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L. R. A.

AS AUTHORITIES

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1-70 L. R. A.

IN SIX VOLUMES.

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L. R. A. CASES AS AUTHORITIES.

CASES IN 37 L. R. A.

37 L. R. A. 33, HARDY v. SHEDDEN CO. 24 C. C. A. 261, 47 U. S. App. 362, 78 Fed. 610.

When relation of master and servant exists.

Cited in Cleveland, C. C. & St. L. R. Co. v. Berry, 152 Ind. 612, 46 L. R. A. 48, 53 N. E. 415, holding railroad liable for negligence of employees while running train over another's tracks; Clough v. Grand Trunk W. R. Co. 11 L.R.A.(N.S.) 449, 85 C. C. A. 1, 155 Fed. 84, holding that where a circus company leased from the railway company, motive power, the use of its tracks, and operatives for its train, under a contract releasing the railway company from liability for all injuries, the train operatives were not servants of the railway so as to make the latter liable for their acts.

Annotation cited in Kelly v. Tyre, 163 Minn. 178, 17 L.R.A.(N.S.) 339, 114 N. W. 750, holding servant of principal contractor did not become servant of subcontractor merely by doing an act to facilitate the latter's work when so requested; Sacker v. Waddell, 98 Md. 50, 103 Am. St. Rep. 374, 56 Atl. 399, holding that whether the relation of master and servant exists is for the jury where there is any real question.

Cited in footnotes to Murray v. Dwight, 48 L. R. A. 673, which holds servant of truckman unloading goods at warehouse, not fellow servant of warehouseman's servants; Swackhamer v. Johnson, 54 L. R. A. 625, which holds hirer of workmen furnished to third person not liable for their trespass in cutting stranger's timber; Channon v. Sanford Co. 41 L. R. A. 200, which denies liability of manufacturer of ornamental decorations for injury to servant by fall of staging erected at servant's request by employee of builder; Gagnon v. Dana, 41 L. R. A. 389, which denies liability of gratuitous lender of brackets for injury to borrower's servants from unknown defect; Brady v. Chicago & G. W. R. Co. 57 L. R. A. 712, which holds employees of depot company not employees of railroad company operating train through former's yard; Stewart v. California Improv. Co. 52 L. R. A. 205, which holds owner of steam roller liable for engineer's neglect to warn travelers though roller hired by city; Delory v. Blodgett, 64 L.R.A. 114, which holds expert machinist sent by employer to make repairs on plants of other persons at their request the servant of the latter.

Cited in notes (50 L. R. A. 419, 462) on what servants are deemed to be in same common employment apart from statutes, where no questions as to vice prin-

cipalship arise; (46 L. R. A. 35, 57, 88, 122) on right of servant to recover damages from persons other than his master for injuries received in performance of his duties; (47 L. R. A. 194–196) on *volenti non fit injuria*, as a defense to actions by injured servants; (4 L.R.A.(N.S.) 651) on liability of general employer for negligence of employee assisting third person without former's knowledge or consent; (17 L.R.A.(N.S.) 338) on servants of employer and of contractor as fellow servants; (22 L.R.A.(N.S.) 323) on liability of railroad for negligence of employee while running on road of another, subject to orders of the latter's train despatcher.

Duty as to safe appliances.

Cited in Loehring v. Westlake Constr. Co. 118 Mo. App. 181, 94 S. W. 747, holding that the duty as to safe place and appliance does not extend beyond the probabilities of reasonable anticipation within the contemplation of the parties under the circumstances of employment.

37 L. R. A. 86, SYLVESTER BLECKLEY CO. v. ALEWINE, 48 S. C. 308, 26 S. E. 609.

Effect of indorsement by stranger before delivery.

Cited in note (72 Am. St. Rep. 680) on effect of indorsement by stranger before delivery.

Provisions rendering notes non-negotiable.

Cited in White v. Harris, 69 S. C. 69, 104 Am. St. Rep. 79, 48 S. E. 41, holding that an agreement in note to pay ten per cent for attorney's fees does not render it unnegotiable; Smith Sons Gin & Mach. Co. v. Badham, 81 S. C. 66, 61 S. E. 1031, holding that note providing for the payment of all expenses of suit in case of collection by suit, was non-negotiable.

Disapproved in First Nat. Bank v. Badham, 86 S. C. 198, 138 Am. St. Rep. 1043, 68 S. E. 536, holding that note is not rendered non-negotiable by provision for attorney's fees in case it is necessary to employ attorney to collect.

37 L. R. A. 89, HUTCHISON v. CRUTCHER, 98 Tenn. 421, 39 S. W. 725.

Sufficiency of presentment.

Distinguished in Jackson v. McInnis, 33 Or. 532, 43 L. R. A. 129, cited in footnote p. 128, 72 Am. St. Rep. 755, 54 Pac. 884, holding demand on receiver *pendente lite* of insolvent bank insufficient to bind indorser of certificate of deposit issued by bank.

Right of subrogation.

Cited in notes (99 Am. St. Rep. 476) on right of subrogation; (37 L.R.A.(N.S.) 1205) on right of one advancing purchase price to subrogation to vendor's lien.

37 L. R. A. 94, TEXAS & P. R. CO. v. SCOTT, 23 C. C. A. 424, 41 U. S. App. 624, 77 Fed. 726.

Adverse possession of right of way.

Second appeal, Scott v. Texas & P. R. Co. 36 C. C. A. 285, 94 Fed. 342, holding adverse possession of portion of right of way only immaterial where title acquired by contract.

Cited in Louisville & N. R. Co. v. Smith, 63 C. C. A. 3, 128 Fed. 3, holding prescriptive right of way acquired by construction, with owner's permission, and subsequent continuous use, of track for forty years.

Contract to maintain railroad depot.

Cited in Beasley v. Texas & P. R. Co. 53 C. C. A. 437, 115 Fed. 955, denying

specific performance of contract restricting location of railway stations; Beasley v. Texas & P. R. Co. 191 U. S. 497, 48 L. ed. 276, 24 Sup. Ct. Rep. 164, refusing to restrain construction of depot in violation of agreement by prior owner of road, when public interests are involved; Lucas v. New York, N. H. & H. R. Co. 64 C. C. A. 640, 130 Fed. 438, holding railroad company relieved from maintaining entrance to depot grounds as agreed, by reason of change in grade by municipality; Willson v. Winchester & P. R. Co. 41 C. C. A. 218, 99 Fed. 644, raising, without deciding, question whether railroad liable for failure to continue depot established in consideration of conveyance; Kansas City Southern R. Co. v. Quigley, 181 Fed. 206, holding that specific performance of contract to maintain railroad division point at particular point, will not be decreed, where it would impose burden on interstate commerce and embarass service of road; Louisville & Interurban R. Co. v. Callahan, 143 Ky. 518, 34 L.R.A.(N.S.) 415, 136 S. W. 1018, holding that railroad company may move station for better convenience of local public, a reasonable distance without consent of railroad commission; Maryland & P. R. Co. v. Silver, 110 Md. 517, 73 Atl. 297; Atlanta & W. W. R. Co. v. Camp, 130 Ga. 6, 15 L.R.A.(N.S.) 598, 124 Am. St. Rep. 151, 60 S. E. 177, 14 Ann. Cas. 439.—holding that contract to maintain station at certain point is not perpetual, but whenever the rights of the public demand that it be maintained elsewhere, it may be moved; Whalen v. Baltimore & O. R. Co. 112 Md. 199, 76 Atl. 166, on the same point; Whalen v. Baltimore & O. R. Co. 108 Md. 19, 17 L.R.A.(N.S.) 134, 129 Am. St. Rep. 423, 69 Atl. 390, holding that an agreement to maintain a side track and to stop trains for passengers at a certain place was a valid and enforceable agreement; Jacquelin v. Erie R. Co. 69 N. J. Eq. 437, 61 Atl. 18, holding that an agreement by a railroad company to maintain a station at a given point will not be enforced to the detriment of the public, but the individual will be left to his action on the agreement for damages.

Cited in footnotes to Lyman v. Suburban R. Co. 52 L. R. A. 645, which sustains condition in grant of right of way for maintenance of depot on land conveyed; Reed v. Johnson, 57 L. R. A. 404, which holds agreement to convey interest in land for services in securing location of depot where grantee has agreed to divide profits with certain officials of road, invalid.

Cited in note (15 L.R.A.(N.S.) 596) on validity of contract of railroad to establish and maintain station.

Distinguished in Herzog v. Atchison, T. & S. E. R. Co. 153 Cal. 499, 17 L.R.A. (N.S.) 430, 95 Pac. 898, holding that where enforcement of contract to place station at certain point would impose great burden upon railroad company, or such enforcement would be detrimental to the public, and no great benefit would accrue to the plaintiff, the contract will not be enforced; Taylor v. Florida East Coast R. Co. 54 Fla. 650, 16 L.R.A.(N.S.) 315, 127 Am. St. Rep. 155, 45 So. 574, 14 Ann. Cas. 472, holding that where land is conveyed for a right of way upon consideration that the railroad company will construct and maintain a spur track and depot at the place and the grantor improves his land in reliance upon the construction of the track and depot, the contract will be enforced unless the rights of the public require it to be otherwise.

37 L. R. A. 98, OXSHEER v. NAVE, 90 Tex. 568, 40 S. W. 7.

Offsetting indebtedness against share of heir or devisee.

Cited in Boyer v. Robinson, 26 Wash. 121, 66 Pac. 119, holding that judgment creditor acquires no lien against devisee's interest in realty until indebtedness to estate satisfied; Marvin v. Bowlby, 142 Mich. 251, 4 L.R.A.(N.S.) 194, 113 Am.

St. Rep. 574, 105 N. W. 751, 7 Ann. Cas. 559, holding that an heir's distributive share in an estate may be applied to the payment of his debt due the estate.

Disapproved in Russell v. Smith, 115 Iowa, 263, 88 N. W. 361, holding debt owed by heir to decedent not lien against share until reduced to judgment.

Construction of will.

Cited in Cochran v. Cochran, 43 Tex. Civ. App. 263, 95 S. W. 731, holding that intention of testator must be ascertained from will as whole, and the language interpreted in the light of circumstances existing at time will was executed, and intention so ascertained must control the construction of the will.

37 L. R. A. 103, HOLDEN v. HARDY, 14 Utah, 71, 46 Pac. 756.

Affirmed in 169 U. S. 366, 42 L. ed. 780, 18 Sup. Ct. Rep. 383.

Cited in Re Chartz, 29 Nev. 112, 5 L.R.A.(N.S.) 917, 124 Am. St. Rep. 915, 85 Pac. 352, in stating the facts of a contemptuous criticism of the court by an attorney.

Statutory regulation of labor.

Cited in State v. Sopher, 25 Utah, 324, 60 L. R. A. 471, 95 Am. St. Rep. 845, 71 Pac. 482, sustaining statute forbidding barbers to exercise trade on Sunday.

Cited in notes (48 L. ed. U. S. 149, 150) on validity of legislation regulating hours of labor; (78 Am. St. Rep. 239, 245) on acts which legislature may declare criminal.

— Limitation of hours of labor.

Followed in State v. Holden, 14 Utah, 97, 37 L. R. A. 110, footnote p. 108, 46 Pac. 1105, and Short v. Bullion-Beck & C. Min. Co. 20 Utah, 26, 45 L. R. A. 604, footnote p. 603, 57 Pac. 720, sustaining eight-hour law for miners, smelters, and refiners.

Cited in Com. v. Beatty, 15 Pa. Super. Ct. 17, and Wenham v. State, 65 Neb. 404, 58 L. R. A. 829, footnote p. 825, 91 N. W. 421, sustaining statute limiting hours of work of women in certain employments: Ex parte Boyce, 27 Nev. 333, 65 L.R.A. 57, 75 Pac. 1, 1 Ann. Cas. 66, sustaining statute providing an eight-hour day for all workingmen in mines, smelters, and mills for the reduction of ores.

Cited in footnotes to Fiske v. People, 52 L. R. A. 291, which holds void, restriction of hours of labor on city contracts to eight hours per day; Cleveland v. Clements Bros. Constr. Co. 59 L. R. A. 775, which holds void, act limiting to eight hours a day work of laborers on public contract; *Re* Dalton, 47 L. R. A. 380, which sustains eight-hour law applicable only to employees of state, municipality, or subdivision of state; *Re* Ten-Hour Law, 61 L. R. A. 612, which sustains limitation to ten hours a day, work of street railway employees; State v. Buchanan, 59 L. R. A. 342, which sustains prohibition against employment of women more than ten hours a day in certain establishments.

Cited in note (65 L.R.A. 45) on legislative limitation of hours of labor.

Distinguished in *Re* Morgan, 26 Colo. 432, 47 L. R. A. 60, footnote p. 52, 77 Am. St. Rep. 269, 58 Pac. 1071, holding void, eight-hour law applying to smelters.

Class legislation.

Cited in Nashville, C. & St. L. R. Co. v. Taylor, 86 Fed. 185, holding provision for assessment of railroads by state board, without privilege of equalization, illegal.

Cited in footnote to Chicago, W. & V. Coal Co. v. People, 48 L. R. A. 554, which sustains statute for inspection of mines at cost of mine owners.

Subsisting laws as parts of contracts.

Cited in Curtice v. Schmidt, 202 Mo. 728, 101 S. W. 61, 10 Ann. Cas. 702,

holding that all subsisting laws are read into and become parts of the contract whether specifically mentioned or not.

Legislative powers.

Cited in State ex rel. Ornstine v. Cary, 126 Wis. 141, 11 L.R.A.(N.S.) 177, 105 N. W. 792, holding that the legislature may make to doing of an act a criminal offense, punishable under general laws or under municipal by-laws, or simply prescribe forfeiture of rights.

37 L. R. A. 108, STATE v. HOLDEN, 14 Utah, 96, 46 Pac. 1105.

Affirmed in 169 U. S. 366, 42 L. ed. 780, 18 Sup. Ct. Rep. 383.

Statutory limitation of hours of labor.

Cited in Com. v. Beatty, 15 Pa. Super. Ct. 17, and Wenham v. State, 65 Neb. 404, 58 L. R. A. 829, footnote p. 825, 91 N. W. 421, sustaining statute limiting hours of work of women in certain employments; *Re* Morgan, 26 Colo. 432, 47 L. R. A. 60, footnote p. 52, 77 Am. St. Rep. 269, 58 Pac. 1071, holding void, eight-hour law applying to smelters: Re Martin, 157 Cal. 62, 106 Pac. 239, holding that whether working in quartz mill was so detrimental to health as to require shortening hours of labor therein, was question for legislature.

Cited in footnotes to Short v. Bullion, B. & C. Min. Co. 45 L. R. A. 603, which sustains eight-hour law for miners, smelters, and refiners; Holden v. Hardy, 37 L. R. A. 103, which sustains act prohibiting employment in underground mines for more than eight hours per day; *Re* Dalton, 47 L. R. A. 380, which sustains eight-hour law applicable only to employees of state, municipality, or subdivision of state; Cleveland v. Clements Bros. Constr. Co. 59 L. R. A. 775, which holds void, act limiting to eight hours a day work of laborers on public contract; Fiske v. People, 52 L. R. A. 291, which holds void, restriction of hours of labor on city contracts to eight hours per day; *Re* Ten-Hour Law, 61 L.R.A. 612, which sustains limitation to ten hours a day, work of street railway employees; State v. Buchanan, 59 L. R. A. 342, which sustains prohibition against employment of women more than ten hours a day in certain establishments; Chicago, W. & V. Coal Co. v. People, 48 L. R. A. 554, which sustains statute for inspection of mines at cost of mine owners.

Cited in notes (65 L.R.A. 45; 78 Am. St. Rep. 245) on legislative limitation of hours of labor.

37 L. R. A. 111, STATE *ex rel.* AMSTERDAMSCH TRUSTEES KANTOOR v. SUPERIOR COURT, 15 Wash. 668, 55 Am. St. Rep. 907, 47 Pac. 31.

Followed without discussion in 15 Wash. 701, 47 Pac. 1103.

Jurisdiction of Washington supreme court.

Cited in *Re* Waugh, 32 Wash. 53, 72 Pac. 710, denying supreme court jurisdiction of disbarment proceedings.

— To issue writ of prohibition.

Cited in Winsor v. Bridges, 24 Wash. 542, 64 Pac. 780, holding supreme court without original jurisdiction to issue writ of prohibition against illegal action of state land commissioners; Cronan v. District Ct. 15 Idaho, 202, 96 Pac. 768, holding that the court has power to issue a writ of prohibition to prevent the exercise of assumed jurisdiction by a lower court, where there is no adequate speedy remedy by appeal.

Appointment of receivers for corporations.

Cited in People ex rel. Daniels v. District Ct. 33 Colo. 302, 80 Pac. 908, holding that the power to appoint receivers over domestic corporations having been specially legislated upon, other statutes on the general subject are inapplicable.

37 L. R. A. 115, WASHINGTON BANK v. FIDELITY ABSTRACT & SECURITY CO. 15 Wash. 487, 55 Am. St. Rep. 902, 46 Pac. 1036.

Lienable or leviable papers.

Cited in Hanley v. Heidelberg Compound Oxygen Co. 24 Pa. Co. Ct. 503, 8 Pa. Dist. R. 207, holding that a secret formula and process sold by its inventor to another in exchange for shares of stock and deposited in a sealed envelope, is subject to seizure on a writ of fieri facias.

37 L. R. A. 116, STATE v. HAYES, 98 Iowa, 619, 60 Am. St. Rep. 219, 67 N. W. 673.

Larceny of property found.

Cited in State v. Nordman, 101 Iowa, 452, 70 N. W. 621, holding finder appropriating property guilty of larceny; Berry v. State, 4 Okla. Crim. Rep. 205, 31 L.R.A.(N.S.) 851, 111 Pac. 676, holding that under information for larceny proof may be made that accused found property and failed to restore it to owner known to accused, without fact of such finding being alleged in information.

Cited in footnote to Danielson v. Roberts, 65 L.R.A. 526, which holds that finder of money hidden on employer's premises by unknown previous owner entitled to maintain trover against employer for taking away of, and refusal to restore same.

Cited in notes (37 L. R. A. 123) on rights and liabilities of finder of property; (52 L.R.A. 139) on larceny of money or property delivered by mistake; (19 L.R.A.(N.S.) 1201) on rights inter se of joint finders of lost property; (88 Am. St. Rep. 603; 30 L.R.A.(N.S.) 339) on larceny of property found; (8 L.R.A.(N.S.) 95; 35 L.R.A.(N.S.) 979) on rights of finder.

Proof of corpus delicti.

Cited in note (68 L.R.A. 66) on proof of corpus delicti.

37 L. R. A. 127, MILWAUKEE MASONS' & BUILDERS' ASSO. v. NIEZEROWSKI, 95 Wis. 129, 60 Am. St. Rep. 97, 70 N. W. 166.

Unlawful combinations.

Cited in Bailey v. Master Plumbers' Asso. 103 Tenn. 111, 46 L. R. A. 564, footnote p. 561, 52 S. W. 853, holding void, by-laws of plumbers' association compelling members to pay fixed sums for certain items and restricting purchases to dealers selling only to members; United States v. Addyston Pipe & Steel Co. 46 L. R. A. 135, 29 C. C. A. 159, 54 U. S. App. 723, 85 Fed. 289, holding combination of iron pipe manufacturers to restrain competition and control prices, illegal; State *ex rel.* Crow v. Armour Packing Co. 173 Mo. 388, 61 L. R. A. 473, 96 Am. St. Rep. 515, 73 S. W. 645, holding combination of jobbers to control price of meat, illegal; State *ex rel.* Durner v. Huegin, 110 Wis. 259, 62 L. R. A. 745, 85 N. W. 1046, holding malicious combination of newspaper publishers to compel reduction of advertising rates by another, actionable; State *ex rel.* Crow v. Firemen's Fund Ins. Co. 152 Mo. 47, 45 L. R. A. 377, 52 S. W. 595, sustaining statute prohibiting combination to fix rates for fire insurance; Gatzow v. Buening, 106 Wis. 12, 49 L. R. A. 480, 80 Am. St. Rep. 17, 81 N. W. 1003, holding liverymen's association by-law forbidding rendering service at funerals where undertaker or family patronize nonunion liveries, illegal; Ferd Heim Brewing Co. v. Belinder, 97 Mo. App. 70, 71 S. W. 691, holding unlawful, agreement by brewers not to sell to one indebted to any of them; State v. Duluth Bd. of Trade, 107 Minn. 539, 23 L.R.A. (N.S.) 1277, 121 N. W. 395, holding that grain exchange was not a combination in restraint of trade within the meaning of the statute, though it fixed prices among its members in dealings with nonmembers; State ex rel. Hadley

v. Standard Oil Co. 218 Mo. 461, 116 S. W. 902; Lohse Patent Door Co. v. Fuelle, 215 Mo. 469, 22 L.R.A.(N.S.) 625, 128 Am. St. Rep. 492, 114 S. W. 997,—on the illegality of combinations in the restraint of trade; Kradwell v. Thiesen, 131 Wis. 102, 111 N. W. 233, holding that a contract not to engage in the drug business within city within five years, is not void as a restriction of trade.

Cited in footnote to Com. v. Grinstead, 56 L. R. A. 709, which holds agreement not to resell goods at less than specified price, not within statute for suppression of conspiracies.

Entry of judgment pending motion for new trial.

Cited in Guetzkow v. Smith, 105 Wis. 97, 80 N. W. 1109, raising, without deciding, effect of entering judgment pending motion for new trial.

Entry of judgment by clerk without costs.

Cited in Dresser v. Lemma, 122 Wis. 395, 100 N. W. 844, holding that the clerk can enter judgment to the exclusion of costs to either party only when the clerk can prepare and enter the proper judgment, and not when the judgment to be entered does not rest upon the verdict, but upon a subsequent determination of the court.

37 L. R. A. 131, JOHN R. DAVIS LUMBER CO. v. HARTFORD F. INS. CO. 95 Wis. 226, 70 N. W. 84.

Insurance agent as agent of assured.

Cited in Wicks Bros. v. Scottish Union & Nat. Ins. Co. 107 Wis. 609, 83 N. W. 781, holding immediate cancelation of policy not effected by return to broker, who endeavors to procure other insurance; United Firemen's Ins. Co. v. Thomas, 47 L. R. A. 457, footnote p. 450, 34 C. C. A. 246, 92 Fed. 133, holding insurance broker authorized to procure certain amount of insurance in companies to be chosen by him, not insurer's agent; Edwards v. Home Ins. Co. 100 Mo. App. 709, 73 S. W. 881, holding notice of cancelation of policy to insurance broker, notice to insured corporation, when broker for years had had entire charge of keeping the corporation property insured; Washburn v. United States Casualty Co. 106 Me. 416, 76 Atl. 902, holding that attaching renewal receipt to original accident policy and charging renewal premium to insured, and crediting it to company, constituted renewal of policy where agent had charge of all insured's insurance business; Fredman v. Consolidated F. & M. Ins. Co. 104 Minn. 80, 124 Am. St. Rep. 608, 116 N. W. 221, holding that an insurance broker under the statute is the agent of the insured and not of the insurer except for the delivery of the policy and the collection of premiums, and this cannot be changed by acts of parties to the contrary; Welch v. Fire Asso. of Philadelphia, 120 Wis. 460, 98 N. W. 227, holding that a broker who procures insurance for a person, collecting the premium and delivering it to the agent of the company from who he procured the policy, is an agent of the company under the statute; Wisconsin C. R. Co. v. Phœnix Ins. Co. 123 Wis. 316, 101 N. W. 703, holding same as to a person not an insurance broker; Costello v. Grant County Mut. F. & Lightning Ins. Co. 133 Wis. 364, 113 N. W. 639, holding that under the statute one who forwards an application for insurance and who transmits the acceptance to the insured, is an agent of the insurer.

Cited in note (38 L.R.A.(N.S.) 627, 639) on insurance broker as agent for the insured.

Power of insurance agent to bind company.

Cited in footnotes to Cole v. Union Cent. L. Ins. Co. 47 L. R. A. 201, which holds credit for part of first premium extended by general agent binding on com-

pany; Hall v. Union Cent. L. Ins. Co. 51 L. R. A. 288, which holds admissions by insurance agent after death of insured, that all premiums paid, binding on company; McCabe v. Ætna Ins. Co. 47 L. R. A. 641, which sustains authority of agent of foreign insurance company to orally renew policy issued by him.

Cancelation of insurance.

Cited in Chrisman & S. Bkg. Co. v. Hartford F. Ins. Co. 75 Mo. App. 316, holding return of unearned premium essential to effect cancelation of policy; Northern Pine Crating Co. v. Liverpool & L. & G. Ins. Co. 143 Wis. 435, 128 N. W. 70, holding that one party to insurance policy can cancel it only by strictly complying with terms as to cancelation; Firemans' Fund Ins. Co. v. Hellner, 159 Ala. 452, 49 So. 297, 17 Ann. Cas. 793, holding that a telegram directed to the agent of the company directing him to cancel an insurance policy did not cancel the policy where there was an affirmative act necessary on the part of the agent.

Cited in note (13 L.R.A.(N.S.) 887) on return of premium as condition of canceling insurance.

37 L. R. A. 138, JOHN V. FARWELL CO. v. JOSEPHSON, 96 Wis. 10, 65 Am. St. Rep. 22, 70 N. W. 289.

Plea of ultra vires — By private persons.

Cited in Hubbard v. Haley, 96 Wis. 588, 71 N. W. 1036, holding that corporation's power to contract cannot be questioned by guarantor; Atty. Gen. *ex rel.* Askew v. Smith, 109 Wis. 541, 85 N. W. 512, holding deed in fee to railroad, *ultra vires,* not collaterally assailable; Manchester Street R. Co. v. Williams, 71 N. H. 321, 52 Atl. 461, holding purchaser with notice, of stock owned by corporation, from agent wrongfully selling, cannot set up that ownership *ultra vires;* Bergeron v. Hobbs, 96 Wis. 647, 65 Am. St. Rep. 85, 71 N. W. 1056 (dissenting opinion), majority holding organizers failing to effect corporation individually liable for debts; Kanneberg v. Evangelical Creed Congregation, 146 Wis. 617, 39 L.R.A.(N.S.) 141, 131 N. W. 353, Ann. Cas. 1912 C, 376, holding that executed contract for services, made in good faith, by corporation cannot be avoided by plea of ultra vires: Calumet Service Co. v. Chilton, 148 Wis. 353, 135 N. W. 131, holding that want of power in corporation to acquire property cannot be attacked collaterally; Harris v. Independence Gas Co. 76 Kan. 757, 13 L.R.A.(N.S.) 1174, 92 Pac. 1123, holding that one who has entered into a contract with a corporation, otherwise not objectionable, cannot sue for its cancelation on the ground that it is foreign to the purposes of the corporation; Eastman v. Parkinson, 133 Wis. 381, 13 L.R.A.(N.S.) 928, 113 N. W. 649, holding same as to contract no longer executory and not tainted with fraud; Illinois Steel Co. v. Warras, 141 Wis. 126, 123 N. W. 656, holding that the inability of a corporation, foreign or domestic, to acquire title to any property, cannot be raised by a stranger claiming the property unless the inability results from express statutory prohibition.

Cited in note (70 Am. St. Rep. 163) on ultra vires contracts of private corporation.

— By corporation.

Cited in Bullen v. Milwaukee Trading Co. 109 Wis. 45, 85 N. W. 115, holding that corporation receiving benefits of contract cannot plead *ultra vires;* McElroy v. Minnesota Percheron Horse Co. 96 Wis. 321, 71 N. W. 652, holding that corporation cannot plead *ultra vires* to prevent recovery on contract performed by other party; Ledebuhr v. Wisconsin Trust Co. 112 Wis. 663, 88 N. W. 607, sustaining right of beneficiary, designated by will to recover insurance, though not named in

benefit certificate, as required by charter, to recover insurance; Bigelow v. Chicago, B. & N. R. Co. 104 Wis. 112, 80 N. W. 95, holding that railroad cannot invoke *ultra vires* in action on contract to transport goods purchased in reliance thereon; Zinc Carbonate Co. v. First Nat. Bank, 103 Wis. 132, 74 Am. St. Rep. 845, 79 N. W. 229, holding *ultra vires* no defense to corporation in action for conspiracy to defraud; Interior Woodwork Co. v. Prasser, 108 Wis. 560, 84 N. W. 833, sustaining guaranty of building contract by corporation organized to carry on wholesale lumber business; Security Nat. Bank v. St. Croix Power Co. 117 Wis. 217, 94 N. W. 74, holding defense of *ultra vires* not available by corporation against bank foreclosing mechanic's lien against corporation; Meating v. Tigerton Lumber Co. 113 Wis. 385, 89 N. W. 152, holding proof that president was managing officer of corporation justifies recovery on contract made by him; Northwestern Fuel Co. v. Lee, 102 Wis. 430, 78 N. W. 584, sustaining sale of corporate property by president; not disaffirmed by directors.

What actions survive and are assignable.

Cited in Killen v. Barnes, 106 Wis. 560, 82 N. W. 536, holding cause of action for deceit not assignable; Shaw v. Gilbert, 111 Wis. 190, 86 N. W. 188, holding partner purchasing share of another afterwards dying can recover only for damages to his interest in action for deceit; Allen v. Frawley, 106 Wis. 642, 82 N. W. 593, holding that action to recover property obtained by conspiracy survives; Lane v. Frawley, 102 Wis. 377, 78 N. W. 593, holding action for damages caused by deceit does not survive; Puffer v. Welch, 144 Wis. 514, 129 N. W. 525, Ann. Cas. 1912 A, 1120, holding that prior to enactment of chapter 353, Laws of 1907, cause of action at law for deceit was not assignable; Harris v. Welch, 148 Wis. 446, 134 N. W. 1041, holding that since enactment of chapter 353, of laws of 1907, cause of action survives death of party originally liable; Harrigan v. Gilchrist, 121 Wis. 340, 99 N. W. 909, holding that an action for an accounting against an unfaithful trustee, does not abate by the death of the plaintiff but survives to his personal representative; Lindemann v. Rusk, 125 Wis. 226, 104 N. W. 119, holding same as to action against a director for a wrongful appropriation of the assets of a corporation; Borchert v. Borchert, 132 Wis. 597, 113 N. W. 35, holding that where the child through fraud and undue influence, secures a transfer to himself of all the property of his parents upon the pretense of supporting them for the rest of their lives the cause of action for the rescission of such contract and the recovery of the property, survives to the personal representative; Allen v. Frawley, 138 Wis. 298, 119 N. W. 565, holding that an action against one for deceit and fraud resulting in damages by depletion of the estate in the hands of the receiver does not survive the death of the wrongdoer.

Cited in footnote to Rogers v. Portland & B. Street Railway, 70 L.R.A. 574, which holds right of action for severance of gravel from realty and its wrongful conversion assignable.

Distinguished in Somervaill v. McDermott, 116 Wis. 509, sustaining survival of cause of action against confidential agent of intestate for accounting and to declare conveyances beneficial to agent, fraudulent.

Damages for fraud.

Cited in Shaw v. Gilbert, 111 Wis. 190, 86 N. W. 188, holding sale price, where fair value, proper measure of damages for obtaining goods by fraud.

Interest as element of damages.

Cited in Shaw v. Gilbert, 111 Wis. 197, 86 N. W. 188, holding that person defrauded of property may recover interest on value.

Adoption of construction with adopted statute.

Cited in Manitowoc Clay Product Co. v. Manitowoc, G. B. & N. W. R. Co. 135 Wis. 102, 115 N. W. 390, holding that the construction placed upon a statute by the courts of a state, before its adoption by another state, become a part of the law of the latter state.

37 L. R. A. 142, STATE v. SHOVE, 96 Wis. 1, 65 Am. St. Rep. 17, 70 N. W. 312.

Liability for receiving deposit in insolvent bank.

Cited in McClure v. People, 27 Colo. 371, 61 Pac. 612, sustaining conviction under statute of president of insolvent bank receiving deposit, negligently failing to inform himself of its condition; State v. Winstandley, 154 Ind. 444, 57 N. E. 109, holding sufficiency of indictment of officers of insolvent bank receiving deposits determined by same rules as for embezzlement; Ellis v. State, 138 Wis. 521, 20 L.R.A.(N.S.) 448, 131 Am. St. Rep. 1022, 119 N. W. 1110, holding that the depositing of a check in a bank, which check was treated as money by the depositor and the bank, was a depositing of money in the bank within the meaning of the statute fixing the liability for receiving money in an insolvent bank.

Cited in footnote to Richardson v. Olivier, 53 L. R. A. 113, which sustains shareholder's right to recover back deposit fraudulently taken while bank insolvent.

Applicability to banks of legislation independent of banking law.

Cited in Northwestern Nat. Bank v. Superior, 103 Wis. 51, 79 N. W. 54, holding statute making municipalities preferred creditors of insolvent corporations applicable to banks.

Statutory construction.

Cited in State *ex rel.* Holland v. Lammers, 113 Wis. 405, 86 N. W. 677, by Cassoday, J., dissenting, who holds statute providing for incorporation of villages construable with reference to general object; Long v. Neenah, 128 Wis. 43, 107 N. W. 10, 8 Ann. Cas. 463, holding that remedial statutes, penal in their nature should be liberally construed.

Statutes against receiving of deposits into insolvent banks.

Cited in Ex parte Pittman, 31 Nev. 51, 22 L.R.A.(N.S.) 270, 99 Pac. 700, 20 Ann. Cas. 1319, sustaining statute providing punishment for receiving deposits into an insolvent bank.

Definition of certificate of deposit.

Cited in note (75 Am. St. Rep. 44) on definition of certificate of deposit.

37 L. R. A. 146, WERTHEIMER v. SAUNDERS, 95 Wis. 573, 70 N. W. 824.

Liability for acts of independent contractors.

Cited in Wilber v. Follansbee, 97 Wis. 581, 72 N. W. 741, holding landlord voluntarily repairing premises liable to tenant for contractor's negligence; Peerless Mfg. Co. v. Bagley, 126 Mich. 230, 53 L. R. A. 288, footnote p. 285, 86 Am. St. Rep. 537, 85 N. W. 568, holding landlord liable for independent contractor's negligence in putting in automatic fire extinguisher; Prescott v. Le Conte, 83 App. Div. 488, 82 N. Y. Supp. 411, holding landlords liable to sublessees for damages resulting from insufficient protection provided by independent contractor employed by insurance company to repair roof; Thomas v. Hammer Lumber Co. 153 N. C. 357, 32 L.R.A.(N.S.) 586, 69 S. E. 275, holding that company operating steam railroad for logging purposes is liable in damages for fires caused by locomotives by reason of foul condition of right of way, although independent contractor was employed; Nahn v. Register Newspaper Co. 120 Ky. 491, 87 S. W. 296, holding that the landlord was liable for damages resulting from rain

falling upon the lower stories of the building while additional stories were being added, though the work was being done by an independent contractor; Myhre v. Schleuder, 98 Minn. 239, 108 N. W. 276, holding that the landlord is liable to the tenants of the lower floor for injuries to them through the repairing of the roof and stairway by a tenant of the upper floor, though the full authority to act was turned over to the upper tenant; Eberson v. Continental Invest. Co. 130 Mo. App. 306, 109 S. W. 62, holding that if the landlord attempts to have repairs made he is liable for the negligence of the contractor doing the work.

Cited in footnotes to Pittsfield Cottonwear Mfg. Co. v. Pittsfield Shoe Co. 60 L. R. A. 116, which holds landlord liable to tenants of lower floor for injury from freezing of automatic fire extinguisher in portion retained by former though building heated by independent contractor; Bonaparte v. Wiseman, 44 L. R. A. 482, which requires one employing independent contractor to excavate near neighbor's house to notify neighbor or see that contractor exercises due care; Boomer v. Wilbur, 53 L. R. A. 172, which denies owner's liability for injury by fall of bricks through negligence of independent contractor repairing chimney; Hoff v. Shockley, 64 L. R. A. 538, which holds property owner not liable for injuries to traveler by obstructions placed in street without danger signals by independent contractor for construction of building.

Cited in notes (65 L.R.A. 855) on liability for injuries caused by performance of work by independent contractor which is dangerous unless certain precautions are observed; (76 Am. St. Rep. 403, 423) on liability for negligence and torts of independent contractors.

Landlord's liability for defective premises.

Cited in Willcox v. Hines, 100 Tenn. 563, 41 L. R. A. 284, 66 Am. St. Rep. 770, 46 S. W. 297, holding landlord with knowledge liable for injury to tenant from unsafe premises; Upham v. Head, 74 Kan. 20, 85 Pac. 1017, holding that where a landlord at the request of a tenant orders a mechanic to make repairs around the premises, the landlord is liable for injuries to the tenant through the negligence of the mechanic in doing the work; Munk v. Maryland Casualty Co. 116 App. Div. 757, 102 N. Y. Supp. 164, on the liability of the landlord for acts of an independent contractor.

Cited in note (34 L.R.A.(N.S.) 806) on liability of landlord for injury to tenants from defects in premises.

Distinguished in Rhoades v. Seidel, 139 Mich. 611, 102 N. W. 1025, holding that the landlord was not liable to the tenant for injuries to the latter because of the failure of the former to perform his voluntary promise to repair the premises, where the tenant knew that he had not so repaired them.

Duty of master to servant.

Cited in Walker v. Simmons Mfg. Co. 131 Wis. 549, 111 N. W. 694, holding that the person furnishing a working place, machinery, and appliances to another to do his work, owes a duty of furnishing him a reasonably safe place in which to do his work.

37 L. R. A. 150, WILLIAMS v. LILLEY, 67 Conn. 50, 34 Atl. 765.

Rights of vendor and vendee to proceeds of insurance.

Cited in Brakhage v. Tracy, 13 S. D. 346, 83 N. W. 363, holding that proceeds of insurance taken by purchaser under land contract in vendor's name should be credited on price; Wm. Skinner & Sons' Ship Bldg. & Dry-Dock Co. v. Houghton, 92 Md. 88, 84 Am. St. Rep. 485, 48 Atl. 85, holding vendee under land contract entitled to proceeds of insurance upon paying purchase money; Phinizy v. Guernsey, 111 Ga. 350, 50 L. R. A. 683, footnote p. 680, 78 Am. St. Rep. 217, 36 S. E.

796, holding vendor entitled to insurance on buildings destroyed while in his possession during investigation of title; Cropper v. Brown, 76 N. J. Eq. 422, 139 Am. St. Rep. 770, 74 Atl. 987, holding that purchaser at judicial sale, who executes contract to purchase, acquires insurable interest in property; Thorp v. Croto, 79 Vt. 405, 10 L.R.A.(N.S.) 1170, 118 Am. St. Rep. 961, 65 Atl. 562, 9 Ann. Cas. 58 (dissenting opinion), on the application of the insurance money to payment of mortgage debt.

Cited in footnote to Naquin v. Texas Sav. & Real Estate Invest. Asso. 58 L. R. A. 711, which sustains vendee's right to have insurance money applied in restoring property instead of reducing unmatured indebtedness.

Cited in notes (37 L.R.A. 153) on rights of vendor and vendee to proceeds of insurance; (57 L. R. A. 652) on nature of interest of vendor or vendee in land contract as real or personal property; (27 L.R.A.(N.S.) 233) as to who must bear loss from destruction or deterioration of realty before contract of sale completely performed by transfer of title.

37 L. R. A. 157, STATE *ex rel.* ADAMS v. BURDGE, 95 Wis. 390, 60 Am. St. Rep. 123, 70 N. W. 347.

Delegation of legislative power.

Cited in State ex rel. Buell v. Frear, 146 Wis. 304, 34 L.R.A.(N.S.) 490, 131 N. W. 832, holding that statute providing for appointment of civil service commissioners and defining powers is not void because of delegation of legislative powers; State ex rel. Kenosha Gas & Electric Co. v. Kenosha Electric R. Co. 145 Wis. 347, 129 N. W. 600, holding that legislature may authorize railroad rate commission to ascertain facts such as is required in passing upon application for certificate of convenience and necessity under public utility law; Minneapolis, St. P. & S. Ste. M. R. Co. v. Railroad Commission, 136 Wis. 162, 17 L.R.A.(N.S.) 838, 116 N. W. 905, holding that the grant of the power to a commission to determine the existence of certain prescribed facts, preliminary to the enforcement of a statute, is not an invalid delegation of legislative power; State ex rel. Northern P. R. Co. v. Railroad Commission, 140 Wis. 171, 121 N. W. 919 (dissenting opinion), on the delegation of legislative power; State ex rel. Van Alstine v. Frear, 142 Wis. 324, 125 N. W. 961, sustaining the "Primary Election Law" as not being a delegation of legislative power.

Cited in footnote to Schaezlein v. Cabaniss, 56 L. R. A. 733, which denies right to commissioner of labor statistics discretion to determine possibility of preventing liability to inhalation of dangerous substances in particular factories.

Cited in note (80 Am. St. Rep. 229, 230) on powers which may be delegated to boards of health.

Distinguished in State *ex rel.* Boycott v. La Crosse, 107 Wis. 663, 84 N. W. 242, by Marshall, J., concurring, who holds that legislature may delegate to cities power to amend charters by adopting general law; State v. Atlantic Coast Line R. Co. 56 Fla. 627, 32 L.R.A.(N.S.) 655, 47 So. 969, holding that the imposition of a rule by the railroad commission was not invalid, where the statute itself imposed the penalty for violation.

Police power.

Cited in State *ex rel.* Winkler v. Benzenberg, 101 Wis. 176, 76 N. W. 345, sustaining statute requiring examination of master and journeymen plumbers before being licensed; State *ex rel.* Kellogg v. Currens, 111 Wis. 436, 56 L. R. A. 255, 87 N. W. 561, sustaining statute requiring examination of persons commencing practice of medicine; Mathews v. Kalamazoo Bd. of Edu. 127 Mich. 537, 54 L. R. A. 737, footnote p. 736, 86 N. W. 1036, and Osborn v. Russell, 64 Kan. 510, 68

Pac. 60, denying power to make vaccination condition of admission to schools in absence of epidemic; Morris v. Columbus, 102 Ga. 802, 42 L. R. A. 180, footnote p. 175, 66 Am. St. Rep. 243, 30 S. E. 850, sustaining compulsory vaccination under legislative authority within city limits where smallpox epidemic; Potts v. Breen, 167 Ill. 76, 39 L. R. A. 155, footnote p. 152, 59 Am. St. Rep. 262, 47 N. E. 81, denying power of State Board of Health to compel school children to be vaccinated as condition of attending school; Com. v. Pear, 183 Mass. 245, 67 L.R.A. 939, 66 N. E. 719, sustaining statute providing for the free vaccination of the inhabitants of certain infected districts, and providing for punishment for failure to be vaccinated; Benz v. Kremer, 142 Wis. 7, 26 L.R.A.(N.S.) 845, 125 N. W. 99, sustaining regulation prohibiting the operation of bakeries in a room more than five feet below the level of the store or the adjoining ground; State v. Redmon, 134 Wis. 101, 14 L.R.A.(N.S.) 233, 126 Am. St. Rep. 1003, 114 N. W. 137, 15 Ann. Cas. 408, holding that the statute giving the absolute right to the occupant of a lower berth of a sleeping car to decide whether or not the upper berth, when unoccupied shall be made up, is not a valid exercise of the police power, but is for private benefit.

Cited in footnote to State ex rel. Freeman v. Zimmerman, 58 L.R.A. 78, which sustains regulation, in cases of emergency, for vaccination as condition of admission to school; Com. v. Pear, 67 L.R.A. 935, which sustains power of legislature to authorize health authorities of municipality to require under penalty all citizens to be vaccinated when considered necessary for the public health; Re Viemeister, 70 L.R.A. 796, which upholds statute requiring vaccination as proper requisite to attendance at public schools.

Cited in note (17 L.R.A.(N.S.) 712) on compulsory vaccination.

Distinguished in Blue v. Beach, 155 Ind. 139, 50 L. R. A. 72, footnote p. 64, 80 Am. St. Rep. 195, 56 N. E. 89, holding exclusion of unvaccinated pupils from public schools during smallpox epidemic justified only as public emergency; Com. v. Pear, 183 Mass. 245, 67 L. R. A. 939, footnote p. 935, 66 N. E. 719, sustaining statute authorizing board of health to require vaccination of all inhabitants, and impose fine for refusal.

Reasonableness of sanitary regulations.

Cited in Wilson v. Alabama G. S. R. Co. 77 Miss. 718, 52 L. R. A. 358, 78 Am. St. Rep. 543, 28 So. 567, holding order of state board of health prohibiting persons getting off trains in state void for unreasonableness where no epidemic exists; Pierce v. Dillingham, 203 Ill. 164, 62 L. R. A. 893, 67 N. E. 846, Affirming 96 Ill. App. 315, holding statute permitting executive prohibition against importation of cattle from locality having epidemic of contagious disease, not justification for exclusion of cattle from locality not shown to be so affected; Stoltman v. Lake, 124 Wis. 464, 102 N. W. 920, on the validity of a health regulation laid down by a board of health.

Mandamus to compel granting of school privileges.

Cited in Harley v. Lindemann, 129 Wis. 520, 8 L.R.A.(N.S.) 130, 109 N. W. 570, holding that mandamus would lie to compel the granting of school privileges to children not complying with the ruling of the school board in changing text books, where the change was made without authority.

37 L. R. A. 162, BADGER PAPER CO. v. ROSE, 95 Wis. 145, 70 N. W. 302.

Stock subscriptions.

Cited in Franey v. Warner, 96 Wis. 232, 71 N. W. 81, holding that subscription for stock cannot be rescinded for fraud of promoters; Gilman v. Gross, 97 Wis.

227, 72 N. W. 885, holding conditional subscription for stock not binding until delivery to and acceptance by corporation.

Distinguished in Rehbein v. Rahr, 109 Wis. 148, 85 N. W. 315, holding that signers of certificate become stockholders of banking corporation on filing; Southwestern State Co. v. Stephens, 139 Wis. 625, 29 L.R.A.(N.S.) 96, 131 Am. St. Rep. 1074, 120 N. W. 408, holding that an offer by a corporation to sell unsubscribed stock at a stipulated figure, having been accepted by the subscriber, became a binding contract, subject to rescission for failure of corporation to employ person as provided in the contract of subscription.

Commencement of existence of corporation.

Cited in Sentinel Co. v. A. D. Meiselbach Motor Wagon Co. 144 Wis. 227, 32 L.R.A.(N.S.) 438, 140 Am. St. Rep. 1007, 128 N. W. 861, holding that corporation comes into being on filing of its articles with register of deeds, and from that time may bind itself by contract.

37 L. R. A. 166, GEILFUSS v. CORRIGAN, 95 Wis. 651, 60 Am. St. Rep. 143, 70 N. W. 306.

Pledge.

Cited in American Pig Iron Storage Warrant Co. v. German, 126 Ala. 239, 85 Am. St. Rep. 21, 28 So. 603, holding valid pledge effected by piling pig iron in separate place in pledgor's yard, marked with pledgee's name; Franklin Nat. Bank v. Whitehead, 149 Ind. 571, 39 L. R. A. 730, footnote p. 725, 63 Am. St. Rep. 302, 49 N. E. 592, holding invalid, warehouse receipts issued by corporation on own property to secure own debt.

Cited in note (30 L.R.A.(N.S.) 553) on issuance and delivery by private warehouseman of receipt for own property as transfer of possession essential to valid pledge.

Public warehousemen.

Cited in Tradesmen's Nat. Bank v. Jagode, 42 W. N. C. 343, 40 Atl. 1018, holding that the warehouseman must be one other than the owner of the goods; Security Warehousing Co. v. Hand, 206 U. S. 420, 51 L. ed. 1122, 27 Sup. Ct. Rep. 720, 11 Ann. Cas. 789, affirming 74 C. C. A. 186, 143 Fed. 39, holding that where the goods of a corporation were stored in parts of its own building which had been leased to a so-called foreign warehouse company, there was no warehousing within meaning of the statute, where the former paid all the expenses of the storage, and had control of the goods.

Cited in footnotes to Central Elevator Co. v. People, 43 L. R. A. 658, which denies right of licensed warehouseman to deal in and store grain in own licensed warehouse; Anderson v. Portland Flouring Mills Co. 50 L. R. A. 235, which holds parol evidence of contract under which grain delivered though negotiable warehouse receipts given therefor.

Cited in note (136 Am. St. Rep. 217) on duty of warehousemen in care of property.

Distinguished in National Union Bank v. Shearer, 225 Pa. 472, 74 Atl. 351, 17 Ann. Cas. 664, holding that a warehouseman is one who receives and stores goods as a business for compensation, though he need not under the statute hold himself out to the public as such.

37 L. R. A. 175, CLEVELAND, C. C. & ST. L. R. CO. v. CONNERSVILLE, 147 Ind. 277, 62 Am. St. Rep. 418, 46 N. E. 579.

Compelling railroad to light track.

Cited in note (41 L. R. A. 424) on compelling railroad to light track in city.

Modified in Chicago, I. & L. R. Co. v. Crawfordsville, 164 Ind. 77, 72 N. E. 1025, holding that an ordinance providing for the lighting of street crossings by railroads, was not rendered invalid as indefinite because it excused the company from maintaining lights when there was sufficient moonlight.

Validity of statutes and ordinances.

Cited in *Re* Smith, 143 Cal. 373, 77 Pac. 180, holding void, county ordinance prohibiting maintenance of gas works in sparsely settled rural district: St. Paul v. St. Paul City R. Co. 114 Minn. 255, 36 L.R.A.(N.S.) 239, 130 N. W. 1108, Ann. Cas. 1912 B, 1136, holding that common council may require operators of street cars to take reasonable measures to protect passengers from dust raised by cars: Re Junqua, 10 Cal. App. 606, 103 Pac. 159, sustaining a smoke ordinance which applied to places using crude oil as a fuel.

— When reviewable.

Cited in Goodwine v. Cadwallader, 158 Ind. 206, 61 N. E. 939, and Chicago & S. E. R. Co. v. Glover, 159 Ind. 170, 62 N. E. 11, refusing to pass upon constitutionality of statute, not essential to decision; Southern Illinois R. Co. v. Bedford, 165 Ind. 274, 75 N. E. 268, 6 Ann. Cas. 509, holding that an ordinance requiring a railroad company to keep a flagman at a railroad crossing between the hours of seven in the morning and seven o'clock in the evening on every day was unreasonable where the tracks over the crossing were not used after six o'clock in the evening and not on holidays or Sundays.

37 L. R. A. 177, PACIFIC EXP. CO. v. SHEARER, 160 Ill. 215, 52 Am. St. Rep. 324, 43 N. E. 816.

Use of assumed name as fraud.

Cited in E. S. Karoly Electrical Constr. Co. v. Globe Sav. Bank, 64 Ill. App. 230, holding indorsement of checks by person bearing assumed name, without intent to defraud, not forgery.

Delivery of goods by carrier.

Cited in Security Trust Co. v. Wells, F. & Co. 81 App. Div. 430, 80 N. Y. Supp. 830, holding express company liable for delivery of money to wrong person upon forged order, although money was expressed in compliance with forged letter, and referring with approval to annotation in 37 L. R. A. 177; Schlichting v. Chicago, R. I. & P. R. Co. 121 Iowa, 506, 96 N. W. 959, holding carrier, having knowledge of issuance of bill of lading, justified in refusing delivery except upon its pruduction; Corning & Co. v. Peoria & P. Union R. Co. 144 Ill. App. 410, holding that where goods have been delivered to a carrier to be carried and delivered to a certain person at a certain destination, the carrier is an insurer for the safe delivery to the person to whom they are consigned.

Cited in notes (37 L. R. A. 181) on delivery to impostor by carrier; (38 L. R. A. 366) on to whom delivery may be made under bill of lading; (61 Am. St. Rep. 374, 375) on duty of express companies as common carriers to deliver goods to consignee.

37 L. R. A. 189, TERRE HAUTE v. EVANSVILLE & T. H. R. CO. 149 Ind. 174, 46 N. E. 77.

Subsequent appeal in Evansville & T. H. R. Co. v. Terre Haute, 161 Ind. 28, 67 N. E. 686, holding act providing that judgments on appeal from condemnation proceedings upon opening street are final, retroactive.

Taking of property already devoted to public use.

Cited in Postal Teleg. Cable Co. v. Chicago, I. & L. R. Co. 30 Ind. App. 658, 66 N. E. 919, sustaining right of telegraph company to acquire right of way along

railroad right of way; Indianapolis & V. R. Co. v. Indianapolis & M. Rapid Transit Co. 33 Ind. App. 341, 67 N. E. 1013, holding that property taken for a public use may be taken for another different or inconsistent use, whenever in the judgment of the legislature the public exigency therefor exists; Zehner v. Millner, 172 Ind. 500, 24 L.R.A.(N.S.) 388, 87 N. E. 208, holding where the right to maintain a mill dam in connection with a grist mill was acquired by condemnation, but the mill was operated wholly for private gain, the dam may be taken by the drainage commission in order to remove obstructions in the river for the benefit of the public health.

Cited in note (2 L.R.A.(N.S.) 228) on taking railroad lands for drainage district.

Location of highways across railroads.

Followed in Powell v. Greensburg, 150 Ind. 154, 49 N. E. 955, holding that railroad's right of way may be condemned for street.

Cited in Gold v. Pittsburgh, C. C. & St. L. R. Co. 153 Ind. 243, 53 N. E. 285, sustaining location of highway across railroad's right of way; Baltimore & O. S. W. R. Co. v. State, 159 Ind. 519, 65 N. E. 508, holding railroad corporation's acquisition of right of way subject to state's right to extend public highways across it; Heinl v. Terre Haute, 161 Ind. 52, 66 N. E. 450, recognizing right of city to extend street across lands of railroad company; Baltimore & O. S. W. R. Co. v. Jackson County, 156 Ind. 276, 59 N. E. 856, sustaining power of county commissioners to locate public drain upon railroad's right of way.

Cited in notes (24 L.R.A.(N.S.) 1218) on power to lay out streets across railway property; (24 L.R.A.(N.S.) 1226, 1228, 1229) on necessity and measure of compensation, upon laying out street across railway property.

Independence of governmental branches.

Followed in Wilkison v. Board of Children's Guardians, 158 Ind. 8, 62 N. E. 481, holding authority in circuit court to appoint members of Board of Children's Guardians, not delegation of executive power; Baltimore & O. R. Co. v. Whiting, 161 Ind. 233, 68 N. E. 266, sustaining act conferring judicial power upon town clerk; Madison County v. Moore, 161 Ind. 430, 68 N. E. 905, sustaining power of justice of peace to appoint person to care for one adjudged insane by him.

Cited in State ex rel. Walker v. Wagner, 170 Ind. 147, 82 N. E. 466, 15 Ann. Cas. 1063, holding that the power to appoint an officer in a municipality may be conferred upon the city council; Indianapolis v. State, 172 Ind. 477, 88 N. E. 687, sustaining statutes providing for the appointment of appraisers upon petition to the circuit court, for the reassessment for public improvements; Chicago, I. & L. R. Co. v. Railroad Commission, 38 Ind. App. 458, 78 N. E. 338, sustaining statute giving the appellate court the power on appeal to determine whether the rate fixed by the railroad commission is a reasonable one, or whether it was passed under a valid law; State ex rel. Young v. Brill, 100 Minn. 520, 111 N. W. 639, holding unconstitutional a statute providing for the appointment of members of county board of control, by the judges of the district court of the county; Re County Comrs. 22 Okla. 447, 98 Pac. 557, holding statute unconstitutional which provided for the appointment of additional judges of the district court by the governor upon the recommendation of the supreme court, as a delegation of legislative power to the suppreme court; Re Appointment of Revisor, 141 Wis. 615, 124 N. W. 670, 18 Ann. Cas. 1176, holding that the power of appointment of officers may be delegated to a court where it is to assist the court in the performance of acts necessary for the due discharge of judicial duties; Arnett v. State, 168 Ind. 184, 8 L.R.A.(N.S.) 1194, 80 N. E. 153, holding that the statute providing for a metropolitan police force in certain cities

of the state was not an interference with the right of local self-government, though it imposed the maintenance of the force upon the municipality, without control over the expenditures therefor.

Distinguished in State *ex rel.* White v. Barker, 116 Iowa, 110, 57 L. R. A. 252, 93 Am. St. Rep. 222, 89 N. W. 204, holding invalid, act authorizing district court to appoint trustees of municipal boards of waterworks.

Practical construction of Constitution.

Cited in *Re* Bank of Commerce, 153 Ind. 463, 47 L. R. A. 491, 53 N. E. 950, holding practical construction of Constitution by legislature influential in determining meaning; Indianapolis v. Navin, 151 Ind. 147, 41 L. R. A. 341, 47 N. E. 525, holding long-continued regulation of corporations by special acts influential in determining construction of provision against creating corporations by special acts; Smith v. Indianapolis Street R. Co. 158 Ind. 435, 63 N. E. 849, sustaining special act relating to corporation, passed by legislature containing members of constitutional convention familiar with constitution; State ex rel. Gleason v. Gerdink, 173 Ind. 252, 90 N. E. 70, holding that uniform practice and course of legislation, under constitutional provision, may be used in construing such provision; Spaulding v. Mott, 167 Ind. 64, 76 N. E. 620, holding that if the meaning of a statute is ambiguous the practical construction as placed thereon, should be accepted as its true meaning unless there are other good reasons for not accepting it; McCleary v. Babcock, 169 Ind. 235, 82 N. E. 453, holding that great weight will be accorded the construction of the constitution as to the powers of legislature as placed thereon by the legislature itself; State ex rel. Moodie v. Bryan, 50 Fla. 390, 39 So. 929, holding that the court may take judicial notice of practical construction of a statute and long prevailing custom.

Injunctive relief.

Cited in Helms v. Bell, 155 Ind. 504, 58 N. E. 707, holding judgment void on face may be enjoined; McKee v. Pendleton, 154 Ind. 654, 57 N. E. 532, holding front-foot assessment for street improvement regardless of benefits, unauthorized by statute, enjoinable; Lowe v. Lawrenceburg Roller Mills Co. 161 Ind. 500, 69 N. E. 148, sustaining injunctive relief against enforcement of invalid municipal ordinance to vacate street.

37 L. R. A. 195, STEINBERG v. LARKIN, 58 Kan. 201, 48 Pac. 861.

Followed without special discussion in Getty v. Larkin, 59 Kan. 550, 53 Pac. 755.

Partnership realty.

Cited in Coolidge v. Burke, 69 Ark. 243, 62 S. W. 583, holding land taken by surviving partner in payment of debt goes to heirs of deceased on settlement; Sarbach v. Sarbach, 86 Kan. 898, 122 Pac. 1052, holding that real estate devoted to partnership purposes will be deemed partnership property without any writing or memorandum; Clark v. Fleischmann, 81 Neb. 454, 116 N. W. 290, on partnership realty being treated as personalty.

Cited in note (37 L.R.A.(N.S.) 900) as to when real estate considered partnership property.

37 L. R. A. 197, WHITE v. WILSON, 100 Ky. 367, 38 S. W. 495.

Right to recover on gambling contracts.

Cited in St. Louis Fair Asso. v. Carmody, 151 Mo. 574, 74 Am. St. Rep. 571, 52 S. W. 365, denying right of race-track association to recover rent for bookmaking and refreshment stand; Timmons v. Timmons, 145 Ky. 265, 140 S. W.

164, holding that one who acts as agent in bucket shop transaction and receives commissions is liable under statute for all sums lost on investments.

Cited in footnotes to Appleton v. Maxwell, 55 L. R. A. 93, which denies right of action for money loaned for use in gambling; Central Stock & Grain Exchange v. Bendinger, 56 L. R. A. 875, which holds broker liable to refund to principal money illegally taken from agent as margins on gambling transaction; Olson v. Sawyer Goodman Co. 53 L. R. A. 648, which holds void, agreement to debit and credit on accounts due employees, their winnings at card games with each other; Ullman v. St. Louis Fair Asso. 56 L. R. A. 606, which denies right to abandon partly executed illegal bookmaking contract for specified period, and recover back *pro rata* amount of money paid; Drinkall v. Movius State Bank, 57 L. R. A. 341, which holds title to cashier's check acquired by payee's indorsement to gambler in payment for chips to be used in gambling, defective; Baxter v. Deneen, 64 L. R. A. 949, which refuses to enjoin broker for withdrawing, from bank, margins deposited with him on stock gambling transactions in violation of his agreement to keep them in bank until transaction closed; Fuller v. Berger, 65 L.R.A. 381, which holds that equity will not refuse relief against infringement of patent because owner has devoted it wholly to an immoral use.

37 L. R. A. 199, WILLIAMS v. GREAT NORTHERN R. CO. 68 Minn. 55, 70 N. W. 860.

Admissibility of declarations of pain.

Cited in Edlund v. St. Paul City R. Co. 78 Minn. 436, 81 N. W. 214, holding complaints to physician of existing pain admissible; Martin v. Sherwood, 74 Conn. 482, 51 Atl. 526, holding complaints expressing, not asserting or describing, present suffering admissible; St. Louis S. W. R. Co. v. Martin, 26 Tex. Civ. App. 234, 63 S. W. 1089, holding statements of past suffering made to physician making examination for mere purpose of testifying, inadmissible; O'Boyle v. Com. 100 Va. 798, 40 S. E. 121, denying admissibility as *res gestæ* of declarations made while suffering, of having fallen earlier in day: Wabash Screen Door Co. v. Lewis, 106 C. C. A. 402, 184 Fed. 262, on admissibility on cross-examination of plaintiff's physician, of evidence as to effect of alleged disease upon plaintiff's physical condition: Runnells v. Pecos & N. T. R. Co. 49 Tex. Civ. App. 153, 107 S. W. 647, holding that declarations of injured person made immediately after injury are admissible under doctrine of res gestae: Klingaman v. Fish & H. Co. 19 S. D. 143, 102 N. W. 601, holding in an action for personal injuries, evidence of statements made by plaintiff after the injury, concerning the nature thereof and the resulting pain and not constituting mere exclamations indicative of existing pain, is not competent.

Cited in footnote to Sample v. Consolidated Light & R. Co. 57 L. R. A. 186, which holds admissible, declaration of motorman as to cause of accident while car still on body of injured child.

Distinguished in Moratzky v. Wirth, 74 Minn. 153, 76 N. W. 1032, holding doctor's evidence that patient made no complaint as to leg admissible in rebuttal.

37 L. R. A. 205, STATE *ex rel.* YOUNG v. YATES, 19 Mont. 239, 47 Pac. 1004.

Casting vote by mayor.

Cited in Hecht v. Coale, 93 Md. 694, 49 Atl. 660, and McCourt v. Beam, 42 Or. 44, 69 Pac. 990, sustaining mayor's right, under charter, to give casting vote upon confirmation of nominee to office when council evenly divided; Riggs v. Carroll, 66 W. Va. 503, 66 S. E. 633, holding that where city council consisted of mayor, recorder and six councilmen, recorder had right to vote when council was sitting to decide election contest.

Cited in footnote to Cate v. Martin, 48 L. R. A. 613, which denies mayor's power to veto action by aldermen in passing on election for member of board.

Sufficiency of majority in city council.

Cited in Griffin v. Messenger, 114 Iowa, 100, 86 N. W. 219, holding that mayor must be considered member of council in determining affirmative vote of ⅔ thereof; Murdoch v. Strange, 99 Md. 112, 57 Atl. 628, 3 Ann. Cas. 66, holding that where there were eight members voting, and four votes were cast for one candidate and three for another, and one ballot was blank, the candidate receiving the four votes was elected.

Cited in footnote to Pollasky v. Schmid, 55 L. R. A. 614, which requires two-thirds majority of all members elected to council to pass ordinance over veto though some seats vacant.

37 L. R. A. 207, STATE *ex rel.* SUMMERFIELD v. TYLER, 14 Wash. 495, 53 Am. St. Rep. 878, 45 Pac. 31.

Garnishment of municipalities.

Cited in Clarksdale Compress Co. v. Caldwell Co. 80 Miss. 348, 31 So. 790, denying right to garnish municipality in absence of statute; Pringle v. Guild, 118 Fed. 656, holding public municipal corporation not subject to garnishment for moneys due contractors of public work, in absence of statute; Flood v. Libby, 38 Wash. 371, 107 Am. St. Rep. 851, 80 Pac. 533, holding that a salary of a teacher could not be seized under execution as that would amount to a garnishment of a municipal corporation; Moscow Hardware Co. v. Colson, 158 Fed. 200, holding that the regents of the state university being a corporation and a part of the state, are not subject to garnishment.

Cited in footnote to Addyston Pipe & Steel Co. v. Chicago, 44 L. R. A. 405, which denies right to creditor's bill against city for money due contractor.

Cited in notes (37 L. R. A. 207) on liability of county to garnishment; (54 L. R. A. 574) on exemption of officer's salary from claims of his creditors.

Annotation in 37 L. R. A. 207, referred to particularly in Duval County v. Charleston Lumber & Mfg. Co. (Fla.) 60 L. R. A. 551, footnote p. 549, 33 So. 531, denying right to garnish county.

37 L. R. A. 211, ATTY. GEN. *ex rel.* MORELAND v. DETROIT, 112 Mich. 145, 70 N. W. 450.

Offices of profit.

Cited in State *ex rel.* Broatch v. Moores, 52 Neb. 779, 73 N. W. 299, holding office of mayor of city one of trust and profit under state laws; Opinion of the Justices, 95 Me. 586, 51 Atl. 224, by minority, who hold office of fish and game commissioner or trustee of any state institution "office of profit."

County office as state office.

Cited in Board of Auditors v. Reynolds, 121 Mich. 103, 79 N. W. 1121, sustaining legislature's right to prescribe county clerk's salary; Ballantyne v. Bower, 17 Wyo. 362, 99 Pac. 869, 17 Ann. Cas. 82, holding that a justice of the peace is a civil officer of the state within a statute providing that all civil officers shall hold their offices until their successors have been elected and qualified.

Incompatible offices.

Cited in Atty. Gen. *ex rel.* Dust v. Oakman, 126 Mich. 719, 86 Am. St. Rep. 574, 86 N. W. 151, holding office of city assessor vacated by acceptance of appointment as member of board of tax commissioners; Lodge v. Wayne County Clerk, 155 Mich. 429, 119 N. W. 573, holding that a county office and a membership in the state legislature are not incompatible offices.

Cited in note (86 Am. St. Rep. 578, 580, 582, 585) on loss of one office by accepting another.

Distinguished in Eckerson v. Des Moines, 137 Iowa, 466, 115 N. W. 177, holding that the legislature may choose the agencies for the administration of local government, and vest the agencies selected with powers judicial, executive, and legislative in character.

When mandamus proper.

Distinguished in Pfeiffer v. Board of Education, 118 Mich. 580, 42 L. R. A. 543, 77 N. W. 250, by Moore, J., dissenting, who holds mandamus proper to compel discontinuance of use of "readings from Bible" in public schools.

37 L. R. A. 222, TRYON v. PINGREE, 112 Mich. 338, 67 Am. St. Rep. 398, 70 N. W. 905.

Action for false imprisonment.

Cited in footnote to Whaley v. Lawton, 56 L. R. A. 649, which denies liability to action for false imprisonment of one making affidavit for warrant under which arrest made.

Obstructing performance of duties of public officials.

Cited in Richardson v. Dybedahl, 17 S. D. 636, 98 N. W. 164, holding that a road-overseer is a public officer so that preventing him from doing his duties constitutes a public offense.

Advice of counsel as defense to malicious prosecution.

Cited in note (18 L.R.A.(N.S.) 67) on advice of counsel as defense to action for malicious prosecution.

37 L. R. A. 227, PEOPLE *ex rel.* LAWRENCE v. FALLON, 152 N. Y. 12, 57 Am. St. Rep. 492, 46 N. E. 296.

What constitutes lottery.

Cited in United States v. Rosenblum, 121 Fed. 182, holding circular offering prizes to persons estimating nearest number of cigarettes on which tax paid during certain month, not lottery; People *ex rel.* Ellison v. Lavin, 93 App. Div. 297, 87 N. Y. Supp. 776, holding advertising scheme for distribution of money prizes, not lottery when distribution not dependent entirely upon chance; Russell v. Equitable Loan & Secur. Co. 129 Ga. 163, 58 S. E. 881, 12 Ann. Cas. 129, holding that where there is an absence of human design in the determining of the result of any scheme, it is a lottery; Atty. Gen. v. Preferred Mercantile Co. 187 Mass. 519, 73 N. E. 669, holding that the chance as to who would redeem certificates, or who would allow them to lapse, and as to the number of new ones that would be taken out, was not such a chance as constituted the affair a lottery; People ex rel. Ellison v. Lavin, 179 N. Y. 171, 66 L.R.A. 604, 71 N. E. 753, 1 Ann. Cas. 165, holding a scheme for the distribution of money among the purchasers of cigars according to their guesses as to the total number of cigars that will be purchased in a certain month, is a lottery; Thomson v. Hays, 59 Misc. 430, 111 N. Y. Supp. 495 (dissenting opinion), on what constitutes a bet or wager.

Cited in footnotes to State *ex rel.* Sheets v. Interstate Sav. Invest. Co. 52 L. R. A. 531, which holds unlawful, investment securities, etc., incapable of accumulating reserve fund required within period fixed without aid from lapses or appropriations from premiums on new business; State *ex rel.* Prout v. Nebraska Home Co. 60 L. R. A. 448, which holds scheme by which common fund distributed among contributors a valuable preference in distribution depending on chance, a lottery; Equitable Loan & Security Co. v. Waring, 62 L. R. A. 93, which holds lottery not

constituted by determining by lot the order in which members of loan company shall be paid: People ex rel. Ellison v. Lavin, 66 L.R.A. 601, which holds distribution of prizes to those who shall make closest estimate of number of cigars on which tax is paid during specified month, a lottery; People v. McPhee, 69 L.R.A. 506, which holds a scheme by which a certain number of persons pay a small sum weekly and choose by lot each week one of the number to receive a suit of clothes worth much more than the weekly payment after which he ceases to be a member, a lottery, although each member is entitled to trade out the amount paid in whenever he chooses to withdraw.

Racing associations.

Cited in Grannan v. Westchester Racing Asso. 16 App. Div. 14, 44 N. Y. Supp. 790, holding racing associations, being invested with quasi-public function, cannot permanently exclude person from track.

Bookmaking and poolselling.

Cited in People *ex rel.* Clifton v. De Bragga, 73 App. Div. 580, 77 N. Y. Supp. 7, holding statute making bookmaking and poolselling punishable criminally, constitutional.

Cited in note (25 L.R.A.(N.S.) 906) on power of state to prohibit or regulate horse racing.

37 L. R. A. 230, WEBER v. SHAY, 56 Ohio St. 116, 60 Am. St. Rep. 743, 46 N. E. 377.

Contracts against public policy.

Cited in Luhrig Coal Co. v. Jones & A. Co. 72 C. C. A. 311, 141 Fed. 620, holding that the legality of a contract is to be judged by its character and not by what the plaintiff might do, or attempt to do, with the fruits of it.

Cited in footnotes to Deering & Co. v. Cunningham, 54 L.R.A. 410, which holds void, contract to withdraw opposition to granting of pardon; United States Fidelity & G. Co. v. Charles, 57 L.R.A. 212, which holds void, note to reimburse surety on fidelity bond given on condition of not prosecuting principal; Horner v. Lowe, 159 Ind. 407, 64 N. E. 218, holding incorrect deed received as security for note affirmed by laches in offering to reconvey.

Cited in notes (83 Am. St. Rep. 183) on invalidity of champertous contracts between attorneys and clients; (117 Am. St. Rep. 520) on invalidity of contracts tending to corrupt or improperly influence public officials.

37 L. R. A. 233, LOWE v. TURPIE, 147 Ind. 652, 44 N. E. 25, 47 N. E. 150.

Subsequent appeal in 158 Ind. 48, 62 N. E. 628, holding error in overruling demurrer, harmless.

Damages for breach of contract.

Cited in Western U. Teleg. Co. v. Henley, 23 Ind. App. 25, 54 N. E. 775, holding damages not recoverable for mental distress at not being met at station through telegraph company's failure to transmit message; Smith v. Parker, 148 Ind. 133, 45 N. E. 770, holding measure of damages for breach of agreement to loan money difference between agreed interest and what plaintiff had to pay elsewhere; New York L. Ins. Co. v. Pope, 139 Ky. 572, 68 S. W. 851, holding that measure of damages for refusal of insurance company to loan money at 5 per cent as stipulated in policy, was difference between what borrower would have to pay and such fixed rate; Bixby-Theirson Lumber Co. v. Evans, 167 Ala. 436, 29 L.R.A.(N.S.) 198, 140 Am. St. Rep. 47, 52 So. 843, holding that where obligation to pay money is special and not alone for discharge of debt, damages for actual injury suffered by breach of contract, may be recovered; Anderson v.

Hilton & D. Lumber Co. 121 Ga. 692, 49 S. E. 725, holding that a pleading alleging damages for a breach of a contract to lend money, is not sufficient which does not allege a consideration and the damages claimed were within the contemplation of the parties at the time the contract was made; Kagy v. Western U. Teleg. Co. 37 Ind. App. 79, 117 Am. St. Rep. 278, 76 N. E. 792, holding that damages for perforation of an intestine caused by mental anxiety and suffering as the result of a failure to deliver a telegram, were too remote to be recovered in an action for breach of contract to deliver.

Cited in note (29 L.R.A.(N.S.) 194) on damages recoverable for breach of contract to lend money.

Parol promise to answer for another's debt or default.

Cited in Cleveland, C. C. & St. L. R. Co. v. Shea, 174 Ind. 307, 91 N. E. 1081, holding that recovery might be had on promise of railroad company to pay debt of materialman who relinquished right to lien on contractor's and railroad's property relying upon such promise; Southern Indiana Loan & Sav. Inst. v. Roberts, 42 Ind. App. 655, 86 N. E. 490, holding that where the grantee of land assumes the payment of a mortgage given by the grantor, as a part of the consideration for the conveyance, it is not a promise to pay the debt of another within the meaning of the statute of frauds.

Cited in footnote to Hartley v. Sandford, 55 L. R. A. 206, which holds void, father's oral promise to reimburse surety for son if latter fails to pay debt.

Cited in notes (15 L.R.A.(N.S.) 1090) on vendee's agreement to pay encumbrance as promise to answer for debt of another; (71 Am. St. Rep. 201) on contract to pay another's debt.

Parol contract to convey land.

Cited in Bradley v. Harter, 156 Ind. 505, 60 N. E. 139, holding parol contract to convey certain real estate in payment for lands sold under written contract, unenforceable; Baxter v. Baxter, 46 Ind. App. 523, 92 N. E. 881, holding that mere payment of purchase price under parol contract of purchase of land is insufficient to take contract out of statute of frauds.

Effect of indefinite description of land.

Cited in Edens v. Miller, 147 Ind. 211, 46 N. E. 526, holding devise of real estate, description of which cannot be ascertained, void.

Necessary parties to appeal.

Cited in Zimmerman v. Gaumer, 152 Ind. 554, 53 N. E. 829, holding cross-complainants not necessary parties to vacation appeal from judgment to which they were not parties; Mueller v. Stinesville & B. Stone Co. 154 Ind. 234, 56 N. E. 222, holding insolvent corporation not necessary party to appeal involving distribution of funds among creditors; Bliss v. Grayson, 25 Nev. 340, 59 Pac. 888, holding that notice of appeal need not be served upon codefendants as to whom action dismissed before judgment; Smith v. Fairfield, 157 Ind. 493, 61 N. E. 560, holding all persons jointly bound by judgment must be named in assignment of error as appellants; Kaufman v. Preston, 158 Ind. 362, 63 N. E. 570, holding that defendant who is not joint judgment defendant need not be made coappellant in vacation appeal; Evans v. Odem, 30 Ind. App. 208, 65 N. E. 755, denying necessity in term time appeals, of making all codefendants against whom judgment was rendered parties; Sohl v. Evans, 29 Ind. App. 637, 62 N. E. 84, holding imperative, statutory requirement that notice of vacation appeal by part of coparties must be served on all other coparties; Ward v. Yarnelle, 173 Ind. 542, 91 N. E. 7, holding that appellant in term-time appeal is not required to make parties on appeal, his coparties to decree appealed from; West v. Goodwin, 41 Ind. App. 334,

81 N. E. 734; Whisler v. Whisler, 162 Ind. 144, 70 N. E. 152,—holding that before an appellate court will proceed to adjudicate upon the subject matter of a cause, it must first acquire jurisdiction over all the parties whose rights or interest will be affected by the judgment rendered; Smith v. Gustin, 169 Ind. 46, 80 N. E. 959; Southern R. Co. v. Elliott, 170 Ind. 276, 82 N. E. 1051; Keiser v. Mills, 162 Ind. 369, 69 N. E. 142,—holding that only parties to the judgment appealed from are necessary parties to the appeal, and in a term-time appeal, co-defendants are not necessary parties; Kline v. Hagey, 169 Ind. 278, 81 N. E. 209, holding same, and that parties to a drainage petition who were called in by the commissioners were not necessary parties; Pitser v. McCreery, 172 Ind. 665, 88 N. E. 303, holding that parties to the record but not parties to the judgment are not necessary parties to the appeal; Windfall City v. State, 174 Ind. 313, 92 N. E. 57, holding that assignment of errors need not contain names of all parties to action below.

Dismissal of appeal.

Cited in Michigan Mut. L. Ins. Co. v. Frankel, 151 Ind. 539, 50 N. E. 304, holding failure to move therefor until after submission of cause does not bar dismissal of appeal; Lake Shore Sand Co. v. Lake Shore & M. S. R. Co. 171 Ind. 462, 86 N. E. 754, holding that appeal will be dismissed where all coparties to the interlocutory judgment or order appealed from, are not made coappellants in the appellate court.

What constitutes appearance on appeal.

Cited in Jeffries v. Orndorf, 44 Ind. App. 226, 88 N. E. 958, holding that filing of brief on merits of appeal constitutes appearance, and is waiver of lack of notice of such appeal.

Persons bound by judgment.

Cited in footnote to Allred v. Smith, 65 L.R.A. 924, which holds judgment in action quasi in rem binding on the parties only.

Title of mortgagee.

Cited in Baldwin v. Moroney, 173 Ind. 582, 30 L.R.A.(N.S.) 770, 91 N. E. 3, holding that mortgagee has no title but merely incumbrance or lien upon lands.

37 L. R. A. 246, RUSSELL v. AYER, 120 N. C. 180, 27 S. E. 133.

Taxation.

Cited in Southern R. Co. v. North Carolina Corp. Commission, 97 Fed. 518, holding railroad taxable under revenue act of 1897; Board of Education v. Macon County, 137 N. C. 313, 49 S. E. 353, holding it essential to the validity of all revenue laws that they observe an equality between poll and property taxes; Southern R. Co. v. Mecklenburg County, 148 N. C. 225, 61 S. E. 690, holding that failure of the county commissioners to levy a poll tax as required by law, does not render invalid the property tax levied.

Mandamus to compel performance of official duty.

Cited in Bennett v. Swain County, 125 N. C. 470, 34 S. E. 632, holding mandamus proper to require county commissioners to pass upon official bonds of dispensary commissioners.

Explained in Jackson v. Corporation Commission, 130 N. C. 415, 42 S. E. 123, by Douglas, J., dissenting, who holds that citizen and taxpayer may maintain action for mandamus to compel assessment of railroad franchises.

Overruled in Kitchin v. Wood, 154 N. C. 567, 70 S. E. 995, holding that at

suit of governor mandamus will lie against auditor to compel him to prepare forms assessing and taxing polls in accordance with constitution.

Effect on statute of unconstitutionality of part.

Cited in Rodman v. Washington, 122 N. C. 42, 30 S. E. 118; Wilkes County v. Coler, 51 C. C. A. 405, 113 Fed. 731, holding unconstitutionality of part of act does not affect sections dealing with other matters; State *ex rel.* Greene v. Owen, 125 N. C. 222, 34 S. E. 424, holding statute utterly void only when unconstitutionality of part destroys practical operation.

Self-executing constitutional provisions.

Cited in footnote to State v. Kyle, 56 L. R. A. 115, which holds self-operating, constitutional amendment for criminal prosecution by indictment or information only.

37 L. R. A. 254, FALCONIO v. LARSEN, 31 Or. 137, 48 Pac. 703.

Enforcement of mechanic's liens.

Cited in Hand Mfg. Co. v. Marks, 36 Or. 526, 53 Pac. 1072, holding suits for enforcement of mechanic's liens not entitled to precedence on supreme court calendar.

Settlement of action without attorney's consent.

Cited in Miedreich v. Bank, 40 Ind. App. 401, 82 N. E. 117, holding that settlements without the attorney's consent and made out of his presence are allowable, but are viewed with suspicion; Jackson v. Stearns, 48 Or. 30, 5 L.R.A. (N.S.) 393, 84 Pac. 798, sustaining right of party to make a bona fide settlement without the attorney's consent but if made by collusion to defraud attorney, it will be set aside; Jones v. Jones, 59 Or. 314, 117 Pac. 414, holding that on dismissing divorce suit on evidence of condonation, court can require defendant to comply with former order for payment of costs and attorney's fees.

Cited in footnote to Tompkins v. Nashville, C. & St. L. R. 61 L. R. A. 340, which sustains plaintiff's right to dismiss suit, notwithstanding lien of attorney.

Cited in note (5 L.R.A.(N.S.) 391) on dismissal of suit to defeat attorney's lien or claim to compensation.

Distinguished in Stearns v. Wollenberg, 51 Or. 94, 14 L.R.A.(N.S.) 1100, 92 Pac. 1079, holding that unless the attorney has some vested right in the subject matter which may ripen into a lien, the party may dismiss the action without the attorney's consent.

Right of assignee for collection to sue in his own name.

Cited in Smith v. Bayer, 46 Or. 146, 114 Am. St. Rep. 858, 79 Pac. 497, holding that an indorsee for collection, may maintain suit upon the note in his own name to collect same; Alderson v. Lee, 52 Or. 99, 96 Pac. 234, holding that an assignee of a laborer's lien on logs was assignable after recording so that the assignee could maintain suit in his own name.

37 L. R. A. 258, RICHMOND & M. R. CO. v. MOORE, 94 Va. 493, 27 S. E. 70.

Liability for injury to spectators at public entertainment.

Cited in Texas State Fair v. Marti, 30 Tex. Civ. App. 134, 69 S. W. 432, and Texas State Fair v. Brittain, 56 C. C. A. 502, 118 Fed. 716, holding state fair association liable for injury to spectator from fall of seats improperly constructed by exhibitor; Thornton v. Maine State Agri. Soc. 97 Me. 114, 94 Am. St. Rep. 488, 53 Atl. 979, holding state agricultural association liable for death of one within approach to fair grounds, resulting from stray shot from shooting gallery permitted therein; Indianapolis Street R. Co. v. Dawson, 31 Ind. App. 607, 68 N. E.

909, holding street railway company having knowledge of conspiracy to assault colored men liable for assault upon colored man in park maintained by it; Stickel v. Riverview Sharpshooters Park Co. 250 Ill. 455, 34 L.R.A.(N.S.) 660, 95 N. E. 445, Affirming 159 Ill. App. 115, holding that proprietor of amusement place must see the devices of concessioners are reasonably safe; Turgeon v. Connecticut Co. 84 Conn. 541, 80 Atl. 714, holding that street railway company which maintains amusement park is liable for negligence in failing to keep place safe although it is leased to others who operate it under company's supervision: Murrell v. Smith, 152 Mo. App. 115, 133 S. W. 76, holding that managers of public entertainments are bound to exercise reasonable diligence and caution to keep place from becoming dangerous; Williams v. Mineral City Park Asso. 128 Iowa, 38, 1 L.R.A.(N.S.) 431, 111 Am. St. Rep. 184, 102 N. W. 783, 5 Ann. Cas. 924, holding that proprietor of a public amusement place, is bound to exercise reasonable care to prevent injury or prevent the creation of conditions tending toward injuries, to a spectator; Larkin v. Saltair Beach Co. 30 Utah, 100, 3 L.R.A.(N.S.) 987, 116 Am. St. Rep. 818, 83 Pac. 686, 8 Ann. Cas. 977, holding that one maintaining a public bathing resort charging an admission fee, was in the exercise of reasonable care, required to keep some one on duty to aid any one in danger, and to act as a guard; Blakeley v. White Star Line, 154 Mich. 639, 19 L.R.A.(N.S.) 774, 129 Am. St. Rep. 496, 118 N. W. 482, holding defendant liable for injuries to plaintiff by being struck by a base ball while standing near a dancing platform, not knowing that a base ball game was in progress nearby, it being an unusual place for playing the game; Hollis v. Kansas City, Missouri, Retail Merchants' Asso. 205 Mo. 519, 14 L.R.A. (N.S.) 288, 103 S. W. 32, holding that the proprietor as well as the company furnishing the apparatus was liable for injuries to a person, caused by the negligence in the construction of a "merry-go-round."

Cited in footnote to Mastad v. Swedish Brethren, 53 L. R. A. 803, which holds proprietor of place of amusement required to use reasonable care to protect other patrons from assaults by one rendered disorderly by liquor sold.

Cited in notes (1 L.R.A.(N.S.) 428) on negligence of proprietor of place of entertainment, injuring visitor; (14 L.R.A.(N.S.) 284) on liability of one conducting fair for injury to patron through negligence of concessionary.

Distinguished in Clark v. Northern P. R. Co. 29 Wash. 148, 59 L. R. A. 512, footnote p. 508, 69 Pac. 636, denying liability of railroad company permitting circus on its vacant land adjoining switch yard for injury to person crossing yard to reach circus.

Duty owed to person present by implied invitation.

Cited in Clark v. Fehlhaber, 106 Va. 805, 13 L.R.A.(N.S.) 444, 56 S. E. 817, holding that one owed the duty to a person upon the premises lawfully by implied invitation, to exercise ordinary care to have the premises in reasonably safe condition for the visit.

Distinguished in Eaton v. Moore, 111 Va. 402, 69 S. E. 326, holding that complaint merely alleging that trespassing infant three years old was injured by explosion of dynamite caps which child got hold of, because of negligence in storing them, does not state cause of action.

Liability for negligence of independent contractor.

Cited in Thompson v. Lowell, L. & H. Street R. Co. 170 Mass. 582, 40 L. R. A. 347, footnote p. 345, 64 Am. St. Rep. 323, 49 N. E. 913, holding street railway company liable for injury to spectator at free exhibition of markmanship given by independent contractor on company's grounds; Walton v. Miller, 109 Va. 220, 132 Am. St. Rep. 908, 63 S. E. 458, holding that the railroad company was liable

for the death of an employee through the negligence of an independent contractor in firing a blast near the right of way in the preparation of road bed for purposes of double tracking.

Cited in footnotes to Sebeck v. Plattdeutsche Volksfest Verein, 50 L. R. A. 199, which denies proprietor's liability for injury to spectator by explosion of bomb at exhibition in hands of skilled person; Boomer v. Wilbur, 53 L. R. A. 172, which denies owner's liability for injury by fall of bricks through negligence of independent contractor repairing chimney; Wright v. Big Rapids Door & Blind Mfg. Co. 50 L. R. A. 495, which denies liability of owner of premises for negligent piling of lumber taken from car by independent contractor; Bonaparte v. Wiseman, 44 L. R. A. 482, which requires one employing independent contractor to excavate near neighbor's house, to notify neighbor or see that contractor exercises due care; Peerless Mfg. Co. v. Bagley, 53 L. R. A. 285, which holds landlord liable for independent contractor's negligence in putting in automatic fire extinguisher; Pittsfield Cottonwear Mfg. Co. v. Pittsfield Shoe Co. 60 L. R. A. 116, which holds landlord liable to tenants of lower floor for injury from freezing of automatic fire extinguisher in portion retained by former though building heated by independent contractor; Hoff v. Shockley, 64 L. R. A. 538, which holds property owner not liable for injuries to traveler by obstructions placed in street without danger signals by independent contractor for construction of building.

Cited in notes (65 L.R.A. 855) on liability for injuries caused by performance of work by independent contractor which is dangerous unless certain precautions are observed: (76 Am. St. Rep. 407, 408) on liability for negligence and torts of independent contractors.

Distinguished in Smith v. Benick, 87 Md. 616, 42 L. R. A. 279, footnote p. 277, 41 Atl. 56, denying liability of proprietor of public resort for negligence of balloonist, who was an independent contractor.

37 L. R. A. 261, KIMBERLY'S APPEAL, 68 Conn. 428, 36 Atl. 847.

Nonexpert evidence as to sanity or insanity.

Cited in Turner's Appeal, 72 Conn. 315, 44 Atl. 310, holding nonexpert opinion as to testator's mental capacity admissible only in connection with personal observations upon which opinion is based.

Cited in note (38 L. R. A. 741) on nonexpert witnesses as to sanity or insanity.

Testamentary capacity.

Cited in Sturdevant's Appeal, 71 Conn. 401, 42 Atl. 70, defining testamentary capacity as ability of testator to know and understand what he is doing in making will; Layer v. Layer, 110 Ky. 552, 62 S. W. 15, holding that jury should have been instructed to find insufficient capacity to make will, if evidence showed testator under insane delusion that son was illegitimate, and referring particularly to annotation in 37 L.R.A. 261; Harbison v. Beets, 84 Kan. 18, 113 Pac. 423, holding that mental capacity to understand and direct terms of will to change former will, is not inconsistent with insane delusion causing such change; Nichols v. Wentz, 78 Conn. 435, 62 Atl. 610, holding that the fact that the testator was insane prior to 1869 and he became so again in 1902, was no legal reason why he was incapacitated from executing a will in 1890.

Cited in note (27 L.R.A.(N.S.) 66) on what is testamentary capacity.

Insane delusions.

Cited in *Re* Scott, 128 Cal. 63, 60 Pac. 527, holding testatrix's irrational inference that husband was trying to poison her, not insane delusion; Bradley v. Palmer, 193 Ill. 78, 61 N. E. 856, holding fear of being poisoned, without evidence that no grounds therefor existed, not insane delusion; Friedersdorf v. Lacy,

173 Ind. 433, 90 N. E. 766, holding that fear of being poisoned by certain persons does not constitute insane delusion, where others have warned testator against such poisoning.

Cited in footnotes to *Re* Buchanan, 50 L. R. A. 378, which holds sane, for purpose of trial for crime, person rendered dangerous by uncontrollable appetite for liquor at frequent intervals; Orchardson v. Cofield, 40 L. R. A. 256, which holds will prompted by delusion induced by belief in spiritualism that beneficiary gifted with spiritual powers, invalid; People v. Gilman, 46 L. R. A. 218, which holds conspiracy to cheat by materializing seances and professed medium punishable, though obvious humbug.

Cited in note (63 Am. St. Rep. 81, 82) on insane delusions.

Error in submitting evidence.

Cited in Turner's Appeal, 72 Conn. 320, 44 Atl. 310, holding intimation of opinion by court in submitting evidence as to its weight not error.

Sufficiency of assignment of error.

Cited in Anderson v. New Canaan, 70 Conn. 102, 38 Atl. 944, holding statement that trial court erred in reaching certain conclusion insufficient assignment of error.

37 L. R. A. 285, SMITH v. YOUMANS, 96 Wis. 103, 65 Am. St. Rep. 30, 70 N. W. 1115.

Title to lands artificially submerged.

Cited in Pewaukee v. Savoy, 103 Wis. 275, 50 L. R. A. 843, 74 Am. St. Rep. 859, 79 N. W. 436, holding that state acquires title to lands submerged by artificially raising lake level; Mendota Club v. Anderson, 101 Wis. 493, 78 N. W. 185, holding tax deed void so far as covering portions of lake raised by dam more than twenty years previously.

Distinguished in Diana Shooting Club v. Lamoreux, 114 Wis. 55, 91 Am. St. Rep. 898, 89 N. W. 880, holding that public rights do not attach to swamp lands covered by artificial lake while title unaffected.

Rights of riparian owners on artificial lake.

Cited in Kray v. Muggli, 84 Minn. 97, 54 L. R. A. 479, 87 Am. St. Rep. 332, 86 N. W. 882, sustaining prescriptive right of riparian owners improving property with reference thereto to have artificial lake maintained; Castle v. Madison, 113 Wis. 351, 89 N. W. 156, holding riparian owners necessary parties to action to abate dam raising lake level; Re Shepard Drainage Dist. 140 Wis. 330, 122 N. W. 775, holding that the artificial condition originally created by the mill-dam, became by lapse of time, a natural condition.

Cited in note (50 L. R. A. 844) on rights acquired in artificial condition in body of water.

Distinguished in Kray v. Muggli, 77 Minn. 235, 45 L.R.A. 221, 79 N. W. 964 holding owners of wild land on artificial lake acquire no prescriptive right to have dam maintained; Marshall Ice Co. v. La Plant, 136 Iowa, 634, 12 L.R.A.(N.S.) 1079, 111 N. W. 1016, holding that where the defendants conveyed land to the plaintiff, which land bordered upon the stream which had been obstructed by a dam, the land being for use in connection with an ice business, there was an implied condition that the dam would be maintained at the same height.

Rights by prescription in diversion of waters.

Cited in Taggart v. Jaffrey, 75 N. H. 476, 28 L.R.A.(N.S.) 1052, 139 Am. St. Rep. 729, 76 Atl. 123, holding that the owner of lands upon an artificial stream, which had been formed by the diversion of the waters of a natural stream for over sixty years, acquired the same rights as an owner upon a natural

stream; Broadwell Special Drainage Dist. No. 1 v. Lawrence, 231 Ill. 99, 83 N. E. 104, holding that where one had diverted the surface waters through an artificial course for a period longer than the statutory period of limitations, he could not again turn them through the natural course.

Distinguished in Cloyes v. Middlebury Electric Co. 80 Vt. 121, 11 L.R.A.(N.S.) 699, 66 Atl. 1039, holding that where the alterations were made under an agreement, the idea of prescriptive rights was not applicable to the question of the rights of riparian owners upon the altered stream.

Navigable rivers.

Cited in Re Horicon Drainage Dist. 136 Wis. 232, 116 N. W. 12, holding that Rock River, Wisconsin, is a navigable river.

37 L. R. A. 289, STATE *ex rel.* GETCHEL v. BRADISH, 95 Wis. 205, 70 N. W. 172.

Revocation of liquor license.

Cited in footnotes to Voight v. Excise Comrs. 37 L. R. A. 292, which holds valid, revocation of license for violation of excise laws; Wallace v. Reno, 63 L. R. A. 337, which authorizes revocation of liquor license by legislature or municipal officers with or without notice to licensee.

Disqualification to try charges.

Cited in Wilcox v. Supreme Council, R. A. 66 Misc. 256, 123 N. Y. Supp. 83, holding that where accused was charged with having falsely accused supreme council of order of being robbers, etc., such supreme council is disqualified to sit in judgment upon hearing, if under rules other tribunal might hear charges.

Cited in footnote to State *ex rel.* Barnard v. Board of Education, 40 L. R. A. 317, which holds school director disqualified to try charges against school superintendent towards whom he has personal enmity.

Distinguished in Wood v. Chamber of Commerce, 119 Wis. 383, 96 N. W. 835, holding that corporation by-laws directing board of directors to examine charges against members, permit its examination of charges made by members of board.

Bias or interest of administrative officers.

Cited in Rollins v. Connor, 74 N. H. 459, 124 Am. St. Rep. 983, 69 Atl. 777, 13 Ann. Cas. 334, holding that the decision of the city council upon the question of a contested election, was vitiated by the member elected to the contested office, voting upon the question; State ex rel. Cook v. Houser, 122 Wis. 573, 100 N. W. 964, holding that members of the tribunal provided for by the statute regulating the calling of political conventions, to settle disputes as between two conventions claiming to be the proper convention, were not disqualified by bias or interest.

37 L. R. A. 292, VOIGHT v. EXCISE COMRS. 59 N. J. L. 358, 36 Atl. 686.

Revocation of liquor license without jury trial.

Cited in Higgins v. Talty, 157 Mo. 290, 57 S. W. 724, sustaining statute authorizing revocation of license by excise commissioner for violation of dramshop laws; Carbondale v. Wade, 106 Ill. App. 659, holding liquor license revocable under police power of state; Balling v. Board of Excise, 79 N. J. L. 199, 74 Atl. 277, holding that revocation of license to sell liquor by excise board, without notice, was illegal; State v. Seebold, 192 Mo. 728, 91 S. W. 491, holding that a liquor license is not property within the meaning of the constitution relative to the taking of property without due process of law, so that a revocation is not such a taking.

Cited in footnotes to *Re* Peck, 53 L. R. A. 888, which denies right to forfeit liquor tax certificate for criminal acts on holder's mere failure to deny allegations of petition; Wallace v. Reno, 63 L. R. A. 337, which authorizes revocation of liquor license by legislature or municipal officers with or without notice to licensee.

Cited in note (30 L.R.A.(N.S.) 1006) on constitutionality of statute by which conviction of violating liquor law entails revocation of license.

— Revocation of licenses.

Cited in Davis v. Repp, 79 N. J. L. 396, 75 Atl. 169, holding that petition for revocation of license under statute, which sets out jurisdictional facts, is sufficiently verified when affidavit thereto states, "that matters and things set forth in foregoing petition is true;" People ex rel. Lodes v. Health Dept. 189 N. Y. 193, 13 L.R.A.(N.S.) 898, 82 N. E. 187, holding that a license is not a contract or property but merely a temporary permit issued to do that which would otherwise be prohibited and may be revoked by the board granting it without hearing.

Nature of liquor license.

Cited in Christian Feigenspan v. Mulligan, 63 N. J. Eq. 186, holding liquor license not property right capable of being subject of chattel mortgage; Louisiana Oyster & Fish Co. v. Assumption Parish, 126 La. 525, 52 So. 685, to the point that license or permit granted under police regulations is not contract, and it cannot give rise to vested rights; Barnett v. Pemiscot County Ct. 111 Mo. App. 703, 86 S. W. 575, holding that a liquor license is not a contract so that the state may revoke the same in any manner provided by law; People ex rel. Lodes v. Health Dept. 117 App. Div. 875, 103 N. Y. Supp. 275, on the nature of a license.

Distinguished in Degginger v. Seattle Brewing & Malting Co. 41 Wash. 387, 4 L.R.A.(N.S.) 628, 83 Pac. 898, holding that where the right to sell and transfer a liquor license is recognized, a liquor license becomes a valuable property right as to creditors.

37 L. R. A. 294, TOWNSEND v. STATE, 147 Ind. 624, 62 Am. St. Rep. 477, 47 N. E. 19.

Class legislation.

Cited in Pittsburgh, C. C. & St. L. R. Co. v. Montgomery, 152 Ind. 12, 71 Am. St. Rep. 301, 49 N. E. 582, sustaining statute making railroad and other corporations liable for injury to employee from coemployee's negligence.

Rights of gas companies.

Cited in Great Western Natural Gas & Oil Co. v. Hawkins, 30 Ind. App. 568, 66 N. E. 765, denying right of gas company to exercise power of eminent domain except for public use.

— In natural gas.

Cited in Manufacturers Gas & Oil Co. v. Indiana Natural Gas & Oil Co. 155 Ind. 475, 50 L. R. A. 774, footnote p. 768, 57 N. E. 912, holding unlawful, pumping of natural gas to injury of other persons having wells supplied from same reservoir; Ohio Oil Co. v. Indiana, 177 U. S. 207, 44 L. ed. 738, 20 Sup. Ct. Rep. 576, and State v. Ohio Oil Co. 150 Ind. 29, 47 L. R. A. 631, footnote p. 627, 49 N. E. 809, sustaining statute prohibiting escape of natural gas from wells into open air.

Cited in notes (23 L.R.A.(N.S.) 436) on constitutionality of statutes to prevent waste of subterranean water, gas, or oil; (78 Am. St. Rep. 256) on waste of natural gas; (44 L. ed. U. S. 730) on property in petroleum oil or gas.

Police power.

Cited in State v. Theriault, 70 Vt. 625, 43 L. R. A. 293, 67 Am. St. Rep. 695, 41 Atl. 1030, sustaining statute authorizing fish commissioners to prohibit fishing for certain period after stocking stream; Huber v. Merkel, 117 Wis. 367, 62 L. R. A. 595, 98 Am. St. Rep. 933, 94 N. W. 354, holding that police power does not justify legislation prohibiting waste of water from artesian wells to injury of neighboring wells; Lindsley v. Natural Carbonic Gas Co. 162 Fed. 958; Hathorn v. Natural Carbonic Gas Co. 194 N. Y. 344, 23 L.R.A.(N.S.) 447, 128 Am. St. Rep. 555, 87 N. E. 504,—holding an act forbidding the increasing of the flow of mineral springs for commercial purposes was a valid exercise of legislative power; Opinion of Justices, 103 Me. 512, 19 L.R.A.(N.S.) 426, 69 Atl. 627, 13 Ann. Cas. 745, on what may constitute a lawful legislative exercise of the police power.

Cited in note (78 Am. St. Rep. 238) on acts which legislature may declare criminal.

Justice and expediency of statutes as affecting validity.

Cited in Lowe v. White County, 156 Ind. 166, 59 N. E. 466, holding that only legislature can give relief from unwise or oppressive taxation; Plumb v. Christie, 103 Ga. 696, 42 L. R. A. 186, 30 S. E. 759, holding state liquor dispensary law not violative of constitutional prohibition of irrevocable grants of special privileges; State *ex rel.* Dreibelbiss v. Berghoff, 158 Ind. 358, 63 N. E. 717, holding motive or expediency of legislation providing for change in time of municipal elections, not inquirable into by judiciary.

When statute unconstitutional.

Cited in State *ex rel.* Geake v. Fox, 158 Ind. 129, 56 L. R. A. 895, 63 N. E. 19; State *ex rel.* Harrison v. Menaugh, 151 Ind. 266, 43 L. R. A. 411, 51 N. E. 117, holding unconstitutionality of statute must be clearly shown; Carr v. State, 175 Ind. 247, 32 L.R.A.(N.S.) 1193, 93 N. E. 1071, holding that it is duty of court to sustain statute unless it is clearly and positively in violation of constitution.

Restriction of legislative power.

Cited in Scott v. State, 151 Ind. 562, 52 N. E. 163, and State *ex rel.* Harrison v. Menaugh, 151 Ind. 266, 43 L. R. A. 411, 51 N. E. 117, holding legislative authority limited only by restrictions in state and Federal Constitutions; State *ex rel.* Geake v. Fox, 158 Ind. 129, 56 L. R. A. 895, 63 N. E. 19, holding municipal rights infringed by act placing in governor power to appoint board to control fire department and other municipal matters.

Waiver of error.

Cited in Madden v. State, 148 Ind. 187, 47 N. E. 220, holding error in admitting evidence subsequently withdrawn by court waived by failure to move jury's discharge; Consumers Paper Co. v. Eyer, 160 Ind. 435, 66 N. E. 994, denying right to raise on appeal question of attorney's misconduct while addressing jury, when no objection was made at time.

37 L. R. A. 301, FREEL v. CRAWFORDSVILLE, 142 Ind. 27, 41 N. E. 312.

Liability of governmental subdivision for acts or negligence of officers.

Cited in Johnson County v. Reinier, 18 Ind. App. 121, 47 N. E. 642, and Jasper County v. Allman, 142 Ind. 577, 39 L. R. A. 62, 42 N. E. 206, denying county's liability for negligence of officers failing to repair bridge; Pittsburgh, C. C. & St. L. R. Co. v. Iddings, 28 Ind. App. 514, 62 N. E. 112, holding doctrine of contributory negligence inapplicable in action by township against railroad for injury to highway; Aitken v. Wells River, 70 Vt. 314, 41 L. R. A. 569, 67 Am. St. Rep.

672, 40 Atl. 829, denying liability of village for destroying dam to prevent washing out of highway during freshet; Talbott v. St. Joseph County, 42 Ind. App. 199, 85 N. E. 376, holding no liability on part of county for the tortious acts of county officials; James v. Wellston Twp. 18 Okla. 70, 13 L.R.A.(N.S.) 237, 90 Pac. 100, 11 Ann. Cas. 938, holding township is not liable for injury due to the failure of township officers to keep a highway in repair.

Cited in footnote to Ernst v. West Covington, 63 L.R.A. 652 which holds municipality furnishing school lot and building not responsible for safe condition of same.

Cited in note (37 L. R. A. 301) on liability of school district or school corporation to action for damages from negligence.

School corporations.

Cited in Wilcoxon v. Bluffton, 153 Ind. 271, 54 N. E. 110, holding school bonds part of debt of civil city, where school district and city coextensive; Edwards v. State, 143 Ind. 92, 42 N. E. 525, holding it duty of school corporation to provide for pupil transferred from another township as provided by statute.

37 L. R. A. 305, AMHERST COLLEGE v. RITCH, 151 N. Y. 282, 45 N. E. 876.

Motion for reargument denied in 152 N. Y. 641, 46 N. E. 1152.

Motion to amend remittitur denied in 152 N. Y. 627, 46 N. E. 1152.

Injunction against paying legacies denied in Fayerweather v. Ritch, 34 C. C. A. 61, 63 U. S. App. 112, 91 Fed. 724.

Cited in Fayerweather v. Ritch, 195 U. S. 304, 49 L. ed. 212, 25 Sup. Ct. Rep. 58, explaining the facts impliedly decided in the cited case which was pleaded as res adjudicata.

Short-form decision.

Cited in Shaffer v. Martin, 20 App. Div. 306, 46 N. Y. Supp. 992, holding that short decision must state how issues were decided; Bly v. Edison Electric Illuminating Co. 172 N. Y. 6, 58 L. R. A. 502, 64 N. E. 745, and Dannhauser v. Wallenstein, 169 N. Y. 205, 62 N. E. 160, holding where decision in short-form all facts warranted by evidence and necessary to support judgment presumed found; Health Department v. Weekes, 22 App. Div. 112, 47 N. Y. Supp. 913, holding that insufficiency of grounds stated in short decision will not justify reversal; Beardsley v. New York, L. E. & W. R. Co. 15 App. Div. 257, 44 N. Y. Supp. 175; Critten v. Chemical Nat. Bank, 171 N. Y. 231, 57 L. R. A. 534, 63 N. E. 969; Solomon v. Continental F. Ins. Co. 160 N. Y. 598, 46 L. R. A. 684, 73 Am. St. Rep. 707, 55 N. E. 279; Garvey v. Long Island R. Co. 159 N. Y. 328, 70 Am. St. Rep. 550, 54 N. E. 57; Petrie v. Hamilton College, 158 N. Y. 463, 53 N. E. 216; New York Security & T. Co. v. Lipman, 157 N. Y. 556, 52 N. E. 595; Bomeisler v. Forster, 154 N. Y. 237, 39 L. R. A. 243, 48 N. E. 534; Bartlett v. Goodrich, 153 N. Y. 424, 47 N. E. 794,— holding in absence of express findings all facts warranted by evidence and necessary to support judgment presumed found; Hutton v. Smith, 175 N. Y. 378, 67 N. E. 633, and Bly v. Edison Electric Illuminating Co. 172 N. Y. 6, 58 L. R. A. 502, 64 N. E. 745, regarding short-form decision as, in effect, general verdict; Piltz v. Yonkers R. Co. 83 App. Div. 32, 82 N. Y. Supp. 220, holding appellate division not prevented from reviewing exceptions taken upon trial, by failure to take and file exceptions to short-form decision; Brokaw v. Duffy, 165 N. Y. 404, 59 N. E. 196, by O'Brien, J., dissenting, who holds all facts necessary to support judgment on short decision deemed found, and all inconsistent facts, negatived.

Distinguished in Matherson v. Belden, 14 App. Div. 521, 43 N. Y. Supp. 888, holding where decision shows that trial court failed to pass on question it may be

considered on appeal: Rodgers v. Clement, 162 N. Y. 427, 76 Am. St. Rep. 342, 56 N. E. 901, holding finding by referee against admission in pleadings not presumed to support judgment.

Power of court of appeals to review facts.

Cited in Genet v. Delaware & H. Canal Co. 170 N. Y. 289, 63 N. E. 350; Woodbridge v. First Nat. Bank, 166 N. Y. 245, 59 N. E. 836; Reed v. McCord, 160 N. Y. 334, 54 N. E. 737,— holding court of appeals cannot review sufficiency of evidence to sustain decision or undirected verdict unanimously affirmed by appellate division; People *ex rel.* Citizens' Lighting Co. v. Feitner, 81 App. Div. 123, 81 N. Y. Supp. 73, and People *ex rel.* Manhattan R. Co. v. Barker, 152 N. Y. 432, 46 N. E. 875, holding implied findings of fact unanimously made by appellate division on review of assessment conclusive on court of appeals; People *ex rel.* Sands v. Feitner, 173 N. Y. 650, 66 N. E. 626, holding court of appeals cannot review facts on appeal of statutory review of assessment unanimously affirmed by appellate division: Niagara Falls v. New York C. & H. R. R. Co. 168 N. Y. 611, 61 N. E. 185, holding question whether finding unsupported by evidence not reviewable by court of appeals, on appeal from unanimous decision; Consolidated Electric Storage Co. v. Atlantic Trust Co. 161 N. Y. 611, 56 N. E. 145, holding questions dependent on facts not reviewable by court of appeals on appeal from unanimous affirmance of general decision; Lamkin v. Palmer, 164 N. Y. 204, 58 N. E. 123, holding validity of contract under statute of frauds not reviewable by court of appeals where dependent on question of fact; Marden v. Dorthy, 160 N. Y. 46, 46 L. R. A. 696, 54 N. E. 726, holding facts expressly or impliedly negatived against appellant by unanimous decision of appellate division conclusive on court of appeals; Kennedy v. Mineola, H. & F. Traction Co. 178 N. Y. 512, 71 N. E. 102, holding that unanimous affirmance by appellate division of lower-court decision upon question of title, prevents court of appeals from construing deeds upon which title was based; National Harrow Co. v. E. Bement & Sons, 163 N. Y. 510, 57 N. E. 764, holding referee's omission to find material fact in short decision not reviewable in court of appeals; Carpenter v. Taylor, 164 N. Y. 182, 58 N. E. 53 (dissenting opinion), majority holding propriety of judgment upon settled facts reviewable by court of appeals; Collar v. Ulster & D. R. Co. 72 Miss. 280, 131 N. Y. Supp. 56, on power of court on appeal to review facts.

Distinguished in Miller v. New York & N. S. R. Co. 183 N. Y. 128, 75 N. E. 1111, 35 N. Y. Civ. Proc. Rep. 280, holding court of appeals need not assume facts necessary to support judgment entered upon a short decision where judgment is unwarranted by any aspect of the finding.

Silence as fraud.

Cited in footnotes to Chicora Fertilizer Co. v. Dunan, 50 L. R. A. 401, which holds failure to inform creditor of pending negotiations increasing value of collateral security sought to be released not fraudulent concealment; Opie v. Pacific Invest. Co. 56 L. R. A. 778, which denies duty of indorser to disclose to mortgagee knowledge as to value of mortgage which he attempts to buy for third person.

Trust created by promise of legatee or transferee.

Cited in Neresheimer v. Smyth, 167 N. Y. 207, 60 N. E. 449, holding trust created by transfer of property to one promising to pay debts therefrom; Ahrens v. Jones, 169 N. Y. 561, 88 Am. St. Rep. 620, 62 N. E. 666, holding trust *ex maleficio* attaches to property conveyed on grantee's promise to pay specified sum to another; McClellan v. Grant, 83 App. Div. 604, 82 N. Y. Supp. 208, holding enforceable, against heirs at law of grantee, trust *ex maleficio* created by conveyance

of real estate by illiterate woman to pastor, under verbal understanding to hold for son; Edson v. Bartow, 154 N. Y. 219, 61 Am. St. Rep. 609, 48 N. E. 541, holding legacy to circumvent statute prohibiting certain bequests within fixed period before death impressed with trust for next of kin; *Re* Small, 27 App. Div. 447, 50 N. Y. Supp. 341 (dissenting opinion), majority holding trust not created by undertaking of residuary legatee to provide for certain relatives; Winder v. Scholey, 83 Ohio St. 216, 33 L.R.A.(N.S.) 1002, 93 N. E. 1098, 21 Ann. Cas. 1379; Peters v. Peters, 137 App. Div. 638, 122 N. Y. Supp. 363,—holding that when one induces testator to make devise apparently absolute, upon promise to devote property to certain purpose, equity will compel him to apply it in accordance with promise; Baker v. Syfritt, 147 Iowa, 61, 125 N. W. 998, holding that husband and wife may agree to unite their separate estates in creation of trust for benefit of third person, who will come into legal title upon death of survivor; Hill v. Fiske, 69 Misc. 509, 125 N. Y. Supp. 1026, holding that under bequest of residuary estate "to be distributed by executor in his discretion or as may be hereafter mentioned in codicils or written additions to this will," executor takes absolute title, where testator dies without making codicil or addition to will; Smullin v. Wharton, 73 Neb. 688, 103 N. W. 288, holding a legatee receiving a devise or bequest with knowledge of the intention of testator that it is to be applied to the benefit of another becomes a trustee for the purpose of carrying such intention into effect; Jimmerson v. Ferguson, 57 Misc. 504, 109 N. Y. Supp. 845, holding where a brother induces testatrix to leave her property to him so that he may hold it for the benefit of testatrix's son, without the latter's wife who has left him acquiring any interest therein, equity will compel the brother to keep his promise; Mead v. Robertson, 131 Mo. App. 192, 110 S. W. 1095, on a legatee as bound in equity to keep a promise on the strength of which the legacy was given; Rutherford v. Carpenter, 134 App. Div. 883, 119 N. Y. Supp. 790, holding the evidence of an inducing promise was sufficient to raise a trust; Miller v. Hill, 64 Misc. 202, 118 N. Y. Supp. 63, on equity as compelling the performance of a secret trust; Chappell v. White, 146 N. C. 575, 60 S. E. 635, on when an implied trust will be imposed upon a devise of land for the benefit of another.

Cited in notes (22 L.R.A.(N.S.) 1269) on effect of statutes limiting charitable bequest, etc. on absolute gift to individual in hope that he will use it for such purposes; (31 L.R.A.(N.S.) 177, 178) on constructive trust from fraud in frustrating decedent's intention to give property to third person; (33 L.R.A.(N.S.) 998, 1001) as to whether constructive trust may be based upon undertaking to hold for another's benefit property received through devise or inheritance, where no actual testamentary intention frustrated; (82 Am. St. Rep. 518, 519) on effect of writings in favor of "trustee" without indicating beneficiary or terms of trust; (106 Am. St. Rep. 97) on heir, devisee, or legatee as trustee ex malificio.

Distinguished in Smith v. Havens Relief Fund Soc. 44 Misc. 614, 90 N. Y. Supp. 168, holding substitutionary gift unconditional in terms but upon hope of a certain disposal was not on trust where no promise was made.

Effect of colegatee's promise.

Distinguished in Edson v. Bartow, 154 N. Y. 221, 61 Am. St. Rep. 609, 48 N. E. 541, holding shares of other colegatees unaffected by promise of one for himself to comply with testator's wishes.

Effect of illegal secret trust upon remainder to trustee.

Cited in Ham v. Twombly, 181 Mass. 172, 63 N. E. 336, holding remainder to devisee of expressed trust after death of beneficiary not affected although illegal secret trust existed.

Impossibility of performance of parol trust.

Cited in Medical College Laboratory v. New York University, 76 App. Div. 59, 78 N. Y. Supp. 673, decreeing reconveyance of property conveyed under parol agreement impossible to be performed.

Restriction of devises to certain corporations.

Cited in Allen v. Stevens, 22 Misc. 174, 49 N. Y. Supp. 431, and Frazer v. Hoguet, 65 App. Div. 201, 72 N. Y. Supp. 840, holding statute prohibiting bequests of more than half of estate to religious corporation can be invoked only by persons mentioned therein; *Re* Stilson, 85 App. Div. 136, 83 N. Y. Supp. 67, holding antenuptial agreement by husband to take no part of wife's property after death, waiver of rights under statute restricting devises to charity; Moskowitz v. Hornberger, 20 Misc. 562, 46 N. Y. Supp. 462, holding validity of devise of real estate to religious corporation not collaterally assailable; Scott v. Ives, 22 Misc. 755, 51 N. Y. Supp. 49, holding statute prohibiting bequests of more than half estate to certain corporations affects bequest to foreign corporations; Allen v. Stevens, 33 App. Div. 503, 54 N. Y. Supp. 8 (dissenting opinion), majority holding devise of more than half of estate to found home for aged men invalid; Robb v. Washington & J. College, 185 N. Y. 494, 78 N. E. 359, Modifying 103 App. Div. 345, 93 N. Y. Supp. 92, holding a testator might give to a college by a trust deed such part of his estate as he saw fit even though statute restricted the giving of more than half of estate by will to a charitable corporation; Keystone Pub. Co. v. Hill Dryer Co. 55 Misc. 637, 106 N. Y. Supp. 1036, holding where a married woman survived by her husband left the bulk of her estate consisting of personalty to a religious corporation in violation of a statute, her nephews and nieces could not object to such bequest; Hasbroucky v. Knoblauch, 59 Miss. 103, 112 N. Y. Supp. 159, holding a bequest to a college within the prohibition against the giving of more than half of estate where wife and child survive, to charitable or educational corporations; St. John v. Andrews Institute, 191 N. Y. 273, 83 N. E. 981, 14 Ann. Cas. 708, Modifying 117 App. Div. 712, 102 N. Y. Supp. 808, on the purpose of a statute restricting gifts to charitable institutions; Re Morgan, 56 Misc. 245, 107 N. Y. Supp. 393, holding a bequest to an educational institution is not within the object of a statute prohibiting the giving of more than half the estate to religious, charitable and similar corporation.

Limited in Williams v. Daiker, 63 App. Div. 614, 71 N. Y. Supp. 247, holding bequests of more than half of estate for certain purposes may be challenged by any interested person.

Validity of agreement not to contest will.

Cited in Clark v. Lyons, 38 Misc. 518, 77 N. Y. Supp. 967, holding legatee's promise to pay fixed sum to one agreeing not to contest will, valid.

Trustee's purchase of adverse interest.

Cited in Merrick v. Waters, 51 App. Div. 86, 64 N. Y. Supp. 542, holding purchase by trustee of adverse interest in property inures to benefit of *cestuis que trust.*

Taxation of legacies.

Limited in *Re* Edson, 24 Misc. 356, 53 N. Y. Supp. 712, holding legacy impressed with secret trust not taxable against legatee's estate.

Distinguished in Re Scherrer, 2 Gibbons Sur. Rep. (N. Y.) 534, holding that where legacy is impressed with secret trust in favor of another, under which latter took beneficial interest, legacy cannot be taxed against legatee.

— Ascertainment by surrogate.

Cited in State ex rel. Pabst Brewing Co. v. Carpenter, 129 Wis. 189, 8 L.R.A.

(N.S.) 792, 108 N. W. 641, holding a county court in the determination of the value of an estate for the purpose of imposing an inheritance tax cannot compel a corporation in which decedent is a stockholder to produce its books to aid in such determination.

Distinguished in Re Vineland Historical & Antiquarian Soc. 66 N. J. Eq. 294, 56 Atl. 1039, holding the assessment of a tax on a legacy by the surrogate is not conclusive in proceedings before the orphans' court to show cause why the tax should not be decreed to be paid.

Bequests to educational institutions.

Cited in *Re* Lampson, 33 App. Div. 52, 53 N. Y. Supp. 531, holding bequests to educational institutions favored by public policy.

Definiteness of beneficiaries.

Cited in note (14 L.R.A.(N.S.) 78) on enforcement of general bequest for charity or religion.

Distinguished in Jay v. Lee, 41 Misc. 14, 83 N. Y. Supp. 579, holding not void for indefiniteness, bequest in trust for persons whom testatrix had "indicated during . . . my lifetime."

Validity of charitable trust.

Cited in Starr v. Selleck, 145 App. Div. 872, 130 N. Y. Supp. 693, holding that testamentary gift to trustees "to be used toward purpose of maintaining club house for social resort of young men and boys upon west side of city of New York, or for purpose of similar work, etc." does not create trust contrary to public policy.

Who can contest will.

Cited in note (130 Am. St. Rep. 207) on who can contest a will.

Right of heirs to assail legacy to corporation.

Cited in note (60 Am. St. Rep. 321) on right of heirs to assail legacy to corporation.

Conflict of laws as to wills.

Cited in note (2 L.R.A.(N.S.) 440) on conflict of laws as to wills.

Findings of facts.

Cited in Re New York City, 200 N. Y. 548, 93 N. E. 498 (dissenting opinion), on meaning of phrase "finding of fact."

37 L. R. A. 333, LEHMANN v. DEUSTER, 95 Wis. 185, 60 Am. St. Rep. 111, 70 N. W. 170.

Survival of action for personal injuries.

Cited in Brown v. Chicago & N. W. R. Co. 102 Wis. 141, 153, 44 L. R. A. 582, 77 N. W. 748, holding that cause of action for personal injuries survives; Nemecek v. Filer & S. Co. 126 Wis. 72, 105 N. W. 225; Robertson v. Chicago, St. P. M. & O. R. Co. 122 Wis. 68, 66 L.R.A. 921, 106 Am. St. Rep. 925, 99 N. W. 433,—on the survivable causes of action for personal injuries.

Cited in notes (44 L. R. A. 178–180, 187) on assignability of cause of action for personal injury; (27 L.R.A.(N.S.) 405) on effect of statute declaring cause of action for death survivable, to render it assignable.

Garnishment of unliquidated claims.

Cited in note (59 L. R. A. 358) on garnishment of unliquidated claims.

Garnishment of verdict before judgment.

Cited in note (4 L.R.A.(N.S.) 624) on garnishment of verdict before judgment.

Action for personal injuries.

Cited in Wysocki v. Wisconsin Lakes Ice & Cartage Co. 125 Wis. 642, 104 N. W. 707, holding an action by parent for loss of services occasioned by injuries to son is not an action "for an injury to the person."

37 L. R. A. 337, TITTLE v. VANLEER, 89 Tex. 174, 34 S. W. 715.

Whether instrument deed of trust or assignment for creditors.

Cited in Rindskoff v. Vanleer, 14 Tex. Civ. App. 95, 36 S. W. 918; Willis v. Holland, 13 Tex. Civ. App. 693, 36 S. W. 329; Seward Confectionery Co. v. Ullman, 89 Tex. 506, 35 S. W. 469,—holding conveyance to secure payment of specified debts, surplus returnable to grantor, deed of trust; Thaxton v Smith, 90 Tex. 594, 40 S. W. 14, holding instrument providing for payment of all debts out of proceeds of insolvent's entire property thereby transferred, directing preferences and return of surplus, general assignment.

Cited in footnote to Conely v. Collins, 44 L. R. A. 844, which holds conveyance in trust to sell and apply proceeds to corporate indebtedness, assignment for creditors.

Preference by mortgage or sale as assignment for creditors.

Cited in notes (37 L. R. A. 337) on whether preference by mortgage or sale is an assignment for creditors; (37 L. R. A. 465, 483) on effect of insolvency statutes on mortgage or sale preferring creditors; (36 L. R. A. 366) on right of creditor to buy property from his debtor in satisfaction of his debt.

Necessity of acceptance by beneficiaries of trust deed.

Cited in White v. Sterzing, 11 Tex. Civ. App. 555, 32 S. W. 909, holding acceptance by any creditor secured renders trust deed operative as to him.

Distinguished in Bailey v. Deware, 91 Tex. 92, 40 S. W. 966, holding decision that pleadings did not raise question of acceptance of deed of trust by beneficiaries not in conflict.

Effect of general assignment.

Cited in Thaxton v. Smith, 90 Tex. 594, 40 S. W. 14, holding proceedings against estate of deceased assignor for creditors unnecessary.

37 L. R. A. 371, WELLS, F. & CO.'S EXPRESS v. CRAWFORD COUNTY, 63 Ark. 576, 40 S. W. 710.

Taxation of property of nonresidents.

Cited in footnote to Liverpool & L. & G. Ins. Co. v. Board of Assessors, 45 L. R. A. 524, which holds tax against nonresident with no property in state, null.

Assessment of intangible values.

Cited in Detroit Citizens' Street R. Co. v. Detroit, 125 Mich. 692, 84 Am. St. Rep. 589, 85 N. W. 96, sustaining assessment of street railroad including value of franchise.

Cited in footnote to People *ex rel.* Delaware, L. & W. R. Co. v. Clapp, 39 L. R. A. 237, which holds cost of reproduction proper basis for local taxation of railroad.

Cited in note (58 L. R. A. 532, 595, 609) on taxation of capital stock of corporations in the United States.

Enjoining collection of taxes.

Cited in footnotes to Philadelphia Mortg. & T. Co. v. Omaha, 57 L. R. A. 150, which denies right to restrain city from enforcing tax against property on which money loaned in reliance on treasurer's mistaken marking of taxes as paid; Com. use of Wiggins v. Scott, 55 L. R. A. 597, which sustains right of single nonresident taxpayer to sue for himself and others to recover taxes illegally exacted.

Cited in notes (16 L.R.A.(N.S.) 808) on injunction against collection of tax on excessive assessment: (42 L. ed. U. S. 448) on injunction to restrain the collection of a tax; (48 L. ed. U. S. 181) on necessity of payment of tax due where injunction is sought against illegal taxation.

Construction of statutes.

Cited in Western U. Teleg. Co. v. State, 82 Ark. 316, 101 S. W. 748, 12 Ann. Cas. 82, construing statutory regulation of foreign corporations to apply only to such as engaged in intrastate business where otherwise construed it would have been void.

Relief against excessive taxes.

Cited in Clay County v. Brown Lumber Co. 90 Ark. 417, 119 S. W. 251, holding taxpayer must pursue the remedy provided for his relief against overvaluation or abide by the findings of the board of equalization; State v. Little, 94 Ark. 220, 126 S. W. 713, holding that courts cannot give relief against erroneous assessments, except where they are especially impowered to do so.

Effect of partial invalidity of statute.

Cited in Ex parte Byles, 93 Ark. 621, 37 L.R.A.(N.S.) 778, 126 S. W. 94, holding that statutes valid only in part will be disregarded as to void part and enforced as to residue.

Computation of value of property of interstate carriers.

Cited in Re Arkansas Rate Cases, 187 Fed. 319, holding that in computing net income of railroad, for purpose of determining reasonableness of rates, interstate business is justly chargeable with its proportion of expense incurred by company in maintaining agents to solicit business.

37 L. R. A. 376, LUCAS v. HERBERT, 148 Ind. 64, 47 N. E. 146.

Rights of hackmen and expressmen at depots.

Cited in Indianapolis Union R. Co. v. Dohn, 153 Ind. 12, 45 L. R. A. 428, 74 Am. St. Rep. 274, 53 N. E. 937, denying railroad company's right to grant one transfer company exclusive rights on station grounds; Hot Springs v. Demby, 90 Ark. 576, 134 Am. St. Rep. 43, 119 S. W. 1126, holding a railroad company may designate the place within their grounds where competing hackmen may stand; Oregon Short Line R. Co. v. Davidson, 33 Utah, 375, 16 L.R.A.(N.S.) 782, 94 Pac. 10, 14 Ann. Cas. 489, holding a railroad company may properly grant right to one concern operating carriages to enter grounds to solicit business.

Cited in footnotes to State v. Reed, 43 L. R. A. 134, which denies railroad company's right to give one hackman exclusive privilege to enter station grounds; Pennsylvania Co. v. Chicago, 53 L. R. A. 223, which denies carrier's power to prevent others than lessee occupying hack stands in street; Boston & A. R. Co. v. Brown, 52 L. R. A. 418, which holds driver of public carriage entering railroad grounds to get passenger ordering carriage, a trespasser on soliciting other passengers; New York, N. H. & H. R. Co. v. Scovill, 42 L. R. A. 157, which sustains railroad company's right to give exclusive privilege of soliciting passengers or baggage on station grounds; Norfolk & W. R. Co. v. Old Dominion Baggage Transfer Co. 50 L. R. A. 722, which upholds special privilege to baggage transfer company to another depot to solicit business; Kates v. Atlanta Baggage & Cab Co. 46 L. R. A. 431, which sustains contract giving cab company exclusive privilege of soliciting patronage on trains and in depot; Hedding v. Gallagher, 64 L. R. A. 811, which sustains right of railroad company to give to one teamster exclusive right to enter railroad property to solicit privilege of carrying baggage and

passengers; Godbout v. St. Paul Union Depot Co. 47 L. R. A. 532, which authorizes discrimination by carrier between hackmen within, but not outside of, depot; Cosgrove v. Augusta, 42 L. R. A. 711, which holds ordinance prohibiting hackmen, etc., from entering depot to solicit custom not authorized by general welfare clause in city charter; State ex rel. Sheets v. Union Depot Co. 68 L.R.A. 792, which sustains right of union depot company to grant transfer company exclusive right to use specified part of depot grounds for hacks and vehicles and soliciting patronage of passengers.

Cited in note (16 L.R.A.(N.S.) 782) on right to discriminate between solicitors of patronage at depots, wharves, etc.

Disapproved in Donovan v. Pennsylvania Co. 61 L. R. A. 143, footnote p. 140, 57 C. C. A. 364, 120 Fed. 217, sustaining carrier's power to give exclusive right to solicit patrons within station to one hackman.

37 L. R. A. 378, EVANSVILLE STREET R. CO. v. GENTRY, 147 Ind. 408, 62 Am. St. Rep. 421, 44 N. E. 311.

Duty of person crossing street railroad.

Cited in Marchal v. Indianapolis Street R. Co. 28 Ind. App. 137, 62 N. E. 286, holding rule as to duty of person crossing track not so strict in case of street as of steam railroads; Citizens' Street R. Co. v. Hamer, 29 Ind. App. 431, 62 N. E. 658, holding presumption that person seeing approaching car will step from track applicable with less force to street cars than steam cars; Duetz v. Louisville & S. I. Traction Co. 46 Ind. App. 694, 91 N. E. 622, holding that "look and listen rule" does not apply in its strictness at crossings of city street by interurban railway; Dow v. Des Moines City R. Co. 148 Iowa, 447, 126 N. W. 918, holding that person in crossing street railway track has right to assume that cars will be run in accordance with law regarding rate of speed and giving signals; Bremer v. St. Paul C. R. Co. 107 Minn. 332, 21 L.R.A.(N.S.) 893, 120 N. W. 382; Marden v. Portsmouth, K. & Y. Street R. Co. 110 Me. 48, 69 L.R.A. 304, 109 Am. St. Rep. 476, 60 Atl. 530,—holding it unnecessary as a matter of law for a traveller at a street railway crossing to stop, look and listen; Union Traction Co. v. Vandercook, 32 Ind. App. 626, 69 N. E. 486; Indianapolis Street R. Co. v. Schmidt, 35 Ind. App. 207, 71 N. E. 663; Indianapolis Street R. Co. v. Tenner, 32 Ind. App. 325, 67 N. E. 1044 (dissenting opinion),—on the duty to stop, look and listen, not applying at crossing of street car tracks; Indianapolis Street R. Co. v. Taylor, 39 Ind. App. 601, 80 N. E. 436, holding it unnecessary for a traveller at a street crossing to show that he stopped and looked and listened in order to free himself from the imputation of contributory negligence; Saylor v. Union Traction Co. 40 Ind. App. 386, 81 N. E. 94, holding an instruction erroneous which charged that plaintiff was guilty of contributory negligence in failing to look before crossing a street railway track.

Cited in footnotes to Kansas City-Leavenworth R. Co. v. Gallagher, 64 L.R.A. 344, which sustains right of one about to cross street car tracks to believe that car is running at lawful speed and is under control; Marden v. Portsmouth, K. & Y. Street Railway, 69 L.R.A. 300, which holds failure to look and listen before crossing street car tracks at public crossing not negligence per se.

Disapproved in Hornstein v. United R. Co. 195 Mo. 456, 4 L.R.A.(N.S.) 738, 113 Am. St. Rep. 693, 92 S. W. 884, 6 Ann. Cas. 699, holding a duty rests on a pedestrian to look and listen and if necessary stop, in an effort to learn of the approach of a street car.

Negligence in running street cars over crossings.

Cited in Indianapolis Street R. Co. v. Zaring, 33 Ind. App. 308, 71 N. E. 501 (dissenting opinion), on the duty of street railway company in the operation of its cars.

Cited in footnotes to Smith v. Union Trunk Line, 45 L. R. A. 169, which holds that running two cable cars past each other at much frequented crossing without signal, gross negligence; Roberts v. Spokane Street R. Co. 54 L. R. A. 184, which holds street car company not free from negligence *per se* in having cars meet at busy street crossing while running at rate of 2½ miles an hour.

Contributory negligence.

Cited in Pittsburgh, C. C. & St. L. R. Co. v. Parish, 28 Ind. App. 200, 91 Am. St. Rep. 120, 62 N. E. 514, holding that absence of contributory negligence may be shown by slight positive testimony, circumstantial or otherwise; De Graffenried v. Wallace, 2 Ind. Terr. 662, 53 S. W. 452, holding person walking out of door on second floor of unfinished building at night guilty of contributory negligence; Moore v. St. Louis Transit Co. 95 Mo. App. 737, holding one exercising such care in looking for approaching car as ordinarily prudent man would exercise, not contributorily negligent as to injury received.

Distinguished in Scofield v. Myers, 27 Ind. App. 376, 60 N. E. 1005, holding failure to look and listen for runaway team approaching from behind not contributory negligence.

Negligence as jury question.

Cited in Indianapolis Street R. Co. v. Marschke, 166 Ind. 495, 77 N. E. 945, on its being for the jury where the questions of negligence and contributory negligence are such that reasonable men might fairly differ.

Burden of proving exercise of due care by plaintiff.

Cited in Evansville & T. H. R. Co. v. Berndt, 172 Ind. 705, 88 N. E. 612, holding no presumption that a person killed by the negligence of another, was in the exercise of due care; Indianapolis v. Keeley, 167 Ind. 526, 79 N. E. 499, on the duty formerly being on the plaintiff in action for personal injuries to prove the exercise of due care; Shumm v. Rutland R. Co. 81 Vt. 202, 19 L.R.A. (N.S.) 980, 69 Atl. 945 (dissenting opinion), on the evidence required of an injured person to show that he was in the exercise of due care.

Cited in note (33 L.R.A.(N.S.) 1141) on burden of proof as to contributory negligence.

37 L. R. A. 381, WINDFALL MFG. CO. v. PATTERSON, 148 Ind. 414, 62 Am. St. Rep. 532, 47 N. E. 2.

Enjoining prospective nuisance.

Cited in Flood v. Consumers Co. 105 Ill. App. 565, holding that one seeking to enjoin nuisance must show clear case of pressing necessity; Smith v. Weiler, 59 Pittsb. L. J. 112, 20 Pa. Dist. R. 386, holding that if injury be doubtful, eventual, or contingent, equity will not enjoin; Siegel v. Wayne Circuit Judge, 155 Mich. 462, 119 N. W. 645, refusing to enjoin the erection of a building on the ground that the business proposed to be carried on there would constitute a nuisance, where the building was not objectionable in itself.

Cited in footnotes to Chambers v. Cramer, 54 L. R. A. 545, which holds injunction not granted against what is not nuisance *per se*, though it may become such; Pearce v. Gibson County, 55 L. R. A. 477, which sustains right to enjoin intended discharge of water closets through sewer on another's land; St. Lawrence v. Gross, 47 L. R. A. 572, which denies injunction against removal of building on ground that nuisance will be created by leaving dangerous excavation.

Cited in note (118 Am. St. Rep. 879, 880) on injunction against nuisance.

Injunction against oil and gas well.

Cited in McGregor v. Camden, 47 W. Va. 196, 34 S. E. 936, holding operation of oil well so as to make it nuisance to adjoining dwelling, enjoinable.

Definition of nuisance.

Cited in Melker v. New York, 190 N. Y. 488, 16 L.R.A.(N.S.) 624, 83 N. E. 565, 13 Ann. Cas. 544; Ehrlick v. Com. 125 Ky. 746, 10 L.R.A.(N.S.) 996, 128 Am. St. Rep. 269, 102 S. W. 289,—on what constitutes a nuisance per se.

Cited in notes (107 Am. St. Rep. 207, 211, 245) on what are public nuisances: (124 Am. St. Rep. 593, 595) on definition of nuisance.

37 L. R. A. 384, BUCK v. MILLER, 147 Ind. 586, 62 Am. St. Rep. 436, 45 N. E. 647, 47 N. E. 8.

Cited in Buck v. Beach, 164 Ind. 38, — L.R.A.(N.S.) —, 108 Am. St. Rep. 272, 71 N. E. 963, historically.

Assessment of personalty against nonresidents.

Cited in Schmidt v. Failey, 148 Ind. 157, 37 L. R. A. 446, 47 N. E. 326, holding funds distributable to nonresidents in hands of local receiver, subject to taxation; Augusta v. Kimball, 91 Me. 609, 41 L. R. A. 477, 40 Atl. 666, holding nonresident trustees accountable to state courts not assessable for property held outside of state; Gallup v. Schmidt, 154 Ind. 203, 56 N. E. 443, sustaining assessment of decedent's personalty against nonresident executor: Armour Packing Co. v. Augusta, 118 Ga. 556, 98 Am. St. Rep. 128, 45 S. E. 424, holding choses in action of a foreign corporation doing business in the state were taxable by the municipality where such business was conducted; Hathaway v. Edwards, 42 Ind. App. 25, 85 N. E. 28, holding choses in action taken by the agent of a nonresident as security for loans of his principal's money are liable to taxation; Theobald v. Clapp, 43 Ind. App. 199, 87 N. E. 100, holding notes and mortgages taken by a nonresident as security for loans but kept at the place of his residence are not taxable in this state; State v. Fidelity & D. Co. 35 Tex. Civ. App. 218, 80 S. W. 544, holding municipal bonds and securities owned by a nonresident are taxable in state where used here by owner in his business; Com. v. Peebles, 134 Ky. 128, 23 L.R.A.(N.S.) 1132, 119 S. W. 774, on when personalty of nonresident is taxable in state.

Cited in footnotes to Grigsby Constr. Co. v. Freeman, 58 L. R. A. 349, which holds contractor's outfit brought into state for use several months in constructing railroad, taxable in state; Liverpool & L. & G. Ins. Co. v. Board of Assessors, 45 L. R. A. 524, which holds situs of debt due nonresident at creditor's domicil for purpose of taxation.

Cited in notes (2 L.R.A.(N.S.) 638) on situs of debt for taxation, apart from creditor's domicil; (7 L.R.A.(N.S.) 704) on local situs within state of tangible personal property of nonresident for taxation; (69 Am. St. Rep. 52) on situs of national bank shares for purpose of taxation; (69 Am. St. Rep. 114) on situs of debts for purposes of garnishment and of property in transit in hands of carriers.

Disapproved in Buck v. Beach, 206 U. S. 400, 51 L. ed. 1111, 27 Sup. Ct. Rep. 712, 11 Ann. Cas. 732, holding mortgage notes payable in another state and belonging to a nonresident and merely in the state for safe keeping are not the subject of taxation.

Enjoining collection of tax.

Cited in Luke v. Sheridan, 26 Ind. App. 532, 60 N. E. 359, holding collection of tax assessed on personalty of one taxed in another county, enjoinable; Citizens' Nat. Bank v. Klauss, 47 Ind. App. 57, 93 N. E. 681, holding that where taxes

are partly valid, person assessed must pay or offer to pay same before injunction will lie to restrain collection of unlawful part thereof.

Cited in footnote to Philadelphia Mortg. & T. Co. v. Omaha, 57 L. R. A. 150, which denies right to restrain city from enforcing tax against property on which money loaned in reliance on treasurer's mistaken marking of taxes as paid.

Cited in note (42 L. ed. U. S. 448) on injunction to restrain the collection of a tax.

Presumption that assessment correct.

Cited in Gallup v. Schmidt, 154 Ind. 212, 56 N. E. 443, holding assessment made by auditor presumed correct in proceeding to collect tax; Parkison v. Thompson, 164 Ind. 629, 73 N. E. 109, 3 Ann. Cas. 677, holding the burden is on a taxpayer to show that the auditor erroneously listed property already listed and taxes paid; Brunson v. Starbuck, 32 Ind. App. 464, 70 N. E. 163, holding the burden on an administrator to show in proceedings to show cause why omitted taxes should not be paid, that the tax was invalid; Fell v. West, 35 Ind. App. 28, 73 N. E. 719, on it being presumed that taxes are legally assessed.

Collection of omitted taxes.

Cited in Darnell v. State, 174 Ind. 151, 90 N. E. 769, holding that in listing omitted property for taxation, county auditor is not required to give notice thereof to nonresidents; Gamble v. Patrick, 22 Okla. 917, 99 Pac. 640, 18 Ann. Cas. 348, holding the death of a taxpayer does not terminate the right of the state to collect omitted taxes; Anderson v. Ritterbusch, 22 Okla. 775, 98 Pac. 1002, on the death of a property owner as not terminating the right of the state to collect omitted taxes.

Cited in note (40 L.R.A.(N.S.) 927, 929) on assessment after owner's death of taxes omitted during lifetime.

Necessity of notice of assessment.

Cited in footnote to Hodge v. Muscatine County, 67 L.R.A. 624, which holds notice of assessment or levy of specific tax upon business of selling cigarettes unnecessary.

37 L. R. A. 391, DETROIT v. CHAPIN, 108 Mich. 136, 66 N. W. 587.

Signing bill after legislature's adjournment.

Cited in note (37 L. R. A. 397) on right of executive to sign bill after adjournment of legislative bodies.

Effect of amendatory law on pending proceedings.

Cited in Lears v. Seaboard Air-Line R. Co. 3 Ga. App. 620, 60 S. E. 343, holding an amendatory statute is applicable to proceedings pending at time it went into effect but which had not been prosecuted to judgment; Scott v. Jenkins, 46 Fla. 529, 35 So. 101, on the repeal of a statute as affecting proceedings pending under.

Distinguished in Brady v. Hayward, 114 Mich. 330, 72 N. W. 233, holding proceedings under drain law not terminated by amendatory law; Balch v. Detroit, 109 Mich. 254, 67 N. W. 122, holding condemnation proceedings in which verdict confirmed and time to appeal expired not affected by enactment of repealing statute.

Contemporaneous construction of Constitution.

Cited in Pingree v. Auditor General, 120 Mich. 104, 44 L.R.A. 685, 78 N. W. 1025, holding rule of construction of constitutional provision by long continued usage applicable only in doubtful cases.

Practical construction of statutes.

Cited in Atty. Gen. ex rel. Ruggles v. Buckley & D. Lumber Co. 164 Mich. 638, 130 N. W. 200, holding that where lumber company was permitted to produce salt in connection with lumbering operations for upwards of 15 years, and legislation in reference to such industry had taken place, state by its conduct was estopped from preventing such operations.

37 L. R. A. 402, ANDREWS v. JACKSON, 168 Mass. 266, 60 Am. St. Rep. 390, 47 N. E. 412.

Vendor's representations as fraud.

Cited in Whiting v. Price, 169 Mass. 577, 61 Am. St. Rep. 307, 48 N. E. 772, holding seller's representations that bond was good and secured by mortgage of certain property actionable fraud; Boles v. Merrill, 173 Mass. 494, 73 Am. St. Rep. 308, 53 N. E. 894, holding statements of vendor of personal property used in business as to number of regular customers and net income, actionable; Chilson v. Houston, 9 N. D. 503, 84 N. W. 354, holding vendor's representations as to financial condition of maker of note, actionable; Lynch v. Murphy, 171 Mass. 308, 50 N. E. 623, holding representations as to value as investment of stock in company organized to manufacture machine then unperfected, not actionable; Com. v. Stuart, 207 Mass. 569, 93 N. E. 825, holding that false statements as to value of property fraudulently made by one of several conspirators upon sale to victim toward whom he stood in confidential relation, cannot be considered mere dealers' talk; Gurney v. Tenney, 197 Mass. 466, 84 N. E. 428, holding known false representations by the owner of stock in a corporation as to the solvency of the corporation made for the purpose of inducing plaintiff to purchase stock are actionable; Lyons Burial Vault Co. v. Taylor, 198 Mass. 69, 84 N. E. 320, holding representations by an agent as to the construction and cost of construction of property and its marketable value, known to be false and made for the purpose of inducing a sale are actionable; Shackett v. Bickford, 74 N. H. 60, 7 L.R.A.(N.S.) 650, 124 Am. St. Rep. 933, 65 Atl. 252; Mabardy v. McHugh, 202 Mass. 149, 23 L.R.A.(N.S.) 491, 132 Am. St. Rep. 484, 88 N. E. 894, 16 Ann. Cas. 500,—on when fraudulent representations by a vendor are actionable.

Cited in footnotes to H. W. Williams Transp. Line v. Darius Cole Transp. Co. 56 L. R. A. 939, which denies right to rely on false representations as to speed of steamboat, if warranty as to speed inserted in contract; Stackpole v. Hancock, 45 L. R. A. 814, which requires purchaser undertaking to inform vendor of valuable mine on land to disclose whole truth.

Distinguished in People's Sav. Bank v. James, 178 Mass. 324, 59 N. E. 807, holding fraudulent representations as to financial standing inducing transfer of property, no ground for equitable relief as against purchaser under execution.

Ratification of fraudulent contract.

Cited in Modlin v. Roanoke R. & Nav. Co. 145 N. C. 223, 58 S. E. 1075, on the retention of the purchase price as not being such a ratification of a contract as will prevent its avoidance for fraud.

37 L. R. A. 404, ROCHESTER LODGE NO. 21, A. F. & A. M. v. GRAHAM, 65 Minn. 457, 68 N. W. 79.

Covenants running with land.

Cited in footnote to Doty v. Chattanooga Union R. Co. 48 L. R. A. 160, which holds covenant for running certain trains binding on subsequent purchaser of railroad.

37 L. R. A. 406, SCHOOL DISTRICT v. STOCKING, 138 Mo. 672, 60 Am. St. Rep. 576, 40 S. W. 656.

Incurring liability as consideration for promise to give.

Cited in Christian University v. Hoffman, 95 Mo. App. 495, 69 S. W. 474, holding that incurring obligations by trustees of educational institution on faith of future promise to pay constitutes valuable consideration; Third Nat. Bank v. Reichert, 101 Mo. App. 253, 73 S. W. 893, holding agreement between parties to undertake enterprise, ample consideration for notes given by one of them; Underwood Typewriter Co. v. Century Realty Co. 220 Mo. 531, 25 L.R.A. (N.S.) 1177, 119 S. W. 400, Reversing 118 Mo. App. 202, 94 S. W. 787, holding agreement to permit assignment of nonassignable lease was binding on lesssor after lessee in reliance on it had executed an assignment; Shelby County R. Co. v. Crow, 137 Mo. App. 465, 119 S. W. 435, holding the signing of other subscribers for stock is a sufficient consideration for the signing of a subscription for stock.

Cited in footnote to Albert Lee College v. Brown, 60 L. R. A. 870, which holds enforceable after maker's death note payable in future for permanent endowment fund of charitable educational institution.

Gift in futuro.

Cited in *Re* Soulard, 141 Mo. 657, 43 S. W. 617, holding gift to take effect in future invalid; Foley v. Harrison, 233 Mo. 539, 136 S. W. 354, to the point that it is essential to valid donation that it goes into effect at once completely; that thing given be delivered and not merely promised; Harris Bkg. Co. v. Miller, 190 Mo. 662, 1 L.R.A.(N.S.) 798, 89 S. W. 629, holding there was no valid gift inter vivos of a certificate of deposit where donor kept possession and drew interest during life time.

Gift of note or bill.

Cited in Pennell v. Ennis, 126 Mo. App. 359, 103 S. W. 147, holding a check drawn on the general account of drawer neither accepted or paid before the death of the drawer will not constitute a valid gift.

Cited in footnotes to Ricketts v. Scothorn, 42 L. R. A. 794, which holds void for lack of consideration note to grand-daughter to enable her to live without working, although enforceable if lucrative position given up in reliance thereon; Royston v. McCulley, 52 L. R. A. 899, which holds gift of note to servant made by indorsing and giving it to her, though retaining it as her agent.

Cited in note (27 L.R.A.(N.S.) 310) on check or note as subject of gift by maker.

Necessity of pleading illegality of contract.

Cited in Shohoney v. Quincy, O. & K. C. R. Co. 231 Mo. 147, 132 S. W. 1059. Ann. Cas. 1912 A, 1143, holding that if contract is illegal and illegality appears from it, the illegality is effective to deny remedy, though not pleaded.

37 L. R. A. 412, HELENA CONSOL. WATER CO. v. STEELE, 20 Mont. 1, 49 Pac. 382.

Municipal waterworks.

Followed in Helena v. Helena Waterworks Co. 58 C. C. A. 391, 122 Fed. 11 without special discussion; State *ex rel.* White v. Barker, 16 Iowa, 107, 57 L. R. A. 251, 93 Am. St. Rep. 222, 89 N. W. 204, holding that legislature cannot take from municipality, management of water-supply system, vesting it in trustees for whose selection it provides.

Cited in Helena Waterworks Co. v. Helena, 195 U. S. 393, 49 L. ed. 256, 25

Sup. Ct. Rep. 40, Affirming 58 C. C. A. 391, 122 Fed. 11, on the unconstitutionality of a statute providing for the acquirement of a municipal waterworks system by purchase instead of construction.

Cited in footnote to North Springs Water Co. v. Tacoma, 47 L. R. A. 214, which sustains city's right to build own waterworks after granting franchise to water company.

Cited in note (61 L. R. A. 39) on establishment and regulation of municipal water supply.

Legislative control of municipalities.

Cited in State ex rel. Gerry v. Edwards, 42 Mont. 148, 32 L.R.A.(N.S.) 1082, 111 Pac. 734, Ann. Cas. 1912 A, 1063, holding that matters pertaining to creation and maintenance of public parks are of purely and private concern, over which municipalities have exclusive control.

Cited in note (48 L. R. A. 471) on power of legislature to impose burdens on municipalities and to control their local administration and property.

37 L. R. A. 417, BULLOCK v. DELAWARE, L. & W. R. CO. 60 N. J. L. 24, 36 Atl. 773.

Passenger's right to carry packages in car.

Cited in footnotes to Runyan v. Central R. Co. 43 L. R. A. 284, which denies right to take small packages of merchandise in car as part of baggage although long acquiescence prevents rescission of regulation without notice; Runyan v. Central R. Co. 48 L. R. A. 744, which holds carrier not prevented by previous indulgence from discontinuing practice of passengers carrying small packages of merchandise into car.

What is baggage.

Cited in notes (99 Am. St. Rep. 353) on what is baggage; (39 L.R.A.(N.S.) 637) on household goods or supplies as baggage.

37 L. R. A. 419, PEOPLE *ex rel.* STURGIS v. FALLON, 152 N. Y. 1, 46 N. E. 302.

Right to race horses.

Cited in Grannan v. Westchester Racing Asso. 16 App. Div. 14, 44 N. Y. Supp. 790, denying right of racing association to permanently exclude person from track; Brien v. Stone, 82 App. Div. 452, 81 N. Y. Supp. 597, recognizing constitutionality of statute providing for and regulating horse racing.

Cited in note (25 L.R.A.(N.S.) 906) on power of state to prohibit or regulate horse racing.

Betting on races.

Followed without special discussion in People v. Stedeker, 175 N. Y. 61, 67 N. E. 132.

Cited in People *ex rel.* Clifton v. DeBragga, 73 App. Div. 580, 77 N. Y. Supp. 7, and People v. Shannon, 87 App. Div. 33, 83 N. Y. Supp. 1061, holding Penal Code, § 351, prohibiting pool selling outside of grounds upon results of horse races, constitutional; People *ex rel.* Allen v. Hagan, 170 N. Y. 53, 62 N. E. 1086, holding commitment upon charge of violating Penal Code, § 351, defective as failing to state crime charged; People v. Levoy, 72 App. Div. 57, 76 N. Y. Supp. 783, holding it punishable under Penal Code to permit premises not upon race track to be used as pool room; Maxim & G. Co. v. Sheehan, 37 Misc. 370, 75 N. Y. Supp. 422, denying injunction to prevent resale of tips on races; People ex rel. Collins v. McLaughlin, 128 App. Div. 613, 113 N. Y. Supp. 188, holding the receipt of money in payment of an oral bet on a horse race, made at the track is not a crime within the meaning of a statute; Opinion of Justices, 73 N. H.

627, 63 Atl. 505, 6 Ann. Cas. 689, on the betting of money on horse racing as constituting gambling within the meaning of a statute.

Recovery of wager made on horse race.

Distinguished in Mendoza v. Rose, 44 Misc. 244, 88 N. Y. Supp. 938, holding an act of penal nature providing for recovery by the loser of the amount bet on a horse race does not affect the civil remedy given by another statute to recover the amount lost.

Judicial inquiry into legislative motives.

Cited in Barhite v. Home Teleph. Co. 50 App. Div. 28, 63 N. Y. Supp. 659, holding action of common council in granting franchise not impeachable in courts for fraud; Kittinger v. Buffalo Traction Co. 160 N. Y. 389, 54 N. E. 1081, holding that taxpayer cannot have consent of authorities to street railroad declared void because same was obtained through fraud and corruption; Craft v. Lent, 53 Misc. 485, 103 N. Y. Supp. 366, holding the action of highway commissioners in granting a lighting franchise after a public hearing, without compensation is not subject to review by the courts.

Constitutional provisions not self-executing.

Distinguished in Chittenden v. Wurster, 152 N. Y. 371, 37 L. R. A. 817, 46 N. E. 857 (dissenting opinion), majority holding civil service clause in Constitution not self-executing as to ascertaining fitness by competitive examinations.

37 L. R. A. 423, STATE v. MEYERS, 46 Neb. 152, 64 N. W. 697.

Competency of witnesses.

Cited in notes (37 L.R.A. 423) on effect of insanity on competency of witnesses; (65 L.R.A. 318) on admissibility of declarations of infant too young to be sworn as witness.

Complaint by person raped.

Cited in Welsh v. State, 60 Neb. 113, 82 N. W. 368, holding evidence of complaints of prosecutrix in rape case admissible in corroboration; State v. Wheeler, 116 Iowa, 214, 93 Am. St. Rep. 236, 89 N. W. 978, holding complaints of prosecutrix, not part of *res gestæ*, not corroborative evidence, within meaning of Code in prosecution for rape; State v. Wolf, 118 Iowa, 566, 92 N. W. 673, holding failure of prosecutrix to make complaint properly considered as affecting her credibility as witness; Henderson v. State, 85 Neb. 447, 26 L.R.A.(N.S.) 1152, 123 N. W. 459, holding complaints of the victim as to the ravishment are admissible in corroboration of her testimony but details of the complaint are inadmissible in chief unless part of res gestae; Hanks v. State, 88 Neb. 467, 129 N. W. 1011, upholding verdict of guilty in prosecution for rape, where evidence was such that it was for jury to say whether they would believe state's witnesses or those for accused as to corroborating evidence.

37 L. R. A. 429, ROGERS v. HEAD'S IRON FOUNDRY, 51 Neb. 39, 70 N. W. 527.

Relation back of instruments to delivery to third person.

Cited in Barnes v. Cox, 58 Neb. 677, 79 N. W. 550, holding that recorded deed does not affect attachment levied after recording but before actual delivery; Sloan v. Thomas Mfg. Co. 58 Neb. 717, 79 N. W. 728, holding rights of chattel mortgagees inferior to attachment prior to acceptance; United States v. Loughrey, 172 U. S. 228, 43 L. ed. 428, 19 Sup. Ct. Rep. 153 (dissenting opinion), majority holding that title to lands resumed by United States previously granted to state for certain purpose does not relate back.

Cited in note (54 L. R. A. 897, 906) on delivery of deed to third person, or record, or delivery for record, by grantor.

Delivery of writing to third person.

Cited in Svanda v. Svanda, 86 Neb. 209, 125 N. W. 585, holding the delivery of a deed to the person by whom written with instructions to see that it was recorded, the grantee assenting to such proceedings constituted a sufficient delivery and acceptance.

Presumption of acceptance of beneficial grant.

Cited in Atwood v. Marshall, 52 Neb. 177, 71 N. W. 1064, holding chattel mortgage voluntarily executed and recorded by mortgagor presumably accepted by mortgagee.

37 L. R. A. 434, HORBACH v. TYRRELL, 48 Neb. 514, 67 N. W. 485.

Necessity for acknowledgment.

Cited in Linton v. National L. Ins. Co. 44 C. C. A. 58, 104 Fed. 588, and Linton v. Cooper, 53 Neb. 408, 73 N. W. 731, sustaining validity of unacknowledged conveyance of separate property not homestead of married woman; Morris v. Linton, 61 Neb. 539, 85 N. W. 565, sustaining validity of properly executed acknowledged power of attorney; Anderson v. Young, 74 N. H. 429, 69 Atl. 122; Wilson v. Wilson, 85 Neb. 168, 122 N. W. 856,—on when an acknowledgment is essential to the validity of a conveyance.

Unacknowledged conveyance of homestead.

Cited in Interstate Sav. & L. Asso. v. Strine, 58 Neb. 135, 78 N. W. 377, holding conveyance of homestead unacknowledged by husband and wife, void; Solt v. Anderson, 63 Neb. 737, 89 N. W. 306, holding unacknowledged contract for sale of homestead unenforceable by or against vendor; Solt v. Anderson, 71 Neb. 828, 99 N. W. 678, holding the acknowledgment of husband and wife to an instrument seeking to incumber homestead is essential; Kloke v. Wolff, 78 Neb. 505, 11 L.R.A.(N.S.) 100, 111 N. W. 134, holding an acknowledgment is essential to the validity of a lease of a homestead; Kimmerly v. McMichael, 83 Neb. 794, 120 N. W. 487, holding the failure of the wife to sign and acknowledge a mortgage on a homestead worth less than $2,000 rendered the mortgage void.

Necessity of wife as party to sale of homestead.

Cited in Blumer v. Albright, 64 Neb. 254, 89 N. W. 809, holding conveyance of homestead without acknowledgment of wife, absolutely void; Meek v. Lange, 65 Neb. 785, 91 N. W. 695, holding executory contract by husband alone, for sale of homestead, unenforceable; Buettgenbach v. Gerbig, 2 Neb. (Unof.) 892, 90 N. W. 654, holding void, contract for sale of homestead, made by husband without wife.

Cited in note (95 Am. St. Rep. 939) on effect of conveyance or encumbrance of homestead by one spouse only.

Interest disqualifying witnesses.

Cited in Ames v. Parrott, 61 Neb. 851, 87 Am. St. Rep. 536, 86 N. W. 503, holding plaintiff in attachment not proper witness of levy.

When notary disqualified.

Cited in Havemeyer v. Dahn, 48 Neb. 537, 33 L. R. A. 333, 58 Am. St. Rep. 706, 67 N. W. 489, holding attorney having claim for collection not disqualified from taking acknowledgment of mortgage securing it; Holmes v. Hull, 50 Neb. 657, 70 N. W. 241, holding mortgagee's agent not disqualified to witness or take acknowledgment of mortgage; Bank of Woodland v. Oberhaus, 125 Cal. 324, 57 Pac. 1070, holding notary not disqualified to take acknowledgment of

mortgage by being cashier of mortgagee bank; Kothe v. Krag-Reynolds Co. 20 Ind. App. 301, 50 N. E. 594, and Ogden Bldg. & L. Asso. v. Mensch, 196 Ill. 563, 89 Am. St. Rep. 330, 63 N. E. 1049, holding acknowledgment taken by stockholder in mortgagee corporation void; First Nat. Bank v. Citizens' State Bank, 11 Wyo. 56, 100 Am. St. Rep. 925, 70 Pac. 726, and Wilson v. Griess, 64 Neb. 795, 90 N. W. 866, holding mortgage to bank acknowledged before notary who was officer and stockholder therein, void; Hedbloom v. Pierson, 2 Neb. (Unof.) 801, 90 N. W. 218, holding acknowledgment of mortgage given to secure note, before owner of note, void; Mudra v. Graeling, 89 Neb. 838, 132 N. W. 389, holding that notary public who was creditor and who took acknowledgment of deed by debtor to third person who was directed to pay proceeds of sale of property to creditors was not disqualified to take acknowledgment; Banking House of A. Castetter v. Stewart, 70 Neb. 817, 98 N. W. 34, holding a notary taking an acknowledgment of a mortgage was not disqualified by interest by reason that he was the son-in-law of one of the parties and employed in his bank; Talmage v. Minton-Woodward Co. 83 Neb. 32, 118 N. W. 1099, holding notary disqualified by interest from taking an acknowledgment of deed of assignment by corporation of which he was stockholder.

Cited in notes (33 L.R.A. 339) on right of interested persons to take acknowledgment; (23 L.R.A.(N.S.) 1078) on acknowledgment of corporate instrument before stockholder or officer; (56 Am. St. Rep. 802) on interest of officer disqualifying him from taking acknowledgment; (58 Am. St. Rep. 707, 708) on disqualification of officer to take acknowledgment.

Nature of act of taking acknowledgment.

Cited in note (108 Am. St. Rep. 529) on nature of act of officer in taking acknowledgment.

37 L. R. A. 442, SCHMIDT v. FAILEY, 148 Ind. 150, 47 N. E. 326.

Order for distribution of assets modified in Cowen v. Failey, 149 Ind. 383, 49 N. E. 270.

Distribution of assets of insolvent insurance company.

Cited in note (38 L. R. A. 107) on distribution of assets of insolvent insurance company.

Taxation of personalty of nonresidents.

Cited in Augusta v. Kimball, 91 Me. 609, 41 L. R. A. 477, 40 Atl. 666, holding nonresident trustees accountable to state courts not assessable for property held outside of state; Buck v. Beach, 164 Ind. 48, — L.R.A.(N.S.) —, 108 Am. St. Rep. 272, 71 N. E. 963, holding chose in action payable in another state and belonging to a nonresident but kept in state by an agency for that purpose were taxable there.

Cited in footnote to Liverpool & L. & G. Ins. Co. v. Board of Assessors, 45 L. R. A. 524, which holds situs of debt due nonresident, at creditor's domicil for purpose of taxation.

37 L. R. A. 446, SPRINGFIELD v. SMITH, 138 Mo. 645, 60 Am. St. Rep. 569, 40 S. W. 757.

Imposition of license tax for revenue.

Cited in St. Charles v. Elsner, 155 Mo. 680, 56 S. W. 291, sustaining power of city empowered to require weighing of coal on public scales to impose charge exceeding expense; Lamar v. Adams, 90 Mo. App. 41, sustaining city's power under statute authorizing license tax, to tax occupations for revenue; Troy v. Harris, 102 Mo. App. 60, 76 S. W. 662, sustaining ad valorem tax upon

retail trade of oil company conducted by agent within city limits; Newport News & O. P. R. & Electric Co. v. Newport News, 100 Va. 161, 40 S. E. 645, sustaining right to impose license tax upon street railway either for purposes of revenue or in exercise of police power; Bloomington & N. R. Electric & Heating Co. v. Bloomington, 123 Ill. App. 644, holding a city might impose a license fee for every car used by a street car company within the corporate limits; Monett v. Hall, 128 Mo. App. 94, 106 S. W. 579, holding a business corporation was liable for an occupation tax imposed by ordinance although it had already paid an ad valorem tax; St. Louis v. United R. Co. 210 U. S. 277, 52 L. ed. 1059, 28 Sup. Ct. Rep. 630, holding the grant of a franchise to a street railroad company does not prevent the city from imposing taxes on the cars; Mercantile Incorporating Co. v. Junkin, 85 Neb. 564, 123 N. W. 1055, on the legislature as having power to levy occupation taxes on corporations engaged in business within the state.

Cited in note (129 Am. St. Rep. 264, 289) on constitutional limitations on power to impose license or occupation taxes.

Liability of agent on nonpayment of license tax.

Cited in note (12 L.R.A.(N.S.) 947) on liability of agent or employee in case license tax not paid by employer.

37 L. R. A. 449, LEONARD v. MEDFORD, 85 Md. 666, 37 Atl. 365.

Character of sale of standing timber.

Cited in Whittington v. Hall, 116 Md. 470, 82 Atl. 163, holding that contract for sale of standing timber is sale of personalty only.

Cited in note (13 L.R.A.(N.S.) 278) on character of purchase of standing timber to be removed within specified period, as of realty, or of personalty.

Performance taking contract out of statute of frauds.

Cited in Ford v. Howgate, 106 Me. 523, 29 L.R.A.(N.S.) 737, 76 Atl. 939, holding that delivery and acceptance of goods sold, taking contract outside of statute of frauds may be inferred from attendant circumstances.

37 L. R. A. 452, FREEMAN'S APPEAL, 68 Conn. 533, 57 Am. St. Rep. 112, 37 Atl. 420.

Followed in same case in Federal courts, in Mitchell v. First Nat. Bank, 180 U. S. 477, 45 L. ed. 630, 21 Sup. Ct. Rep. 418, Reversing 34 C. C. A. 542, 92 Fed. 565. Which Reverses 84 Fed. 90, on principle that determination of court having jurisdiction binds parties.

What law determines married woman's capacity to contract.

Cited in Colburn's Appeal, 74 Conn. 465, 92 Am. St. Rep. 231, 51 Atl. 139, holding that whether interest of husband in policy passed to wife by assignment delivered by him to company in another state, without being delivered to her, depends upon law of their domicil.

Cited in footnotes to Thompson v. Taylor, 54 L. R. A. 585, which holds written promise of married woman, valid when made, enforceable in New Jersey, though void if made therein; Smith v. Ingram, 61 L. R. A. 878, which holds law of place where land located, governs as to privy examination of married woman; Walling v. Christian & C. Grocery Co. 47 L. R. A. 608, which denies power of married woman to convey land in other state without joinder of husband as required by its laws; Williams v. Pope Mfg. Co. 50 L. R. A. 816, which sustains nonresident married woman's right to bring, in own name, according to law of domicil, action for tort to her person.

Cited in notes (57 L.R.A. 515) on conflict of laws as to capacity of married

women to contract; (26 L.R.A.(N.S.) 771) on same point; (85 Am. St. Rep. 568, 570) on conflict of laws as to rights and obligations of married woman.

Married woman's capacity to contract.

Cited in Barlow Bros. Co. v. Parsons, 73 Conn. 701, 49 Atl. 205, holding married woman not liable as husband's partner nor as surety on his bond; Freeman's Appeal, 71 Conn. 715, 43 Atl. 185, raising, without deciding, question of validity of note given by married woman as surety for husband; Mathewson v. Mathewson, 79 Conn. 33, 5 L.R.A.(N.S.) 617, 63 Atl. 285, 6 Ann. Cas. 1027, holding a woman might maintain an action against her husband for money loaned.

37 L. R. A. 455, MACAULEY BROS. v. TIERNEY, 19 R. I. 255, 61 Am. St. Rep. 770, 33 Atl. 1.

Legality of combinations to injure another's business.

Cited in Collins v. American News Co. 34 Misc. 265, 69 N. Y. Supp. 638, sustaining right of publishers' association to refuse to supply news dealer with papers; New York, C. & St. L. R. Co. v. Schaffer, 65 Ohio St. 421, 62 L. R. A. 935, 87 Am. St. Rep. 628, 62 N. E. 1036, holding that railroads may lawfully agree not to employ striking employees; Plant v. Woods, 176 Mass. 501, 51 L. R. A. 343, 79 Am. St. Rep. 330, 57 N. E. 1011, holding conspiracy by members of labor union to compel others to join by threatening employers with strikes and boycotts, unlawful; Beck v. Railway Teamsters' Protective Union, 118 Mich. 519, 42 L. R. A. 416, 74 Am. St. Rep. 421, 77 N. W. 13, enjoining distribution of boycotting circulars; Master Builders' Asso. v. Domascio, 16 Colo. App. 32, 63 Pac. 782, holding refusal of members of builders' association to bid if certain builder's bid was received, not unlawful, when association included not more than ¼ of number of builders in city; Martell v. White, 185 Mass 263, 64 L. R. A. 264, footnote p. 260, 102 Am. St. Rep. 341, 69 N. E. 1085, holding action maintainable on behalf of quarry owner against members of association to which he does not belong enforcing by-law imposing fine on members dealing with nonmembers; Huskie v. Griffin, 75 N. H. 348, 27 L.R.A.(N.S.) 969, 139 Am. St. Rep. 718, 74 Atl. 595, holding that employer who fraudulently represents that employee dishonorably left his employment is liable for damages; Retail Lumber Dealer's Asso. v. State, 95 Miss. 343, 35 L.R.A.(N.S.) 1057, 48 So. 1021, holding that combination of retail lumber dealers under agreement not to purchase from any manufacturer competing with retailers, is unlawful; Meier v. Speer, 96 Ark. 626, 32 L.R.A.(N.S.) 796, 132 S. W. 988, holding that agreement between members of labor union not to work for particular person nor to work on particular building if he has any contract to do work thereon is not unlawful; Jetton-Dekle Lumber Co. v. Mather, 53 Fla. 975, 43 So. 590, holding a union would not be enjoined from the enforcement of its rules which provided for the expulsion of members working for those employing nonunion labor; Lindsay & Co. v. Montana Federation of Labor, 37 Mont. 274, 18 L.R.A. (N.S.) 712, 127 Am. St. Rep. 722, 96 Pac. 127, refusing to enjoin the employment of a boycott by a labor union to compel the betterment of conditions of employment; State v. Van Pelt, 136 N. C. 654, 68 L.R.A. 768, 49 S. E. 177, 1 Ann. Cas. 495, holding the publication of a notice that a lumber dealer was unfair because he refused to employ union men exclusively did not constitute an unlawful conspiracy; J. F. Parkinson Co. v. Building Trades Council, 154 Cal. 608, 21 L.R.A.(N.S.) 564, 98 Pac. 1027, 16 Ann. Cas. 1165, on the right of members of a trades union to combine for the purpose of preventing the employment of nonunion men; Wilson v. Hey, 232 Ill. 399, 16 L.R.A.(N.S.) 97, 122 Am. St. Rep. 119, 83 N. E. 928, 13 Ann. Cas. 82 (dissenting opinion), on right

of a number of persons to enter into an agreement not to trade or deal with another; Willcutt & Sons Co. v. Driscoll, 200 Mass. 136, 23 L.R.A.(N.S.) 1251, 85 N. E. 897 (dissenting opinion); Karges Furniture Co. v. Amalgamated Woodworkers Local Union No. 131, 165 Ind. 428, 2 L.R.A.(N.S.) 794, 75 N. E. 877, 6 Ann. Cas. 829,—on impropriety of injunction against union members engaging in a peaceful strike; Allis-Chalmers Co. v. Iron Molders' Union No. 125, 150 Fed. 179, holding it not unlawful for strikers to try peaceably to intercept and dissuade others from taking employment; Lohse Patent Door Co. v. Fuelle, 215 Mo. 453, 22 L.R.A.(N.S.) 619, 128 Am. St. Rep. 492, 114 S. W. 997, as an instance of a lawful combination, but holding a boycott against nonunion materials was unlawful.

Cited in footnotes to National Protective Asso. v. Cumming, 58 L. R. A. 135, which denies liability of members of labor union for causing discharge of nonmembers by threatening to strike unless nonmembers discharged; Downs v. Bennett, 55 L. R. A. 560, which denies right of one only remotely affected, to injunction against fining or expelling member for violation of by-law prohibiting dealing with nonmembers or those dealing with them; Marx & H. Jeans Clothing Co. v. Watson, 56 L. R. A. 951, which denies power to enjoin publication of circular letter and solicitation of merchants not to deal with boycotted firm; West Virginia Transp. Co. v. Standard Oil Co. 56 L. R. A. 804, which sustains right to engage in malicious competition to get customers from rival and obtain business for one's self; Doremus v. Hennessy, 43 L. R. A. 797, which holds members of trade association combining to prevent other persons dealing with nonmember liable for resulting injury; Gatzow v. Buening, 49 L. R. A. 475, which holds by-law of liverymen's association prohibiting furnishing hearse or carriages to nonunion liverymen, illegal; Ertz v. Produce Exchange, 48 L. R. A. 90, which holds malicious, conspiracy to injure dealer by inducing other people not to deal with him; Ertz v. Produce Exchange, 51 L. R. A. 825, which holds produce exchange discriminating against nonmembers and controlling delivery of goods an illegal combination; Gray v. Building Trades Council, 63 L. R. A. 753, which sustains injunction against boycotting by labor unions against firms employing nonunion men; Gray v. Building Trades Council, 63 L.R.A. 753, which holds that boycott by combination of labor unions against firms placed by them on "the unfair list," because of the employment of nonunion men by threatening customers and prospective customers within ability to employ men if they deal with such firms will be enjoined; Martell v. White, 64 L.R.A. 260, which sustains right of action by quarry owner against members of voluntary association to which he does not belong for enforcement of by-law imposing fine on members dealing with nonmembers; My Maryland Lodge v. Adt, 68 L.R.A. 752, which sustains right to injunction against boycott; Employing Printers' Club v. DeBlosser Co. 69 L.R.A. 90, which holds actionable a combination to injure person in his trade in inducing employee to break contract or to decline to continue longer in his employment.

Cited in notes (62 L.R.A. 712) on effect of bad motive to make actionable what would otherwise not be; (12 L.R.A.(N.S.) 645) on right of labor union to forbid members to handle one's product; (16 L.R.A.(N.S.) 90) on legality of "secondary boycott" by labor union; (35 L.R.A.(N.S.) 1054) on combination by dealers not to patronize wholesalers selling to undesirable persons; (103 Am. St. Rep. 495, 496) on boycotting; (1 Brit. Rul. Cas. 251, 258) on liability of labor union for boycott.

Distinguished and disapproved in Ferd Heim Brewing Co. v. Belinder, 97 Mo.

App. 69, 71 S. W. 691, holding unlawful, agreement by brewers not to sell to anyone indebted to any of them.

Combinations to restrict competition.

Cited in Ætna Ins. Co. v. Com. 106 Ky. 888, 45 L. R. A. 361, 51 S. W. 624, holding combination to maintain insurance rates not indictable; Tanenbaum v. New York F. Ins. Exchange, 33 Misc. 137, 68 N. Y. Supp. 342, holding insurers' agreement not to pay commissions to brokers not agreeing to maintain rates not unlawful conspiracy; Straus v. American Pub. Asso. 177 N. Y. 491, 64 L. R. A. 718, 101 Am. St. Rep. 819, 69 N. E. 1107 (dissenting opinion), majority holding unlawful, agreement between publishers not to sell to dealers selling at less than price fixed by publishers; Knight & J. Co. v. Miller, 172 Ind. 47, 87 N. E. 823, 18 Ann. Cas. 1146; State v. Adams Lumber Co. 81 Neb. 412, 116 N. W. 302; Purington v. Hinchliff, 120 Ill. App. 532,—on when agreements are unlawful as in restraint of trade; State v. Eastern Coal Co. 29 R. I. 257, 132 Am. St. Rep. 817, 70 Atl. 1, 17 Ann. Cas. 96, on when combinations are unlawful as conspiracies in restraint of trade.

Cited in notes (26 L.R.A.(N.S.) 151) on right of injured person not party to agreement to assail validity as tending to monopoly; (74 Am. St. Rep. 265) on combinations constituting unlawful trusts.

Distinguished in Cleland v. Anderson, 66 Neb. 263, 5 L.R.A.(N.S.) 142, 92 N. W. 306, holding an organization of retail lumber dealers for the prevention of competition from wholesalers and which levies a penalty on wholesalers for selling to nonmembers is unlawful.

Disapproved in Brown v. Jacobs' Pharmacy Co. 115 Ga. 442, 57 L. R. A. 557, footnote p. 548, 90 Am. St. Rep. 126, 41 S. E. 553, sustaining right to injunction against combination of merchants to prevent sales to other dealer unless he sells at fixed prices.

Plumbers' associations.

Cited in footnote to Hartnett v. Plumber's Supply Asso. 38 L. R. A. 194, which holds plumber's supply association subject to quo warranto for assuming to prevent giving credit by members to delinquent dealer.

Disapproved in Bailey v. Master Plumbers' Asso. 103 Tenn. 117, 46 L. R. A. 565, footnote p. 561, 52 S. W. 853, holding void, by-laws of plumbers' association compelling members to pay fixed sums for certain items and restricting purchasers to dealers selling only to members.

37 L. R. A. 462, SWIFT v. CALNAN, 102 Iowa, 206, 63 Am. St. Rep. 443, 71 N. W. 233.

Statutory construction.

Cited in Sipe v. People, 26 Colo. 130, 56 Pac. 571, and Baird v. Hutchinson, 179 Ill. 440, 53 N. E. 567, holding that unconstitutional clauses are to be considered in construing act; Hill v. Tohill, 225 Ill. 393, 80 N. E. 253, 8 Ann. Cas. 423, refusing in a doubtful case to declare a statute unconstitutional wherein substantially the same form, for nearly fifty years it had been regarded as the law and enforced as such.

Party walls.

Cited in Pier v. Salot, 134 Iowa, 360, 111 N. W. 989, holding an adjoining property owner making use of a party wall was liable for a proportionate value thereof; Percival v. Colonial Invest. Co. 140 Iowa, 281, 24 L.R.A.(N.S.) 295, 115 N. W. 941; Lederer v. Colonial Invest. Co. 130 Iowa, 159, 106 N. W. 357, 8 Ann. Cas. 317,—on party walls statutes being sustainable on the principles of the police power of the state.

Cited in footnote to Lincoln v. Burrage, 52 L. R. A. 110, which holds grantee's promise to pay part of cost of party wall when used not run with land.

Cited in notes (66 L.R.A. 706, 711) on enforcement of obligation to contribute to cost of party walls, by or against grantees or successors in title; (89 Am. St. Rep. 927, 941) on party walls.

Distinguished in Schmidt v. Lewis, 63 N. J. Eq. 566, 52 Atl. 707, enjoining construction of party wall partly on other owner's land without his consent when ordinance permitting same unauthorized.

Mechanic's lien on building on adjoining lots.

Cited in note (30 L.R.A.(N.S.) 1222) on mechanic's lien on building on adjoining lots held in severalty.

37 L. R. A. 465. SABIN v. WILKINS, 31 Or. 450, 48 Pac. 425.

Debtor's right to make preferential transfer.

Cited in Standard Shoe Co. v. Thompson, 32 Or. 39, 51 Pac. 444, sustaining preferential transfer by insolvent debtor; Ladd v. Johnson, 32 Or. 203, 49 Pac. 756, sustaining right of debtor to make preferential transfer to particular creditors; Hesse v. Barrett, 41 Or. 204, 68 Pac. 751, sustaining preference by insolvent of relative, when transaction was bona fide.

Cited in notes (36 L. R. A. 366) on right of creditor to buy property from his debtor in satisfaction of debt; (37 L. R. A. 465) on effect of insolvency statutes on mortgage or sale preferring creditors; (37 L. R. A. 337) on whether preference by mortgage or sale is an assignment for creditors.

37 L. R. A. 489, RUDDER v. KOOPMANN, 116 Ala. 332, 22 So. 601.

Liability of one storing explosives.

Cited in Kleebauer v. Western Fuse & Explosives Co. 138 Cal. 503, 60 L. R. A. 378, 94 Am. St. Rep. 62, 71 Pac. 617, in opinion in first hearing upon appeal not adhered to; in rehearing opinion holding storage by fuse manufacturer of necessary gunpowder not nuisance per se: O'Hara v. Nelson, 71 N. J. Eq. 170, 63 Atl. 836, holding the storing of large quantities of gasoline in a frame building in a thickly settled portion of a city constitutes a nuisance which might be enjoined; Flynn v. Butler, 189 Mass. 386, 75 N. E. 730, holding powder house with floor saturated with nitroglycerine was nuisance if in its location it was public menace; Henderson v. Sullivan, 16 L.R.A.(N.S.) 698, 86 C. C. A. 236, 159 Fed. 51, 14 Ann. Cas. 590, refusing to restrain necessary keeping of dynamite on small island in Detroit river merely because channels of navigation were adjacent; Chambers v. Milner Coal & R. Co. 143 Ala. 261, 39 So. 170, on the keeping of explosives in large quantities as constituting a nuisance regardless of negligence, otherwise if kept in small quantities or obscure places.

Cited in footnotes to Kinney v. Koopmann, 37 L. R. A. 497, which holds keeping gunpowder in large quantities in public place not nuisance *per se;* Bradford Glycerine Co. v. St. Mary's Woolen Mfg. Co. 45 L. R. A. 658, which holds owner of nitroglycerine liable for injuries by explosion, though free from negligence; Ft. Worth & Denver City R. Co. v. Beauchamp, 58 L. R. A. 716, which holds negligent leaving of car load of explosives unreasonably long near dwelling proximate cause of injury by explosion.

Cited in note (16 L.R.A.(N.S.) 692) on storage of explosives as nuisance.

Distinguished in Stone v. Boston & A. R. Co. 171 Mass. 543, 41 L. R. A. 799, 51 N. E. 1, denying liability of railroad storing oil upon platform, for burning of adjacent buildings ignited therefrom.

37 L. R. A. 497, KINNEY v. KOOPMANN, 116 Ala. 310, 67 Am. St. Rep. 119, 22 So. 593.

Nuisances per se.

Cited in Kleebauer v. Western Fuse & Explosives Co. 138 Cal. 503, 60 L. R. A. 381, 84 Am. St. Rep. 62, 71 Pac. 617, holding storage of gunpowder by fuse factory not nuisance *per se;* McGregor v. Camden, 47 W. Va. 196, 34 S. E. 936, holding oil and gas well not nuisance *per se;* Stone v. Boston & A. R. Co. 171 Mass. 543, 41 L. R. A. 799, 51 N. E. 1, denying liability of railroad storing oil upon freight platform, for burning of buildings ignited therefrom; O'Hara v. Nelson, 71 N. J. Eq. 178, 63 Atl. 836, holding the storage of gasoline in a garage in a populous part of a city constituted a nuisance; Flynn v. Butler, 189 Mass. 386, 75 N. E. 730, holding keeping of explosives in location and with floors soaked with nitroglycerine so that public was endangered was nuisance; Fisher v. Western Fuse & Explosives Co. 12 Cal. App. 745, 108 Pac. 659, sustaining complaint for storage of explosives in large quantities in charge of incompetent and careless servant by whose act they exploded; Henderson v. Sullivan, 16 L.R.A.(N.S.) 698, 86 C. C. A. 236, 159 Fed. 51, 14 Ann. Cas. 590, refusing injunction against storage of dynamite on rocky islet in Detroit river though navigation passed in nearby channels; Holman v. Mineral Point Zinc Co. 135 Wis. 136, 128 Am. St. Rep. 1016, 115 N. W. 327, holding the erection of a sulphuric acid plant in such close proximity to complainant's residence as to render it unhabitable constituted a nuisance, although its erection was not a nuisance per se.

Cited in footnotes to Rudder v. Koopmann, 37 L. R. A. 489, which holds storing explosives in wooden building in populous part of city negligence; Bradford Glycerine Co. v. St. Mary's Woolen Mfg. Co. 45 L. R. A. 658, which holds owner of nitroglycerine liable for injuries by explosion, though free from negligence.

Cited in notes (38 L. R. A. 309) on municipal power over nuisances affecting safety, health, and personal comfort; (38 L. R. A. 641) on municipal power over nuisances relating to trade or business; (124 Am. St. Rep. 593) on definition of nuisance per se.

Public and private nuisances.

Cited in Acme Fertilizer Co. v. State, 34 Ind. App. 358, 107 Am. St. Rep. 190, 72 N. E. 1037, on what may constitute a nuisance both public and private in nature.

Cited in notes (16 L.R.A.(N.S.) 692) on storage of explosives as nuisance; (107 Am. St. Rep. 199, 205, 207, 243, 244) on what are public nuisances; (124 Am. St. Rep. 593) on definition of nuisance.

Liability for injuries resulting from an explosion.

Cited in Whaley v. Sloss-Sheffield Steel & I. Co. 164 Ala. 222, 51 So. 419, 20 Ann. Cas. 822, holding that count which merely alleges storing or keeping of large quantities of dynamite or other explosives in thickly settled portion of city, does not show negligence per se.

Cited in note (123 Am. St. Rep. 578) on duty and liability of land owners to adjoining proprietors as to use and storge of explosives.

Distinguished in McGhee v. Norfolk & S. R. Co. 147 N. C. 151, 24 L.R.A. (N.S.) 123, 60 S. E. 912, holding defendant company not liable for injuries received by plaintiff who while passing along a highway fired a pistol into a shack near the highway in which dynamite was stored.

Judicial notice.

Cited in note (124 Am. St. Rep. 32) on facts of which courts will take judicial notice.

Presumption of negligence.

Cited in note (113 Am. St. Rep. 987, 1014) on presumption of negligence from happening of accident causing personal injuries.

37 L. R. A. 504, ST. LOUIS, I. M. & S. R. CO. v. PAUL, 64 Ark. 83, 62 Am. St. Rep. 154, 40 S. W. 705.

Recovery of wages up to time of discharge.

Cited in footnote to Hildebrand v. American Fine Art Co. 53 L. R. A. 826, which sustains right to recover *pro rata* on entire contract of employment terminated by employer for cause.

Cited in note (5 L.R.A.(N.S.) 454) on right of wrongfully discharged servant to wages for contract period subsequent to discharge.

Equal protection of laws.

Affirmed in 173 U. S. 404, 43 L. ed. 746, 19 Sup. Ct. Rep. 419, sustaining statute requiring railroads to pay wages of employee in full up to time of discharge.

Followed in St. Louis Southwestern R. Co. v. Brown, 75 Ark. 139, 86 S. W. 994, holding statute, providing that railroads shall pay a discharged employee on the day of discharge, is constitutional.

Cited in Tullis v. Lake Erie & W. R. Co. 175 U. S. 351, 44 L. ed. 194, 20 Sup. Ct. Rep. 136, sustaining statute fixing liability of railroad companies for injuries to employees; Callahan v. St. Louis Merchants' Bridge Terminal R. Co. 170 Mo. 492, 60 L. R. A. 254, 94 Am. St. Rep. 746, 71 S. W. 208, holding statute making railroad companies liable for negligence of fellow servants, not violation of Constitution, although not restricted to acts performed in operating trains; Arkansas Stave Co. v. State, 94 Ark. 33, 27 L.R.A.(N.S.) 258, 140 Am. St. Rep. 103, 125 S. W. 1001, sustaining statute requiring railroad corporations to pay their employees semimonthly; Shortall v. Puget Sound Bridge & Dredging Co. 45 Wash. 295, 122 Am. St. Rep. 899, 88 Pac. 212, sustaining the validity of a statute requiring all employers to pay employees at time of discharge or voluntary withdrawal all wages then due; Lewis v. Northern P. R. Co. 36 Mont. 217, 92 Pac. 469; McGuire v. Chicago, B. & Q. R. Co. 131 Iowa, 367, 33 L.R.A.(N.S.) 719, 108 N. W. 902,—holding a statute imposing upon railroad companies the liability for the negligence of their fellow servants does not deny equal protection of the laws; People v. Marcus, 110 App. Div. 261, 97 N. Y. Supp. 322, denying the validity of a statute prohibiting a natural person from entering into a contract with an employee binding him not to enter a labor union; Mier v. Phillips Fuel Co. 130 Iowa, 577, 107 N. W. 621, sustaining the validity of a statute imposing double damages upon mine owners or operators for taking coal from adjoining lands without permission.

Cited in notes (35 L.R.A.(N.S.) 550) on validity and effect of statute regulating time of payment of wages; (62 Am. St. Rep. 177) on protection of corporation from special and hostile legislation; (79 Am. St. Rep. 178, 184, 185, 186) on constitutionality of statutes allowing attorney's fee; (122 Am. St. Rep. 912) on constitutionality of statutes regulating time and method of payment of wages.

Disapproved in Ballard v. Mississippi Cotton Oil Co. 81 Miss. 572, 62 L. R. A. 417, 95 Am. St. Rep. 476, 34 So. 533, holding statute making corporations liable for injuries to employees from defective machinery, although employees had notice, and exempting individual employees, unconstitutional classification.

Constitutional right to amend corporate charters.

Cited in Skinner v. Garnett Gold Min. Co. 96 Fed. 744, sustaining statute requiring corporations to pay employees monthly; Woodson v. State, 69 Ark.

528, 65 S. W. 465, sustaining statute providing for weighing and paying miner for coal before screening, as applied to domestic mining corporations; Bienville Water Supply Co. v. Mobile, 186 U. S. 221, 46 L. ed. 1136, 22 Sup. Ct. Rep. 820, sustaining legislature's right to revoke corporation's exclusive right to supply city water before exclusive right obtained to sources of supply; Avondale Land Co. v. Shook, 170 Ala. 389, 54 So. 268 (dissenting opinion), on right to alter, revoke or amend charter of corporation, under constitutional provisions; Union Sawmill Co. v. Felsenthal, 85 Ark. 354, 108 S. W. 217, holding power of a legislature, under the constitution to amend or repeal provisions of a corporate charter, included prohibition of payments in store orders.

Penalty for nonpayment of wages.

Cited in Kansas City, P. & G. R. Co. v. Moon, 66 Ark. 414, 50 S. W. 996, holding that penalty for nonpoyment of wages continues to run until judgment; Seelyville Coal & Min. Co. v. McGlosson, 166 Ind. 568, 117 Am. St. Rep. 396, 77 N. E. 1044, 9 Ann. Cas. 234, sustaining the validity of a statute requiring mining quarrying and manufacturing employers to pay their laborers semimonthly with a penalty for delay beyond a certain time; St. Louis, I. M. & S. R. Co. v. Bryant, 92 Ark. 429, 122 S. W. 996, holding penalty for nonpayment of wages at time of discharge runs only until wages are tendered though the accrued penalty was not included in such tender.

Nature of action based on breach of duty.

Cited in Atlanta Nat. Bank v. Southern R. Co. 106 Fed. 631, holding damage resulting from breach of contract contained in bill of lading gravamen of action to recover value of goods.

Title of amendatory act.

Followed in Porter v. Waterman, 77 Ark. 386, 91 S. W. 754, upholding the constitutionality of a statute which impliedly amends or repeals a former statute by being in conflict with it but which does not give the title of such amended or repealed statute.

Cited in Spokane Grain & Fuel Co. v. Lyttaker, 59 Wash. 78, 109 Pac. 316, holding that constitutional provision that no act shall be revised or amended by mere reference to title does not apply to act complete and perfect in itself although it amends former act by implication; Butler v. Fourche Drainage Dist. 99 Ark. 105, 137 S. W. 251, holding that provision of constitution that "no law shall be revived or amended etc. by reference to its title only" does not prevent legislature from impliedly repealing section of prior statute; Southern P. Co. v. Bartine, 170 Fed. 739, holding a statute is valid which is complete in itself and does not purport to amend a previous statute though it has so amended without referring to the title of the former statute.

37 L. R. A. 509, VERMONT LOAN & T. CO. v. HOFFMAN, 5 Idaho, 376, 95 Am. St. Rep. 186, 49 Pac. 314.

Effect of failure to procure license on validity of contract.

Cited in Hughes v. Snell, 28 Okla. 829, 34 L.R.A.(N.S.) 1134, 115 Pac. 1105, Ann. Cas. 1912 D, 374, holding that real estate agent may recover commission even though he failed to take out license as required by ordinance; A. Booth & Co. v. Weigand, 30 Utah, 144, 10 L.R.A.(N.S.) 699, 83 Pac. 734, holding a statute prohibiting foreign corporations doing business within a state unless license was procured did not invalidate contracts made in the state by such corporations; Ober v. Stephens, 54 W. Va. 358, 46 S. E. 195, holding a statute prohibiting a broker to buy or sell without procuring a license does not render void contracts made by such broker; A. Booth & Co. v. Weigand, 28 Utah, 393,

79 Pac. 570 (dissenting opinion), on the validity of contracts made without procuring license.

Cited in footnotes to Smith v. Robertson, 45 L. R. A. 510, which denies right of recovery on contract for services of unlicensed stallion; Denning v. Yount, 50 L. R. A. 103, which denies right of unlicensed brokers to recover commissions; Black v. Security Mut. Life Asso. 54 L. R. A. 939, which denies right to commissions of one securing applications for insurance before license, which is granted before policies issued; Citizens' State Bank v. Nore, 60 L. R. A. 737, which authorizes recovery by bona fide purchaser of note for medical services by unlicensed practitioner.

Cited in notes (117 Am. St. Rep. 507; 1 L.R.A.(N.S.) 1159; 12 L.R.A.(N.S.) 613, 616) on validity of contract made in business carried on without required license.

Usury.

Followed in Ocobock v. Nixon, 6 Idaho, 554, 57 Pac. 309, holding notes and mortgages sued upon within inhibition of usury statutes.

Cited in Stevens v. Home Sav. & L. Asso. 5 Idaho, 749, 51 Pac. 779, holding that in determining whether loan association contract is usurious, so-called "premium for precedence" must be regarded as interest; Cleveland v. Western Loan & Sav. Co. 7 Idaho, 480, 63 Pac. 885, sustaining action to compel satisfaction of record of mortgage to secure usurious contract, principal of which mortgage has been paid; Ford v. Washington Nat. Bldg. & L. Invest. Asso. 10 Idaho, 32, 109 Am. St. Rep. 192, 76 Pac. 1010, holding the usurious character of contracts is tested by what was contracted for rather than by what was received.

Cited in note (33 L.R.A.(N.S.) 300) on validity of agreement before interest due to pay interest on interest.

— What law controls.

Cited in Fidelity Sav. Asso. v. Shea, 6 Idaho, 416, 55 Pac. 1022, holding that contract of loan association loaning money upon real estate within state and to resident thereof, must be determined by laws of state.

Cited in note (62 L. R. A. 67) on conflict of laws as to interest and usury.

Who may make defense of usury.

Cited in Ford v. Washington Nat. Bldg. & Loan Invest. Asso. 10 Idaho, 37, 109 Am. St. Rep. 192, 76 Pac. 1010, holding that a statute against usury is not a defense which a party may be estopped from pleading but a prohibition to be enforced by the court.

Distinguished in Anderson v. Oregon Mortg. Co. 8 Idaho, 422, 69 Pac. 130, holding a usury statute can only be taken advantage of by the borrower as defendant and gives no right of action to a mortgagor's grantee.

Validity of license tax on money lenders.

Cited in note (129 Am. St. Rep. 281) on constitutional limitations on power to impose license or occupation taxes on persons loaning money.

37 L. R. A. 515, NATIONAL CASH REGISTER CO. v. BROWN, 19 Mont. 200, 61 Am. St. Rep. 498, 47 Pac. 995.

Liability of retiring partner.

Cited in Preston v. Garrard, 120 Ga. 692, 102 Am. St. Rep. 124, 48 S. E. 118, 1 Ann. Cas. 724, on the liability of a retiring partner as surety and holding him discharged if with knowledge the other partners are given any extension.

Cited in note (9 L.R.A.(N.S.) 77) on effect of assumption of debts on dissolution of partnership on liability of retiring partner.

37 L. R. A. 518, JOHNSON v. DE BARY-BAYA MECHANTS' LINE, 37 Fla. 499, 19 So. 640.

Place of taxation and to whom property assessable.

Cited in Yost v. Lake Erie Transp. Co. 50 C. C. A. 513, 112 Fed. 748, holding registered water-craft engaged in commerce, subject to taxation only at home port.

Annotation cited in Olson v. San Francisco, 148 Cal. 83, 2 L.R.A.(N.S.) 200, 113 Am. St. Rep. 191, 82 Pac. 850, 7 Ann. Cas. 443, holding that the situs of a vessel for purposes of taxation is at the port nearest which her owners reside though the temporary registration place was the port where she was built.

Cited in footnote to Minneapolis & N. Elevator Co. v. Traill County, 50 L. R. A. 267, which sustains statute taxing grain in elevators, etc., in proprietor's name.

Cited in notes (37 L. R. A. 519) as to where ships are taxable; (60 L. R. A. 654) on corporate taxation and the commerce clause; (69 L.R.A. 447, 449) on situs, for taxing purposes, of tangible personalty of domestic corporations: (29 L.R.A.(N.S.) 105) as to where ships are taxable: (36 L.R.A.(N.S.) 298) on personal property having taxation situs elsewhere as subject of taxation in state of owner's domicil; (62 Am. St. Rep. 471, 472) on situs of personal property for purposes of taxation.

Distinguished in North Western Lumber Co. v. Chehalis County, 25 Wash. 101, 54 L. R. A. 214, footnote p. 212, 87 Am. St. Rep. 747, 64 Pac. 909, holding ocean-going tugboats taxable by state in whose waters exclusively employed, though registered in state of owner's domicil; North American Dredging Co. v. Taylor, 56 Wash. 568, 29 L.R.A.(N.S.) 109, 106 Pac. 162, holding a steam dredge continuously working in the port where built had its situs for taxation at such port though the owners lived in another state.

Injunction against collecting tax.

Cited in footnote to Philadelphia Mortg. & T. Co. v. Omaha, 57 L. R. A. 150, which denies right to restrain city from enforcing tax against property on which money loaned in reliance on treasurer's mistaken marking of taxes as paid.

37 L. R. A. 529, GARRITY v. DETROIT CITIZENS' STREET R. CO. 112 Mich. 369, 70 N. W. 1018.

Injuries to driver of fire truck.

Cited in footnote to Kansas City v. McDonald, 45 L. R. A. 429, which holds fireman driving to fire not bound by ordinance limiting speed.

Cited in note (19 L.R.A.(N.S.) 626, 628) on liability of street railway for injuries by collision with fire apparatus.

Recovery for injuries in escaping from perilous position.

Cited in Chauvin v. Detroit United R. Co. 135 Mich. 87, 97 N. W. 160, holding that one is not negligent in law when, being caught between two cars without negligence on his part, he attempts escape by the more dangerous route.

Cited in footnotes to Baltimore Consol. R. Co. v. Armstrong, 54 L.R.A. 424, which denies liability towards one caught between two street cars by becoming confused after assenting to motorman's instructions as to reaching safe place; Palmer v. Warren Street R. Co. 63 L.R.A. 507, which holds passenger not negligent in jumping from moving car to avoid impending collision.

Crossing in front of street car as contributory negligence.

Cited in Ryan v. Detroit Citizens' Street R. Co. 123 Mich. 599, 82 N. W. 278, and Hanlon v. Milwaukee Electric R. & Light Co. 118 Wis. 219, 95 N. W.

100, holding question of driver's contributory negligence in crossing track in front of street car, for jury; Oliver v. Denver Tramway Co. 13 Colo. App. 550, 59 Pac. 79, holding negligence of person crossing track in front of street car, for jury; Walker v. St. Paul City R. Co. 81 Minn. 411, 51 L. R. A. 636, 84 N. W. 222, holding person crossing in front of street car under assumption that it is running at customary speed not negligent as matter of law; Ames v. Waterloo & C. F. Rapid Transit Co. 120 Iowa, 661, 95 N. W. 161 (dissenting opinion), majority denying recovery to one struck by car upon stepping upon track from behind loaded wagons; Theisen v. Detroit United R. Co. 163 Mich. 71, 127 N. W. 708, holding that knowledge of person injured at street railway intersection that cars were required by ordinance and were accustomed to stop before crossing intersection, and his reliance on fact, have material bearing on question of contributory negligence; Perjue v. Citizens' Electric Light & Gas Co. 131 Iowa, 713, 109 N. W. 280; Wider v. Detroit United R. Co. 147 Mich. 538, 111 N. W. 100; Pilmer v. Boise Traction Co. 14 Idaho, 346, 15 L.R.A. (N.S.) 266, 125 Am. St. Rep. 161, 94 Pac. 432,—holding failure of pedestrian to look for approaching street car at public crossing is not negligence per se: Bebblethwaite v. Detroit United R. Co. 145 Mich. 18, 108 N. W. 433, holding a driver of horse and buggy is not negligent as a matter of law where when 100 feet from a street car crossing, he looks for a car but fails to look before crossing: Indianapolis Street R. Co. v. Tenner, 32 Ind. App. 324, 67 N. E. 1044 (dissenting opinion), on the care required of pedestrians when crossing before street cars.

Cited in footnote to Laufer v. Bridgeport Traction Co. 37 L. R. A. 533, which denies greater right to electric car in highway than that of other travelers.

— Supervening negligence.

Cited in Pilmer v. Boise Traction Co. 14 Idaho, 346, 15 L.R.A.(N.S.) 266, 125 Am. St. Rep. 161, 94 Pac. 432, holding a pedestrian's negligence in crossing before street car is not such as will prevent his recovery from injuries received when the driver failed to keep his car under control.

37 L. R. A. 533, LAUFER v. BRIDGEPORT TRACTION CO. 68 Conn. 475, 37 Atl. 379.

Evidence of care on other occasions.

Cited in Mears v. New York, N. H. & H. R. Co. 75 Conn. 176, 56 L. R. A. 887, 96 Am. St. Rep. 193, 52 Atl. 610, holding evidence of care taken by cartman on rainy days inadmissible where goods moved on fine day; State v. Goetz, 83 Conn. 440, 30 L.R.A.(N.S.) 461, 76 Atl. 1000, holding that evidence that chauffeur who is charged with manslaughter had theretofore borne reputation for being careful driver, is inadmissible.

Rights of electric cars in highway.

Cited in Lawler v. Hartford Street R. Co. 72 Conn. 83, 43 Atl. 545, holding that electric street cars must be operated so as not to interfere unreasonably with other travelers; Canastota Knife Co. v. Newington Tramway Co. 69 Conn. 152, 36 Atl. 1107, holding electric street railroad not additional servitude; Currie v. Consolidated R. Co. 81 Conn. 386, 71 Atl. 356; Bremer v. St. Paul C. R. Co. 107 Minn. 330, 21 L.R.A.(N.S.) 892, 120 N. W. 382; Richmond Traction Co. v. Clarke, 101 Va. 389, 43 S. E. 618; Smith v. Connecticut Ry. & Light Co. 80 Conn. 271, 17 L.R.A.(N.S.) 709, 67 Atl. 888,—holding proprietor of street car has no rights in a highway superior to that of other travelers except that such travelers must make reasonable efforts to keep out of way of cars: Indianapolis Street R. Co. v. Tenner, 32 Ind. App. 320, 67 N. E. 1044 (dissenting

opinion), on the respective rights of travelers and electric cars in a public highway.

Ordinary prudence as test of negligence.

Cited in Heckman v. Evenson, 7 N. D. 179, 73 N. W. 427, holding contributory negligence of one stepping from sidewalk into street measurable by standard of ordinary prudence; Tacoma R. & Power Co. v. Hays, 49 C. C. A. 121, 110 Fed. 502, holding negligence of person driving across street car track without looking immediately before measurable by standard of ordinary prudence; Belvidere Gas & Electric Co. v. Boyer, 122 Ill. App. 124, holding the question of contributory negligence in handling a defective electric wire should be measured by the prudence required when the wire carried its usual voltage; Parry Mfg. Co. v. Eaton, 41 Ind. App. 91, 83 N. E. 510, on ordinary care where danger is great.

Negligence in crossing car track.

Cited in Hays v. Tacoma R. & Power Co. 106 Fed. 49, holding person driving upon street car track not negligent in assuming that car will approach at lawful rate of speed; Garfield v. Hartford & S. Street R. Co. 79 Conn. 461, 65 Atl. 598, holding an automobile driver is not guilty of contributory negligence for being upon trolley tracks where injury results through excessive speed of trolley car.

Cited in footnote to Garrity v. Detroit Citizens' Street R. Co. 37 L. R. A. 529, which holds driving fire truck at speed preventing stopping before collision with street car at crossing negligence.

Admissibility of custom.

Cited in Levidow v. Starin, 77 Conn. 603, 60 Atl. 123, holding that evidence was inadmissible to show the custom when such custom was unimportant and remote unless supported by inferences upon inferences.

Effect of calling for and inspecting document to make it competent.

Cited in note (33 L.R.A.(N.S.) 555) on effect of calling for and inspecting document to make it competent.

37 L. R. A. 540, STATE *ex rel.* BADGER v. NEW ORLEANS, 49 La. Ann. 804, 21 So. 870.

Right to mandamus.

Cited in State *ex rel.* Kaffie v. Smith, 111 La. 321, 35 So. 584, holding discretion of register of State Land Office in deciding contest between persons applying to purchase public land, not controllable by mandamus; State ex rel. Kaffie v. Smith, 111 La. 321, 35 So. 584, holding mandamus will not lie to compel a register of a state land office to give title to land to which the register, having power to pass on same, has decided he has no right.

Distinguished in Foy v. New Orleans, 50 La. Ann. 1075, 23 So. 928, denying mandamus to place judgment on municipal budget after approval by special ordinance, for one year, and six months before preparation of budget for next succeeding year; State v. Kennedy, 121 La. 762, 46 So. 796, refusing under statute to allow mandamus against any auditing officer or controller of New Orleans to enforce payment of claims against city.

Validity of municipal contract.

Cited in Blanks v. Monroe, 110 La. 949, 34 So. 921, holding municipal contract for necessities to be paid for, as furnished, for current revenues, not within statute prohibiting contraction of debt without provision in ordinance for its payment; Blanks v. Monroe, 110 La. 949, 34 So. 921, holding that contracts

whereby municipality makes provision in advance for light and water and incur obligations to be met from current revenues, do not fall within restrictive operation of R. S., 1876, section 2448.

37 L. R. A. 559. CARSON v. VICKSBURG BANK, 75 Miss. 167, 65 Am. St. Rep. 596, 22 So. 1.

Creditor's right to life insurance.

Cited in footnotes to Morris v. Georgia Loan, Sav. & Bkg. Co. 46 L. R. A. 506, which holds creditor taking assignment of policy entitled to retain from proceeds sufficient to pay debt and advances only; Sternberg v. Levy, 53 L. R. A. 438, which sustains right as against creditors to procure with exempt wages insurance for sister and her children constituting family.

Cited in note (17 L.R.A.(N.S.) 1087) on disposition of fund in benefit society upon failure of beneficiary.

37 L. R. A. 561. CHEEVER v. NORTH, 106 Mich. 390, 58 Am. St. Rep. 499, 64 N. W. 455.

Revocation of will by express words.

Cited in Dudley v. Gates, 124 Mich. 443, 83 N. W. 97, holding will expressly revoking others effective as revocation, though principal bequest void.

Cited in footnote to Billington v. Jones, 56 L. R. A. 654, which holds will revoked by writing on it that it is void, stating to others that it is killed, and filing it away.

Cited in note (18 L.R.A.(N.S.) 100) on power of one lacking testamentary capacity to revoke will.

Disapproved in Dougherty v. Holscheider, 40 Tex. Civ. App. 36, 88 S. W. 1113, holding a conditional will containing no words of revocation of a former will but by its terms necessarily working such revocation, ipso facto, extinguished the first will.

Revival of former by destruction of subsequent will.

Cited in *Re* Gould, 72 Vt. 319, 47 Atl. 1082, holding former revived by destruction of later will, with that intent, without republication; Lane v. Hill, 68 N. H. 283, 73 Am. St. Rep. 591, 44 Atl. 393, holding destruction of second will containing clause of revocation does not revive first, unless testator so intended; Stetson v. Stetson, 200 Ill. 608, 61 L. R. A. 262, footnote p. 258, 66 N. E. 262, holding former will revived by destruction of revoking will; *Re* Noon, 115 Wis. 302, 95 Am. St. Rep. 944, 91 N. W. 670, holding that destruction of will containing revocation clause does not revive former will; Re Moore, 72 N. J. Eq. 313, 65 Atl. 447, holding the destruction of a will by testator which expressly revoked and was at variance with a prior will did not revive the prior will where there was no act of the testator showing such intention; Danley v. Jefferson, 150 Mich. 596, 121 Am. St. Rep. 640, 114 N. W. 470, 13 Ann. Cas. 242, holding the oral declaration of a testator that his first will should be in force, accompanied by the destruction of a second will expressly revoking the first, did not revive the first will as a written declaration was necessary.

Cited in footnote to Williams v. Miles, 62 L. R. A. 383, which holds revival of earlier will dependent on intention of testator in destroying subsequent will revoking it.

Cited in notes (37 L. R. A. 577) on revocation of will by subsequent will and revival of former by destruction of latter; (38 L. R. A. 439) on evidence to establish lost or destroyed wills; (14 L.R.A.(N.S.) 937; 37 L.R.A.(N.S.) 292)

on revocation of later as reviving earlier will; (76 Am. St. Rep. 250) on republication of revoked wills.

Not followed in Kern v. Kern, 154 Ind. 38, 55 N. E. 1004, holding first will not revived by destruction of later inconsistent will.

Disapproved in Bates v. Hacking, 29 R. I. 8, 14 L.R.A.(N.S.) 942, 68 Atl. 624, holding that a will expressly revoking a prior will did not ipso facto work a revocation and the subsequent destruction of the will by the testator left the former one in force.

Declarations of testator as to revocation.

Cited in Ewing v. McIntyre, 141 Mich. 517, 104 N. W. 787, holding that declarations of a testator are competent to rebut the presumption of a revocation in a proceeding to probate a lost will.

Costs allowable in will contest.

Cited in Brilliant v. Wayne Circuit Judges, 110 Mich. 68, 67 N. W. 1101, holding only taxable costs allowable out of estate on determination of will contest; Goff v. Cass Circuit Judge, 152 Mich. 125, 115 N. W. 1059, holding a statute allowing circuit courts to award costs to either party meant only actual taxable costs; Re Colburn, 153 Mich. 216, 18 L.R.A.(N.S.) 149, 126 Am. St. Rep. 479, 117 N. W. 932, on the discretionary power of court to tax costs.

37 L. R. A. 580, DOCTOR v. RIEDEL, 96 Wis. 158, 65 Am. St. Rep. 40, 71 N. W. 119.

Action for malicious prosecution of civil suit.

Cited in Waring v. Fletcher, 152 Ind. 629, 52 N. E. 203, holding that complaint in action for excessive attachment must allege malice and want of probable cause: Whitesell v. Study, 37 Ind. App. 433, 76 N. E. 1010, holding action for malicious prosecution will not lie where judgment therein was rendered against defendant though brought with malicious intent: Grimestad v. Lofgren, 105 Minn. 293, 17 L.R.A.(N.S.) 994, 127 Am. St. Rep. 566, 117 N. W. 515, holding malicious levy on exempt property gives a right of action for abuse of process but not for malicious prosecution.

Cited in footnotes to McCormick Harvesting Mach. Co. v. Willan, 56 L.R.A. 338, which authorizes suit for malicious prosecution of civil action without restraint of person or seizure of property; Abbott v. Thorne, 65 L.R.A. 826, which denies right of action for malicious prosecution of civil action in which there was no arrest or attachment of property and no special injuries inflicted.

Cited in note (86 Am. St. Rep. 398, 402), on abuse of lawful process and liability therefore.

Duty of bank to apply deposit upon note.

Cited in note (8 L.R.A.(N.S.) 952) on effect upon surety or indorser, of bank's failure to apply principal's deposit account upon note.

37 L. R. A. 583, OPEL v. SHOUP, 100 Iowa, 407, 69 N. W. 560.

Effect of treaties on alien's right to inherit.

Cited in Bahuaud v. Bize, 105 Fed. 488, holding United States may by treaty remove alien's disability to inherit; Doehrel v. Hillmer, 102 Iowa, 171, 71 N. W. 204, holding treaty providing that aliens may inherit lands removes disability imposed by state laws; Ruppin v. McLachlan, 122 Iowa, 349, 98 N. W. 153, recognizing earlier uncertainty as to whether state statutes as to descent were controlled by treaty providing for inheritance notwithstanding alienage: Re Stixrud, 58 Wash. 343, 33 L.R.A.(N.S.) 634, 109 Pac. 343, Ann. Cas. 1912 A,

850, holding that removal of disabilities of aliens to acquisition of property in several states is proper subject of treaty between United States and foreign countries; Doe ex dem. Dockstader v. Roe, 4 Penn. (Del.) 400, 55 Atl. 341, holding a treaty with Great Britain granting a right of inheritance to her subjects is paramount to a state statute cutting off such alien heirs; Ehrlich v. Weber, 114 Tenn. 724, 88 S. W. 188, holding a treaty with a foreign sovereign granting equal rights of inheritance to her subjects is paramount to a state statute on such aliens' rights of inheritance.

Distinguished in effect in Blythe v. Hinckley, 127 Cal. 435, 59 Pac. 787, upholding state law giving aliens right to inherit, where treaty silent on subject.

Construction of treaty giving alien right to inherit.

Cited in Doehrel v. Hillmer, 102 Iowa, 173, 71 N. W. 204, holding effect of treaty removing nonresident alien's disability to inherit not limited to one step in transmission.

Distinguished in Scharpf v. Schmidt, 172 Ill. 260, 50 N. E. 182, holding under treaty permitting aliens to inherit and two years, which may be reasonably prolonged, to sell lands, no formal step need be taken to prolong time.

Treaty rights.

Cited in Minnesota Canal & P. Co. v. Pratt, 101 Minn. 232, 11 L.R.A.(N.S.) 1119, 112 N. W. 395, holding an international treaty on the use of boundary waters will be given full force and effect by state courts in all actions brought affecting the use of such waters.

Conditions against remarriage.

Cited in note (84 Am. St. Rep. 151) on conditions against remarriage.

37 L. R. A. 587, THUENEN v. IOWA MUT. BEN. ASSO. 101 Iowa, 558, 70 N. W. 712.

Mutual insurance by classes.

Cited in Kennedy v. Iowa Legion of Honor, 124 Iowa, 68, 99 N. W. 137, holding a certificate for insurance calling for an assessment on a class gives no right of assessment on another class.

37 L. R. A. 589, FOSS v. HARTWELL, 168 Mass. 66, 60 Am. St. Rep. 366, 46 N. E. 411.

Father's liability for child's support after divorce.

Cited in Glynn v. Glynn, 94 Me. 470, 48 Atl. 105, holding that mother divorced for desertion cannot recover from father for support of minor child taken with her.

Cited in footnotes to *Re* Zilley, 40 L. R. A. 579, which holds father liable to pay mother after divorce for keeping child which father entitled to under decree; Keller v. St. Louis, 47 L. R. A. 391, which denies mother's right of action for injury to child given her by divorce decree without provision as to its support.

Cited in note (114 Am. St. Rep. 701, 703) on father's duty to support child awarded to mother by divorce decree silent as to maintenance.

Not followed in McCloskey v. McCloskey, 93 Mo. App. 400, 67 S. W. 669, holding father liable to mother for support of minor children after divorce.

Disapproved in Alvey v. Hartwig, 106 Md. 264, 11 L.R.A.(N.S.) 683, 67 Atl. 132, 14 Ann. Cas. 250, holding a decree of divorce granted a wife which made no provision for the support of the children did not bar a right of recovery for their support when the divorce was granted upon publication.

37 L. R. A. 591, ROSSE v. ST. PAUL & D. R. CO. 68 Minn. 216, 64 Am. St. Rep. 472, 71 N. W. 20.

Liability for breach of statutory duty.

Followed in Marengo v. Great Northern R. Co. 84 Minn. 400, 87 Am. St. Rep. 369, 87 N. W. 1117, and Nickolson v. Northern P. R. Co. 80 Minn. 511, 83 N. W. 454, holding railroad liable for child injured because of failure to fence; Hamilton v. Minneapolis Desk Mfg. Co. 78 Minn. 6, 79 Am. St. Rep. 350, 80 N. W. 693, denying right of fireman to recover for fall down elevator shaft unguarded in violation of act for employee's protection.

Cited in Heiting v. Chicago, R. I. & P. R. Co. 252 Ill. 473, 96 N. E. 842, Ann. Cas. 1912 D, 451, Affirming 162 Ill. App. 414, holding that it is question for jury whether presence of statutory fence would have prevented injury to eight year old boy, if facts and circumstances proven are such that men might arrive at different conclusions; Menut v. Boston & M. R. Co. 207 Mass. 19, 30 L.R.A.(N.S.) 1201, 92 N. E. 1032, 20 Ann. Cas. 1213, holding that statute requiring railroad to fence right of way, imposes no duty upon railroad to prevent by maintenance of such fences, owners of adjoining premises from falling down embankments along road; Evans v. Chicago & N. W. R. Co. 109 Minn. 75, 26 L.R.A.(N.S.) 284, 122 N. W. 876, holding that railroad's violation of inspection statute was efficient cause of killing by sanitary board of horse afflicted with glanders; Friesh v. Chicago, G. W. R. Co. 95 Minn. 402, 104 N. W. 228, holding G. S. 1894, sec. 2695 has no application to actions for damages for loss of domestic animals by reason of failure of a railroad company to fence its road and G. S. 1894, sec. 2693 exclusively refers to and control such actions, which is limited in its operation to animals killed or injured on the right of way; Mattes v. Great Northern R. Co. 100 Minn. 36, 110 N. W. 98, holding railroad fence statute was designed to prevent children as well as animals from entering upon railroad tracks and applies to cattle guards constructed as part of the fence; Ellington v. Great Northern R. Co. 96 Minn. 179, 104 N. W. 827, holding failure of a railroad company to fence its road as required by statute is prima facie, but not conclusive evidence of negligence; Anderson v. Settergren, 100 Minn. 296, 111 N. W. 279, holding it prima facie evidence of negligence to omit a statutory duty.

Limited in Schreiner v. Great Northern R. Co. 86 Minn. 247, 58 L. R. A. 77, 90 N. W. 400, holding railroad failing to fence not liable to person pushed in front of train by stray cow; Fezler v. Willmar & S. F. R. Co. 85 Minn. 254, 88 N. W. 746, holding railroad failing to fence not liable to boy of ten taking track as short cut.

Railroad's duty to trespassing children.

Cited in footnotes to Ashworth v. Southern R. Co. 59 L. R. A. 592, which holds company liable for injury to young child while riding on running board of engine according to known custom of children; Erickson v. Great Northern R. Co. 51 L. R. A. 645, which denies railroad company's liability for injury to trespassing child by fire set on right of way.

37 L. R. A. 593, FARGO GASLIGHT & COKE CO. v. FARGO GAS & ELECTRIC CO. 4 N. D. 219, 59 N. W. 1066.

Representations made to effect contract as fraud.

Cited in Roberts v. Holliday, 10 S. D. 581, 74 N. W. 1034, holding that purchaser of real estate may rely on representations of selling agent as to location; Speed v. Hollingsworth, 54 Kan. 440, 38 Pac. 496, sustaining right of grantee of land to recover damages for vendor's representations, falsity of

which discoverable by investigation; Tacoma v. Tacoma Light & Water Co. 17 Wash. 471, 50 Pac. 55, sustaining right of vendee of water system to recover damages for vendor's false representations, not palpably untrue; Hunt v. Barker, 22 R. I. 21, 84 Am. St. Rep. 812, 46 Atl. 46, holding representation as to ownership of land, falsity of which discoverable by inspecting records, actionable: Kelty v. McPeake, 143 Iowa, 571, 121 N. W. 529, holding that landlord is not estopped from suing to cancel lease on ground of false representations of tenant as to his financial condition, because of his failure to examine records to ascertain his indebtedness: Holmes v. Rivers, 145 Iowa, 709, 24 N. W. 801, holding that false representations by party to exchange of properties as to price paid for it is ground for action for fraud, and fact that other party failed to use available means of detecting falsity of his statements is immaterial: Watson v. Molden, 10 Idaho, 582, 79 Pac. 503, holding false representations by a land owner as to the amount of tillable soil and water rights appurtenant to such land give purchaser relying upon such statements right of action for damages: Long v. Davis, 136 Iowa, 739, 114 N. W. 197, holding a purchaser can recover damages where he has been induced to purchase lands by the fraudulent misrepresentations of the vendor as to their condition or quality: Judd v. Walker, 114 Mo. App. 142, 89 S. W. 558, holding same as to representations of acreage of an irregular tract: Western Mfg. Co. v. Cotton, 126 Ky. 757, 12 L.R.A.(N.S.) 431, 104 S. W. 758, holding a contract may be cancelled as fraudulent where an agent procures signature to it by misreading and where party did not read the contract.

Cited in footnotes to Stackpole v. Hancock, 45 L. R. A. 814, which requires purchaser undertaking to inform vendor of valuable mine on land to disclose whole truth: Simon v. Goodyear Metallic Rubber Shoe Co. 52 L. R. A. 745, which holds false representations made to procure contract without knowledge as to their truth, ground for disaffirmance: Hindman v. First Nat. Bank, 57 L. R. A. 108, which holds bank falsely certifying that all of authorized capital of insurance company on deposit, liable to one purchasing stock in reliance on same: Poska v. Stearns, 42 L. R. A. 427, which denies seller's right to rescind sale, for false statement of buyer to mercantile agency as to amount of his debts: National Cash Register Co. v. Townsend, 70 L.R.A. 349, which holds false statement, by one attempting to sell cash register that its use would save expense of bookkeeper and half of one clerk's time not wrong for rescission of contract.

Cited in notes (17 L.R.A.(N.S.) 420) on right of purchaser of personalty to rely on seller's computation of price, or estimate of quantity; (22 L.R.A. (N.S.) 1211) on what representations afford ground for rescinding sale of books or defense to action for price.

Measure of damages for fraud.

Followed in Beare v. Wright, 14 N. D. 31, 69 L.R.A. 411, 103 N. W. 632, 6 Ann. Cas. 1057, holding the measure of damages for deceit where the aggrieved party has affirmed the contract is the difference between the represented value of the property received and what it was actually worth at time of sale.

Cited in footnote to Beare v. Wright, 69 L.R.A. 409, which holds measure of damages for fraudulent representations inducing exchange of land for corporate stock the difference in value between what was received or parted with and what would have been received or parted with if the representations had been true.

Cited in notes (8 L.R.A.(N.S.) 806) on measure of damages for fraudulent representations in sale of realty; (123 Am. St. Rep. 786) on measure of damages for fraudulent representations including contract for sale or exchange of land.

37 L. R. A. 616, ST. LOUIS, I. M. & S. R. CO. v. NEELY, 63 Ark. 636, 40 S. W. 130.

Duty to person walking near track.

Followed in St. Louis Southwestern R. Co. v. Underwood, 74 Ark. 614, 86 S. W. 804, holding a railroad company owes the duty to employ a reasonable means and care to prevent injury to a pedestrian in a public street used by such railroad company.

Cited in St. Louis & S. F. R. Co. v. Carr, 94 Ark. 251, 126 S. W. 850, holding that where pedestrian upon highway is injured by door projecting from car during running of train, prima facie case of negligence on part of railroad company is made out; St. Louis, I. M. & S. R. Co. v. Jackson, 96 Ark. 473, 31 L.R.A.(N.S.) 986, 132 S. W. 206, holding that it is duty of railroad to use ordinary care to avoid injuring person who may be rightfully near track; Turney v. Southern P. Co. 44 Or. 297, 75 Pac. 144, holding a pedestrian is not a trespasser who walks within a fenced part of a public way used for railroad tracks where such way is so used by permission of the public and the right of pedestrians therein has not been lost; St. Louis Southwestern R. Co. v. Bryant, 81 Ark. 371, 99 S. W. 693, holding a railroad company owes no positive duty of care to trespasser upon its right of way but is only bound to exercise ordinary care when his danger is perceived.

Cited in footnote to Pennsylvania R. Co. v. Martin, 55 L. R. A. 361, which denies duty of railroad company to use care to avoid injury to one using track for own affairs.

Cited in note (31 L.R.A.(N.S.) 983) on liability for injuries from negligent operation of trains to persons on adjoining property or highway.

Presumption of negligence.

Cited in Little Rock & Ft. S. R. Co. v. Blewitt, 65 Ark. 237, 45 S. W. 548, holding that under statute striking of person by locomotive raises presumption of negligence; Miles v. St. Louis & I. M. & S. R. Co. 90 Ark. 494, 119 S. W. 837; Barringer v. St. Louis, I. M. & S. R. Co. 73 Ark. 552, 35 S. W. 94,—holding under statute proof of injury received by a passenger due to the operation of train establishes a prima facie case of negligence; El Dorado & B. R. Co. v. Knox, 90 Ark. 4, 134 Am. St. Rep. 17, 117 S. W. 779, which held that, under the statute, the killing of a dog by the running of a railway train established a prima facie case of negligence against the railroad company; Huddleston v. St. Louis, I. M. & S. R. Co. 90 Ark. 382, 119 S. W. 280, holding, under statute, proof of injury to a passenger at a railway station by mail sacks thrown from a moving train raises a presumption of negligence against the railway company.

Cited in footnote to Wolf v. Downey, 51 L. R. A. 242, which denies liability of contractor for either carpenter or mason work for injury from fall of brick from unknown cause.

Cited in note (6 L.R.A.(N.S.) 800) on applicability of res ipso loquitur in absence of contractual relations.

37 L. R. A. 619, WELLS v. BLACK, 117 Cal. 157, 59 Am. St. Rep. 162, 48 Pac. 1090.

Status of depositor in savings bank.

Cited in Colorado Sav. Bank v. Evans, 12 Colo. App. 341, 56 Pac. 981, holding under Colorado savings bank act depositors not owners of deposits nor directors mere trustees; Colorado Sav. Bank v. Evans, 12 Colo. App. 341, 56 Pac. 981, holding savings banks organized under a statute requiring definite

capital stock bear the relationship of debtor to the depositors and not that of trustee.

Cited in note (105 Am. St. Rep. 730, 731, 734) on duties of savings banks toward depositors.

When stockholders' liability barred by limitations.

Cited in Nellis v. Pacific Bank, 127 Cal. 168, 59 Pac. 830, holding liability of stockholders of bank to depositors barred in three years from date of deposit; London & S. F. Bank v. Parrott, 125 Cal. 488, 73 Am. St. Rep. 64, 58 Pac. 164, holding three-year statute of limitations applicable to action to enforce stockholder's liability; Walker v. Woodside, 90 C. C. A. 644, 164 Fed. 683, holding the liability for a stockholder in a savings bank to depositors is barred three years from the date of the respective deposits.

Cited in footnotes to Swearingen v. Sewickley Dairy Co. 53 L. R. A. 471, which holds limitation runs against stockholder's liability from time of insolvency of corporation; West v. Topeka Sav. Bank, 63 L. R. A. 137, which holds that statute of limitations begins to run on stockholder's subscription to stock payable at intervals on call immediately on corporation's suspension of business for insolvency; Bennett v. Thorne, 68 L.R.A. 114, which holds that liability imposed on stockholders of insolvent bank accrues at time of insolvency.

Cited in note (10 L.R.A.(N.S.) 903) on time of accrual of right of action as to stockholder's liability.

Validity of by-laws.

Cited in note (136 Am. St. Rep. 1028) on validity of by-laws of corporations as to transfer of stock on their books.

37 L. R. A. 622, FERGUSON v. SHERMAN, 116 Cal. 169, 47 Pac. 1023.

Nature of stockholder's liability.

Cited in Crofoot v. Thatcher, 19 Utah, 222, 75 Am. St. Rep. 725, 57 Pac. 171, holding liability for unpaid balance of stock subscription contractual, and governed by *lex loci contractus;* Love v. Pusey & J. Co. 3 Penn. (Del.) 579, 52 Atl. 542, holding an unpaid judgment recovered against a Kansas corporation could be enforced against a stockholder by action of debt in Delaware under the stockholders' liability created by the statute and constitution of Kansas.

Enforcing stockholders' liability outside of state of incorporation.

Cited in Pulsifer v. Greene, 96 Me. 446, 52 Atl. 921; Kulp v. Fleming, 65 Ohio St. 340, 87 Am. St. Rep. 611, 62 N. E. 334; Western Nat. Bank v. Lawrence, 117 Mich. 673, 76 N. W. 105; Howarth v. Lombard, 175 Mass. 575, 49 L. R. A. 305, 56 N. E. 888, — holding stockholder's liability for corporate debts under Kansas laws enforceable in foreign jurisdiction; Hancock Nat. Bank v. Ellis, 172 Mass. 45, 42 L. R. A. 401, footnote p. 396, 70 Am. St. Rep. 232, 51 N. E. 207, holding action to enforce stockholder's liability maintainable in any state where service can be made; Hale v. Hardon, 37 C. C. A. 244, 95 Fed. 751; Whitman v. Oxford Nat. Bank, 176 U. S. 568, 44 L. ed. 592, 20 Sup. Ct. Rep. 477; Fidelity Ins. Trust & S. D. Co. v. Mechanics' Sav. Bank, 56 L. R. A. 230, footnote p. 228, 38 C. C. A. 196, 97 Fed. 299,—holding stockholder's liability enforceable in Federal court, or any court where personal service obtainable; Blair v. Newbegin, 65 Ohio St. 440, 58 L. R. A. 650, footnote p. 644, 62 N. E. 1040, sustaining right to enforce stockholder's liability in other state without making corporation a party; Love v. Pusey & J. Co. 3 Penn. (Del.) 579, 52 Atl. 542, holding action maintainable in Delaware against stockholder in Kansas corporation to enforce individual liability upon judgment against corporation obtained in Kansas.

Cited in footnotes to Bell v. Farwell, 42 L. R. A. 804, which holds action to

enforce stockholder's liability maintainable in other states; Howarth v. Angle, 47 L. R. A. 725, which sustains foreign receiver's right of action against stockholder in foreign corporation; Stoddard v. Lum, 45 L. R. A. 551, which authorizes action in New York by Illinois assignee for creditors of Illinois corporation to enforce liability of all domestic stockholders; Crippen, L. & Co. v. Laighton, 46 L. R. A. 467, which denies enforceability of stockholder's liability in other state; Bank of China v. Morse, 56 L. R. A. 139, which holds assessment under English statute in proceeding to wind up corporation will not be enforced here against resident; Miller v. Smith, 66 L.R.A. 473, which holds that courts of state of stockholder's residence will not take jurisdiction of suit by corporate creditor on behalf of all to enforce his statutory liability to contribute toward payment of corporate debts in advance of judicial determination of his proportionate liability where laws of state of incorporation contemplate pro rata contribution to be enforced in equitable proceeding against all stockholders.

Cited in note (33 L.R.A.(N.S.) 898, 901, 911) on right to enforce stockholders' liability outside of state of incorporation.

Distinguished in Hancock Nat. Bank v. Farnum, 20 R. I. 470, 40 Atl. 341, holding stockholder's liability for corporate debts not enforceable in state having dissimilar policy.

Jurisdiction of Federal courts.

Cited in Lewis v. Clark, 64 C. C. A. 142, 129 Fed. 574, sustaining permission given by Federal court in Idaho upon principles of comity, to action by receiver of insolvent Minnesota corporation to foreclose mortgage held by citizen of Idaho deposited according to law, with other securities, in Wisconsin.

Street railway as "railroad."

Cited in Railroad Com. v. Market Street R. Co. 132 Cal. 682, 64 Pac. 1065, holding street railway company not "transportation company" within meaning of constitutional provision for supervision by railroad commissioners; Huntington v. Curry, 14 Cal. App. 476, 112 Pac. 583, holding that street railroad does not become ordinary railroad by its being extended beyond limits of city, for no other purpose than to extend its local street car traffic; San Francisco & S. M. Electric R. Co. v. Scott, 142 Cal. 234, 75 Pac. 575 (dissenting opinion), on the classification of street railway as "railroad."

Cited in footnote to Diebold v. Kentucky Traction Co. 63 L. R. A. 637, which holds electric railway operated between two cities in different states a trunk railway within prohibition against granting franchise except to highest bidder.

37 L. R. A. 626, MURRAY v. MURRAY, 115 Cal. 266, 56 Am. St. Rep. 97, 47 Pac. 37.

Consideration of findings on appeal.

Cited in Thomson v. Thomson, 121 Cal. 12, 53 Pac. 403, holding findings of fact unnecessarily made, cannot be considered on appeal; Vine v. Vine, 12 Cal. App. 460, 107 Pac. 702, holding findings on a ground of a relief not supported by the pleading may be rejected when the judgment is effectual without it.

Fraudulent conveyances.

Cited in Calkins v. Howard, 2 Cal. App. 236, 83 Pac. 280, holding a mortgagee who has exhausted his security by foreclosure and is in possession of an undocketed deficiency judgment is, under the statute, a "creditor" with right to assail a fraudulent transfer.

Distinguished in Aigeltinger v. Einstein, 143 Cal. 614, 101 Am. St. Rep. 131, 77 Pac. 669, denying right of creditor, before obtaining judgment, to maintain bill to set aside alleged fraudulent conveyance to wife.

— Conveyance in fraud of wife.

Cited in Tuers v. Tuers, 131 Cal. 627, 63 Pac. 1008, holding that wife may assail husband's transfer of property before decree for divorce and alimony if made with intent to defraud her; Blankenship v. Hall, 233 Ill. 125, 122 Am. St. Rep. 149, 84 N. E. 192, holding wife's right to take a portion of estate in lieu of dower was not protected, but her widow's award and homestead was protected against conveyance intended to defeat her; Duncan v. Duncan, 6 Cal. App. 407, 92 Pac. 310, holding wife's right to attack transfer of property depends on fraud which must be pleaded.

Cited in footnote to Ward v. Ward, 51 L. R. A. 858, which holds second wife's right to dower not defeated by fraudulent antenuptial conveyance to sons by former marriage.

Cited in notes (18 L.R.A.(N.S.) 1148) on right of wife to relief against transfer by husband in fraud of her support; (103 Am. St. Rep. 419) on antenuptial conveyance in fraud of intended wife.

Distinguished in Greer v. Greer, 135 Cal. 124, 67 Pac. 20, denying wife's right to assail transfer of property by husband going away for medical treatment and providing for her support; Kessler v. Kessler, 2 Cal. App. 512, 83 Pac. 257, denying wife's right as "creditor" to assail transfer of property to husband's daughter, the obligation of support not having been violated by the husband.

Husband's liability for support of deserted wife.

Cited in footnotes to People *ex rel.* Public Charities & C. Comrs. v. Cullen, 44 L. R. A. 420, which denies husband's liability for abandonment after judicial separation in suit by wife; Kirk v. Chinstrand, 56 L. R. A. 333, which holds husband refusing to permit wife to live with him liable for her support where she chooses.

Validity of personal judgment upon constructive service of nonresident.

Cited in Morgan v. Mutual Ben. L. Ins. Co. 16 Cal. App. 93, 116 Pac. 385, holding that New York trustees of estate of assignee of life insurance policy issued by foreign corporation doing business in New York to resident there may serve summons, by publication upon nonresident beneficiaries, under New York statutes; Rhoades v. Rhoades, 78 Neb. 498, 126 Am. St. Rep. 611, 111 N. W. 122, holding jurisdiction to subject realty of deserting husband to action for alimony, may be had by placing realty in hands of receiver and serving process by publication.

Cited in footnotes to Kemper-Thomas Paper Co. v. Shyer, 58 L. R. A. 173, which denies right to execution against other property in state for unpaid part of judgment against nonresident served by attachment and publication; Cabanne v. Graf, 59 L. R. A. 735, which holds void, act authorizing service, in personal action against nonresident, on agent in charge of business in state without seizure of property.

Cited in note (94 Am. St. Rep. 552) on foreign judgments in rem.

Distinguished in Anderson v. Schloesser, 153 Cal. 223, 94 Pac. 885, where the record showed regular service on a nonresident and was presumed to have been on personal service.

Power of court in maintenance actions.

Cited in Re Collins, 11 B. C. 440, as a case evidencing the law of California on power of its superior court in maintenance actions.

Cited in notes (9 L.R.A.(N.S.) 594) power to grant alimony in divorce suit without personal service of process; (25 L.R.A.(N.S.) 133) on money decree for alimony or separate maintenance as lien on realty; (38 L.R.A.(N.S.)

954, 955) on power, in absence of statute, to decree alimony or maintenance, independently of proceedings for divorce; (102 Am. St. Rep. 710) on power of courts to create and enforce liens to secure payment of alimony.

Appointment of receiver.

Cited in note (72 Am. St. Rep. 68) as to when appointment of receiver is proper.

37 L. R. A. 630, COLORADO PAVING CO. v. MURPHY, 23 C. C. A. 631, 49 U. S. App. 17, 78 Fed. 28.

Dismissed for want of jurisdiction in 166 U. S. 719, 41 L. ed. 1188, 17 Sup. Ct. Rep. 997.

Rights of lowest bidder on public contract.

Cited in Detroit v. Wayne Circuit Judge, 128 Mich. 439, 87 N. W. 376, holding lowest bidder cannot enjoin city from entering into contract for public improvement; State *ex rel.* Prince v. Police Jury, 108 La. 314, 32 So. 363, denying mandamus to bidder compelling municipality to contract, after award of contract with bidder's acquiescence; United States Wood Preserving Co. v. Sundmaker, 110 C. C. A. 224, 186 Fed. 683, holding that lowest bidder cannot compel officer who has right to reject any or all bids, to enter into contract with him when such officer is about to award contract to another bidder; Turner v. Fremont, 95 C. C. A. 455, 170 Fed. 263, where it was held that lowest bidder on public work who refused to submit to terms of the bids cannot question city's letting of contract; State ex rel. Bank of Franklinton v. Louisiana State Bd. of Agriculture & Immigration, 122 La. 682, 48 So. 148 (dissenting opinion), on mandamus being allowable only where there is flagrant abuse of discretion in letting contract.

Cited in notes (30 L.R.A.(N.S.) 127) on remedy of lowest bidder for refusal to award contract; (38 L.R.A.(N.S.) 655) on discretion in choosing between bidders for public contract.

Rights of taxpayers over public expenditures.

Cited in Kellogg v. School Dist. No. 10, 13 Okla. 303, 74 Pac. 110, sustaining taxpayer's right to restrain unauthorized construction by school district of schoolhouses.

Cited in note (36 L.R.A.(N.S.) 2) on taxpayer's right to enjoin unlawful municipal expenditures.

Injunction against public action.

Cited in Allyn v. Louisville School Board, 131 Ky. 329, 19 L.R.A.(N.S.) 1005, 115 S. W. 206, denying the right of a book publisher to enjoin municipal school board from illegally changing text books in violation of contract.

37 L. R. A. 636, PABLO v. PEOPLE, 23 Colo. 134, 46 Pac. 636.

State jurisdiction over Indian criminals.

Cited in State v. Buckaroo Jack, 30 Nev. 336, 96 Pac. 497, holding an indictment of Indian for murder need not aver that such offense was not committed on a reservation.

37 L. R. A. 638, SPRAGUE v. NEW YORK & N. E. R. CO. 68 Conn. 345, 36 Atl. 791.

When findings as to negligence reviewable.

Cited in Bergin v. Southern New England Teleph. Co. 70 Conn. 64, 39 L. R. A. 195, 38 Atl. 888, holding conclusion of trial court as to negligence not re-

viewable unless incorrect standard of duty applied or some legal principle violated.

Explained and distinguished in Nolan v. New York, N. H. & H. R. Co. 70 Conn. 183, 43 L. R. A. 334, 39 Atl. 115, holding finding that railroad was negligent in failing to provide by special order in addition to rules for operation of trains reviewable on appeal.

Rules promulgated for conduct of business.

Cited in note (43 L. R. A. 315) on duties of master and servant as to rules promulgated for safe conduct of business.

Duty of master to make rules.

Cited in Gaska v. American Car & Foundry Co. 127 Mo. App. 184, 105 S. W. 3, holding master liable for injuries to servant for neglect to furnish rules where it was necessary for one gang to work beneath cars, while another gang's work put men beneath cars in peril.

Judgment upon hearing in damages.

Cited in Lawler v. Hartford Street R. Co. 72 Conn. 85, 43 Atl. 545, and Bergin v. Southern New England Teleph. Co. 70 Conn. 65, 39 L. R. A. 196, 38 Atl. 888, holding plaintiff showing upon default extent of injury entitled to substantial damages unless defendant proves freedom from negligence or contributory negligence.

Determination of master's liability by character of coemployee's act.

Cited in Kelly v. New Haven S. B. Co. 74 Conn. 346, 57 L. R. A. 495, 92 Am. St. Rep. 220, 50 Atl. 871, holding owner not liable to deck hand injured by mate's neglect to use fender in docking vessel.

37 L. R. A. 642, WHITE v. STATE, 99 Ga. 16, 26 S. E. 742.

Arrest without warrant.

Cited in Piedmont Hotel Co. v. Henderson, 9 Ga. App. 680, 72 S. E. 51, holding that burden of proving justification for arresting person without warrant is upon person making such arrest.

Cited in footnotes to McCullough v. Greenfield, 62 L.R.A. 906, which holds that possession by officer of a warrant will not justify an arrest of accused by police department of other town under direction by telephone by officer holding warrant; State ex rel. Livingstone v. Williams, 67 L.R.A. 166, which holds that mandamus will not lie to compel arrest without warrant of designated persons for alleged commission of a misdemeanor.

Cited in note (84 Am. St. Rep. 686) on right of policeman to make arrest.

Validity of ordinances as to street parades.

Cited in note (25 L.R.A.(N.S.) 251) on validity of ordinances as to street parades.

37 L. R. A. 644, GOUGAR v. TIMBERLAKE, 148 Ind. 38, 62 Am. St. Rep. 487, 46 N. E. 339.

Federal control of elections.

Cited in note (53 L.R.A. 660) on Federal control of elections.

Right to vote.

Cited in Riter v. Douglass, 32 Nev. 423, 109 Pac. 444, holding that right to vote conferred by constitution is mere political privilege, and not inherent, unqualified personal or political right; Solon v. State, 54 Tex. Crim. Rep. 293, 114 S. W. 349, holding statute making it a misdemeanor to pay another's poll tax as a necessary incident of suffrage did not infringe any right to vote.

Cited in notes (31 L.R.A.(N.S.) 1107) on right to damages for being prevented from voting; (91 Am. St. Rep. 685) on right of elector to vote for candidate not named on official ballot.

— Right of women.

Cited in Coggeshall v. Des Moines, 138 Iowa, 737, 128 Am. St. Rep. 221, 117 N. W. 309, denying right of women to vote at a municipal election under constitution giving right to males at "all" elections.

Cited in note (27 L.R.A.(N.S.) 523) on right of women to vote.

Right to hold office.

Cited in Shaw v. Marshalltown, 131 Iowa, 134, 10 L.R.A.(N.S.) 829, 104 N. W. 1121, 9 Ann. Cas. 1039, upholding statute granting a preference for public offices to resident soldiers and sailors of the Civil War.

37 L. R. A. 651, UNION WATER-POWER CO. v. AUBURN, 90 Me. 60, 60 Am. St. Rep. 240, 37 Atl. 331.

Water in mill pond as property.

Cited in Auburn v. Union Water-Power Co. 90 Me. 589, 38 L. R. A. 190, 38 Atl. 561, holding power company storing water in great pond not entitled to damages for taking of part by city.

Taxation of water power or dam.

Cited in Blackstone Mfg. Co. v. Blackstone, 200 Mass. 90, 18 L.R.A.(N.S.) 758, 85 N. E. 880, on taxation of water power.

Distinguished in Saco Water Power Co. v. Buxton, 98 Me. 297, 56 Atl. 914, sustaining assessment of property as "mill privilege," which included land and unused dam.

Overruled in effect in Penobscot Chemical Fibre Co. v. Bradley, 99 Me. 271, 59 Atl. 83, holding that land suitable for developing water power may be taxed at value given by its topography.

37 L. R. A. 654, MILLER v. GITTINGS, 85 Md. 601, 60 Am. St. Rep. 352, 37 Atl. 372.

Injunction against suit in other state.

Cited in Von Bermuth v. Von Bermuth, 76 N. J. Eq. 182, 139 Am. St. Rep. 752, 73 Atl. 1049, holding that husband may be enjoined from maintaining in another state action for separation brought subsequent to wife's suit for divorce, here, where he has appeared and answered in wife's suit.

Cited in notes (25 L.R.A.(N.S.) 269) on injunction against action or proceeding in foreign jurisdiction; (59 Am. St. Rep. 884, 885) on right to prosecute transitory causes of action in other jurisdiction.

Distinguished in Bigelow v. Old Dominion Copper, Min. & Smelting Co. 74 N. J. Eq. 485, 71 Atl. 153, denying injunction on behalf of citizen of Massachusetts against New Jersey corporation to stop suit in action already before court of Massachusetts.

37 L. R. A. 659, ST. LOUIS S. W. R. CO. v. STANFIELD, 63 Ark. 643, 40 S. W. 126.

Dogs as property.

Followed in El Dorado & B. R. Co. v. Knox, 90 Ark. 4, 134 Am. St. Rep. 17, 117 S. W. 779; St. Louis, I. M. & S. R. Co. v. Philpot, 72 Ark. 26, 77 S. W. 901,—holding dogs are personal property for negligent killing of which a railroad company is liable.

Cited in Salley v. Manchester & A. R. Co. 54 S. C. 485, 71 Am. St. Rep. 810, 32 S. E. 526, holding railroad civilly liable for killing dog, and referring particularly to annotation in 37 L.R.A. 659: Columbus R. Co. v. Woolfolk, 128 Ga. 632, 10 L.R.A.(N.S.) 1137, 119 Am. St. Rep. 404, 58 S. E. 152, holding killing of dog negligently is actionable and also citing annotation on this point: Florida Central & P. R. Co. v. Foxworth, 45 Fla. 278, 34 So. 270, to same point: St. Louis, I. M. & S. R. Co. v. Rhoden, 93 Ark. 32, 137 Am. St. Rep. 73, 123 S. W. 798, 20 Ann. Cas. 915, holding that dogs are property for negligent killing of which railway company is liable: State v. Soward, 83 Ark. 268, 11 L.R.A. (N.S.) 1119, 119 Am. St. Rep. 136, 103 S. W. 741, 13 Ann. Cas. 79, holding dog to be such personal property as would sustain an information for larceny.

Annotation approved in Strong v. Georgia R. & Electric Co. 118 Ga. 515, 45 S. E. 366, holding a dog is not property for which there is a right of damages against a railroad for negligently killing and also citing annotation on this point.

Cited in footnote to Wilcox v. State, 39 L. R. A. 709, which holds dog domestic animal within statute against cruelty.

Cited in notes (40 L.R.A. 505, 510) on property rights in dogs; (6 L.R.A. (N.S.) 913) on duty of railroads or street railways with respect to dogs on track.

Disapproved in Mobile & O. R. Co. v. Holliday, 79 Miss. 298, 30 So. 820, denying liability of railroad company for unintentionally running over stray dog, in absence of gross negligence, and referring particularly to annotation in 37 L. R. A. 659.

37 L. R. A. 661, LOUISIANA CONSTR. & IMPROV. CO. v. ILLINOIS C. R. CO. 49 La. Ann. 527, 21 So. 891.

Lease or sale of public property.

Followed in Shreveport & R. River Valley R. Co. v. St. Louis & S. W. R. Co. 51 La. Ann. 824, 25 So. 424, denying railroad's absolute ownership of batture.

Cited in footnote to Reighard v. Flinn, 43 L. R. A. 502, which holds invalid, lease by city of part of public landing to private person.

37 L. R. A. 673, STATE v. ITZCOVITCH, 49 La. Ann. 366, 62 Am. St. Rep. 648, 21 So. 544.

Regulation of dealing in second-hand goods.

Cited in footnote to Com. v. Hubley, 42 L. R. A. 403, which sustains ordinance restricting collection of rags in thickly settled part of city by unlicensed persons.

Cited in note (24 L.R.A.(N.S.) 1169) on power to regulate traffic in rags, secondhand articles, and junk.

Municipal police power.

Cited in notes (78 Am. St. Rep. 271) on ordinance as valid exercise of police power; (25 L.R.A.(N.S.) 687) on validity of statute or ordinance requiring chattel mortgage and salary loan brokers to file record of loans.

37 L. R. A. 675, KELSEY v. FIRE & WATER COMRS. 113 Mich. 215, 71 N. W. 589.

Regulation of public service corporations.

Cited in footnotes to Ladd v. Boston, 40 L. R. A. 171, which upholds removal of water meter though fixtures so arranged as to cost consumer, after removal, twenty times as much as others pay; Indiana Natural & Illuminating Gas Co.

v. State, 57 L. R. A. 761, which denies right of natural gas company to discriminate against single consumer by enforcing meter rate instead of flat rate, against him.

Cited in note (61 L. R. A. 108, 119) on establishment and regulation of municipal water supply.

— Owner's liability for service to tenants.

Cited in Cunningham v. Iola, 86 Kan. 91, 119 Pac. 317, holding that ordinances made by city furnishing natural gas is not unreasonable because it provides that owner of tenant property and not tenants will be dealt with unless separate service pipes are supplied for each tenant; East Grand Forks v. Luck, 97 Minn. 375, 6 L.R.A.(N.S.) 200, 107 N. W. 393, 7 Ann. Cas. 1015, upholding a charter provision which makes owner of premises liable for water and light furnished by municipality to tenant.

Cited in note (33 L.R.A.(N.S.) 1015) on right of water company to refuse to deal with tenant.

37 L. R. A. 679, ALLEN v. MINNESOTA LOAN & T. CO. 68 Minn. 8, 64 Am. St. Rep. 446, 70 N. W. 800.

37 L. R. A. 682, JONES v. WILLIAMS, 139 Mo. 1, 39 S. W. 486, 61 Am. St. Rep. 436, 40 S. W. 353.

Officer's power to bind corporation.

Cited in Ferguson v. Venice Transp. Co. 79 Mo. App. 360, holding corporation estopped by acquiescence to deny validity of president's assignment of asset in payment of corporate debt; Saunders v. United States Marble Co. 25 Wash. 484, 65 Pac. 782, holding that secretary may be authorized expressly or by acquiescence to bind corporation by contract; Miller v. Matthews, 87 Md. 475, 40 Atl. 176, sustaining validity of corporation's general assignment made by president and secretary, in which directors acquiesced; Consumers Paper Co. v. Eyer, 160 Ind. 431, 66 N. E. 994, holding corporation liable for negligence of president acting as superintendent in latter's temporary absence; Potts-Thompson Liquor Co. v. Potts, 135 Ia. 460, 69 S. E. 734, holding that where president is permitted by long course of business to make contracts for company similar contracts made by him will be binding on corporation, though he was not specially authorized to make them; Cann v. Church of the Redeemer, 111 Mo. App. 189, 85 S. W. 994, holding rector had no authority to bind vestry by building contracts where authority for such building resided in vestry and had not been delegated except by isolated remarks of vestrymen; Cann v. Holy Redeemer Church, 121 Mo. App. 208, 98 S. W. 781, holding a rector had authority to bind a vestry where such authority was given orally by a majority of the vestrymen in executive session; Kidd v. New Hampshire Traction Co. 74 N. H. 183, 66 Atl. 127, on the authority of a president, having entire management of corporation, to contract; Stripling v. Maguire, 108 Mo. App. 601, 84 S. W. 164, or the scope of the authority of the president of corporation.

Distinguished in Bonsall v. Platt, 82 C. C. A. 260, 153 Fed. 128, holding a defendant was liable for services rendered when he employed plaintiff with understanding that compensation should afterwards be fixed and later employed him on behalf of corporation without its authority.

— Ratification.

Cited in Watson v. Proximity Mfg. Co. 147 N. C. 477, 61 S. E. 273, holding a corporation ratified the action of its president in negotiating a loan when all the members had notice and assented to the transaction.

Specific performance of contract to sell stock.

Cited in O'Neill v. Webb, 78 Mo. App. 6, holding specific performance proper remedy on contract to transfer controlling interest in corporation.

Pretium affectionis.

Cited in State v. May, 142 Mo. 140, 43 S. W. 637, to statement that placing excessive *pretium affectionis* on another's property leading to informal appropriation may result in forcible seclusion from ordinary social intercourse; Watson v. Proximity Mfg. Co. 147 N. C. 474, 61 S. E. 273, holding evidence was admissible to show that loan made personally to president of corporation was for the use of the corporation.

Injunctive relief against trespass.

Cited in Metropolitan Land Co. v. Manning, 98 Mo. App. 257, 71 S. W. 696, sustaining injunctive relief to landlord against harassing and continuous trespasses by tenant after forfeiture of lease.

Executed oral contracts for services to corporation.

Cited in Kropp v. Herman Brewing Co. 138 Mo. App. 53, 119 S. W. 1066, upholding the validity of contract not of record between directors and one of their number where services have been performed and benefits received.

Specific performance of contract for services.

Cited in note (140 Am. St. Rep. 59) on specific performance of contract for personal services.

Distinguished in Shubert v. Woodward, 92 C. C. A. 509, 167 Fed. 55, holding that ordinary specific performance of a contract for personal services will be denied where the court could not reciprocally compel complainant to perform; Scripps v. Sweeney, 160 Mich. 162, 125 N. W. 72, holding a contract between four stockholders whereby one of them was to be retained at a fixed salary, without the consent of the other stockholders, and for the personal gain of the contracting parties, will not be specifically enforced.

Injunction.

Cited in School Dist. No. 61 v. McFarland, 154 Mo. App. 419, 134 S. W. 673, holding that injunction may lie although there may be remedy at law for injury, in cases where adequate remedy cannot be afforded by action for damages as such; Shannon v. Mastin, 135 Mo. App. 55, 114 S. W. 1127, holding, under a statute, writ will lie to enjoin the setting of mortgaged personal property where plaintiff has not an adequate remedy by an action in damages; Butterick Pub. Co. v. Fisher, 203 Mass. 132, 133 Am. St. Rep. 283, 89 N. E. 189, holding writ would lie to enforce a contract whereby defendant was to handle none but plaintiff's patterns in consideration of a reduced price; State ex rel. Jump v. Louisiana, B. G. & A. Gravel Road Co. 116 Mo. App. 199, 92 S. W. 153, holding injunction was the proper remedy to restrain a road company from unlawfully exacting tolls on a public highway.

Contracts by stockholders for corporation.

Cited in Keady v. United R. Co. 57 Or. 336, 108 Pac. 197, holding that contract with several stockholders individually to pay them certain sums if they would agree to sale of corporate property would not be deemed illegal as in fraud of any stockholder, it not appearing but that all consented.

Newspaper contracts against public policy.

Cited in note (93 Am. St. Rep. 907) on contracts with newspapers void as against public policy.

37 L. R. A. 711, VIRGINIA CAÑON TOLL ROAD CO. v. PEOPLE, 22 Colo. 429, 45 Pac. 398.

Toll roads.

Approved in State ex rel. Hines v. Scott County Macadamized Road Co. 207 Mo. 78, 105 S. W. 752, 13 Ann. Cas. 656, holding a toll road company which had the right of collecting tolls on a public road for fifty years had no right of compensation when period expired.

Cited in Oregon v. Portland General Electric Co. 52 Or. 517, 95 Pac. 722, holding a corporation operating canal and locks cannot collect tolls as an inherent right under the general statutes which make no provision for such tolls.

Distinguished in Lyons & E. P. Toll Road Co. v. People, 29 Colo. 441, 68 Pac. 275, denying right to take tolls on road located upon previous toll road theretofore abandoned to public.

— Dedication as highway.

Cited in Oregon v. Portland General Electric Co. 52 Or. 520, 95 Pac. 722, holding corporation which accepted franchise to construct canal and locks on a navigable stream upon lands which it owned in fee thereby dedicated such land as a public highway.

Transfer of franchise.

Cited in Oregon v. Portland General Electric Co. 52 Or. 522, 95 Pac. 722, holding a corporation granted a franchise to construct toll gates and locks cannot lose or alien such franchise rights and obligations to another corporation where no right of transfer was granted by the franchise.

Right to operate ferry.

Annotated cited in Greensboro Ferry Co. v. New Geneva Ferry Co. 34 Pa. Co. Ct. 45, holding grantor could not by reservation vest in himself exclusive ferry rights on stream at the granted lands.

Cited in footnote to Warren v. Tanner, 49 L. R. A. 248, which holds grant of exclusive ferry franchise violated by numerous persons operating ferry for themselves and families exclusively.

Term of franchises.

Cited in Omaha Electric, Light & P. Co. v. Omaha, 102 C. C. A. 601, 179 Fed. 460, holding that franchise given to electric light company will, no term being expressed, be construed to extend at least during life of corporation; Mercantile Trust Co. v. Denver, 161 Fed. 771, on the term of a public franchise as measured by the term of grantee's existence.

37 L. R. A. 721, MESSER v. THE FADETTES, 168 Mass. 140, 60 Am. St. Rep. 371, 46 N. E. 407.

Assignability of trade name.

Cited in Blakely v. Sousa, 197 Pa. 323, 80 Am. St. Rep. 821, 47 Atl. 286, holding right to call band by leader's name not assignable; Finney's Orchestra v. Finney's Famous Orchestra, 161 Mich. 292, 28 L.R.A.(N.S.) 460, 126 N. W. 198, holding equity will grant an injunction to prevent members of orchestra from using a deceased leader's name where he has left the right of such name to members who have kept up former organization; Falk v. American West Indies Trading Co. 180 N. Y. 450, 1 L.R.A.(N.S.) 704, 105 Am. St. Rep. 778, 73 N. E. 239, 2 Ann. Cas. 216, holding an assignment of a trademark with no transfer of the business or good will to which it was attached gives no right to action to enjoin infringement; Crossman v. Griggs, 186 Mass. 280, 71 N.

E. 560, holding a trade name cannot be assigned in gross as security for a debt; Nelson v. J. H. Winchell & Co. 203 Mass. 83, 23 L.R.A.(N.S.) 1155, 89 N. E. 180, on the enforcement by a court of equity of right in trademark containing fake representations.

Cited in notes (1 L.R.A.(N.S.) 711, 724) on sale of trademark; (28 L.R.A. (N.S.) 458) on right of members to protection in use of organization name which their efforts have made valuable; (117 Am. St. Rep. 516) on assignability of name of artist, author, musician, etc.

37 L. R. A. 723, WILLEY v. BOSTON ELECTRIC LIGHT CO. 168 Mass. 40, 46 N. E. 395.

Evidence of subsequent precautions to show negligence.

Cited in Fonder v. General Constr. Co. 146 Wis. 11, 130 N. W. 884, holding that evidence that after plaintiff's injury change was made so that man operating derrick was in less danger, was admissible to show that it was practicable to so place men that they would be out of danger.

Cited in footnote to Georgia Southern & F. R. Co. v. Cartledge, 59 L. R. A. 118, which holds incompetent, evidence of additional precautions after injury.

Liability for injuries from electric wires in highways.

Cited in Norfolk R. & Light Co. v. Spratley, 103 Va. 384, 49 S. E. 502, holding that proof of ownership and control of dangerous wire lying in highway coupled with injury establishes a prima facie case of negligence throwing burden on defendant to show that wire was broken and remained down without its fault.

Cited in footnotes to Newark Electric Light & P. Co. v. Garden, 37 L. R. A. 725, which requires electric light company to use due care in insulating wires maintained on same pole with other companies; Brush Electric Light & P. Co. v. Lefevre, 49 L. R. A. 771, which denies liability for death by uninsulated electric light wire running above awning 16 feet above street; Boyd v. Portland General Electric Co. 52 L. R. A. 509, which holds want of sufficient assistance to promptly replace wires broken by severe storm not excuse as matter of law for delay; Mitchell v. Raleigh Electric Co. 55 L. R. A. 398, which sustains telephone company employee's right to presume that electric light wires are properly insulated; Mooney v. Luzerne, 40 L. R. A. 811, which holds city liable for negligence as to abandoned telephone wire crossing dangerous electric wire, though other parties also liable; Snyder v. Wheeling Electrical Co. 39 L. R. A. 499, which holds that death of person by stepping on live electric wire fallen to ground raises presumption of negligence.

Cited in note (57 L. R. A. 838) on statutory liability of employers for defects in condition of their plant.

Distinguished in Chisholm v. New England Teleph. & Teleg. Co. 176 Mass. 128, 57 N. E. 383, denying employer's liability for injuries to lineman coming into contact with third person's defectively insulated wire.

Action for negligently causing employee's immediate death.

Cited in Conley v. Portland Gaslight Co. 96 Me. 294, 52 Atl. 656, raising, without deciding, question whether action maintainable under statute giving right of action for injuries causing immediate death, where camatose condition intervenes; Perkins v. Oxford Paper Co. 104 Me. 118, 71 Atl. 476, on the recovery of consciousness to the extent of enduring suffering as affecting cause of action for negligent death.

Actionable defect in condition of employer's premises.

Cited in Jones v. Tennessee Coal, Iron & R. Co. 163 Ala. 268, 50 So. 1017,

holding it sufficient to allege defect "in condition" of ways and works of employer under employers' liability act, it not being necessary to show a defect "in the ways and works."

37 L. R. A. 725, NEWARK ELECTRIC LIGHT & P. CO. v. GARDEN, 23 C. C. A. 649, 39 U. S. App. 416, 78 Fed. 74.

Liability for injuries by electric wires.

Cited in Mitchell v. Raleigh Electric Co. 129 N. C. 171, 55 L. R. A. 401, foot note p. 398, 85 Am. St. Rep. 735, 39 S. E. 801, sustaining telephone company employee's right to presume that electric light wires properly insulated; Geismann v. Missouri-Edison Electric Co. 173 Mo. 678, 73 S. W. 654, holding electric company liable for death from uninsulated electric wire, of workman removing sign from front of store; Finch v. Ottawa, 111 C. C. A. 199, 190 Fed. 302, holding that city is bound to exercise reasonable care to prevent injury to persons on street, by escape of electricity, where it conveys deadly current through street for lighting purposes; South Shore Gas & Electric Co. v. Ambre, 44 Ind. App. 441, 87 N. E. 246, holding that electric light company using lower arm on telegraph pole, is liable to servant of telegraph company injured because of its failure properly to insulate its wires; La Dow v. Oklahoma Gas & Electric Co. 28 Okla. 25, 119 Pac. 250, holding that absence of insulation on electric wire, in violation of ordinance, is prima facie evidence of negligence; Trout v. Laclede Gaslight Co. 151 Mo. App. 223, 132 S. W. 58, holding that where telephone company and electric light company use same poles, each company is required to exercise highest degree of care in insulating their high voltage wires to protect servants from injury; Downs v. Andrews, 145 Mo. App. 180, 130 S. W. 472, holding that under a permit from defendant to use its poles to keep employer's lines in condition the plaintiff was entitled to have defendant use ordinary care in keeping its wires insulated so that he would not be injured by contact with them in removing them from employer's wires; Wagner v. Brooklyn Heights R. Co. 69 App. Div. 351, 74 N. Y. Supp. 809, holding railroad company liable for injury to city police wire linesman from defectively insulated trolley wire where city wire was placed on railroad structure in consideration of payment of rent by city; Memphis Consol. Gas & Electric Co. v. Letson, 68 C. C. A. 453, 135 Fed. 973, holding that owners of electric plant must explain the existence of a defect through which current escapes causing death to person not in fault and show that cause was unforeseen and unavertible or be held liable; Colusa Parrot Min. & Smelting Co. v. Monahan, 89 C. C. A. 256, 162 Fed. 280, holding company liable for death of its unskilled laborer sent to work on roof near its heavy current wires which were defectively insulated.

Cited in footnotes to Mooney v. Luzerne, 40 L. R. A. 811, which holds city liable for negligence as to abandoned telephone wire crossing dangerous electric wire, though other parties also liable; Brush Electric Light & P. Co. v. Lefevre, 49 L. R. A. 771, which denies liability for death by uninsulated electric light wire running above awning 16 feet above street; Snyder v. Wheeling Electrical Co. 39 L. R. A. 499, which holds that death of person by stepping on live electric wire fallen to ground raises presumption of negligence; Willey v. Boston Electric Light Co. 37 L. R. A. 723, which holds negligence in failing to cut electric light wires from which insulation burned by lightning question for jury; Thomas v. Maysville Gas Co. 53 L. R. A. 147, which requires corporation sending electricity into street railway company's wires, to see to their insulation; Boyd v. Portland General Electric Co. 57 L. R. A. 619, which holds electric light com-

pany liable for injury by wire broken during storm; Boyd v. Portland General Electric Co. 52 L. R. A. 509, which holds want of sufficient assistance to promptly replace wires broken by severe storm not excuse as matter of law for delay; Hebert v. Lake Charles Ice, Light & Waterworks Co. 64 L. R. A. 101, which holds electric light company liable for death of person in street by uninsulated wire which burned and fell because of fall of telephone wire negligently strung above former one; Hebert v. Lake Charles Ice, Light & Waterworks Co. 64 L.R.A. 101, which holds electric light company conveying electricity by overhead wires bound to keep them insulated so as to guard against effect of objects coming in contact with them.

Cited in notes (46 L.R.A. 36, 47, 50, 99) on right of servant to recover damages from persons other than his master for injuries received in performance of his duties; (100 Am. St. Rep. 537) on duties and liabilities of electric corporations.

Liability to licensee on premises.

Cited in Knowlton v. Des Moines Edison Light Co. 117 Iowa, 456, 90 N. W. 818, holding electrical company bound to exercise high degree of care in insulating wires as protection to linemen of telephone company necessarily working in proximity thereto; Rollestone v. Cassirer, 3 Ga. App. 171, 59 S. E. 442, holding owner of bar fixture maintained in dangerous manner liable for death of licensee upon whom it fell, the owner knowing of his presence, and condition while in close proximity to the bar; Johnson v. Paducah Laundry Co. 122 Ky. 380, 5 L.R.A.(N.S.) 737, 92 S. W. 330 (dissenting opinion), on liability of owner of property for injury to a technical trespasser.

Cited in footnote to Ryerson v. Bathgate, 57 L. R. A. 308, which denies liability of owner for injury to one using premises for purpose not authorized by invitation.

Cited in notes (3 L.R.A.(N.S.) 991) on duty of company maintaining electric wires on another's premises, toward trespasser or licensee; (17 L.R.A.(N.S.) 919) on duty of owner of premises to protect licensee against hidden dangers.

Violation of duty as basis of liability for negligence.

Cited in Sloss-Sheffield Steel & I. Co. v. Bibb, 164 Ala. 67, 51 So. 345, holding that no liability for negligence arises unless negligent party owes some duty to person seeking to hold him liable for negligence.

37 L. R. A. 731, HERD v. CATRON, 97 Tenn. 662, 37 S. W. 551.

Conditions in restraint of marriage.

Cited in Overton v. Lea, 108 Tenn. 507, 68 S. W. 250, holding son's devise to mother conditional against remarriage, valid.

Cited in footnote to King v. King, 52 L. R. A. 157, which authorizes recovery on fully executed promise to care for person for life though accompanied by void promise not to marry.

Cited in notes (84 Am. St. Rep. 152; 25 Eng. Rul. Cas. 638) on validity of condition in restraint of marriage.

37 L. R. A. 732, EMERY COUNTY v. BURRESEN, 14 Utah, 328, 60 Am. St. Rep. 898, 47 Pac. 91.

37 L. R. A. 734, SYDNOR v. BOYD, 119 N. C. 481, 26 S. E. 92.

Deed from husband to wife.

Distinguished in McLamb v. McPhail, 126 N. C. 221, 35 S. E. 426, holding deed

from husband to wife in 1841 void at law, but sustainable in equity upon meritorious consideration.

Breach of contemporaneous agreement as defense to note.

Cited in note (43 L. R. A. 470) on contemporaneous agreements and their breach as defense to promissory note.

Validity of contracts between husband and wife.

Cited in Rea v. Rea, 156 N. C. 532, 72 S. E. 573, holding that statute empowering married woman to make certain contracts except in certain cases does not extend to conveyances of personalty by wife to husband.

37 L. R. A. 737, CURTIS v. CUTLER, 22 C. C. A. 16, 40 U. S. App. 233, 76 Fed. 16.

Exhaustion of lien by enforcement for part of claim.

Cited in First Nat. Bank v. Elliott, 125 Ala. 653, 47 L. R. A. 744, footnote p. 742, 82 Am. St. Rep. 268, 27 So. 7, holding balance of mortgage debt, where land sold for less, not required to be paid on redemption; King v. Bender, 54 C. C. A. 324, 116 Fed. 820 (dissenting opinion), majority holding that attachment on two causes of action remains lien on property after sale under judgment taken on admission of first cause.

Cited in notes (68 L.R.A. 332) on waiver of junior lien by failure to assert it on foreclosure; (3 L.R.A.(N.S.) 344) on effect of foreclosure by taking possession before all of mortgage debt due; (15 L.R.A.(N.S.) 590) on right of assignee of mortgage to enforce option to declare entire mortgage due for default.

Foreclosure by advertisement in name of assignee.

Cited in Higbee v. Daeley, 15 N. D. 342, 109 N. W. 318, holding voidable a foreclosure by advertisement by assignee in name of mortgagee where the assignment is unrecorded.

— Filling in names in blank instruments.

Cited in Casserly v. Morrow, 101 Minn. 20, 111 N. W. 654, holding foreclosure of mortgage by assignee in blank who filled in his name, as grantee without authority from mortgagor, void.

37 L. R. A. 761, DE SOTO PARISH v. WILLIAMS, 49 La. Ann. 422, 21 So. 647.

Construction of constitutional provisions upon same subject.

Followed in Clifton v. Hobgood, 106 La. 539, 31 So. 46, holding constitutional provisions dealing with same subject should be construed together.

Cited in Smith v. Claiborn Parish, 125 La. 729, 51 So. 701; Flores v. De Soto Parish, 116 La. 431, 40 So. 785,—as an instance where certain ambiguous articles were construed together as being on the same subject matter.

Constitutional provision for taxation in aid of railway.

Cited in Webster Parish v. Police Jury, 52 La. Ann. 474, 27 So. 102, holding that legislature may prescribe mode in which taxpayers may authorize levy of special tax in aid of railway.

What constitutes sufficient majority.

Cited in Pickett v. Russell, 42 Fla. 139, 28 So. 764, construing constitutional provision for vote of majority of qualified electors paying taxes to authorize levy, to mean majority of those who vote; Dreifus v. Colonial Bank & T. Co. 123 La. 69, 48 So. 649, holding that election of liquidators of bank by all stockholders present at stockholders' meeting, is not invalid, because election was not supported by three-fourths of entire stock, where statute provides that

corporation may be dissolved with assent of three-fourths of stock represented at meeting.

Distinguished in *Re* Denny, 156 Ind. 122, 51 L. R. A. 729, footnote p. 722, 59 N. E. 359, requiring majority of all votes cast at election for any purpose to adopt constitutional amendment.

What is municipal tax.

Cited in United R. & Trading Co. v. Mevers, 112 La. 905, 36 So. 797, holding authorized tax levied by levee commissioners for levee purposes, not municipal tax.

Persons present but not voting.

Cited in Murdoch v. Strange, 99 Md. 110, 57 Atl. 628, 3 Ann. Cas. 66, holding that those who are present at meeting of a corporate body and who do not vote or cast blank ballots should be considered as voting.

37 L. R. A. 771, CLAYTON v. CLARK, 74 Miss. 499, 60 Am. St. Rep. 521, 21 So. 565, 22 So. 189.

Accord and satisfaction by part payment.

Cited in Shelton v. Jackson, 20 Tex. Civ. App. 446, 49 S. W. 415, holding bond discharged by payment of less than amount secured, where principal and surety insolvent; Williams v. Blumenthal, 27 Wash. 27, 67 Pac. 393, holding valid satisfaction of judgment effected by payment of less than face, where debtor waives right of appeal; Marshall v. Bullard, 114 Iowa, 465, 54 L. R. A. 864, footnote p. 862, 87 N. W. 427, holding third person's part payment of judgment sufficient consideration for release of balance; Cooper v. Yazoo & M. Valley R. Co. 82 Miss. 644, 35 So. 162, holding acceptance by creditor, although under protest that more was due, of sum tendered in full satisfaction of debt, accord and satisfaction; Dreyfus v. Roberts, 75 Ark. 362, 69 L.R.A. 825, 112 Am. St. Rep. 67, 87 S. W. 641, 5 Ann. Cas. 521, holding that debt can be discharged by execution of, and payment under an agreement in writing to accept smaller sum in satisfaction in full; Frey v. Hubbell, 74 N. H. 365, 17 L.R.A.(N.S.) 1201, 68 Atl. 325, holding payment and acceptance of smaller sum than amount due as discharge of the debt and satisfaction in full to be binding and an extinguishment of the debt.

Cited in footnotes to Engbretson v. Seiberling, 64 L. R. A. 75, which holds that acceptance of part of amount due from insolvent may operate as satisfaction of entire debt; Harrison v. Henderson, 62 L. R. A. 760, which holds that mere payment by debtor and retention by creditor of amount denominated "balance" not accord and satisfaction; Dreyfus v. Roberts, 69 L.R.A. 823, which holds debt discharged by payment of less than is due on full execution of agreement to that effect evidenced by written receipt in full satisfaction.

Cited in notes (11 L.R.A.(N.S.) 1020, 1026; 21 L.R.A.(N.S.) 1005) on payment of part of undisputed debt as consideration for its discharge; (100 Am. St. Rep. 421) on accord and satisfaction.

Disapproved in Schlessinger v. Schlessinger, 39 Colo. 46, 8 L.R.A.(N.S.) 864, 88 Pac. 970, holding that payment of part of a liquidated sum due is not to be taken as satisfaction of the full debt, regardless of form of receipt given.

37 L. R. A. 775, SUPREME LODGE K. OF P. v. STEIN, 75 Miss. 107, 65 Am. St. Rep. 589, 21 So. 559.

When subsequent anti-suicide by-law binding upon insured.

Cited in Lange v. Royal Highlanders, 75 Neb. 191, 10 L.R.A.(N.S.) 668, 121 Am. St. Rep. 786, 106 N. W. 224, holding void under strict construction

a subsequent by-law making insurance unrecoverable in case of death of insured by suicide, where such by-law was not passed by a representative board of officers as required by statute.

Cited in notes (8 L.R.A.(N.S.) 1126) on suicide while sane as defense to action on policy or certificate containing no provision as to effect thereof; (83 Am. St. Rep. 717; 84 Am. St. Rep. 554) on effect of changes in by-laws of beneficial association as against pre-existing members.

Distinguished in Dornes v. Supreme Lodge K. of P. 75 Miss. 481, 23 So. 191, holding anti-suicide clause authorized by supreme lodge binding upon Knight of Pythias.

Powers of board of control.

Followed in Toomey v. Supreme Lodge K. of P. 74 Mo. App. 517, holding that supreme lodge of Knights of Pythias cannot delegate power to legislate to board of control.

37 L. R. A. 779, LOWRY v. INSURANCE CO. OF N. A. 75 Miss. 43, 46 Am. St. Rep. 587, 21 So. 664.

Right of other than insured to sue on policy.

Cited in Brown v. Commercial F. Ins. Co. 21 App. D. C. 341, sustaining right of one to whom policy was delivered by insured with indorsement of insurance company having knowledge of all circumstances, to maintain action thereon as assignee thereof; Trust Co. v. Scottish Union & Nat. Ins. Co. 119 Ga. 674, 46 S. E. 855, sustaining suit by mortgagee in his own name on policy made payable to him as his interest might appear, where amount of debt exceeded value of insurance and the policy covered only property under the mortgage.

Distinguished in Bacot v. Phenix Ins. Co. 96 Miss. 249, 25 L.R.A.(N.S.) 1233, 50 So. 729, Ann. Cas. 1912B, 262, holding that where mortgagee is the only party at interest under the policy and entitled to all that is due under the policy he may sue in his own name alone though value of policy is greater than amount of secured debt.

Parties to suit on policy.

Distinguished in Bacot v. Phenix Ins. Co. 96 Miss. 249, 25 L.R.A.(N.S.) 1233, 50 So. 729, Ann. Cas. 1912B, 262, holding dismissal of suit on a policy for misjoinder of mortgagors with mortgagee as plaintiff, improper where question of their interest and manner of asserting it was before the court and party may be dismissed if improper.

37 L. R. A. 780, PENNSYLVANIA CO. FOR INS. ON LIVES & G. A. v. FRANKLIN F. INS. CO. 181 Pa. 40, 37 Atl. 191.

Followed without discussion in Pennsylvania Co. for Ins. on Lives & G. A. v. American F. Ins. Co. 181 Pa. 50, 37 Atl. 1119, and Shannon v. Castner, 21 Pa. Super. Ct. 331.

Scope of equity jurisdiction.

Cited in Steinmeyer v. Siebert, 190 Pa. 475, 44 W. N. C. 61, 70 Am. St. Rep. 641, 42 Atl. 880, holding that equity has jurisdiction of suit to recover stock fraudulently obtained by betrayal of confidence; Kelly v. Nypano R. Co. 23 Pa. Co. Ct. 178, holding that equity will enforce covenant by grantee in deed to erect and maintain fence; Eaton v. Eastern Bldg. & L. Asso. 7 Pa. Dist. R. 442, holding that withdrawing stockholder of building association may bring bill in equity to determine value of shares; Corbet v. Oil City Fuel Supply Co. 21 Pa. Super. Ct. 87, sustaining injunction restraining gas company from shutting off gas from house of one having binding contract therefor; Miller v. Doran, 151

Ill. App. 534, holding that equity has jurisdiction to protect stockholder whose certificate of stock has been stolen; Fuller v. Fisk, 43 Pa. Super. Ct. 494, holding that equity has jurisdiction to restrain trespass continuous in its nature, if repeated acts of wrong are done or threatened, although legal remedy exists and is adequate as to each single act; Corbe v. Burkert, 33 Pa. Super. Ct. 320, sustaining jurisdiction of equity where several different defendants have bonds of plaintiff in their possession which were obtained through embezzlement of one person and plaintiff seeks to prevent redemption and regain possession.

Which of two innocent parties must bear loss.

Cited in Vanderslice v. Royal Ins. Co. 9 Pa. Super. Ct. 238, 43 W. N. C. 384, holding insurance company liable for return premiums paid agent fraudulently inserting own name in assignment in blank; Clark's Estate, 58 Pittsb. L. J. 88, holding that bank had no preferred claim against insolvent water company for money loaned to it by bank's cashier which he had abstracted from bank's funds; Dollar Sav. Fund & T. Co. v. Pittsburg Plate Glass Co. 213 Pa. 313, 62 Atl. 916, 5 Ann. Cas. 248, holding corporation not liable to person holding stock certificate as security for a loan to a clerk who had forged name of transfer agent thereon after it had been signed by officers and seal attached and left in the office.

Liability of corporation for fraudulent stock.

Cited in footnotes to Cincinnati, N. O. & T. P. R. Co. v. Citizens' Nat. Bank, 43 L. R. A. 777, which holds purchaser in open market of stock certificate fraudulently issued by proper officers entitled thereto as against corporation; Farmers' Bank v. Diebold Safe & Lock Co. 58 L. R. A. 620, which holds corporation not bound by representation of officer as to his ownership of stolen certificate, negotiated as security for his own debts; The Jennie Clarkson Home for Children v. Missouri K. & T. R. Co. 70 L.R.A. 787, which holds corporation canceling registration of bonds and making them payable to bearer contrary to agreement liable to owner for their value, although transfer agent was deceived by forgeries of owner's agent while acting outside scope of authority.

37 L. R. A. 783, CHAPPELL v. STEWART, 82 Md. 323, 51 Am. St. Rep. 476, 33 Atl. 542.

Dismissed for want of jurisdiction in 169 U. S. 733, 42 L. ed. 1215, 18 Sup. Ct. Rep. 940.

Injunction to protect personal rights.

Annotation cited in Vanderbilt v. Mitchell, 72 N. J. Eq. 920, 14 L.R.A.(N.S.) 309, 67 Atl. 97, on the tendency of equity to enforce personal rights even where it is necessary to recognize merely technical property rights to acquire jurisdiction.

Cited in footnotes to Supreme Lodge, O. of G. C. v. Simering, 41 L. R. A. 720, which sustains right to injunction against excluding representative from right to vote in supreme lodge of benefit society; Bomeisler v. Forster, 39 L. R. A. 240, which authorizes injunction against violating contract not to bring suit on claims, prosecution of which would damage defendant's reputation.

Cited in notes (1 L.R.A.(N.S.) 1148) on injunction to protect personal right; (37 L.R.A.(N.S.) 945) on injunction against publication or sale of letters.

Annotation in 37 L. R. A. 783 referred to with approval in *Ex parte* Warfield, 40 Tex. Crim. Rep. 421, 76 Am. St. Rep. 727, 50 S. W. 933, sustaining right to enjoin defendant in action for alienating wife's affections from writing or talking to her.

37 L. R. A. 788, SUN PRINTING & PUB. ASSO. v. NEW YORK, 152 N. Y. 257, 46 N. E. 499.

Public highways.

Followed in Bates v. Holbrook, 171 N. Y. 478, 64 N. E. 181, by O'Brien, J., dissenting, who holds municipal street railroad city highway.

Cited in Palmer v. Larchmont Electric Co. 158 N. Y. 234, 43 L. R. A. 674, 52 N. E. 1092, holding electric light poles not additional burden on fee of highway in town contracting for street lights; New York v. Interborough Rapid Transit Co. 53 Misc. 127, 104 N. Y. Supp. 157, on street railway subways built by city as being city property and part of its system of public streets and highways; Interborough Rapid Transit Co. v. New York, 47 Misc. 225, 95 N. Y. Supp. 886, holding that although the street railway running through the city's subway is a public highway it is not subject in any way to supervision of city street commissioners, the cities only control thereover being vested in rapid transit board.

Cited in note (106 Am. St. Rep. 264) on what are additional servitudes in highways.

For what purposes municipalities may expend money.

Followed in Underground R. Co. v. New York, 116 Fed. 960, as to constitutionality of rapid transit act, authorizing municipality to contract for construction of underground street railway.

Cited in *Re* Jensen, 44 App. Div. 518, 60 N. Y. Supp. 933, Affirming 28 Misc. 382, 59 N. Y. Supp. 653, and Chapman v. New York, 168 N. Y. 86, 56 L. R. A. 849, 85 Am. St. Rep. 665, 61 N. E. 108, holding statute charging on municipality expenses incurred by officer in defending against charge of official misconduct unconstitutional; Deady v. Lyons, 39 App. Div. 143, 57 N. Y. Supp. 448, holding expenditure by village to retain county seat not for municipal purpose; Holder v. Yonkers, 39 App. Div. 3, 56 N. Y. Supp. 912, sustaining city's power to lease land for park; Parsons v. Van Wyck, 56 App. Div. 339, 67 N. Y. Supp. 1054, sustaining statute authorizing issue of bonds by city for soldiers' monument; Holroyd v. Indian Lake, 40 Misc. 77, 81 N. Y. Supp. 268, holding that town may become primarily liable for water system, although expense is ultimately to be borne by water district; Mayo v. Washington, 122 N. C. 25, 40 L. R. A. 169, 29 S. E. 343 (dissenting opinion), majority holding debt for purchase of electric light plant not necessary municipal expense; Atty. Gen. *ex rel.* Barbour v. Pingree, 120 Mich. 563, 46 L. R. A. 414, footnote p. 407, 79 N. W. 814, holding void, statute empowering city to purchase and operate street railways; Smith v. Smythe, 197 N. Y. 463, 35 L.R.A.(N.S.) 526, 90 N. E. 1121, holding that maintenance of rights of way dedicated to public use by sale of building lots fronting on them is not village purpose; Haeussler v. St. Louis, 205 Mo. 684, 103 S. W. 1034, holding that bridge across river in public highway and public city purpose, even though part of public highway is beyond city limits; Ridgeway v. Treman, 72 Misc. 454, 129 N. Y. Supp. 1081, holding that expense of operation of left bridge over canal may legally be borne by town; Denver v. Hallett, 34 Colo. 406, 83 Pac. 1066, holding that the city of Denver can levy and collect taxes to build an auditorium under constitutional provision restricting taxation to the "purposes of such corporation;" Holton v. Camilla, 134 Ga. 565, 31 L.R.A.(N.S.) 124, 68 S. E. 472, 20 Ann. Cas. 199, holding the operation of an ice plant in connection with water system to supply inhabitants with ice properly within purpose for which city may issue bonds; Stemmler v. New York, 179 N. Y. 484, 72 N. E. 581, holding that

city can not appropriate funds to pay salary to a de jure officer who has not earned his salary such amount having been paid to de facto officer.

Cited in footnote to Edgerton v. Goldsboro Water Co. 48 L. R. A. 444, which holds cost of providing water for city authorized by charter not a "necessary expense."

Cited in note (28 L.R.A.(N.S.) 413) on power of legislature to authorize political divisions to build, purchase, or operate railroad, as affected by restrictions on power to aid private enterprises.

Lease of property by municipality.

Followed in Schinzel v. Best, 48 Misc. 234, 92 N. Y. Supp. 754, holding valid a grant of power to traction company to operate its cars over city bridge on tracks owned by city.

Cited in Barsaloux v. Chicago, 245 Ill. 610, 92 N. E. 525, holding that city of Chicago can acquire or build street railway subways for purposes of leasing same to traction companies under law authorizing cities to own, operate or lease street railways.

Cited in footnotes to Baily v. Philadelphia, 39 L. R. A. 837, which sustains right of city to lease its gasworks; Ogden v. Bear Lake & River Waterworks & Irrig. Co. 41 L. R. A. 305, which denies city's right to lease or otherwise transfer waterworks.

— Revocation.

Cited in Lincoln Safe Deposit Co. v. New York, 96 App. Div. 624, 88 N. Y. Supp. 912, holding that city can revoke permit to use vault under street where such space is to be taken up for a public purpose; Potter v. Interborough Rapid Transit Co. 54 Misc. 430, 105 N. Y. Supp. 1071, holding that the building of a subway is a public use authorizing the revocation of permits to maintain vaults under sidewalks.

Scope of use of public in streets.

Cited in Atty. Gen. ex rel. Brotherton v. Detroit, 148 Mich. 101, 111 N. W. 860, on railways in streets as a city purpose warranting taxation therefor; New York v. Interborough Rapid Transit Co. 125 App. Div. 451, 109 N. Y. Supp. 885, reversing 55 Misc. 143, 106 N. Y. Supp. 296 (dissenting opinion), on the scope of the use of property leased from city; Re Rapid Transit R. Comrs. 197 N. Y. 97, 36 L.R.A.(N.S.) 655, 90 N. E. 456, 18 Ann. Cas. 366, reversing in part 128 App. Div. 103, 112 N. Y. Supp. 619, holding that construction of a subway to lease to transit companies is a city purpose but not such a street use as does not call for compensation to abutters.

Constitutional prohibitions of local legislation.

Followed in Re New York, 45 Misc. 187, 91 N. Y. Supp. 987, holding constitutional prohibition against passing of local laws authorizing laying down of railroad tracks, not to apply to the construction of tracks by a municipality.

Cited in People v. Dunn, 31 App. Div. 140, 52 N. Y. Supp. 968, sustaining statute providing for special criminal juries in counties having certain population; *Re* Henneberger, 155 N. Y. 437, 42 L. R. A. 138, 50 N. E. 61 (dissenting opinion), majority holding general statute confined in operation by conditions to limited territory, obnoxious to constitutional prohibition of local bill laying out highway; Smithsonian Institution v. St. John, 214 U. S. 32, 53 L. ed. 899, 29 Sup. Ct. Rep. 601, dismissing writ of error to judgment on mandate from 191 N. Y. 278, 83 N. E. 981, 14 Ann. Cas. 708, on validity of general legislation passed with a view to aid particular persons, classes or corporations.

37 L. R. A. 794, UPINGTON v. CORRIGAN, 151 N. Y. 143, 45 N. E. 359.

Condition subsequent.

Cited in Union College v. New York, 173 N. Y. 41, 93 Am. St. Rep. 569, 65 N. E. 853, Affirming 65 App. Div. 555, 73 N. Y. Supp. 51, holding condition subsequent created by deed of land to be used for city hall, to revert on cessation of such use; *Re* Hart, 61 App. Div. 593, 70 N. Y. Supp. 933, holding condition subsequent created by devise of house for life on condition devisees would there reside; *Re* Brookfield, 176 N. Y. 149, 68 N. E. 138 (dissenting opinion), majority holding provision for buying back land in case of its nonuse for flowage purposes, not condition subsequent; Ashuelot Nat. Bank v. Keene, 74 N. H. 151, 9 L.R.A.(N.S.) 760, 65 Atl. 826, holding that conveyance of land to city to be used for park and library purposes to be devoted to such purposes within reasonable time on condition that it shall be used for no other purpose is not on a condition subsequent giving right of re-entry for failing to devote within a reasonable time.

Cited in notes (7 L.R.A.(N.S.) 1122, 1124) on effect of provision directing particular purposes to which gift to or for religious or charitable organization shall be devoted; (79 Am. St. Rep. 756) on what words create condition subsequent; (95 Am. St. Rep. 224) on validity of conditions and restrictions in deed as to use of property for schools, churches, etc.

Distinguished in Mitchell v. Einstein, 42 Misc. 374, 86 N. Y. Supp. 759, holding that conveyance of land for Bloomingdale Road in New York city, conveyance of easement only.

Re-entry for breach of condition subsequent.

Cited in Ball v. Milliken, 31 R. I. 43, 37 L.R.A.(N.S.) 632, 76 Atl. 789, Ann. Cas. 1912B, 30, holding that under statute, contract right of grantor to demand reconveyance of land for breach of condition as to uses to which it may be put will pass by his will; Ostrander v. Reis, 142 App. Div. 21, 126 N. Y. Supp. 1056, to the point that stranger to title cannot take advantage of breach of condition subsequent; Fowler v. Coates, 201 N. Y. 263, 94 N. E. 997, holding that stranger to title cannot take advantage of breach of condition subsequent in deed; Mitchell v. Einstein, 105 App. Div. 421, 94 N. Y. Supp. 210, Reversing 42 Misc. 342, 86 N. Y. Supp. 759, holding that the right of entry for breach of condition subsequent is not available to a transferee but merely to heirs of grantor; Richter v. Distelhurst, 116 App. Div. 273, 101 N. Y. Supp. 634, holding that there is no right of re-entry or forfeiture for breach of condition subsequent in deed by trustees or executors, as neither trustees nor executors can have heirs; White v. Bailey, 65 W. Va. 583, 23 L.R.A.(N.S.) 238, 64 S. E. 1019 (dissenting opinion), on possibility of reversion as not being an estate or interest in real property descendible to heir subject to devise.

Cited in note (60 L. R. A. 757) on transferability of right of entry for condition broken.

Distinguished in Deering v. Reilly, 167 N. Y. 193, 60 N. E. 447, holding seisin of owner of land unaffected by city's occupation for highway; Ellis v. Pelham, 106 App. Div. 148, 94 N. Y. Supp. 103, holding that the right of re-entry for breach of condition subsequent in grant of easement is exercisable by a devise of grantor.

Nature of possibility of reverter.

Cited in Re Bensel, 144 App. Div. 755, 129 N. Y. Supp. 682, to the point that since revised statutes possibility of reverter is not held to be an estate in land.

Taking by heirs under possibility of reverter.

Cited in note (18 L.R.A.(N.S.) 625) on time as to which the "heirs" who take under possibility of reverter are determined.

37 L. R. A. 799, BIERMAN v. CITY MILLS CO. 151 N. Y. 482, 56 Am. St. Rep. 636, 45 N. E. 856.

Warranty by agent.

Cited in Pennsylvania & D. Oil Co. v. Spitelnik, 27 Misc. 558, 58 N. Y. Supp. 311, holding that salesman cannot bind principal by express warranty in absence of custom.

Cited in footnote to Thompson v. New South Coal Co. 62 L. R. A. 551, which holds principal not estopped to assert invalidity of unauthorized contract by agent for sale of land by accepting part of the purchase money.

Cited in note (39 L.R.A.(N.S.) 1153) on extent of commercial traveler's authority to warrant.

Implied warranty by manufacturer.

Cited in Price v. Kohn, 99 Ill. App. 118, holding that manufacturer selling goods by sample impliedly warrants freedom from latent defects; E. T. Burrows Co. v. Rapid Safety Filter Co. 49 Misc. 544, 97 N. Y. Supp. 1048, holding that only an implied warranty that goods supplied by manufacturer are free from defects not discoverable by ordinary inspection or arising from the process of manufacture is involved in an executory sale of goods by description; Haynor Mfg. Co. v. Davies, 147 N. C. 270, 17 L.R.A.(N.S.) 194, 61 S. E. 54, holding that manufacturer impliedly warrants that beverages sold to retailer for resale by an agent can be lawfully sold by him.

Cited in footnote to Gardner v. Winter, 63 L. R. A. 647, which denies implied warranty of fitness for purpose by one filling order for particular brand of seed.

Cited in notes (29 L.R.A.(N.S.) 139, 140) as to whether sale by sample excludes implied warranty other than of conformity thereto; (102 Am. St. Rep. 612, 615) on implied warranty of quality.

Distinguished in Reynolds v. Mayor, 39 App. Div. 221, 57 N. Y. Supp. 1145, holding that no implied warranty of fitness accompanies sale of goods by non-manufacturing dealer; Dodge v. Dickson Mfg. Co. 51 C. C. A. 179, 113 Fed. 222, holding no implied warranty against latent defects in article manufactured for particular purpose under purchaser's supervision; Pascal v. Goldstein, 51 Misc. 630, 100 N. Y. Supp. 1025, holding that the doctrine of implied warranty does not apply where there is no proof that the seller of the goods was the manufacturer thereof.

Implied warranty of fitness for purpose.

Cited in Howard Iron Works v. Buffalo Elevating Co. 113 App. Div. 575, 99 N. Y. Supp. 163, holding no implied warranty against latent defects in wheel purchased under contract providing that seller should obtain it from manufacturer and where no reliance was placed on seller for selection and supply of such machinery; John Tarl's Sons v. Williams Engineering & Contracting Co. 136 App. Div. 712, 121 N. Y. Supp. 478, on warranty implied from executory sale in absence of words of express warranty, that goods sold are suitable for purpose for which purchased.

Cited in footnotes to Rollins Engine Co. v. Eastern Forge Co. 68 L.R.A. 441, which holds warranty that article will be suitable for intended use not to be implied from express contract to forge steel piston rod of specified dimensions; Davis Calyx Drill Co. v. Mallory, 69 L.R.A. 973, which denies implied warranty

that a drill and its machinery are suitable to bore holes through particular strata of land.

Cited in notes (15 L.R.A.(N.S.) 857) on implied warranty of fitness of particular article purchased from manufacturer or producer for particular use; (23 Eng. Rul. Cas. 493) on implied warranty of fitness for purpose for which goods are sold.

When implied warranty survives acceptance.

Cited in League Cycle Co. v. Abrahams, 27 Misc. 552, 58 N. Y. Supp. 306, holding that implied warranty of merchantability and fitness survives acceptance only when defects latent; Waeber v. Talbot, 167 N. Y. 58, 82 Am. St. Rep. 712, 60 N. E. 288, holding that implied warranty of merchantability of goods does not survive acceptance where defects discoverable on inspection; Cleveland Linseed Oil Co. v. A. F. Buchanan & Sons, 57 C. C. A. 502, 120 Fed. 910, holding oil manufacturer furnishing oil to buyer for known purpose, liable on implied warranty that oil shall be fit for such purpose; Crane Co. v. Collins, 103 App. Div. 486, 93 N. Y. Supp. 174, holding acceptance of pipes and retention without offer to return after discovery of defects a waiver of breach of implied warranty where such pipes were returnable after discovery of defects; Staiger v. Soht, 116 App. Div. 878, 102 N. Y. Supp. 342, holding that implied warranty accompanying sale of goods by sample survives acceptance though the defects complained of are patent; Heath Dry Gas Co. v. Hurd, 124 App. Div. 71, 108 N. Y. Supp. 410, holding that failure to return property sold in part before discovery of latent defect is not a waiver of breach of warranty; Kelly Asphalt Block Co. v. Barber Asphalt Paving Co. 136 App. Div. 27, 120 N. Y. Supp. 163, holding acceptance of asphalt blocks the defects of which could not be discovered on customary inspection is not a waiver of implied warranty.

Distinguished in Smith v. Coe, 170 N. Y. 170, 63 N. E. 57, holding vendee accepting unwarranted goods without latent defects liable for purchase price.

Caveat emptor.

Cited in footnote to Kinkel v. Winne, 62 L. R. A. 596, which holds rule of *caveat emptor* applicable to a sale of fire insurance expiration register made without representation as to privacy of information impaired thereby.

Conformity of pleading and proof of warranty.

Cited in Prentice v. Fargo, 53 App. Div. 612, 65 N. Y. Supp. 1114, and Reynolds v. Mayor, 39 App. Div. 220, 57 N. Y. Supp. 1145, holding that plea of express warranty justifies recovery upon implied warranty; Rogers v. Beckrich, 46 App. Div. 431, 61 N. Y. Supp. 725, holding averment of warranty supported by proof of either express or implied.

Ratification of agent's contract.

Cited in note (29 L.R.A.(N.S.) 210) on principal's performance of part of contract in ignorance of unauthorized provisions inserted by agent, as ratification.

37 L. R. A. 802, CURRAN v. GALEN, 152 N. Y. 33, 57 Am. St. Rep. 496, 46 N. E. 297.

Liability for procuring employee's discharge.

Cited in London Guarantee & Acci. Co. v. Horn, 206 Ill. 506, 99 Am. St. Rep. 185, 69 N. E. 526, Affirming 101 Ill. App. 366, holding person liable for maliciously procuring discharge of one employed for indefinite time; Connell v. Stalker, 20 Misc. 424, 45 N. Y. Supp. 1048, holding union liable for maliciously procuring employee's discharge by threat to strike; Davis v. United Portable

Hoisting Engineers, 28 App. Div. 401, 51 N. Y. Supp. 180, by Ingraham, J., concurring, who holds labor union not liable for procuring employment for member, occasioning plaintiff's discharge; Kemp v. Division No. 241, A. A. S. & E. R. E. 153 Ill. App. 366, holding that action lies to prevent officers of union from procuring plaintiff's discharge by coercing or intimidating employer; Tennessee Coal, Iron R. Co. v. Kelly, 163 Ala. 353, 50 So. 1008, holding person not liable for procuring discharge of servant by terminating contract under which employer was enabled to hire such servant; Huskie v. Griffin, 75 N H. 350, 27 L.R.A. (N.S.) 970, 139 Am. St. Rep. 718, 74 Atl. 595, holding that employer who fraudulently represents that employee dishonorably left his employment is liable for damages; Typothetæ v. Typographical Union No. 6, 66 Misc. 487, 123 N. Y. Supp. 967, holding that master cannot complain of stay of issue of process for imprisonment of labor officials for disregard of court order such relator's remedy being an action for damages if injury was sustained through act of such officials.

Cited in footnote to Baker v. Metropolitan L. Ins. Co. 55 L. R. A. 271, which denies liability for discharge by reason of conspiracy of servant employed for indefinite time.

Cited in notes (5 L.R.A.(N.S.) 899) on liability for procuring discharge of workman as nonunion; (17 Eng. Rul. Cas. 356) on liability for inducing breach of contract of service; (1 Brit. Rul. Cas. 521, 522, 527) on liability of labor union to persons with whose employment it has interfered.

Distinguished in concurring opinion in National Protective Asso. v. Cumming, 170 N. Y. 334, 58 L. R. A. 143, 88 Am. St. Rep. 648, 63 N. E. 369, Affirming 53 App. Div. 235, 65 N. Y. Supp. 946, majority holding labor union may refuse to permit members to work with members of rival union, and effect discharge by threatening strike; Wunch v. Shankland, 59 App. Div. 484, 69 N. Y. Supp. 349, holding labor union not liable for obtaining discharge of employee refusing to join by threat to strike.

Unlawful conspiracies.

Cited in Herzog v. Fitzgerald, 74 App. Div. 112, 77 N. Y. Supp. 366, enjoining strikers from threatening or committing acts of violence against nonstriking employees; Christensen v. Kellogg S. & S. Co. 110 Ill. App. 70, restraining "picketing" and attempts by strikers to intimidate employees remaining at work; Consolidated Steel & Wire Co. v. Murray, 80 Fed. 823, holding congregation of strikers near works to intimidate nonunion workman enjoinable; American Steel & Wire Co. v. Wire Drawers' & Diemakers' Unions Nos. 1 & 3, 90 Fed. 615, holding patrol of streets near factory by strikers enjoinable; Davenport v. Walker, 57 App. Div. 225, 68 N. Y. Supp. 161, holding threatening contractors employing nonunion men with strike, unlawful; W. P. Davis Mach. Co. v. Robinson, 41 Misc. 333, 84 N. Y. Supp. 837, restraining members of union from interfering by threats or force with business of company refusing to employ only union men; Beattie v. Callanan, 82 App. Div. 8, 81 N. Y. Supp. 413, holding that union cannot threaten with strike parties contracting with employer refusing to recognize union; Matthews v. Shankland, 25 Misc. 613, 56 N. Y. Supp. 123, enjoining distribution of boycott circulars directed against newspaper refusing to pay union prices and abide by union rules; Straus v. American Publishers' Asso. 85 App. Div. 458, 83 N. Y. Supp. 271, holding unlawful, agreement by book publishers to sell only to booksellers maintaining fixed price for copyright books; Patterson v. Building Trades Council, 11 Kulp, 24, restraining boycott whereby union men were forbidden to work upon any building whereon contractors declared unfair had performed work; John D. Park & Sons Co. v.

National Wholesale Druggists' Asso. 175 N. Y. 36, 62 L. R. A. 647, 96 Am. St. Rep. 578, 67 N. E. 136, Affirming 54 App. Div. 231, 66 N. Y. Supp. 615, Affirming 30 Misc. 679, 64 N. Y. Supp. 276 (dissenting opinion), majority holding lawful, agreement by wholesale dealers in proprietary medicines and manufacturers thereof, to refuse to sell to dealers who will not maintain fixed price: Schwarcz v. International Ladies' Garment Workers' Union, 68 Misc. 532, 124 N. Y. Supp. 968, holding that strike ordered by trade union to drive nonunion employees out of trade in borough unless they join union is against public policy; Farrelly v. Schaettler, 143 App. Div. 276, 128 N. Y. Supp. 157, on validity of agreements between members of trade unions; Dickinson v. Board of Trade, 114 Ill. App. 306, holding valid a board of trade by law preventing its members from charging commission under fixed rate such rule being made for benefit of board binding only on its members; Barnes v. Chicago Typographical Union No. 16, 232 Ill. 436, 14 L.R.A.(N.S.) 1024, 83 N. E. 940, 13 Ann. Cas. 54, holding union liable for establishing pickets who hinder plaintiff's business by diverting trade and procure his employee to quit even though done only by persuasion; Karges Furniture Co. v. Amalgamated Woodworkers Local Union No. 131, 165 Ind. 428, 2 L.R.A.(N.S.) 794, 75 N. E. 877, 6 Ann. Cas. 829, holding that a preconcerted agreement for a body of employees to quit work peacefully and to use no intimidation to gain their end is not a conspiracy even though they know that employer would be injured; Berry v. Donovan, 188 Mass. 357, 5 L.R.A.(N.S.) 903, 108 Am. St. Rep. 499, 74 N. E. 603, 3 Ann. Cas. 738, holding that a contract between employer and union does not justify the discharge of a nonunion workman simply because the union objects to him; Carter v. Oster, 134 Mo. App. 154, 112 S. W. 995, on conspiracy by workmen to procure discharge of a nonunion fellow workman; Booth v. Burgess, 72 N. J. Eq. 185, 65 Atl. 226, sustaining an injunction against union causing employees of boss carpenters to strike if such boss carpenters used materials from complainant's open shop, where strike was caused by coercion; Mills v. United States Printing Co. 99 App. Div. 614, 91 N. Y. Supp. 185, holding that an agreement between a printer and printers association, that only members of association be employed is not unlawful though plaintiff be discharged thereunder, where agreement is made for benefit of association; McCord v. Thompson-Starrett Co. 129 App. Div. 131, 113 N. Y. Supp. 385, holding that an order, the act of an employer's association comprising practically all the employers of that class in the locality, prohibiting its members from employing or retaining nonunion men is void as against public policy; Locker v. American Tobacco Co. 121 App. Div. 453, 106 N. Y. Supp. 115; Brennan v. United Hatters N. A. Local No. 17, 73 N. J. L. 738, 9 L.R.A.(N.S.) 258, 118 Am. St. Rep. 727, 65 Atl. 165,—on the validity of agreements between unions and employers establishing conditions under which men may be employed or maintained in service; Jacobs v. Cohen, 99 App. Div. 483, 90 N. Y. Supp. 854, holding unlawful a contract between employer and labor union under which only union men in good standing were to be employed; City Trust, S. D. & Surety Co. v. Waldhauer, 47 Misc. 14, 95 N. Y. Supp. 222, holding an association to procure, arbitration of labor questions for its members lawful and upholding an order on its members not to employ workmen until they had signed arbitration agreement; Jacobs v. Cohen, 183 N. Y. 210, 2 L.R.A.(N.S.) 294, 111 Am. St. Rep. 730, 76 N. E. 5, 5 Ann. Cas. 280, upholding a voluntary agreement between employer and labor union that employer only employ union labor for a specified period and that the union supply such labor; Butterick Pub. Co. v. Typographical Union No. 6, 50 Misc. 11, 100 N. Y. Supp. 292, on malice as

rendering acts unlawful which in the absence of such malice are lawful of themselves; People v. Klaw, 55 Misc. 83, 106 N. Y. Supp. 341, harmonizing cited case with later case in same court on the validity of acts of labor union's refusal to allow its men to work with members of a rival organization where such action is based on a proper motive; Erdman v. Mitchell, 10 Pa. Dist. R. 710, holding a combination to coerce working men to become members of such combination by interfering with their work or preventing them from obtaining work is unlawful; Purvis v. Local No. 500, United Brotherhood, C. & J., 214 Pa. 360, 12 L.R.A.(N.S.) 651, 112 Am. St. Rep. 757, 63 Atl. 585, 6 Ann. Cas. 275, denying the right of labor unions to use coercive methods to compel employment of union men only and to acquire an unfair control over employer's business; National Fireproofing Co. v. Mason Builders Asso. 26 L.R.A.(N.S.) 157, 94 C. C. A. 535, 169 Fed. 267, Affirming 145 Fed. 263, holding that an agreement between a bricklayers union and a building association that the building contractors do not sublet the interior brickwork and fireproofing, is valid since made with intent to protect brick layers and not to injure fire proofing company; Allis-Chalmers Co. v. Iron Molders' Union No. 125, 150 Fed. 179, holding that the maintenance of pickets after repeated acts of violence causing injury to plaintiff constitutes a conspiracy to maliciously injure such plaintiff; Gibbins v. Metcalfe, 15 Manitoba L. Rep. 574, holding that an agreement among members of board of trade to refrain from dealings with plaintiff a member, for their own interest not unlawful where they did not attempt coercion or induce others to boycott him.

Cited in notes (64 L.R.A. 94) on liability for damage to business by injuring tangible property of other party; (2 L.R.A.(N.S.) 293) on validity of contract to employ union labor only.

Distinguished in Master Horseshoers' Protective Asso. v. Quinlivan, 83 App. Div. 466, 82 N. Y. Supp. 288 (dissenting opinion), majority sustaining right of horseshoer's association to restrain acts of intimidation or violence against members by members of another association, notwithstanding individual rights of action; Collins v. American News Co. 34 Misc. 264, 69 N. Y. Supp. 638, sustaining right of publisher's association to refuse to supply newsdealer.

Cited as overruled in Foster v. Retail Clerks' International Protective Asso. 39 Misc. 58, 78 N. Y. Supp. 860, refusing to enjoin "picketing" of store by peaceable means by sympathizers of labor union.

Agreements restrictive of freedom of contract.

Cited in Roseneau v. Empire Circuit Co. 131 App. Div. 441, 115 N. Y. Supp. 511; People ex rel. John Single Paper Co. v. Edgcomb, 112 App. Div. 606, 98 N. Y. Supp. 965,—on the invalidity of restrictions to the freedom of contract.

Action against trade union.

Cited in notes (2 L.R.A.(N.S.) 789) on right of action against unincorporated trade union; (1 Brit. Rul. Cas. 855) on manner of bringing suit against unincorporated trade union.

37 L. R. A. 805, REICH v. COCHRAN, 151 N. Y. 122, 56 Am. St. Rep. 607, 45 N. E. 367.

Motion for reargument denied in 151 N. Y. 669, 46 N. E. 1151.

Judgment subsequently set aside in 41 Misc. 633, 85 N. Y. Supp. 247, in order to allow defense of usury.

Res judicata.

Cited in McCotter v. Flinn, 30 Misc. 120, 61 N. Y. Supp. 786, and Mutual Reserve Fund Life Asso. v. Cordero, 33 Misc. 387, 67 N. Y. Supp. 464, holding

in action for rent, judgment by default in summary proceedings conclusive proof of tenancy and occupation; Bernstein v. Heinemann, 23 Misc. 466, 51 N. Y. Supp. 467, holding that final order in summary proceedings conclusively establishes allegation as to party liable on lease; Mulligan v. Cox, 23 Misc. 696, 52 N. Y. Supp. 111, holding that final order in summary proceedings precludes tenant from setting up existing defense in subsequent proceedings; Cochran v. Reich, 20 Misc. 625, 46 N. Y. Supp. 443, holding that final order in summary proceedings bars defense that lease void for usury in subsequent proceedings; Jacob v. Thompson, 73 App. Div. 226, 76 N. Y. Supp. 802, holding that landlord's judgment in summary proceedings bars action to rescind or reform lease; Woods v. Garcewich, 67 App. Div. 57, 73 N. Y. Supp. 472, holding that judgment in summary proceedings defended on ground that assignment of lease to plaintiff fraudulent as to creditors, bar of action to set aside assignment; Crompton & K. Loom Works v. Brown, 28 Misc. 514, 59 N. Y. Supp. 556, holding that default judgment on first of series of notes estops maker from setting up in subsequent actions defenses interposable in first; Everitt v. New York Engraving & Printing Co. 20 Misc. 551, 46 N. Y. Supp. 434, holding judgment in former action for instalment due, conclusive as to validity of contract; Davidson v. Weed, 20 Misc. 148, 45 N. Y. Supp. 718, holding defense of usury barred by judgment in action to set aside mortgage on other grounds; Fritz v. Tompkins, 39 App. Div. 77, 56 N. Y. Supp. 847, holding that judgment in trespass action bars defendant's action for obstructing right of way on same premises; Lawton v. Hudson, 19 App. Div. 527, 46 N. Y. Supp. 617, holding that judgment in action to recover chattels seized under mortgage bars action to have mortgage declared usurious or satisfied by tender; Malone v. Weill, 67 App. Div. 171, 73 N. Y. Supp. 700, holding that judgment in action for accounting bars action for taking articles under chattel mortgage; Brawner v. Fahy, 64 App. Div. 124, 71 N. Y. Supp. 834, holding that judgment in replevin not determining value of property bars subsequent action for value; Boyd v. Boyd, 26 Misc. 686, 56 N. Y. Supp. 760, holding that judgment in action to set aside certificate of redemption and deed bars action to establish equitable title; Weiser v. Kling, 38 App. Div. 271, 57 N. Y. Supp. 48, holding that judgment in creditor's action to set aside fraudulent conveyance bars grantee's action to re-establish mortgage paid; Bartholomay Brewing Co. v. Haley, 16 App. Div. 488, 44 N. Y. Supp. 915, holding that judgment in action for damages for breach of warranty bars action for price of goods; Barber v. Kendall, 158 N. Y. 406, 53 N. E. 1, holding that judgment for specific performance bars action to rescind contract for fraud; Earle v. Earle, 173 N. Y. 487, 66 N. E. 398, holding judgment obtained by residuary legatee against testamentary trustees for neglect of duty no bar to similar action by another made defendant in first action; Paget v. Melcher, 42 App. Div. 82, 58 N. Y. Supp. 913, holding that judgment determining that *cestui que trust* had no real estate other than allotted to trustee in partition action clears title of cotentants; Richmond v. Freemans Nat. Bank, 86 App. Div. 157, 83 N. Y. Supp. 632, holding decree in proceeding by creditors of insolvent testator to sell mill property binding upon bank, not party thereto, given mortgage by devisee to secure debt of testator; Willis v. McKinnon, 37 Misc. 389, 75 N. Y. Supp. 770, holding that former adjudication must be pleaded to be available; Reich v. Cochran, 201 N. Y. 452, 94 N. E. 1080, 2 N. Y. Civ. Proc. Rep. N. S. 152, to the point that final order in summary proceedings was res judicata and bar to action subsequently brought to cancel lease on ground that it was intended as mortgage and was usurious; Mouquin v. Hergehan, 138 App. Div. 56, 122 N. Y. Supp. 858, holding that final order in sum-

mary proceedings taken against tenant for want of appearance is res judicata: Willis v. McKinnon, 37 Misc. 389, 75 N. Y. Supp. 770, holding that former adjudication is not available unless pleaded; Jacob v. Thompson, 73 App. Div. 226, 76 N. Y. Supp. 802, holding that judgment by which tenant was dispossessed was conclusive as to validity of lease, and that rent was due, in action by landlord to recover rent; Malon v. Weill, 67 App. Div. 171, 73 N. Y. Supp. 700, holding that whatever is necessarily implied in former decision is for purpose of estoppel, deemed to have been actually decided; Shimer v. Ronk, 139 App. Div. 139, 123 N. Y. Supp. 479, to the point that judgment in summary proceeding dispossessing tenant for nonpayment of rent is conclusive between parties as to matters that might have been litigated; Bischoff v. Packard, 144 App. Div. 408, 129 N. Y. Supp. 238, holding that judgment obtained without fraud or collusion is conclusive between parties as to all matters which were or might have been litigated; Reich v. Cochran, 105 App. Div. 550, 94 N. Y. Supp. 404, on stipulation of party to suit admitting rendition of a judgment in summary proceedings as precluding such party from attacking validity of such judgment; Meyerhoffer v. Baker, 121 App. Div. 798, 106 N. Y. Supp. 718, Reversing 51 Misc. 599, 101 N. Y. Supp. 24, holding judgment by default in summary proceedings to dispossess tenant for nonpayment of rent is as conclusive as to the questions involved as if judgment was rendered after defense and litigation; Prince v. Schesinger, 116 App. Div. 502, 101 N. Y. Supp. 1031, holding judgment by default in summary proceedings for nonpayment of rent by bank and by its receiver against such receiver is conclusive as to the amount unpaid by bank as well as that unpaid by receiver; Matthews v. Carman, 122 App. Div. 584, 107 N. Y. Supp. 694, refusing to enjoin use of order in summary proceedings, as evidence in a law action where the order is void for jurisdictional defects and may be attacked where offered; Von der Born v. Schultz, 111 App. Div. 265, 97 N. Y. Supp. 738, holding an order directing removal of tenant for nonpayment of rent in statutory proceedings for removal for nonpayment is conclusive evidence that tenant owed for rent; Pennsylvania Steel Co. v. Title Guarantee & T. Co. 50 Misc. 57, 100 N. Y. Supp. 299, holding decree foreclosing second mortgage was no bar except as to right to foreclose, as to lien or for materials filed after lis pendens of the foreclosure suit went on; Tyler v. Standard Wine Co. 52 Misc. 376, 102 N. Y. Supp. 65, holding that an action on a quantum meruit for balance due for services rendered and an action for recovery of the partial payment on grounds of nonperformance are not identical and the pendency of one is not a bar to the other though a judgment in one would be conclusive in the other on matter involved in both; Thorn v. De Breteuil, 179 N. Y. 82, 71 N. E. 470, holding that a will construction judgment authorizing operation and accumulation of profits of estate is a bar to an action by beneficiary to maintain that the operation and accumulation is void and to have a distribution of the principal; Peabody v. Long Acre Square Bldg. Co. 188 N. Y. 108, 80 N. E. 657, holding that judgment against tenant should be based only on defaults from which tenant has failed to relieve himself of in order that conclusiveness of such judgment in other actions be not unfair to tenant.

Cited in note (112 Am. St. Rep. 34) on effect of judgment against tenant as res judicata.

Distinguished in Stokes v. Foote, 172 N. Y. 345, 65 N. E. 176, holding decision in equity suit upon point not necessarily involved not conclusive upon parties in subsequent action; Thorn v. de Breteuil, 86 App. Div. 427, 83 N. Y. Supp. 849,

denying conclusiveness upon parties to subsequent action, of question not raised or directly determined in former judgments, although involved therein.

Summary proceedings.

Cited in *Re* McCormick, 30 Misc. 287, 63 N. Y. Supp. 492, holding that doweress assuming to lease to tenant in common cannot maintain summary proceedings; Simon v. Schmitt, 137 App. Div. 628, 122 N. Y. Supp. 421, holding that in summary proceedings it may be shown that relation of landlord and tenant does not exist, and that what is claimed to be lease is mortgage and is usurious.

Denial of relation of landlord and tenant by tenant.

Cited in Kibbe v. Crossman, 139 App. Div. 341, 124 N. Y. Supp. 3, holding that tenant may show that since execution of lease he acquired title superior to that of landlord or has acquired landlord's title; Drake v. Cunningham, 127 App. Div. 81, 111 N. Y. Supp. 199, holding that tenant may show in summary proceedings by landlord that property leased to him is claimed by others as heirs and that plaintiff is not the landlord.

Cited in note (89 Am. St. Rep. 68) on estoppel to deny landlord's title.

What defenses considered on appeal.

Cited in Dr. David Kennedy Corp. v. Kennedy, 165 N. Y. 362, 59 N. E. 133, holding that defense not pleaded or raised on trial cannot be presented on appeal; Marlatte v. Weickgenant, 147 Mich. 274, 110 N. W. 1061 (dissenting opinion), on refusal to consider on appeal, defenses not presented to trial court; National Soc. U. S. D. v. American Surety Co. 56 Misc. 628, 107 N. Y. Supp. 820, holding that after trial on a certain theory objection for the first time on appeal that there was error in adopting the theory will not be heard; Reich v. Cochran, 105 App. Div. 551, 94 N. Y. Supp. 404, on refusing on appeal to consider questions not raised on trial.

37 L. R. A. 809, CHITTENDEN v. WURSTER, 152 N. Y. 345, 46 N. E. 857.

Motion for reargument denied in 153 N. Y. 664, 47 N. E. 273.

Self-executing constitutional provisions.

Cited in State v. Bradford, 12 S. D. 216, 80 N. W. 143, holding constitutional provision for conducting sale of intoxicants by state agents under legislative regulation not self-executing; People *ex rel.* Eldred v. Palmer, 21 App. Div. 107, 47 N. Y. Supp. 403, holding constitutional provision fixing term of office at two or four years, as legislature may direct, self-executing; People ex rel. Qua v. Gaffney, 142 App. Div. 126, 126 N. Y. Supp. 1027 (dissenting opinion), on provisions of constitution relating to appointment and examination of certain village officers as not self-executing.

Constitutionality of civil service laws.

Cited in People *ex rel.* Akin v. Kipley, 171 Ill. 64, 41 L. R. A. 782, footnote p. 775, 49 N. E. 229, sustaining Illinois civil service law, but holding void ordinance attempting to change certain subordinate officers to exempt class.

Cited in note (79 Am. St. Rep. 560) on constitutionality of civil service laws.

Distinguished in People *ex rel.* Balcom v. Mosher, 163 N. Y. 43, 79 Am. St. Rep. 552, 57 N. E. 88, Affirming 45 App. Div. 83, 61 N. Y. Supp. 452, holding that statute requiring appointment of person highest in competitive examinations invades constitutional right of local authorities to appoint city officers.

Effect of adoption of constitution on civil service statutes.

Cited in People *ex rel.* Sweet v. Lyman, 157 N. Y. 374, 52 N. E. 132, holding civil service statute providing for probationary appointment as test of fitness not repealed by adoption of Constitution; People *ex rel.* Sweet v. Lyman, 30 App. Div. 144, 50 N. Y. Supp. 444 (dissenting opinion), majority holding appointing power may decline, without hearing, to make probationary appointment of veteran absolute.

Positions not subject to civil service regulation.

Cited in People *ex rel.* Cochrane v. Tracy, 35 App. Div. 269, 54 N. Y. Supp. 1070, holding office of assistant overseer of poor not within civil service statutes; Rowley v. Rochester, 34 Misc. 292, 69 N. Y. Supp. 160, holding clerk handling money for which city treasurer personally responsible exempt from civil service examination; Blust v. Collier, 62 App. Div. 483, 70 N. Y. Supp. 774, holding deputy sheriff and turnkey exempt from civil service examination; Shaughnessy v. Fornes, 73 App. Div. 467, 77 N. Y. Supp. 223, holding that assistant sergeant-at-arms of board of aldermen occupies confidential relation; People *ex rel.* Letts v. Collier, 78 App. Div. 623, 79 N. Y. Supp. 671, holding comparer, sealer, and financial man in register's office, confidential positions; People *ex rel.* Sweet v. Lyman, 157 N. Y. 381, 52 N. E. 132, holding position of special agent in excise department not within statute promoting appointment of veterans; People *ex rel.* Breckenridge v. Scannell, 25 Misc. 623, 56 N. Y. Supp. 117, holding that officer engaged in investigating origin of fires occupies confidential position within veteran's acts; People *ex rel.* Flood v. Gardiner, 157 N. Y. 527, 52 N. E. 564, Reversing 33 App. Div. 208, 53 N. Y. Supp. 451, holding office of subpœna server in district attorney's office not within act restricting removal of veterans from public service; People *ex rel.* Tate v. Dalton, 24 Misc. 11, 53 N. Y. Supp. 108, holding water registrar of city not protected by veteran's acts; People *ex rel.* Langdon v. Dalton, 49 App. Div. 74, 63 N. Y. Supp. 258, holding position of stream cleaner, performing ordinary manual labor, not subject of competitive examination; People *ex rel.* Sears v. Tobey, 153 N. Y. 391, 47 N. E. 800 (dissenting opinion), majority holding office of clerk of police court, whose duties indicated by city charter, subject to civil service regulations.

Basis of civil service classification.

Cited in Lowell v. People, 229 Ill. 63, 82 N. E. 226, comparing Chicago civil service to that of New York on basis of classification; People ex rel. Corkill v. McAdoo, 113 App. Div. 772, 99 N. Y. Supp. 324, on classification of positions for examination according to practicability based on confidential character of duties.

Necessity for examinations in civil service.

Cited in People *ex rel.* Drake v. Knauber, 43 App. Div. 346, 60 N. Y. Supp. 298, holding principle of competitive examination can not be contravened by doubling rating on examination determining merit only.

Effect of civil service classification.

Cited in *Re* Sugden, 174 N. Y. 97, 66 N. E. 655, holding appointment as detective sergeant without competitive examination not required by existing classification, valid; People *ex rel.* Terry v. Keller, 158 N. Y. 196, 52 N. E. 1107 (distinguished in dissenting opinion), holding change of office from competitive to noncompetitive class renders incumbent subject to removal without hearing.

Court's power to determine validity of civil service classification.

Cited in People *ex rel.* Chamberlain v. Knox, 45 App. Div. 520, 61 N. Y. Supp. 469, holding where nature of duties apparent, practicability of competitive ex-

amination of applicant for civil service position question for court; Weeks v. Kraft, 147 App. Div. 409, 132 N. Y. Supp. 228, holding that change in classification of transfer tax appraisers made by civil service commissioners will not be interfered with by court by injunction, until approved by governor; People ex rel. Birmingham v. Grout, 45 Misc. 54, 90 N. Y. Supp. 861, holding that authorization of appointment to position in competitive class by commission is not a protection to person appointing where the authorization was not a judicial or quasi judicial act.

Distinguished in People ex rel. Schau v. McWilliams, 185 N. Y. 95, 77 N. E. 785, holding certiorari does not lie to review act of civil service commission in classing battalion chief of fire department with competitive examination list though involving exercise of judgment.

— Who may question.

Cited in People ex rel. Schau v. Whittet, 100 App. Div. 184, 91 N. Y. Supp. 675, held that a battalion chief appointed without competitive examination has such an interest in the premises as to entitle him to certiorari to review the placing of such office in the competitive list where in the absence of such placing he would be eligible to appointment.

Mandamus to enforce civil service law.

Cited in People *ex rel.* Akin v. Kraus, 171 Ill. 132, 48 N. E. 1052, holding that mandamus lies to compel civil service commissioners to make classification judicially determined correct; People *ex rel.* Sims v. Collier, 175 N. Y. 203, 67 N. E. 309, holding that mandamus will not lie to review action of state civil service commissioners in placing certain employees in competitive class; Re Simons, 145 App. Div. 473, 130 N. Y. Supp. 306, holding that mandamus lies to review determination of state civil service commission in classifying in exempt or competitive class; People ex rel. Coit v. Wheeler, 56 Misc. 291, 106 N. Y. Supp. 450, holding mandamus lies to review classification made by civil service commission and therefore to remove office of register of city water bureau from competitive class where placed by such commission.

Impeaching discretionary act of public officer.

Cited in Gleason v. Dalton, 23 Misc. 20, 50 N. Y. Supp. 90, holding proof of fraud or breach of official trust required to impeach exercise of discretion by public officer.

Judicial review of executive acts.

Cited in People *ex rel.* Howe v. Conway, 59 App. Div. 331, 69 N. Y. Supp. 837, holding removal of school commissioner by mayor not reviewable by certiorari; Cook v. Civil Service Commission, 160 Cal. 597, 117 Pac. 663, holding that certiorari does not lie to review determination of civil service commission as to percentages attained by candidates for promotion in fire department.

Citizen's right to enforce performance of public duty.

Cited in People *ex rel.* Pumpyansky v. Keating, 168 N. Y. 393, 61 N. E. 637, Affirming on this point 62 App. Div. 350, 71 N. Y. Supp. 97, holding citizen may apply for mandamus to compel commissioner of highways to remove obstruction; People *ex rel.* Sherrill v. Guggenheimer, 47 App. Div. 16, 62 N. Y. Supp. 11, holding taxpayers may compel issue of municipal bonds in pursuance of statutory direction; Greene v. Knox, 175 N. Y. 439, 67 N. E. 910, holding that taxpayer's action to restrain payment of salary on ground of invalidity of appointment, will not lie, until appointment is annulled in direct proceeding.

Construction of remedial statutes.

Cited in Feeley v. Wurster, 25 Misc. 548, 54 N. Y. Supp. 1060, holding statute

giving taxpayer right of action against officer for waste of public funds should be liberally construed.

Unauthorized disbursements.

Cited in Annis v. McNulty, 51 Misc. 128, 100 N. Y. Supp. 951, holding payment of claims against town illegal where made before they were examined and allowed by town board in absence of statute giving disbursing officer such authority.

37 L. R. A. 827, SILKMAN v. WATER COMRS. 152 N. Y. 327, 46 N. E. 612.

Water rates as taxes.

Cited in Ricker v. Lancaster, 7 Pa. Super. Ct. 156, 15 Lanc. L. Rev. 172, 42 W. N. C. 163, sustaining city's right to fix water rates for certain classes irrespective of quantity consumed, and for others on basis of quantity; Rankin v. New York, 145 App. Div. 842, 130 N. Y. Supp. 427, holding that charge made by city of New York for water furnished through meter is not tax but contract obligation between city and actual consumer, who is principal debtor and owner of property as surety; Powell v. Duluth, 91 Minn. 59, 97 N. W. 450, distinguishing between water rates and taxes on uniformity requirements; Kleinstein v. Coasky, 134 App. Div. 267, 118 N. Y. Supp. 949, holding rates charged for water supplied through a meter not taxes, such charges being based on amount consumed; Cuba v. Druskin, 135 App. Div. 510, 120 N. Y. Supp. 381, holding that charges for water supplied through a meter are not taxes in any sense but are in nature of indebtedness to city incurred by the user.

Cited in footnote to Ladd v. Boston, 40 L. R. A. 171, which upholds removal of water meter though fixtures so arranged as to cost consumer, after removal, twenty times as much as others pay.

Cited in note (61 L. R. A. 113, 118) on establishment and regulation of municipal water supply.

Water charges as a lien on property.

Cited in New York University v. American Book Co. 197 N. Y. 297, 90 N. E. 819, Affirming 132 App. Div. 738, 117 N. Y. Supp. 387, which affirms 62 Misc. 124, 115 N. Y. Supp. 103, holding that tenant is liable to landlord for payment of meter charges for water consumed by such tenant which in case of nonpayment would become lien on premises.

Right to cut off water for nonpayment of rates.

Cited in Brass v. Rathbone, 153 N. Y. 440, 47 N. E. 905, sustaining right of municipality to cut off water upon consumer's failure to pay special rate for excess of water used; Krumenaker v. Dougherty, 74 App. Div. 455, 77 N. Y. Supp. 467, holding that court cannot enjoin city's exercise of statutory right to cut off water for nonpayment of rates; People *ex rel.* Hammerstein v. Monroe, 41 Misc. 201, 83 N. Y. Supp. 995, denying right of city commissioner to compel payment of whatever amount claimed as cost of shutting off water from consumer not paying rates, before restoring connection.

Reasonableness of regulations imposed for public service.

Cited in People v. Albion Waterworks Co. 140 App. Div. 649, 125 N. Y. Supp. 589, holding that charging for small quantity of water furnished more per gallon than for much larger supply is not of itself, unjust or illegal discrimination: Mansfield v. Humphreys Mfg. Co. 82 Ohio St. 220, 31 L.R.A.(N.S.) 305, 92 N. E. 233, 19 Ann. Cas. 842, holding reasonable, a regulation providing for cutting off water supply for nonpayment of charges and turning on again only on payment of back charges and damages and one dollar additional for

cutting off and resuming the supply: East Grand Forks v. Luck, 97 Minn. 375, 6 L.R.A.(N.S.) 200, 107 N. W. 393, 7 Ann. Cas. 1015, holding regulation charging property owner with cost of electricity supplied to a tenant to be reasonable and valid; Graver v. Edison Electric Illuminating Co. 126 App. Div. 382, 110 N. Y. Supp. 603 (dissenting opinion), on reasonableness of charging less rate to large consumer of water than that charged to small consumer; Johnson-Kahn Co. v. Thompson, 73 Misc. 111, 130 N. Y. Supp. 216, holding that inhabitants right to water service supplied by city is limited to the right to receive water at reasonable rates without discrimination.

Cited in note (27 L.R.A.(N.S.) 675) on discrimination in rates of water or light company.

37 L. R. A. 830, WHITESELL v. HILL, 101 Iowa, 629, 70 N. W. 750.

Degree of care and skill required from physician.

Followed in Decatur v. Simpson, 115 Iowa, 352, 88 N. W. 839, Dunbauld v. Thompson, 109 Iowa, 203, 80 N. W. 324; Baker v. Hancock, 29 Ind. App. 460, 63 N. E. 323, referring particularly to annotation in 37 L. R. A. 830; Thomas v. Dabblemont, 31 Ind. App. 150, 67 N. E. 463,—holding physician required to exercise degree of care and skill ordinarily possessed by practitioners in similar localities.

Cited in McClarin v. Grenzfelder, 147 Mo. App. 488, 126 S. W. 817, holding that physician holding himself out as expert, may make use of remedy of comparatively recent origin, without necessarily leaving himself liable for malpractice; Reynolds v. Smith, 148 Iowa, 270, 127 N. W. 192; Hales v. Raines, 146 Mo. App. 241, 130 S. W. 425; Kline v. Nicholson, 151 Iowa, 714, 130 N. W. 722,—holding that physician who uses such reasonable skill as is used by physicians in similar localities is not liable for result of treatment; Hamrick v. Shipp, 169 Ala. 175, 52 So. 932, holding that physician is not required to be infallible in diagnosis or treatment of disease, and fact that disease was different from what it was diagnosed was evidential merely of negligence; Giberson v. Kinard, 25 Lanc. L. Rev. 381, holding that no presumption of negligence can arise from fact that physician failed to effect cure; Dorris v. Warford, 124 Ky. 774, 9 L.R.A.(N.S.) 1092, 100 S. W. 312, 14 Ann. Cas. 602, holding that physician should use care and skill exercised generally by ordinary physicians of similar locality and therefore an instruction calling for exercise of defendants best care and skill is erroneous; Ferrell v. Ellis, 129 Iowa, 615, 105 N. W. 993, holding erroneous an instruction failing to limit skill and care required from physician to that ordinarily possessed by physicians practicing in similar localities; Beadle v. Paine, 46 Or. 430, 80 Pac. 903, on the degree of skill required of physicians as being that possessed by average members of the profession practicing in similar localities; Wohlert v. Seibert, 23 Pa. Super. Ct. 218, holding general practitioner not liable for the wrong diagnosis of an unusual disease treatable only by a specialist where symptoms are very similar to a common disease and defendant gave proper treatment for latter disease; Tyson v. Baizley, 35 Pa. Super. Ct. 322, holding that physician can collect for services though he does not effect a cure, his only obligation being to treat with reasonable care and skill.

Annotation cited in Staloch v. Holm, 100 Minn. 281, 9 L.R.A.(N.S.) 714, 111 N. W. 264, as containing collection of many authorities on liability of physicians for mistakes in practice.

Cited in footnotes to Edwards v. Lamb, 50 L. R. A. 160, which holds physician liable for injury from infectious poison in wound to one voluntarily assisting

in caring for it under physician's assurance that there is no danger; Burk v. Foster, 59 L. R. A. 277, which holds physician liable for failure to exercise proper skill, though result as good as usual; Niven v. Boland, 52 L. R. A. 786, which denies liability of physician for signing in good faith certificate necessary to commit to hospital for dipsomaniacs; Hannon v. Siegel-Cooper Co. 52 L. R. A. 429, which holds department store estopped to deny responsibility for malpractice of dentist; Henslin v. Wheaton, 64 L. R. A. 126, which holds physician using X-rays upon patient bound to exercise ordinary care and prudence required from physicians; Longan v. Weltmer, 64 L. R. A. 969, which holds that to entitle one to recover for negligent treatment by magnetic healer, he must show treatment was of kind not properly given under any circumstances to one in plaintiff's condition; Grainger v. Still, 70 L.R.A. 49, which holds that physician improperly treating incipient hip disease as partial dislocation of joint causing great sickness and suffering to patient and crippling him for life, cannot escape liability on ground that result would have been same from disease alone without his interference.

Cited in notes (12 L.R.A.(N.S.) 752) on duty of physician called to reduce fracture to guard against infection; (15 L.R.A.(N.S.) 418) on proof necessary to discharge burden resting upon plaintiff in malpractice action; (20 L.R.A. (N.S.) 1031) on degree of skill and care required of medical specialist; (93 Am. St. Rep. 661, on liability of physicians and surgeons for negligence and malpractice.

Payment for work done in partial fulfilment of contract.

Cited in Miller v. Mason City & F. D. R. Co. 132 Iowa, 418, 108 N. W. 302, denying right of plaintiff to recover on a quantum meruit for work done on a contract which he failed to perform where no benefit from such work accrued to defendant.

Claim for services as offset against claim of damages for malpractice.

Cited in Vandenberg v. Slagh, 150 Mich. 230, 114 N. W. 72, allowing case to go to jury on question of malpractice made under the pleadings to defeat a claim by physician for services.

Distinguished in Ruth v. McPherson, 150 Mo. App. 702, 131 S. W. 474, holding that in suit for medical services, defendant cannot recover on counterclaim for malpractice, based on special contract with plaintiff, that he was to cure defendant, in absence of proof of such contract.

37 L. R. A. 840, SPRAGUE v. FLETCHER, 69 Vt. 69, 37 Atl. 239.

Infringement of equal privileges by taxation.

Cited in Hughes v. Kelley, 69 Vt. 444, 38 Atl. 91, holding nonresidents, as well as residents, entitled to immunity from taxation on personalty in another state.

Cited in footnote to Nathan v. Spokane County, 65 L.R.A. 337, which holds property liable to taxation under general laws of state not exempt because returned for taxation for same years in another state.

Cited in note (60 L. R. A. 330) on constitutional equality in the United States as to corporate taxation.

Distinguished in State v. Travelers Ins. Co. 73 Conn. 276, 57 L. R. A. 489, footnote p. 481, 47 Atl. 299, sustaining statute imposing tax on market value of nonresident shareholders' stock without deduction of capital invested in land, as in case of resident shareholders; *Re* Johnson, 139 Cal. 537, 96 Am. St. Rep. 161, 73 Pac. 424, sustaining collateral inheritance tax exempting nephews and nieces of testator when residents of state.

37 L. R. A. 845, FIRST NAT. BANK v. BRIGGS, 69 Vt. 12, 60 Am. St. Rep. 922, 37 Atl. 231.

Liability of surety on bank employee's bond.

Cited in footnote to Lieberman v. First Nat. Bank, 48 L. R. A. 514, which denies release of surety on bank teller's bond for unauthorized statements by cashier.

Cited in note (42 L. ed. U. S. 990) on liability of sureties of bank officer.

Liability in bank employe's bond on re-election to position.

Cited in Ida County Sav. Bank v. Seidensticker, 128 Iowa, 61, 111 Am. St. Rep. 189, 102 N. W. 821, 5 Ann. Cas. No. 945, holding bond given by cashier holding position by annual appointment only applicable to defalcations committed during year of bond issue, such bond not being continuing; First Nat. Bank v. Samuelson, 82 Neb. 535, 118 N. W. 81, holding undertaking of sureties on bank president's bond extends for one year only where his position depends on election each year to board of directors and election to presidency by the board; Blades v. Dewey, 136 N. C. 186, 103 Am. St. Rep. 924, 48 S. E. 627, 1 Ann. Cas. 379, holding that where cashier was elected "for one year" and bond fixed and accepted such bond applies only to that one year.

Cited in footnote to First National Bank v. National Surety Co. 66 L.R.A. 777, which holds last surety on bond of bank clerk serving during series of years covered by defendant binds guaranteeing bank against "loss" through his acts not liable for any amount because of falsifying accounts of customer so as to give him fictitious credit where on appropriating deposits of customer made during his term to checks during same term drafts do not exceed deposits.

Cited in note (103 Am. St. Rep. 934, 941) on liability of sureties on official bond after expiration of term of office.

Effect of omission of seals on bond.

Cited in note (90 Am. St. Rep. 195) on relief of sureties from liability by omission of seals on bond.

37 L. R. A. 848, BARTZ v. PAFF, 95 Wis. 95, 69 N. W. 297.

Title to land contracted to be sold.

Cited in Emerson v. Schwindt, 108 Wis. 173, 84 N. W. 186, holding that equity will not compel vendee to accept conveyance from vendor's assignee of land contract while legal title remains in vendor; Rohrer v. Lockery, 136 Wis. 534, 117 N. W. 1060, on respective rights of vendor and vendee in land under contract to be sold.

Enforcement of judgment lien against equitable owner.

Cited in State Bank v. Bienfang, 133 Wis. 439, 113 N. W. 726, holding purchaser in possession by part payment had an equitable title subject to lien but that none could exist where sale of land was wholly executory.

Time of performance of contract to sell land.

Cited in Veum v. Sheeran, 95 Minn. 321, 104 N. W. 135, holding that where contract stipulated that purchase price became due on delivery of good and sufficient deed the purchase price became due within a reasonable time and contract is binding.

Vendor of land as trustee for vendee.

Cited in Foster v. Lowe, 131 Wis. 60, 110 N. W. 829, holding that assignee of vendor in land contract to be void on nonpayment of installments can enforce contract though vendor has quit claimed his interest subsequent to nonpayment.

Specific performance of contract.

Cited in Kipp v. Laun, 146 Wis. 603, 131 N. W. 418, holding that where part

of entire contract relates to personal property and rest, to land, specific performance may be had of whole.

— Effect of uncertainty as to time.

Cited in note (2 L.R.A.(N.S.) 222) on uncertainty as to time as affecting right to specific performance.

37 L. R. A. 853, BELDEN v. HURLBUT, 94 Wis. 562, 69 N. W. 357.

Contracts executed upon parol condition.

Cited in New Home Sewing Mach. Co. v. Simon, 104 Wis. 124, 80 N. W. 71, holding guaranty signed with understanding that it should not be delivered until signed by another, of which guarantee knows, not binding; Rehbein v. Rahr, 109 Wis. 143, 85 N. W. 315, upholding liability as stockholders of bank of signers of certificate of incorporation filed in contravention of understanding; Polacheck v. Moore, 114 Wis. 264, 90 N. W. 175, raising without passing on question whether conditional signer of bond liable to obligee without notice.

Cited in note (45 L. R. A. 340) on conditional execution of contract under parol agreement that it shall not take effect until others have signed it.

37 L. R. A. 856, CHICAGO & N. W. R. CO. v. MILWAUKEE, R. & K. ELECTRIC R. CO. 95 Wis. 561, 60 Am. St. Rep. 136, 70 N. W. 678.

Additional burdens on highway.

Cited in Zehren v. Milwaukee Electric R. & Light Co. 99 Wis. 89, 41 L. R. A. 578, footnote p. 575, 67 Am. St. Rep. 844, 74 N. W. 538, holding electric passenger railroad on country highway additional burden; La Cross City R. Co. v. Higbee, 107 Wis. 393, 51 L. R. A. 926, footnote p. 923, 83 N. W. 701, holding electric street railroad pole in city street not additional burden; Krueger v. Wisconsin Teleph. Co. 106 Wis. 103, 50 L. R. A. 302, 81 N. W. 1041, holding telephone poles additional burden on city street; Manitowoc v. Manitowoc & N. Traction Co. 145 Wis. 22, 140 Am. St. Rep. 1056, 129 N. W. 925, holding that use of city streets by interurban railway is additional burden, and on granting right to make such use of streets city may impose any condition it sees fit; Beloit, D. L. & J. R. Co. v. Macloon, 136 Wis. 224, 116 N. W. 897; Kinsey v. Union Traction Co. 169 Ind. 588, 81 N. E. 922 (dissenting opinion),— on interurban electric railway as constituting an additional burden on streets; Younkin v. Milwaukee Light, Heat & Traction Co. 120 Wis. 483, 98 N. W. 215, holding the running of interurban street cars on tracks of street railway from Milwaukee through Waukesha to be an additional burden on streets of latter city; Abbott v. Milwaukee Light, Heat & Traction Co. 126 Wis. 638, 4 L.R.A. (N.S.) 206, 106 N. W. 523; Gosa v. Milwaukee Light, Heat & Traction Co. 134 Wis. 374, 15 L.R.A.(N.S.) 534, 114 N. W. 815,—holding that the building of an electric interurban railway upon the street was imposing an additional servitude upon the street.

Cited in footnotes to Jaynes v. Omaha Street R. Co. 39 L.R.A. 751, which holds trolley railway additional burden on street; Mordhurst v. Fort Wayne & S. W. Traction Co. 66 L.R.A. 106, which holds operation of interurban railway by electric power upon T rails through city street with authority to carry passengers, baggage, mail, and light express matter running no more than two cars in train not an additional servitude on street.

Cited in notes (4 L.R.A.(N.S.) 203) on interurban trolley road as additional burden; (106 Am. St. Rep. 252, 253, 256) on what are additional servitudes in highways.

Rights of abutter in street.

Cited in Lins v. Seefeld, 126 Wis. 615, 105 N. W. 917; Johnston v. Lonstorf, 128 Wis. 22, 107 N. W. 459,—holding that the owner of a lot bounding a public street takes title to center of such street subject to public easement.

Cited in note (101 Am. St. Rep. 103, 110) on rights, obligations, and remedies of persons over whose land a highway runs.

Abutter's rights with respect to street railway.

Cited in Linden Land Co. v. Milwaukee Electric R. & Light Co. 107 Wis. 512, 83 N. W. 851, holding that statute giving municipalities power to grant use of street to railroads carrying freight and passengers does not affect abutter's right to compensation; Younkin v. Milwaukee Light, Heat & Traction Co. 112 Wis. 20, 87 N. W. 861, sustaining right of abutting owner to enjoin construction of additional track by street railway carrying passengers and freight; Allen v. Clausen, 114 Wis. 249, 90 N. W. 181, holding that abutter may enjoin construction of street railway in front of premises under illegal franchise.

Cited in notes (15 L.R.A.(N.S.) 532) on damages to abutting owner for right to run interurban cars over street railway; (36 L.R.A.(N.S.) 716 on abutter's right to compensation for railroads in streets.

What constitutes railroad.

Cited in Diebold v. Kentucky Traction Co. 25 Ky. L. Rep. 1280, 63 L. R. A. 641, 77 S. W. 674, holding electric railway between cities in different states, trunk railway within constitutional provision; Milwaukee Light, Heat & Traction Co. v. Milwaukee Northern R. Co. 132 Wis. 330, 112 N. W. 663, distinguishing street railways and interurban electric railroads; Aurora v. Elgin, A. & S. Traction Co. 128 Ill. App. 84, holding that a street railway company not being empowered to do a commercial railway business cannot contract with another road to carry baggage and freight through city streets.

37 L. R. A. 862, ENOS v. SANGER, 96 Wis. 150, 65 Am. St. Rep. 38, 70 N. W. 1069.

Contracts for benefit of third persons.

Cited in Stites v. Thompson, 98 Wis. 331, 73 N. W. 774, holding grantee assuming mortgage liable therefor in personal action; Colchester Sav. Bank v. Brown, 75 Conn. 71, 52 Atl. 316, sustaining statute giving mortgagee right of action against grantee and successors of mortgaged premises agreeing in deed to pay mortgage; McKay v. Ward, 20 Utah, 156, 46 L. R. A. 625, 57 Pac. 1024 (criticized in dissenting opinion), holding grantee assuming mortgage personally liable therefor, irrespective of grantor's liability; Lenz v. Chicago & N. W. R. Co. 111 Wis. 206, 86 N. W. 607, holding parties to agreement by grantee to assume grantor's debt presumed to intend to confer right of recovery on creditor; Etscheid v. Baker, 112 Wis. 137, 88 N. W. 52, holding that obligee in bond cannot discharge obligor's liability to pay certain sum to third person; Tweeddale v. Tweeddale, 116 Wis. 524, 61 L. R. A. 511, 96 Am. St. Rep. 1003, 93 N. W. 440, holding that third persons may enforce grantee's promise to pay certain sums to them in consideration of conveyance; Kuhl v. Chicago & N. W. R. Co. 101 Wis. 57, 77 N. W. 155, holding that statute of limitations runs on claim for taking land by railroad from time of vendee's agreement to assume liability; Desmond v. McNamara, 107 Wis. 129, 82 N. W. 701, holding parol evidence inadmissible of grantor's agreement to pay mortgage assumed by grantee; Connor v. Marshfield, 128 Wis. 293, 107 N. W. 639, on the irrevocability of contracts made on consideration for the benefit of third persons.

Cited in note (22 L.R.A.(N.S.) 496) on right of mortgagee to enforce purchaser's promise to pay mortgage where grantor or promisee was not himself liable.

L. R. A. CASES AS AUTHORITIES.

CASES IN 38 L. R. A.

38 L. R. A. 33, PENN MUT. L. INS. CO. v. MECHANICS' SAV. BANK & T. CO. 19 C. C. A. 286, 316, 37 U. S. App. 692, 43 U. S. App. 75, 72 Fed. 413, 73 Fed. 653.

Forfeiture of policy of insurance.

Cited in Nederland L. Ins. Co. v. Meinert, 62 C. C. A. 380, 127 Fed. 654, holding policy not forfeited for nonpayment of premium on day on which it falls due, where policy contains provision allowing thirty days' delay.

Cited in footnote to Phenix Ins. Co. v. Fuller, 40 L. R. A. 408, which holds policy not avoided by encumbrance in absence of inquiries or false representations.

— By misrepresentations.

Cited in Guarantee Co. v. Mechanics' Sav. Bank & T. Co. 26 C. C. A. 164, 47 U. S. App. 91, 80 Fed. 784, holding president's knowledge that cashier had engaged in speculative gambling, but had stopped, not breach of warranty avoiding policy insuring bank against loss through employees; Fidelity Mut. Life Asso. v. Miller, 34 C. C. A. 220, 63 U. S. App. 717, 92 Fed. 72, holding membership in secret beneficial order not within provision requiring applicant to state whether he had ever made application to any "company, association, or society;" Fidelity Mut. Life Asso. v. McDaniel, 25 Ind. App. 614, 57 N. E. 645, holding insured's reply alleging that diseases, undisclosed in application, left no bad effect on constitution insufficient to avoid answer alleging misrepresentation; Continental Fire Ins. Co. v. Whitaker, 112 Tenn. 160, 64 L.R.A. 453, footnote p. 451, 79 S. W. 119, holding fire insurance policy not avoided by misrepresentation as to encumbrances, where applicant made no representations, but statement was inserted by company's agent without former's knowledge; Miller v. Maryland Casualty Co. 113 C. C. A. 267, 193 Fed. 350, holding that whether misrepresentation is material to risk essential to make same available as defense under statute depends upon whether insurer, but for misrepresentation would or would not have made contract; Granger v. Providence-Washington Ins. Co. 192 Fed. 677; holding that where charterers intentionally understated amount of cargo of lumber in bill of lading, which fact was material to risk of insurer's charterers were limited as against insurer's amount stated in bill of lading, if policy was not wholly avoided; Insurance Co. v. Stallings, 110 Tenn. 6, 72 S. W. 960, holding statutes providing against forfeitures for innocent or

immaterial representations apply equally to warranties; Mutual Reserve L. Ins. Co. v. Dobler, 70 C. C. A. 134, 137 Fed. 554, holding non-disclosure of policy in accident insurance company not misrepresentation in application for life insurance to question whether applicant has other insurance; Pacific Mut. L. Ins. Co. v. Van Fleet, 47 Colo. 407, 107 Pac. 1087, on applicant's failure to disclose insurance in mutual benefit association as not misrepresentation when asked if he is insured in any other "company;" Lyon v. United Moderns, 148 Cal. 478, 4 L.R.A.(N.S.) 253, 113 Am. St. Rep. 291, 83 Pac. 804, 7 Ann. Cas. 672, holding "woodmen of the world" not a "company" within meaning of provision requiring applicant to state whether he had been refused insurance in any company; Keiper v. Equitable Life Assur. Soc. 159 Fed. 214, holding misrepresentations immaterial if part were brought to knowledge of the insurer and not followed by an increase in premium while rest were known to another insurer who did not consider that they increased risk; Paulhamus v. Security Life & Annuity Co. 163 Fed. 561, holding misstatement as to ever having been under treatment in hospital immaterial where in same application insured states when and where he was operated on which operation was in fact in hospital; Equitable Life Assur. Soc. v. Keiper, 91 C. C. A. 433, 165 Fed. 601, holding insured's statement that he has never had any but the illnesses incidental to childhood when in truth his life had been dispaired of only five years before during a six weeks' sickness will forfeit policy where no disclosure put company on notice; Provident Sav. Life Assur. Soc. v. Whayne, 131 Ky. 94, 93 S. W. 1049, holding misrepresentations as to amount of insurance carried sufficient to avoid policy where insured carried so much as to render him careless of life.

Cited in footnotes to Globe Mut. L. Ins. Asso. v. Wagner, 52 L.R.A. 649, which holds policy not avoided by false statement that none of applicant's brothers dead; Brignac v. Pacific Mut. L. Ins. Co. 66 L.R.A. 323, which holds policy avoided by misrepresentation in answer as to matter not really material to risk.

Cited in note (55 L. R. A. 123, 129, 130, 138, 139) on forfeiture of life insurance by false representations as to previous application for insurance.

Distinguished in Bruce v. Connecticut Mut. L. Ins. Co. 74 Minn. 318, 77 N. W. 210, holding consultation with medical examiner of fraternal and benefit association, to determine whether life insurable, comprehended within question "Has any opinion ever been sought or consultation had with any person as to whether your life was insurable?"; Royal Neighbors v. Wallace, 66 Neb. 550, 92 N. W. 897, holding materiality of misrepresentations for jury in action on life insurance policy.

— Expert evidence as to materiality of representations.

Cited in New Era Asso. v. Mactavish, 133 Mich. 71, 94 N. W. 599, holding testimony of insurance company's secretary and medical director that in their opinion misrepresentations were materially incompetent.

What is "good health" or "bodily infirmity."

Cited in footnotes to Barnes v. Fidelity Mut. Life Asso. 45 L. R. A. 264, which holds person in bed with cold may be "in good health" within meaning of policy, though pneumonia, terminating fatally, sets in soon after; Black v. Travelers' Ins. Co. 61 L. R. A. 500, which holds injury not "bodily infirmity," as matter of law, unless physical health of insured affected.

Accident policy as within statute applying to other policies.

Cited in footnote to Standard Life & Acci. Ins. Co. v. Carroll, 41 L. R. A.

194, which holds accident insurance policy not within statute as to admissibility of application in life or fire insurance policy.

Mutual benefit society as insurance company.

Cited in Wolfstern v. Pennsylvania R. Voluntary Relief Dept. 76 N. J. Eq. 80, 74 Atl. 533, on law of this state in regard to character of business of relief department of railroad; Mutual L. Ins. Co. v. Mullan, 107 Md. 461, 69 Atl. 385, on nonapplicability of ordinary rules of life insurance to mutual benefit associations; Peterson v. Manhattan L. Ins. Co. 244 Ill. 339, 91 N. E. 466, 18 Ann. Cas. 96, holding that term "insurance company" does not include fraternal benefit societies.

Cited in notes (4 L.R.A.(N.S.) 249) on previous rejection by benefit association as declination or refusal of insurance within meaning of application for life insurance; (32 L.R.A.(N.S.) 461) on character of insurance or company covered by question in application as to other insurance or previous rejection.

Admissibility of evidence of custom.

Cited in Louis v. Connecticut Mut. L. Ins. Co. 58 App. Div. 142, 68 N. Y. Supp. 683, holding evidence of life insurance company's custom in refusing to issue policies to persons previously attempting to commit suicide, when fact known, incompetent.

Sufficiency of pleadings.

Cited in Brady v. Evans, 24 C. C. A. 238, 47 U. S. App. 416, 78 Fed. 560, holding pleading alleging that petitioner was induced to remain depositor by directors' statement as to bank's solvency, demurrable.

License of insurance on assessment plan.

Cited in footnote to State *ex rel.* National Life Asso. v. Matthews, 40 L. R. A. 418, which authorizes licensing of insurance on the assessment plan for sole benefit of policy holders.

Forfeiture of insurance company's charter.

Cited in footnote to International Fraternal Alliance v. State, 40 L. R. A. 187, which holds charter of insurance company forfeited by attempting to issue policy for excessive amount.

Conflict of laws as to insurance.

Cited in Russell v. Grigsby, 94 C. C. A. 61, 168 Fed. 580, holding validity of assignment of insurance policy governed by law of state where assignment is made although construction of policy is governed by law of state where issued; Nederland L. Ins. Co. v. Meinert, 62 C. C. A. 377, 127 Fed. 654, holding where contract of insurance expressly stipulates that it shall be governed by the law of company's home state company will not be heard to claim that stipulation is too vague.

Cited in notes (63 L.R.A. 864) on conflict of laws as to contracts of insurance; (55 Am. St. Rep. 51, 53) on place of contract of insurance; (104 Am. St. Rep. 487) on conflict of laws as to nonforfeiture of insurance policy.

Evidence of other similar acts.

Cited in United States v. Milwaukee Refrigerator Transit Co. 142 Fed. 257, holding in action to enjoin taking of rebates evidence of unconnected but similar acceptance of rebates and concessions permissible; Exchange Bank v. Moss, 79 C. C. A. 278, 149 Fed. 344, holding in an action to recover money obtained by conspiracy evidence of similar conspiracies is admissible to establish guilty intent whether committed before or after transaction at issue; Prettyman v. United States, 103 C. C. A. 384, 180 Fed. 36, holding in criminal action for misappropriation of funds evidence of acts of misappropriations other than

those complained of is admissible to show intent; Com. v. Valverdi, 218 Pa. 10, 66 Atl. 877, 32 Pa. Super. Ct. 245, holding evidence that defendant procured names of large number of unnaturalized persons on poll lists admissible in action charging illegal registration of nonresident voters.

Validity of insurance statutes.

Cited in State L. Ins. Co. v. Westcott, 166 Ala. 197, 52 So. 344, to the point that statutes regulating insurance business are remedial in their nature and constitutional.

Cited in footnote to Continental F. Ins. Co. v. Whitaker, 64 L.R.A. 451, which upholds statute imposing penalty on fire insurance company for refusal in bad faith to pay amount due on policy.

Invalidity of contract in violation of statute.

Cited in Head Camp, W. W. v. Sloss, 49 Colo. 184, 31 L.R.A.(N.S.) 834, 112 Pac. 49, holding that contract provision in violation of express statute announcing public policy of state, is void.

Misrepresentation in bad faith.

Cited in note (7 L.R.A.(N.S.) 648) on misrepresentation in bad faith.

38 L. R. A. 71, LEE v. SOUTHERN P. R. CO. 116 Cal. 97, 58 Am. St. Rep. 147, 47 Pac. 932.

Liability of lessor of public franchise.

Cited in De Lashmutt v. Chicago, B. & &. R. Co. 148 Iowa, 561, 126 N. W. 359, holding that both lessor and lessee of railroad are liable for injury caused by improper construction and maintenance of bridge and may be joined in same action; Little Rock & Ft. S. R. Co. v. Daniels, 68 Ark. 176, 56 S. W. 874, holding that in actions against lessor of railroad to subject road to seizure and sale to satisfy judgment for damages caused by running train, both lessor and lessee should be made parties; Smalley v. Atlanta & C. Air Line R. Co. 73 S. C. 575, 53 S. E. 1000, 6 Ann. Cas. 868, holding railroad liable for injuries caused by negligence of operating road where lessor holds property by virtue of state charter; Hollins v. New Orleans & N. W. R. Co. 119 La. 422, 44 So. 159, holding a railroad company liable for negligence of another company operating its road.

Cited in note (58 Am. St. Rep. 148, 149, 156) on liability of lessor of railroad to third persons.

Distinguished in Moorshead v. United R. Co. 119 Mo. App. 570, 96 S. W. 261, holding lessor of railroad not liable for injuries occasioned passenger through carelessness of crew employed by lessee and over which it had no control; Moorshead v. United R. Co. 203 Mo. 159, 100 S. W. 611, holding lessor not liable for lessee's negligence where statute provides that one street car company may lease all its rights to another; Johnson v. Southern P. R. Co. 154 Cal. 293, 97 Pac. 520, where lessor company failed to bring itself within terms of statute and so could not claim exemption thereunder.

Lessor's liability to servant of lessee.

Cited in McCabe v. Maysville & B. S. R. Co. 112 Ky. 875, 66 S. W. 1054, denying power of railroad corporation to relieve itself from liability for negligence of lessee of road, under provision giving former power to "contract for rebuilding or operation of railroad;" Chicago & G. T. R. Co. v. Hart, 209 Ill. 425, 66 L. R. A. 81, 70 N. E. 654 (dissenting opinion), majority holding lessor railroad company liable to employee of lessee for injury due to allowing switch engine to get out of repair; Swice v. Maysville & B. S. R. Co. 116 Ky. 256, 75

S. W. 278, holding lessor of railroad not liable for injuries to employee of lessee; Illinois C. R. Co. v. Sheegog, 126 Ky. 270, 103 S. W. 323, holding lessor liable to employees of lessee for injuries occasioned by lessee's negligence where lessor holds property under franchise and statute provides that no franchise shall be alienated so as to relieve lessor from liability thereunder.

Cited in footnote to Harden v. North Carolina R. Co. 55 L. R. A. 784, which denies power of lessor of railroad to exempt itself from liability to employees of lessee.

Cited in notes (44 L.R.A. 750, 753, 754) on liability of lessor of railroad for injuries caused by negligence of another company using road under lease, license, or other contract; (92 Am. St. Rep. 502) on liability to third persons of lessors of real or personal property.

Liability to servant of another.

Cited in McCall v. Pacific Mail S. S. Co. 123 Cal. 44, 55 Pac. 706, holding company not liable to servant of stevedore for latent defects in sling furnished.

Cited in notes (46 L.R.A. 90, 91) on right of a servant to recover damages from persons other than his master for injuries received in performance of duties; (98 Am. St. Rep. 309) on liability to servant for injuries due to defective machinery and appliances.

Liability for damages from construction of railroad.

Distinguished in Guinn v. Ohio River R. Co. 46 W. Va. 153, 76 Am. St. Rep. 806, 33 S. E. 87, holding lessee not liable to abutter for damages arising from construction of railroad.

Corporate mortgage.

Cited in Central Trust Co. v. Warren, 58 C. C. A. 293, 121 Fed. 327, holding mortgage by street railway company while solvent, not in violation of Constitution forbidding alienation of franchise to escape liabilities.

38 L. R. A. 74, COHN v. KINGSLEY, 5 Idaho, 416, 49 Pac. 985.

Legislative journals.

Cited in footnotes to Stanly County v. Snuggs, 39 L. R. A. 439, which holds fatal, omission to enter yeas and nays in journal on second and third readings on bill authorizing tax; State *ex rel.* Cheyenne v. Swan, 40 L. R. A. 195, which sustains court's right to examine journals to determine whether alleged statutes passed.

Formal requirements as to passage of statute.

Distinguished in Johnson v. Great Falls, 38 Mont. 372, 99 Pac. 1059, 16 Ann. Cas. 974, holding vote by ayes and nays not necessary upon amendments to bill which had been passed on third reading and sent to senate where it was amended and returned.

Validity of statute.

Cited in State v. Ridenbaugh, 5 Idaho, 715, 51 Pac. 750, refusing to consider validity of faro-game law for lack of jurisdiction, as state had no right to appeal; People *ex rel.* Atty. Gen. v. Alturas County, 6 Idaho, 422, 44 L. R. A. 124, 55 Pac. 1067, refusing to determine validity of passage of act for annexation of county after long acquiescence in its validity.

Construction of Constitution as to residence for voting purposes.

Cited in Powell v. Spackman, 7 Idaho, 709, 54 L. R. A. 384, 65 Pac. 503, holding that inmates of soldiers' home cannot acquire right to vote where institution located, where Constitution provides that "absence while kept at public expense does not change voting residence."

Conclusiveness of enrolled bills.

Cited in Atchison, T. & S. F. R. Co. v. State, 28 Okla. 96, 40 L.R.A.(N.S.) 6, 113 Pac. 921, holding that when enrolled bill has been signed, it is not competent to show from journals that act did not pass in form signed.

Cited in note (40 L.R.A.(N.S.) 9, 11, 19, 20, 35) on conclusiveness of enrolled bill.

38 L. R. A. 93, LOUISVILLE, N. A. & C. R. CO. v. KEEFER, 146 Ind. 21, 58 Am. St. Rep. 348, 44 N. E. 796.

Validity of contracts against carrier's or employer's negligence.

Cited in Pittsburgh, C. C. & St. L. R. Co. v. Mahoney, 148 Ind. 200, 40 L. R. A. 103, 62 Am. St. Rep. 503, 46 N. E. 917, and subsequent appeal in 29 Ind. 656, 63 N. E. 231, sustaining employee's release of express and railroad companies from liability for negligence; Russell v. Pittsburgh, C. C. & St. L. R. Co. 157 Ind. 313, 55 L. R. A. 256, footnote P. 253, 87 Am. St. Rep. 214, 61 N. E. 678, and McDermon v. Southern P. Co. 122 Fed. 672, sustaining sleeping car porter's waiver of right of action against railroad company for negligence; Payne v. Terre Haute & I. R. Co. 157 Ind. 617, 56 L. R. A. 473, 62 N. E. 472, sustaining stipulation in pass releasing carrier from liability for negligence; Blank v. Illinois C. R. Co. 182 Ill. 338, 55 N. E. 332, Affirming 80 Ill. App. 484, and Baltimore & O. S. W. R. Co. v. Voigt, 176 U. S. 516, 44 L. ed. 569, 20 Sup. Ct. Rep. 385, Reversing 79 Fed. 564, sustaining contract exempting railroad company from liability for injury to express messenger; Missouri, K. & T. R. Co. v. Carter, 95 Tex. 477, 68 S. W. 159, holding contract exempting carrier from liability for damage by fire to property in its hands, but not as carrier, not prohibited by statute forbidding limitation of carrier's liability by contract; Illinois C. R. Co. v. J. L. Fulton Co. 108 Ill. App. 238, sustaining contract between railroad company and contractor engaged in constructing walls on right of way, making latter responsible for injuries to his employees; Seaboard Air Line R. Co. v. Main, 132 N. C. 455, 43 S. E. 930, holding that circus company's contract to indemnify carrier for loss due to injuries to latter's employees does not relieve carrier from liability for negligent injury; Dodd v. Central R. Co. 80 N. J. L. 62, 76 Atl. 544, holding that contract by porter in employ of express company releasing company from damages from negligence, released company from liability for injuries incident to employment only; Denver & R. G. R. Co. v. Whan, 39 Colo. 238, 11 L.R.A.(N.S.) 442, 89 Pac. 39, 12 Ann. Cas. 732, holding railroad contract limiting its liability for injuries caused by company's negligence in case of Pullman car employees valid; Chicago, R. I. & P. R. Co. v. Hamler, 215 Ill. 530, 1 L.R.A.(N.S.) 677, 106 Am. St. Rep. 187, 74 N. E. 705, 1 Ann. Cas. 42, holding contract with Pullman company releasing railroad from liability to Pullman porter for negligence a good defense; Cleveland, C. C. & St. L. R. Co. v. Henry, 170 Ind. 99, 83 N. E. 710, holding contract of circus company guarantying indemnity to railroad for losses because of injuries occasioned by railroad's negligence good defense in action by employee of circus for wrongful death; Sager v. Northern P. R. Co. 166 Fed. 531, holding statute making contracts of railroad exempting it from liability to employee for injuries caused by its negligence void, has no application to such a contract by railroad with circus company; Robinson v. St. Johnsbury & L. C. R. Co. 80 Vt. 134, 9 L.R.A.(N.S.) 1257, 66 Atl. 814, 12 Ann. Cas. 1060, holding contract of express company with railroad absolving latter from liability for injury to messengers and contract of messenger releasing such liability were valid and he could not sue railroad; Pittsburgh, C. C. & St. L. R. Co. v. Mahoney,

29 Ind. App. 636, 63 N. E. 231, holding employee of express company bound by its contract and his own releasing railroad from liability for injuries to express employees through railroad's negligence; Kelly v. Malott, 67 C. C. A. 548, 135 Fed. 75, holding contract exempting railroad from liability for negligence where valid applies with equal force to cases of gross negligence.

Cited in footnote to Tarbell v. Rutland R. Co. 56 L. R. A. 656, which holds void, contract by next of kin releasing employer from liability for future injuries to employee.

Cited in notes (11 L.R.A.(N.S.) 433, 437) on contract exempting railroad from liability for negligent injury to sleeping car employees, or others sustaining similar relation; (130 Am. St. Rep. 40) on right of railroad to contract for exemption from liability as against sleeping-car company and its employees; (44 L. ed. U. S. 561) on express messengers as passengers.

Distinguished in Richmond v. Southern P. Co. 41 Or. 56, 57 L. R. A. 617, 93 Am. St. Rep. 694, 67 Pac. 947, holding passenger's agreement, when procuring mileage at reduced rates, to release carrier from liability for negligence, unenforceable; Texas & P. R. Co. v. Fenwick, 34 Tex. Civ. App. 226, 78 S. W. 548, holding contract limiting railroad's liability for injuries because of its negligence void where state constitution provides for common-law liability in case of railroads; Sewell v. Atchison, T. & S. F. R. Co. 78 Kan. 20, 96 Pac. 1007, holding statute making railroad liable for all damage resulting from its negligence defeats defense of contract limiting it's liability to employee of express company; Stone v. Union P. R. Co. 32 Utah, 202, 89 Pac. 715, holding contract releasing railroad from liability for wrongful death void in state where injury occurred under statute making such contract void although entered into another state.

Carrier's right to give exclusive favors.

Cited in Donovan v. Pennsylvania Co. 61 L. R. A. 143, 57 C. C. A. 365, 120 Fed. 218, sustaining right of railroad company to give exclusive right to solicit patronage within its station to one hackman.

Cited in note (62 Am. St. Rep. 519, 525) on relation of express companies and their employees to other carriers.

Contracts of carriers against public policy.

Cited in Kelley v. Grand Trunk Western R. Co. 46 Ind. App. 704, 93 N. E. 616, holding that contracts between circus companies and railroad by which railroad transport circus trains, but without liability for negligence, not contrary to public policy; State ex rel. Goodwine v. Cadwallader, 172 Ind. 640, 87 N. E. 644, holding that an agreement between two connecting telephone exchanges that the connections may be discontinued by either party upon thirty days notice, was not void as an agreement between common carriers and against public policy.

Railroad as private carrier.

Cited in Sante Fe, P. & P. R. Co. v. Grant Bros. Constr. Co. 13 Ariz. 192, 108 Pac. 467, holding that common carrier may become private carrier when as matter of accommodation he undertakes to carry something which it is not his business to carry.

Cited in note (62 Am. St. Rep. 522) on common carrier as private carrier.

38 L. R. A. 97, BOSTON & A. R. CO. v. MERCANTILE TRUST & D. CO. 82 Md. 535, 34 Atl. 778.

Distribution of assets of insolvent corporation.

Cited in Ross v. American Employers' Liability Ins. Co. 56 N. J. Eq. 45, 38

Atl. 22, decreeing dividends to those making claims and recovering judgments against insured before insurer's insolvency and to those injured before insolvency and recovering judgment afterwards; Gilbert v. Washington Beneficial Endowment Asso. 21 App. D. C. 364, holding claim under benefit certificate maturing several years before insolvency of insurance company entitled to priority in distribution of assets.

Cited in footnotes to Lewis v. American Sav. & Loan Asso. 39 L. R. A. 559, which holds resident shareholders and creditors alone entitled to participate in securities deposited by foreign loan association as condition of doing business in state; *Re* Wisconsin Odd Fellows' Mut. L. Ins. Co. 42 L. R. A. 300, which holds claim for death loss arising after assignment for creditors by assessment company not enforceable as debt against assigned property.

Trustee's power of sale.

Cited in Cummings v. Wildman, 116 Md. 313, 81 Atl. 610, holding that section 205 of article 16 of Code of General Laws does not apply only to conveyances creating deed of trust for benefit of creditors, but applies to all deeds creating trusts for sale of property, for any other purpose.

Distinguished in Union Trust Co. v. Ward, 100 Md. 101, 59 Atl. 192, holding sale of real estate by trustee under mortgage deed of trust is invalid where trustee had not filed bond as required by statute in such cases.

Default invoking power of sale.

Cited in Union Trust Co. v. Belvedere Bldg. Co. 105 Md. 521, 66 Atl. 450, holding failure of corporation to pay tax on its capital stock is a default of mortgage on its property which stipulates that mortgage might foreclose on impairment of security.

Set-off in insolvency or bankruptcy cases.

Cited in note (55 L. R. A. 50) on set-off in bankruptcy cases.

Annotation in 38 L. R. A. 97, referred to particularly in Allen v. Thompson, 108 Ky. 480, 56 S. W. 823, holding borrowing member of mutual insurance association not entitled to set off value of life insurance policy against loan from association, when latter becomes insolvent and has no assets except mortuary fund.

Preferences to employees.

Cited in Roberts v. Edie, 85 Md. 186, 36 Atl. 820, holding claims for wages earned three months prior to assignment not preferred when assignment afterwards annulled in proceedings adjudging assignor bankrupt; Hess v. Jewell, 85 Md. 238, 36 Atl. 758, holding employees entitled to preference in payment of wages over creditor obtaining judgment eight days before assignment; Clark v. Renninger, 89 Md. 71, 44 L. R. A. 414, footnote p. 413, 42 Atl. 928, holding one cutting timber by contract not employee within statute providing for receiver of estate of one refusing to pay employees; Latta v. Lonsdale, 52 L. R. A. 480, 47 C. C. A. 2, 107 Fed. 585, holding lawyer employed by railroad company on salary payable monthly, not employee within statute giving preference to payment of wages from assets of insolvent.

Priority and payment of tax.

Cited in State v. Safe Deposit & T. Co. 86 Md. 584, 39 Atl. 523, holding taxes not due cannot be charged against trust estate; Monticello Distilling Co. v. Baltimore, 90 Md. 427, 45 Atl. 210, and Carstairs v. Cochran, 95 Md. 503, 52 Atl. 601, sustaining act requiring custodian of distilled spirits to pay taxes for owner, giving former lien for payments; Shainwald v. First Nat. Bank, 18 Idaho, 295, 109 Pac. 257, holding that where bank pays taxes against shares of stock

owned by stockholders, it must charge amount paid against shares of stock on which payment was made or against present owner.

Distinguished in Parlett v. Dugan, 85 Md. 412, 37 Atl. 36, holding taxes on assigned property which trustee for creditors refuses to take, not entitled to priority of payment from funds in his hands derived from other sources.

Contracts releasing or indemnifying carrier against loss.

Cited in Trenton Pass. R. Co. v. Guarantors Liability Indemnity Co. 60 N. J. L. 254, 44 L. R. A. 216, 37 Atl. 609, sustaining contract to indemnify common carrier against losses resulting from negligence; Kansas City, M. & B. R. Co. v. Southern R. News Co. 151 Mo. 386, 45 L. R. A. 385, 74 Am. St. Rep. 545, 52 S. W. 205, holding contract by which news company indemnifies railroad company against loss due to injury to traveling news agents, valid; South Carolina & G. R. Co. v. Carolina, C. G. & C. R. Co. 93 Fed. 560, upholding contract of connecting railroad company to operate receiver's road, and exempting from liability for negligence; Illinois C. R. Co. v. J. L. Fulton Co. 108 Ill. App. 239, sustaining contract between railroad company and contractor engaged in constructing walls on right of way, making latter responsible for injuries to his servants; Seaboard Air Line R. Co. v. Main, 132 N. C. 457, 43 S. E. 930, holding that circus company's contract to indemnify carrier for loss due to injuries to latter's employees does not relieve carrier from liability for negligent injury; Breeden v. Frankford M. Acci. & Plate Glass Ins. Co. 220 Mo. 347, 119 S. W. 576, on validity of contracts exempting carriers from liability for negligent acts; DeWolff v. Adams Exp. Co. 106 Md. 476, 67 Atl. 1099, holding clause on express receipt limiting liability of company to a certain amount in case of loss by negligence unless shipper expressly declared goods to be of greater value valid.

Fraudulent conveyances.

Cited in Thorp v. Leibrecht, 56 N. J. Eq. 505, 39 Atl. 361, holding conveyance to wife for nominal consideration, two months after judgment for personal injuries and before final judgment, fraudulent.

Construction of statute against usury.

Cited in Commercial Bldg. & L. Asso. v. Mackenzie, 85 Md. 138, 36 Atl. 754, holding statute against usury has no application to loan by foreign corporation on leasehold property so as to invalidate mortgage providing for higher rate.

Creation of trust.

Cited in Ruhe v. Ruhe, 113 Md. 601, 77 Atl. 797, holding that where absolute transfer of property is made to person upon faith of his promise to do certain things, valid trust is thereby created; Coyne v. Supreme Conclave, I. O. H. 106 Md. 56, 66 Atl. 704, 14 Ann. Cas. 870, holding oral agreement of beneficiary to pay funds for maintenance of minor children of a certain person to that person creates a trust in favor of children; Clark v. Callahan, 105 Md. 614, 10 L.R.A. (N.S.) 621, 66 Atl. 618, 12 Ann. Cas. 162, holding agreement of beneficiary and insured whereby in consideration of becoming beneficiary one agrees to share the proceeds with another creates a trust in favor of that other although the agreement is unknown to him and is oral.

Insolvency of insurer.

Cited in Todd v. German American Ins. Co. 2 Ga. App. 797, 59 S. E. 94, on cancelation of policy by insolvency of insurer.

Cited in note (19 L.R.A.(N.S.) 648) on right to return of premiums on adjudication of insolvency of insurer.

Validity of tax on capital stock.

Cited in Corry v. Baltimore, 96 Md. 321, 103 Am. St. Rep. 364, 53 Atl. 942,

holding tax on stock of corporation created by state valid although owned by a nonresident.

Public policy.

Cited in Baltimore Humane Impartial Soc. v. Pierce, 100 Md. 526, 70 L.R.A. 488, 108 Am. St. Rep. 450, 60 Atl. 277, holding a contract whereby the inmate of a home for the aged, agrees that if at any time he become the owner of any property by devise or otherwise, it shall become the property of the home, is unenforceable as against public policy.

Guaranty fund as asset of corporation.

Distinguished in Forte v. Chamberlin, 93 Ark. 118, 124 S. W. 234, holding that indemnity bond given by insurance company under statute is not asset of corporation, and cannot be enforced by receiver.

Termination of trusts by revocation.

Cited in note (100 Am. St. Rep. 105) on termination of trusts by revocation.

Date of insolvency as fixing rights of policyholders.

Cited in Michel v. Southern Ins. Co. 128 La. 568, 54 So. 1010, Ann. Cas. 1912 C, 810, holding that decree enjoining further business by insurance company and appointing receiver works immediate dissolution and fixes rights of all parties as of date of decree.

38 L. R. A. 119, KERR v. URIE, 86 Md. 72, 63 Am. St. Rep. 493, 37 Atl. 789.

Right to compel transfer of stock on corporate books.

Cited in Real Estate Trust Co. v. Bird, 90 Md. 243, 44 Atl. 1048, holding equity will compel corporation to transfer on books, shares of stock and issue certificate.

Effect of apparent ownership of stock.

Cited in Sherwood v. Illinois Trust & Sav. Bank, 195 Ill. 119, 88 Am. St. Rep. 183, 62 N. E. 835, holding party liable as stockholder when qualified ownership not stated on corporate books; Knickerbocker Trust Co. v. Myers, 133 Fed. 770, holding stockholder liable on stock to creditors although he sold stock prior to creation of debt where he fails to have the transfer recorded as required by his certificate.

Cited in note (30 L.R.A.(N.S.) 1093) on personal liability of executor, administrator, or trustee on corporate stock standing in his name.

Married woman as stockholder.

Cited in Christopher v. Norvell, 201 U. S. 227, 50 L. ed. 736, 26 Sup. Ct. Rep 502, 5 Ann. Cas. 740, holding married woman liable for assessment made by comptroller on stock held by her in her name although under local law she is incapable of binding herself by contract.

What law governs.

Cited in Lowndes v. Cooch, 87 Md. 487, 40 L. R. A. 382, 39 Atl. 1045, holding that law of testator's domicil governs lapsing of legacy of stock in bank of state where legatee resides; Aultman & T. Mach. Co. v. Kennedy, 114 Iowa, 446, 89 Am. St. Rep. 373, 87 N. W. 435, holding rights of mortgagee and attaching creditors determined by law of state where property located.

Cited in note (57 L. R. A. 523) on conflict of laws as to capacity of married women to contract.

38 L. R. A. 122, WALLACE v. PIERCE-WALLACE PUB. CO. 101 Iowa, 313, 63 Am. St. Rep. 389, 70 N. W. 216.

Power of court to dissolve corporation.

Cited in Gibson v. Thornton, 107 Ga. 562, 33 S. E. 895, holding power of

court of equity to dissolve corporation and appoint receiver dependent upon statute; Feess v. Mechanics' State Bank, 84 Kan. 835, — L.R.A.(N.S.) —, 115 Pac. 563, holding that in absence of express statutory authority court of equity cannot wind up affairs of corporation at instance of minority stockholder; Platner v. Kirby, 138 Iowa, 266, 115 N. W. 1032, holding where insolvency is not shown equity will not dissolve corporation for internal dissention at behest of minority stockholder although it is controlled by a like company which keeps it closed to stifle competition; Troutman v. Council Bluffs, Street Fair & Carnival Co. 142 Iowa, 145, 120 N. W. 730, holding suit will not lie by stockholder to dissolve corporation for misapplication of funds by directors where appropriation of funds is entirely in discretion of directors and acts complained of are within their authority.

Distinguished in Boothe v. Summit Coal Min. Co. 55 Wash. 175, 104 Pac. 207, holding equity will dissolve corporation where owner of one half of stock by means of subservient trustees excludes owner of other half of stock from all participation in management, and by-laws are such as to prevent him from obtaining relief.

Appointment of receiver.

Cited in Vila v. Grand Island Electric Light, Ice & Cold Storage Co. 68 Neb. 228, 63 L.R.A. 797, 110 Am. St. Rep. 400, 97 N. W. 613, 4 Ann. Cas. 59, holding that receiver cannot be appointed at instance of mere mortgagee for property not covered by his mortgage; Merrifield v. Burrows, 153 Ill. App. 532, holding that court of equity has power to appoint receiver for solvent corporation and will exercise such power where best interests of company will be served thereby; Slover v. Coal Creek Coal Co. 113 Tenn. 436, 68 L.R.A. 858, 106 Am. St. Rep. 851, 82 S. W. 1131, holding equity will not appoint a receiver at behest of one who is suing corporation in an action of tort to secure payment of any judgment that might be rendered in that action.

Cited in footnotes to Vila v. Grand Island E. L. I. & C. S. Co. 63 L.R.A. 791, which denies right to appoint receiver for corporation in an independent action where that is the only relief asked for; Slover v. Coal Creek Coal Co. 68 L.R.A. 852, which holds that equity will not appoint a receiver for assets of a mining corporation at suit of plaintiff in action against it for damages on ground that it is exhausting the mine.

Cited in notes (39 L.R.A.(N.S.) 1033, 1034, 1042) on inherent equity jurisdiction to appoint receiver or wind up corporation because of mismanagement or fraud; (72 Am. St. Rep. 51-57, 59, 60; 118 Am. St. Rep. 199) as to when and at whose instance a receiver of a corporation may be appointed.

38 L. R. A. 128, CARPENTER v. KNAPP, 101 Iowa, 712, 70 N. W. 764.

Beneficiary's interest under insurance certificate.

Cited in Brown v. Iowa L. of H. 107 Iowa, 442, 78 N. W. 73, holding that illegitimate children, as legal heirs, acquire vested interest under insurance certificate upon insured's death; Haerther v. Mohr, 114 Iowa, 637, 87 N. W. 692, holding that provision in policy for payment to beneficiary, executors, or assigns, gives former vested interest; Finnerty v. Supreme Council C. K. of A. 115 Iowa, 401, 88 N. W. 834, holding that beneficiary who is not member has no interest allowing right of appeal to tribunal of association or civil courts until insured's death.

Change of beneficiary.

Cited in Delaney v. Delaney, 175 Ill. 195, 51 N. E. 961, holding that insured may change name of beneficiary in insurance certificate; Waldum v. Homstad, 119

Wis. 319, 96 N. W. 806, sustaining policy issued by benefit society, though change of beneficiary not formally completed before insured's death, but where insured had performed his part and only ministerial act remained to be done by officer; Holden v. Modern Brotherhood, 151 Iowa, 681, 132 N. W. 329, holding that where member had complied with all rules as to change of beneficiary except surrender of original certificate, which was in possession of original beneficiary, change in beneficiary was effected; Brinsmaid v. Iowa State Traveling Men's Asso. 152 Iowa, 137, — L.R.A.(N.S.) —, 132 N. W. 34, holding that will of member of benefit society directing payment of proceeds of certificate to legatee is valid change of beneficiary, where original beneficiary was dead and society had made no rules as to change of beneficiary; Wendell v. Mystic Toilers, 130 Iowa, 643, 105 N. W. 448, holding valid change of beneficiary where before death insured made formal request and which was accepted by local agent although insured died before home office approved change; Grand Lodge A. O. U. W. v. O'Malley, 114 Mo. App. 201, 89 S. W. 68, holding obtaining of a new certificate wherein a different beneficiary is named without destroying the old is a change of beneficiary if in accordance with company's rules; Grand Lodge A. O. U. W. v. McFadden, 213 Mo. 284, 111 S. W. 1172, sustaining recovery of subsequent beneficiary where certificate was never taken from first beneficiary it appearing that insured complied with all rules of company in securing second certificate.

Cited in note (49 L. R. A. 738, 750) on power of insured to destroy rights of beneficiary.

Assignment of benefit certificate.

Cited in Belknap v. Johnston, 114 Iowa, 274, 86 N. W. 267, holding surrender of policy to mutual benefit society for one in favor of creditor not mere assignment; Farmers & T. Bank v. Johnson, 118 Iowa, 286, 91 N. W. 1074, sustaining beneficiary's right to assign her interest in policy on life of father.

Cited in note (87 Am. St. Rep. 498, 500, 515–517) on assignment of life insurance policies.

Amendment of by-laws of benefit society restricting benefits.

Cited in Pain v. Société St. Jean Baptiste, 172 Mass. 323, 70 Am. St. Rep. 287, 52 N. E. 502, holding that amendment to by-laws of beneficiary association, restricting benefits, applies to member under disability at time of adoption.

38 L. R. A. 134, NEW ORLEANS & N. E. R. CO. v. McEWEN, 49 La. Ann. 1184, 22 So. 675.

Liability for unforeseen consequences.

Cited in Fuller v. Atlantic Coast Line R. Co. 140 N. C. 484, 53 S. E. 297, holding it for jury whether railroad could reasonably anticipate horse would catch cold from standing all night in car; Lopes v. Sahuque, 114 La. 1011, 38 So. 810, denying liability of grocer for injury to trespassing child playing on wagon which injury could not have been reasonably foreseen, although wagon stood on street in violation of ordinance; Ford v. Tremont Lumber Co. 123 La. 747, 22 L.R.A.(N.S.) 920, 131 Am. St. Rep. 370, 49 So. 492, holding that the storage of celluloid checks in fireproof vault was not proximate cause of injury to employee by explosion caused by fire within vault.

Cited in footnotes to Osborne v. Van Dyke, 54 L. R. A. 367, which holds one unlawfully beating another liable for injury to bystander by unintentional blow; Cleghorn v. Thompson, 54 L. R. A. 402, which denies liability of both master and servant for accidental shooting of man by servant while lawfully shooting at troublesome dogs; Texas & P. R. Co. v. Carlin, 60 L. R. A. 462, which sus-

tains liability for negligence likely to produce injury, though particular injury not anticipated.

Liability to riparian owner.

Cited in note (41 L. R. A. 496) on liability for injuries to riparian owner by running logs in stream.

38 L. R. A. 140, LAKE SHORE & M. S. R. CO. v. ORNDORFF, 55 Ohio St. 589, 60 Am. St. Rep. 716, 45 N. E. 447.

Ejection of custodian for nonpayment of child's fare.

Cited in Braun v. Northern P. R. Co. 79 Minn. 409, 49 L.R.A. 321, footnote p. 319, 79 Am. St. Rep. 497, 82 N. W. 675, requiring tender to custodian, of fare paid by him before ejecting young child from train, and referring particularly to annotation in 38 L.R.A. 140; Ft. Worth & D. C. Ry. v. Gribble, 36 Tex. Civ. App. 81, 102 S. W. 157,—holding person who refuses to pay fare of her nine year old son not entitled to highest degree of care when ejected.

Cited in note in 31 L.R.A.(N.S.) 995, on sufficiency of tender of child's fare by custodian to prevent ejection.

38 L. R. A. 143, RANDALL v. TUELL, 89 Me. 443, 36 Atl. 910.

Effect on contract or right of recovery of failure to procure license.

Cited in Black v. Security Mut. Life Asso. 95 Me. 37, 54 L. R. A. 940, footnote p. 939, 49 Atl. 51, denying right to commissions of one securing applications for insurance before license, but which was granted before policies issued: Fruin-Colnon Contracting Co. v. Chatterson, 146 Ky. 512, 40 L.R.A.(N.S.) 864, 143 S. W. 6, holding that foreign corporation contracting to pave street without complying with requirements for doing business in state cannot enforce paving assessment.

Cited in footnotes to Smith v. Robertson, 45 L. R. A. 510, which denies right of recovery on contract for services of unlicensed stallion; Denning v. Yount, 50 L. R. A. 103, which denies right of unlicensed brokers to recover commissions; Citizens' State Bank v. Nore, 60 L. R. A. 737, which authorizes recovery by bona fide purchaser of note for medical services by unlicensed practitioner.

Cited in notes (117 Am. St. Rep. 507; 1 L.R.A.(N.S.) 1159; 12 L.R.A.(N.S.) 613, 617) on validity of contract made in business carried on without required license.

38 L. R. A. 145, ROGERS v. BARNES, 169 Mass. 179, 47 N. E. 602.

Validity of sale of encumbered property.

Cited in Lord v. Hartford, 175 Mass. 325, 56 N. E. 609, holding pledgee precluded from buying pledged property.

Cited in footnote to Lundberg v. Davidson, 42 L. R. A. 103, which denies insane mortgagor's right to set aside sale of land in good faith under power in mortgage, or to redeem from same after expiration of statutory period.

Cited in note (92 Am. St. Rep. 597) on sales under powers in mortgages and trust deeds.

Distinguished in Wasserman v. McDonnell, 190 Mass. 329, 76 N. E. 959, holding mortgagor cannot deny validity of foreclosure sale because of improper notice where he assents thereto and treats notice as good.

Default warranting foreclosure.

Cited in Temple v. Phelps, 193 Mass. 301, 79 N. E. 482, holding burden of proof is on mortgagee to prove failure of mortgagor to make payments according to terms of mortgage.

Distinguished in New England Mut. L. Ins. Co. v. Wing, 191 Mass. 195, 77 N. E. 376, holding valid foreclosure sale where mortgagor failed to pay taxes as provided in mortgage.

Damages for wrongful sale of trust property.

Cited in Prondzinski v. Garbutt, 10 N. D. 309, 86 N. W. 969, holding beneficiary not limited to proceeds only from wrongful sale of trust property by trustee, where property cannot be restored.

Suit connected with real property in another state.

Cited in footnote to Schmaltz v. York Mfg. Co. 59 L. R. A. 907, which sustains jurisdiction in equity in one state of suit by citizen to enjoin other citizen removing alleged fixtures from land on which former has mortgage.

Cited in note (26 L.R.A.(N.S.) 940) on jurisdiction of action for damages for breach of contract, or for tort concerning realty in another state or country.

38 L. R. A. 149, CUMMINGS v. PERRY, 169 Mass. 150, 47 N. E. 618.

Reaffirmed on second appeal in 177 Mass. 408, 58 N. E. 1083.

Implied easement.

Cited in Gorton-Pew Fisheries Co. v. Tolman, 210 Mass. 410, 38 L.R.A.(N.S.) 889, 97 N. E. 54, holding that devise of homestead "as it shall be at my decease," the only reasonable means of access to which is way visible on ground, passing through property devised to others, carries easement in way; Jemo v. Tourist Hotel Co. 55 Wash. 599, 30 L.R.A.(N.S.) 929, 104 Pac. 820, 19 Ann. Cas. 1199, holding lease of hotel room for restaurant does not imply right to an entrance into rotunda where room already had entrance onto street; McSweeney v. Com. 185 Mass. 374, 70 N. E. 429, holding purchase of lot does not imply easement in drain used to carry off surface water from land above and some distance from plaintiff's lot; Slack v. Knox, 114 Ill. App. 442, holding renting of room with steam attachment for restaurant purposes creates an easement in use of steam where necessary to conduct the business.

Cited in footnote to Irvine v. McCreary, 49 L. R. A. 417, which holds sale of building creates easement in alley across rear of adjacent lot belonging to grantor.

38 L. R. A. 152, LEAVITT v. CANADIAN P. R. CO. 90 Me. 153, 37 Atl. 886.

Validity of statute relating to peddlers' license.

Cited in State v. Montgomery, 94 Me. 205, 80 Am. St. Rep. 386, 47 Atl. 165, declaring unconstitutional, statute prohibiting issue of peddler's license to alien; State v. Mitchell, 97 Me. 71, 94 Am. St. Rep. 481, 53 Atl. 887, holding statute exempting those who own and pay taxes on stock in trade to amount of $25, from payment of hawkers' and peddlers' license tax, void.

Right of subrogation.

Cited in Lyons v. Boston & L. R. Co. 181 Mass. 556, 64 N. E. 404, holding statute giving railroad company benefit of insurance on property destroyed by company's negligence, valid; Carter v. Tanner's Leather Co. 196 Mass. 170, 12 L.R.A.(N.S.) 969, 81 N. E. 902, holding general creditors cannot compel secured creditor to resort to uncertain security where original debtor could not have compelled him to.

Cited in footnotes to Mason v. Marine Ins. Co. 54 L.R.A. 700, which holds insurer receiving abandonment of vessel injured by collision entitled to recover for loss of prospective earnings recovered; Dyer v. Maine Central R. Co. 67 L.R.A. 416, which holds clause in statute making railroad company liable for losses by fire set out by engines which gives it the benefit of insurance inapplicable to loss due to its own negligence.

Cited in note (99 Am. St. Rep. 486) on right of subrogation.

Distinguished in Dyer v. Maine C. R. Co. 99 Me. 200, 67 L.R.A. 418, 58 Atl. 994, 2 Ann. Cas. 457, sustaining common law liability of railroad in suit by insurance company in name of insured for loss by fire caused from sparks emitted by engines.

Equal protection of law.

Cited in State v. Phillips, 107 Me. 257, 78 Atl. 283, holding that statute is not class legislation simply because it affects one class and not another, where it affects all members of same class alike and classification is founded upon reasonable basis; Corbin v. Houlehan, 100 Me. 260, 70 L.R.A. 574, 61 Atl. 131, holding refusal to allow suit of assumpsit by nonresident for intoxicating liquors sold in violation of statute not a denial of equal protection of the law; State v. Leavitt, 105 Me. 84, 26 L.R.A.(N.S.) 803, 72 Atl. 875, holding statute forbidding taking of claims from Scarboro flats during certain months except by town residents or hotel keepers not denial of equal protection of laws.

Cited in note (129 Am. St. Rep. 253) on constitutional limitations on power to impose license or occupation taxes.

38 L. R. A. 156, HALLYBURTON v. BURKE COUNTY FAIR ASSO. 119 N. C. 526, 26 S. E. 114.

Liability for injury to spectator at public exhibition.

Cited in footnotes to Smith v. Benick, 42 L. R. A. 277, which denies liability of proprietor of public resort for negligence of balloonist, who was an independent contractor; Sebeck v. Plattdeutsche Volksfest Verein, 50 L. R. A. 199, which denies proprietor's liability for injury to spectator at exhibition by explosion of bomb in hands of skilled person; Mastad v. Swedish Brethren, 53 L. R. A. 803, which holds proprietor of place of amusement required to use reasonable care to protect patrons from assaults by one rendered disorderly by liquor sold there.

Cited in notes (1 L.R.A.(N.S.) 427) on negligence of proprietor of place of entertainment, injuring visitor; (3 L.R.A.(N.S.) 1134) on liability of one maintaining place of public amusement for safety of patrons.

Distinguished in O'Callaghan v. Dellwood Park Co. 242 Ill. 348, 26 L.R.A. (N. S.) 1057, 134 Am. St. Rep. 331, 89 N. E. 1005, 17 Ann. Cas. 407, holding that the degree of care required of managers and operators of a scenic railway or other amusement devices at public pleasure parks is analogous to and the same as that of a common carrier.

38 L. R. A. 157, MITCHELL v. NEGAUNEE, 113 Mich. 359, 67 Am. St. Rep. 468, 71 N. W. 646.

Exercise of municipal powers.

Approved in Pioneer Iron Co. v. Negaunee, 116 Mich. 433, 74 N. W. 700, sustaining city's power to assess for city purposes, unimproved lands recently annexed.

Cited in Lewick v. Glazier, 116 Mich. 499, 74 N. W. 717, sustaining contract by village officers for construction of water works with grant of rights in streets; Mayo v. Washington, 122 N. C. 25, 40 L. R. A. 169, 29 S. E. 343 (dissenting opinion), majority holding debt for purchase of electric light plant for municipal purposes not "necessary expense" which may be created without majority vote; Wadsworth v. Concord, 133 N. C. 598, 45 S. E. 948, (concurring opinion), raising, without deciding, question whether act relating to electric light plant authorizes establishment of municipal plant as present "necessary expense;" Atherton v. Essex Junction, 83 Vt. 218, 27 L.R.A.(N.S.) 701, 74 Atl. 1118, Ann. Cas.

1912A, 339, holding property within village limits liable for water and sidewalk tax of village although at very edge of village and which derives neither use or advantage therefrom: Hodgins v. Bay City, 156 Mich. 689, 132 Am. St. Rep. 546, 121 N. W. 274, holding rule exempting city from liability for negligence of members of fire department not applicable to electric lighting department: McArthur v. Cheboygan, 156 Mich. 157, 120 N. W. 575, holding fund raised by city to purchase land for a park must be applied to purchase of land for the purchase of which city has entered into a binding contract and cannot be diverted to city's general fund.

Cited in footnote to Fawcett v. Mt. Airy, 63 L. R. A. 870, which sustains municipality's power to incur expense of owning and operating water and electric light plants without submitting proposition to voters.

Cited in notes (15 L.R.A.(N.S.) 712) on power of municipality to own electric light plant; (27 L.R.A.(N.S.) 696) on municipal taxation of rural lands.

Interference with legislative discretion.

Followed in Pioneer Iron Co. v. Negaunee, 116 Mich. 438, 74 N. W. 700, which holds fixing city limits and taxing districts within legislative discretion which courts refuse to disturb.

38 L. R. A. 161, EVANSVILLE v. MILLER, 146 Ind. 613, 45 N. E. 1054.

Municipal power over, and removal of, nuisances.

Cited in Walker v. Towle, 156 Ind. 642, 53 L. R. A. 751, 59 N. E. 20, denying city's liability for killing dog when running about streets unmuzzled in violation of ordinance; Richmond Safety Gate Co. v. Ashbridge, 116 Fed. 222, enjoining enforcement of ordinance directing removal of entire class of elevator appliances, condemned without inspection; Rushville Natural Gas Co. v. Morristown, 30 Ind. App. 459, 66 N. E. 179, holding ordinance requiring gas company to fulfil its contract as to price of gas, and, in case of refusal, directing marshal to sever connections and exclude company from streets, not declaration within statute that pipes were nuisance; State *ex rel.* Indianapolis v. Indianapolis Union R. Co. 160 Ind. 59, 60 L. R. A. 837, footnote p. 831, 66 N. E. 163, which denies city's power to declare anything a nuisance *per se*, not recognized as such by common law; Cuba v. Mississippi Cotton Oil Co. 150 Ala. 264, 10 L.R.A.(N.S.) 312, 43 So. 706, holding ordinance declaring all buildings used to store cotton seed nuisances void where it does not refer to manner in which business is conducted: Indianapolis v. Miller, 168 Ind. 287, 8 L.R.A.(N.S.) 823, 80 N. E. 626, holding ordinance declaring theatre a nuisance unless all its entrances are on streets and none in alleys void; Richmond Safety Gate Co. v. Philadelphia, 11 Pa. Dist. R. 344, holding ordinance prohibiting without inspection the use of a certain kind of elevator gate is unreasonable; Miller v. Syracuse, 168 Ind. 232, 8 L.R.A.(N.S.) 472, 120 Am. St. Rep. 366, 80 N. E. 411, holding municipality has discretionary power to declare keeping of hogs in pen within city limits a nuisance.

Cited in footnotes to Valparaiso v. Bozarth, 47 L. R. A. 487, which holds notice or request to remove building encroaching on street, unnecessary before action to abate it; Wygant v. McLauchlan, 54 L. R. A. 637, which denies city's power unreasonably to prohibit all interments within city; Mercer County v. Harrodsburg, 56 L. R. A. 583, which authorizes city to enjoin replacing of hitching posts removed as nuisances; Ainsworth v. Lakin, 57 L. R. A. 132, which denies obligation of owner to remove or protect walls left standing after fire, until reasonable time to investigate, Laugel v. Bushnell, 58 L. R. A. 266, which

sustains city's power to denounce conclusively as nuisances, those which are such *per se*, or as to which there may be honest differences of opinion; Bostock v. Sams, 59 L. R. A. 282, which holds unauthorized, ordinance permitting refusal of permits for erecting buildings not conforming in size, appearance, etc., to existing buildings.

Cited in notes (36 L. R. A. 598, 605) on power of municipal corporation to define, prevent, and abate nuisances; (38 L. R. A. 305, 323) on municipal power over nuisances affecting safety, health, and personal comfort; (38 L. R. A. 640) on municipal power over nuisances relating to trade or business; (39 L. R. A. 520) on municipal power as to nuisances affecting public morals, decency, peace, and good order; (39 L. R. A. 551) on municipal control over smoke as public nuisance; (39 L. R. A. 649, 667) on municipal power over nuisances affecting highways and waters; (41 L. R. A. 330) on injunctions by municipalities against nuisances affecting public morals, peace and good order, and health and safety; (42 L. R. A. 814, 825) on injunction by municipalities against nuisances on highways and streets; (21 L.R.A.(N.S.) 455) on power to require removal, or to prohibit repairs, of wooden building within fire limits when damaged by fire; (120 Am. St. Rep. 377) on power of municipality to declare what is a nuisance; (123 Am. St. Rep. 38) on test of validity of municipal ordinance as denying equal protection of the laws.

Annotation in 38 L. R. A. 161, referred to particularly in Coverdale v. Edwards, 155 Ind. 383, 58 N. E. 495, upholding city's right to remove electric light poles as nuisances, after termination of license and notice to remove.

38 L. R. A. 175, LIVINGSTON v. SUPERIOR COURT, 117 Cal. 633, 49 Pac. 836.

Liability for maintenance of relative.

Cited in Paxton v. Paxton, 150 Cal. 671, 89 Pac. 1083, holding equity will compel maintainance of adult invalid by parents; Whittle v. Whittle, 5 Cal. App. 700, 91 Pac. 170, holding wife may use money obtained from joint note of herself and husband for necessities where he has deserted her and left her without means.

Separate suit for maintenance.

Cited in Hagert v. Hagert, — N. D. —, 38 L.R.A.(N.S.) 972, 133 N. W. 1035, holding that separate and equitable action at suit of husband against wife will lie to compel wife to support husband, when amply able to do so.

Cited in notes (38 L.R.A.(N.S.) 954, 957) on power, in absence of statute, to decree alimony or maintenance independently of proceedings for divorce; (77 Am. St. Rep. 240) on wife's right to maintain separate suit for maintenance independent of suit for divorce.

Imprisonment for debt.

Cited in note (17 L.R.A.(N.S.) 1142) on imprisonment for failure to pay alimony as imprisonment for debt.

38 L. R. A. 176, WASSERMANN v. SLOSS, 117 Cal. 425, 59 Am. St. Rep. 209, 49 Pac. 566.

Illegality as affecting right to recover.

Cited in De Leonis v. Walsh, 140 Cal. 183, 73 Pac. 813, holding that execution of deed as mortgage to evade land laws and enable grantor to take up certain public lands by falsely stating that she did not own any land does not show such illegality as to defeat action to recover land so conveyed; Munns v. Donovan Commission Co. 117 Iowa, 520, 91 N. W. 789, sustaining right to recover money paid to one to make purchases on board of trade, with understanding that

no produce was to be delivered on purchases actually made, but money to be used in paying differences between contract and market price; Stover v. Flower, 120 Iowa, 520, 94 N. W. 1100, denying right to recover from principal after rescission of lease, rent paid to agent who, without authority, leased premises for house of ill fame, Burke v. Chicago, 127 Ill. App. 175, holding money paid in furtherance of illegal contract may be recovered if contract is wholly executory; Ware v. Spinney, 76 Kan. 296, 13 L.R.A.(N.S.) 273, 91 Pac. 787, 13 Ann. Cas. 1181, holding money paid to secure an illegal consolidation of two corporations may be recovered in an action of accounting to the extent of what has not been expended for such purpose.

Cited in note (13 L.R.A.(N.S.) 268) on right to return of money placed in hands of agent for illegal purpose.

Evidence warranting nonsuit.

Cited in Archibald Estate v. Matteson, 5 Cal. App. 446, 90 Pac. 723, holding nonsuit will not be sustained where evidence tends to establish material averments of complaint although it should have been excluded; Bush v. Wood, 8 Cal. App. 651, 97 Pac. 709, holding order of nonsuit correct where evidence of plaintiff established his own negligence as cause of injuries.

38 L. R. A. 181, GOULD v. EATON, 117 Cal. 539, 49 Pac. 577.

Cited in Montecito Valley Water Co. v. Santa Barbara, 144 Cal. 596, 77 Pac. 1113, on history of litigation involving same tunnel and same water rights.

Diversion of water.

Cited in California Pastoral & Agricultural Co. v. Enterprise Canal & Land Co. 127 Fed. 742, authorizing injunction restraining diversion of water from stream by means of canal; Duckworth v. Watsonville Water & Light Co. 158 Cal. 218, 110 Pac. 927, to the point that riparian owner who has conveyed water rights is absolutely estopped to use any of water on his land, except as specified in deed; Turner v. James Canal Co. 155 Cal. 95, 22 L.R.A.(N.S.) 407, 132 Am. St. Rep. 59, 99 Pac. 520, 17 Ann. Cas. 823, holding owner of land abutting on slough formed by overflow of river may divert a reasonable amount of the water although he thereby lessens the overflow of low land of lower riparian owner; Morris v. Bean, 146 Fed. 431, holding laws of state authorizing complete appropriation of waters will not permit citizen of that state to divert flow of stream so as to deprive citizen of another state of its reasonable use.

Cited in footnote to Stock v. Jefferson, 38 L. R. A. 355, which holds diversion of water from mill without compensation not justified by improvement of highways, drainage of land, or general improvement of country.

Distinguished in Huffner v. Sawday, 153 Cal. 94, 94 Pac. 424, holding injunction to prevent diversion of water will lie where flow is delayed thereby and returned to land of plaintiff at a much lower point.

Use of water for nonriparian land.

Cited in Jones v. Conn, 39 Or. 45, 54 L.R.A. 636, footnote p. 630, 87 Am. St. Rep. 634, 64 Pac. 855, and Meng v. Coffey, 67 Neb. 516, 60 L.R.A. 916, 108 Am. St. Rep. 697, 93 N. W. 713, sustaining riparian proprietor's right to use water for irrigating nonriparian land; Crawford Co. v. Hathaway (Crawford Co. v. Hall) 67 Neb. 353, 60 L.R.A. 902, footnote p. 889, 108 Am. St. Rep. 647, 93 N. W. 781, denying riparian owner's right to use water for irrigation of nonriparian lands.

Cited in note (22 L.R.A.(N.S.) 383) on right to make use, on nonriparian, of water rights incident to riparian lands.

Rights of upper and lower riparian owners.

Cited in San Joaquin & K. R. Canal & Irrig. Co. v. Fresno Flume & Irrig. Co. 158 Cal. 628, 35 L.R.A.(N.S.) 835, 112 Pac. 182, holding that lower claimant of waters of stream must show damage to justify court of equity in restraining upper claimant from his beneficial use of waters.

Cited in note (41 L. R. A. 740) on correlative rights of upper and lower proprietors as to use and flow of water in stream.

38 L. R. A. 183, RABBITT v. WILCOXEN, 103 Iowa, 35, 64 Am. St. Rep. 152, 72 N. W. 306.

Rights of member of insolvent loan association.

Cited in Wilcoxen v. Smith, 107 Iowa, 561, 70 Am. St. Rep. 220, 78 N. W. 217, holding borrowing members entitled to actual, not book, value of stock in distribution of assets of insolvent loan association; Cook v. Emmet Perpetual & Mut. Bldg. Asso. 90 Md. 288, 44 Atl. 1022, holding general creditors entitled to priority over members of loan association who gave notice of withdrawal before judgment of insolvency; Coltrane v. Baltimore Bldg. & L. Asso. 110 Fed. 279, holding that service of notice of withdrawal entitles member to no preference when association insolvent.

Cited in footnote to Southern Bldg. & L. Asso. v. Price, 42 L. R. A. 206, which holds withdrawal immediately due when loan association goes into receiver's hands.

Cited in note (61 Am. St. Rep. 30) on effect of insolvency of loan association on rights and liabilities of members.

Withdrawals from loan association.

Cited in Hawley v. North Side Bldg. & L. Asso. 11 Colo. App. 99, 52 Pac. 408, holding that withdrawal value of stock of member of loan association dates as of time of acceptance of resignation; Fitzgerald v. State Mut. Bldg. & L. Asso. 76 N. J. Eq. 141, 139 Am. St. Rep. 743, 79 Atl. 454, holding that right of withdrawal does not exist except as conferred by by-law of loan association or statute under which association is organized; Evans v. Murphy, 133 Iowa, 550, 110 N. W. 1025, holding that actual payment by insolvent corporation of portion of withdrawal value of stock, made prior to appointment of receiver cannot be treated by receiver as payment by way of dividend; Walker v. Terry, 138 Ala. 432, 35 So. 466, holding withdrawal in accordance with by laws of loan association before appointment of receiver does not create relationship of creditor where member has not been actually paid the money before receiver's appointment; Ft. Smith Bldg. Asso. v. Cohn, 75 Ark. 503, 87 S. W. 1172, holding members of loan association who withdraw and accept notes for the amount due cannot enforce notes against receiver in preference to other stockholders where notes were given after insolvency; Colin v. Welford, 102 Va. 585, 102 Am. St. Rep. 859, 46 S. E. 780, holding member who withdraws after insolvency does not thereby become a creditor although no legal action to wind up company's affairs had been begun and he had compromised his claim; Earn Line S. S. Co. v. Ennis, 157 Fed. 941, holding member who gives notice of withdrawal prior to receivership did not become creditor where by law provided that withdrawals be paid from monthly dues and no monthly dues came in to apply thereto.

Cited in footnote to Andrews v. Roanoke Bldg. Asso. & Invest. Co. 49 L. R. A. 659, which holds relation to loan association not severed by withdrawal, so as to preclude member suing for receiver.

Distinguished in Rogers v. Ogden Bldg. & Sav. Asso. 30 Utah, 198, 83 Pac.

754, holding owner of matured stock in loan association a creditor as to installments thereon which had not been paid where stock was being bought up by company in installments.

38 L. R. A. 188, AUBURN v. UNION WATER-POWER CO. 90 Me. 576, 38 Atl. 561.

Diversion of water for public purposes.

Cited in Hamor v. Bar Harbor Water Co. 92 Me. 376, 42 Atl. 790, denying mill owner's right of recovery for water company's diversion of portion of water of great pond for city purposes, thereby diminishing volume at outlet; Union Water Power Co. v. Lewiston, 95 Me. 177, 49 Atl. 878, denying city's liability for taking water from great pond under legislative authority; Elgin v. Elgin Hydraulic Co. 85 Ill. App. 193, holding public's right to use waters of navigable river paramount to rights of owners of water power; St. Anthony Falls Water Power Co. v. St. Paul Water Comrs. 168 U. S. 372, 42 L. ed. 506, 18 Sup. Ct. Rep. 157, holding grants to maintain dams and sluices in Mississippi river subject to city's right to divert portion for public purposes; American Woolen Co. v. Kennebec Water Dist. 102 Me. 156, 66 Atl. 316, holding owner of riparian land not entitled to compensation for damages by reason of lowering of water of "great pond" by diversion of waters thereof by legislative authority.

Cited in note (50 L. R. A. 747) on state and Federal ownership of waters.

Distinguished in Lonsdale Co. v. Woonsocket, 25 R. I. 434, 56 Atl. 448, holding action will lie, to restrain city from diverting water of river, in favor of lower riparian owners although used to supply citizens with pure water.

Public title to great ponds.

Cited in Atty.-Gen. v. Herrick, 190 Mass. 310, 76 N. E. 1045, holding public owns any island in great ponds which has not been granted and may oust an intruder.

38 L. R. A. 190, TREFETHEN v. LYNAM, 90 Me. 376, 60 Am. St. Rep. 271, 38 Atl. 335.

Creditor's rights to husband's earnings.

Cited in Michael v. Moore, 157 N. C. 466, 73 S. E. 104, holding that funds of insolvent husband invested in improvements on wife's land, in fraud of creditors, is not regarded in equity as part of wife's property.

Cited in footnote to Blackburn v. Thompson, 56 L. R. A. 938, which holds subject to husband's debts, property purchased in wife's name from profits of business conducted as her agent.

Cited in note (77 Am. St. Rep. 93, 94, 96, 108) on liability of wife's separate estate to husband's creditors for value of increase due to his acts.

Distinguished in Brand v. Connery, 132 Mich. 92, 92 N. W. 784, holding creditors of husband who improved his wife's property believing it to be his own while he was solvent may follow such improvements if wife knew the circumstances.

— To earnings of debtor's children.

Cited in footnote to Flynn v. Baisley, 45 L. R. A. 645, which denies creditor's rights in earnings of emancipated minor child.

Burden of proof of husband's debt.

Cited in note (56 L. R. A. 830) on burden of proof of husband's debt to wife on account of property received from her.

Attack by creditors on conveyances from husband to wife.

Cited in note (90 Am. St. Rep. 526) on attacks by creditors on conveyances made by husbands to wives.

38 L. R. A. 194, HARTNETT v. PLUMBER'S SUPPLY ASSO. 169 Mass. 229, 47 N. E. 1002.

Blacklisting and combinations or acts to injure business.

Cited in Weston v. Barnicoat, 175 Mass. 455, 49 L. R. A. 615, 56 N. E. 619, holding member of voluntary association liable for causing another to be blacklisted for nonpayment of debt; Passaic Print Works v. Ely & W. Dry Goods Co. 62 L. R. A. 697, 44 C. C. A. 433, 105 Fed. 171 (dissenting opinion), majority denying merchants' liability for offering goods owned by them at cut price to injure manufacture and depress market value of product; M. Steinert & Sons Co. v. Tagen, 207 Mass. 397, 32 L.R.A.(N.S.) 1020, 93 N. E. 584, holding that injunction will lie against bearing of placard through streets announcing pendency of strike against business man, long after strike has been settled; Cobbey v. State Journal Co. 77 Neb. 640, 113 N. W. 224, majority holding that suit to restrain publication of estates not a combination to injure business of compiler if there existed reasonable doubt of his authority; Woodhouse v. Powles, 43 Wash. 622, 8 L.R.A.(N.S.) 787, 117 Am. St. Rep. 1079, 86 Pac. 1063, 11 Ann. Cas. 54, holding grocer who is erroneously reported delinquent by wholesaler's association can recover only nominal damages where no definite money valuation can be put on his loss; Arbour v. Pittsburgh Produce Trade Asso. 39 Pittsb. L. J. N. S. 156, 35 Pa. Co. Ct. 601, holding retailers may enjoin wholesalers from combining to refuse credit to delinquent retailers where such retailers are erroneously refused credit.

Cited in footnotes to Brewster v. C. Miller's Sons Co. 38 L. R. A. 505, which sustains agreement between undertakers to refuse to render services to anyone failing to pay bill to any of them; Doremus v. Hennessy, 43 L. R. A. 797, which holds members of trade association combining to prevent other persons dealing with nonmember liable for resulting injury; Bailey v. Master Plumbers' Asso. 46 L. R. A. 561, which holds void, by-laws of plumbers' association compelling members to pay fixed sums for certain items, and restricting purchasers to dealers selling only to members; Ertz v. Produce Exchange, 48 L. R. A. 90, which holds malicious, conspiracy to injure dealer by inducing other people not to deal with him; Gatzow v. Buening, 49 L. R. A. 475, which holds by-law of liverymen's association prohibiting furnishing hearse or carriages to nonunion liverymen, illegal; Dun v. Weintraub, 50 L. R. A. 670, as to what constitutes libel of merchant; Ertz v. Produce Exchange, 51 L. R. A. 825, which holds produce exchange discriminating against nonmembers and controlling delivery of goods, an illegal combination; West Virginia Transp. Co. v. Standard Oil Co. 56 L. R. A. 804, which sustains malicious competition to get customers from rival and obtain business for one's self; Brown v. Jacobs Pharmacy Co. 57 L. R. A. 548, which sustains right to injunction against combination of merchants to prevent sales to other dealer unless he sells at fixed prices; Brown v. American F. L. M. Co. 67 L.R.A. 195, which holds loan agents entitled to sue for statements that they are inattentive, neglectful, insolvent, and guilty of fraud for which their principal has taken business from them made to break up their business and secure their custom.

Cited in notes (49 L.R.A. 612) on blacklisting dealer as libel; (3 L.R.A.(N.S.) 340) on charging one with refusal to pay debt as libel.

Distinguished in Reynolds v. Plumbers' Material Protective Asso. 30 Misc. 718,

63 N. Y. Supp. 303, holding communication to other members of protective association that one member refuses to pay bill, privileged.

Liability of member of association for dealing with nonmember.

Cited in footnotes to Downs v. Bennett, 55 L. R. A. 560, which denies right of one only remotely affected, to injunction fining or expelling member for violation of by-law prohibiting members from dealing with nonmembers or with others who deal with such nonmembers; Martell v. White, 64 L. R. A. 260, which holds action maintainable on behalf of quarry owner against members of association to which he does not belong, enforcing by-law imposing fine on members dealing with nonmembers.

Liability of association for acts of officers.

Cited in Stewart v. Wright, 77 C. C. A. 499, 147 Fed. 328, as an illustration of the wide range of cases wherein corporations have been held liable for the misconduct of their officers.

Action for procuring discharge of servant.

Cited in May v. Wood, 172 Mass. 14, 51 N. E. 191 (dissenting opinion), majority holding declaration for inducing master to discharge servant must set out alleged false statements; Moran v. Dunphy, 177 Mass. 487, 52 L. R. A. 116, 83 Am. St. Rep. 289, 59 N. E. 125, holding maliciously procuring discharge of employee, actionable; Wells & R. Co. v. Abraham, 146 Fed. 194, on maliciously inducing discharge of employee as giving cause of action in tort.

Quo warranto.

Cited in Hubbard v. Worcester Art Museum, 194 Mass. 282, 9 L.R.A.(N.S.) 691, 80 N. E. 490, 10 Ann. Cas. 1025, holding quo warranto will not lie in favor of heir to question validity of devise to charitable corporation of an amount in excess of statute limiting such devises.

Cited in note (22 L.R.A.(N.S.) 813) on quo warranto for vindication of private rights.

38 L. R. A. 198, MURFIN v. DETROIT & E. PL. ROAD CO. 113 Mich. 675, 67 Am. St. Rep. 489, 71 N. W. 1108.

Use of streets by bicyclists.

Cited in Lee v. Port Huron, 128 Mich. 535, 55 L. R. A. 309, 87 N. W. 637, holding bicyclist riding on sidewalk under municipal authority may recover for injuries resulting from defective walk; Richardson v. Danvers, 176 Mass. 414, 50 L. R. A. 127, 79 Am. St. Rep. 320, 57 N. E. 688, holding bicycle not within statute for keeping highways safe for carriages.

Cited in footnote to Gloucester & S. Turnp. Co. v. Leppee, 41 L. R. A. 457, which denies right to collect toll from bicycles on turnpike.

Distinguished in People v. Smith, 156 Mich. 174, 21 L.R.A.(N.S.) 41, 120 N. W. 581, 16 Ann. Cas. 607, holding motor cycle within ordinance regulating motor vehicles.

Bicycle law.

Cited in note (47 L. R. A. 304) on bicycle law.

38 L. R. A. 200, O. & W. THUM CO. v. TLOCZYNSKI, 114 Mich. 149, 68 Am. St. Rep. 469, 72 N. W. 140.

Violation of relation as former employee or agent.

Cited in Cahill v. Madison, 94 Ill. App. 222, holding merchant may enjoin former employee's violation of restrictive covenant in contract by attempting to take away customers with whom he became acquainted as such employee.

Cited in footnote to Stein v. National Life Asso. 46 L. R. A. 150, which sustains right of former insurance agent to influence policy holders to transfer insurance to other company, when by so doing he violates no business secret or trust.

Cited in note (24 L.R.A.(N.S.) 939) on validity of agreement by employee not to engage in competing business, as affected by scope in time and territorial extent.

Injunction to protect business.

Cited in Schwanbeck Bros. v. A. Backus Jr. & Sons, 148 Mich. 512, 111 N. W. 1046, holding equity will restrain one firm from using list of another's customers to mail them threatening letters in an attempt to cause them to discontinue to trade with that firm.

Secrets; injunction to protect.

Cited in Westervelt v. National Paper & Supply Co. 154 Ind. 678, 57 N. E. 552, holding that company engaging employee to complete secret paper-bag machine may enjoin employee's manufacturing same machine for others; Harrison v. Glucose Sugar Ref. Co. 58 L. R. A. 921, 53 C. C. A. 491, 116 Fed. 311, holding that employee knowing secrets of employer's business will be enjoined from violating contract not to enter rival concern during certain period; Sanitas Nut Food Co. v. Cemer, 134 Mich. 371, 96 N. W. 454, holding nut food company may enjoin former employee from using or divulging secrets learned in such employment; Eastern Extracting Co. v. Greater New York Extracting Co. 126 App. Div. 929, 110 N. Y. Supp. 738, on equitable jurisdiction to enjoin use of secret obtained by one in bad faith.

Cited in footnotes to Stewart v. Hook, 63 L. R. A. 255, which sustains injunction against divulging, to detriment of discoverer, secret as to medical preparation gained through confidential relations; Stone v. Goss, 63 L. R. A. 344, which upholds injunction against disclosure of trade secret by one under express contract or contract implied from confidential relation; Stone v. Goss, 63 L.R.A. 344, which upholds right to injunction against disclosure of trade secret in violation of contract.

Cited in notes (12 L.R.A.(N.S.) 102) on protection of trade secrets; (133 Am. St. Rep. 761–763, 765, 766) on protection of secret processes and trade secrets.

— Validity of contract as to.

Cited in Grand Rapids Wood Finishing Co. v. Hatt, 152 Mich. 138, 115 N. W. 714, holding contract for sale of secret process of making furniture polish valid; Vulcan Detinning Co. v. American Can Co. 67 N. J. Eq. 247, 58 Atl. 290, holding contract assigning secret process for detinning tin scrap valid.

Cited in footnote to Thibodeau v. Hildreth, 63 L. R. A. 480, which sustains contract by employee that employer shall have benefit of all inventions made by him, and that he will keep information secret in case patent shall not be applied for.

38 L. R. A. 205, HALL v. ALFORD, 114 Mich. 165, 72 N. W. 137.

Nuisance in navigable waters.

Cited in Water Comrs. v. Detroit, 117 Mich. 462, 76 N. W. 70, holding vessel damaged by fire and negligently allowed to become water logged in navigable river, public nuisance.

What waters subject to private ownership.

Cited in Baldwin v. Erie Shooting Club, 127 Mich. 662, 87 N. W. 59, and To-

ledo Liberal Shooting Co. v. Erie Shooting Club, 33 C. C. A. 236, 62 U. S. App. 644, 90 Fed. 682, holding arm of lake about 2 feet deep, covered in summer with tall rushes, subject to private ownership.

Regulation of game on private lands.

Cited in State v. Mallory, 73 Ark. 247, 67 L.R.A. 777, 83 S. W. 955, 3 Ann. Cas. 852, holding statute declaring it unlawful for nonresident to hunt or fish at any time of year unconstitutional as to nonresident landowners.

38 L. R. A. 208, STATE *ex rel.* CROW v. HOSTETTER, 137 Mo. 636, 59 Am. St. Rep. 515, 39 S. W. 270.

Construction of statute.

Cited in Scarritt v. County Court, 89 Mo. App. 589, holding court authorized by statute to grant saloon license upon petition of majority of taxpaying citizens owning property, although not majority owning real property; Keene v. Wyatt, 160 Mo. 15, 63 S. W. 116 (dissenting opinion), majority holding that creditors of deceased homesteader may, under statute, sell homestead subject to rights of widow and children; Horstman v. Adamson, 101 Mo. App. 125, 74 S. W. 398, holding deputy appointed by county clerk to act as long as latter remains in office may be discharged without liability, where statute providing for appointment fails to state how long it shall continue; Joplin Supply Co. v. West, 149 Mo. App. 95, 130 S. W. 156, holding that statutes must be construed in reference to subject matter, objects which prompted and induced their enactment and mischief they were intended to remedy; State ex rel. Atty. Gen. v. Dabbs, 182 Mo. 366, 81 S. W. 1148, holding appointee of governor to newly created judgeship continues in office although another has been properly elected where such other dies before qualifying where statute does not provide for special election: Collier Estate v. Western Paving & Supply Co. 180 Mo. 379, 79 S. W. 947, holding assessment on whole tract of unplatted land which fronts on two streets a violation of charter provision that only property fronting on improved street be assessed where only one of the two streets is being improved; State v. Kessels, 120 Mo. App. 243, 96 S. W. 494, holding general state liquor regulations not applicable to city where legislature has expressly conferred on city exclusive power to regulate sale of liquor therein; Ex parte Helton, 117 Mo. App. 622, 93 S. W. 913, holding statute providing that no one shall hunt outside his own county without license, and under another section requiring license for hunting in state construed to mean license necessary only for hunting outside county of residence.

Right of woman to hold office.

Cited in note (27 L.R.A.(N.S.) 532) on right of women to hold office.

Distinguished in Atty. Gen. v. Abbott, 121 Mich. 549, 47 L. R. A. 96, footnote p. 92, 80 N. W. 372 (approved in dissenting opinion), holding woman not eligible for office of prosecuting attorney.

— To practise law.

Cited in footnote to *Re* Maddox, 55 L. R. A. 298, which denies right of woman to practise law.

— To act as principal of schools.

Cited in footnote to Com. *ex rel.* Scott v. Board of Public Education, 41 L. R. A. 498, which holds exclusion of women from principalship of certain schools within discretion of board of education.

Right to vote for candidate not on ballot.

Cited in note (91 Am. St. Rep. 686) on right of elector to vote for candidate not named on official ballot.

38 L. R. A. 218, STATE *ex rel.* KANSAS CITY v. EAST FIFTH STREET R. CO. 140 Mo. 539, 62 Am. St. Rep. 742, 41 S. W. 955.

City's power to abrogate contract.

Cited in State *ex rel.* National Subway Co. v. St. Louis, 145 Mo. 574, 42 L. R. A. 122, 46 S. W. 981, holding city allotting subway spaces in streets for wires cannot repudiate contract by giving same space to another company; State ex rel. Fullerton v. Des Moines City R. Co. 135 Iowa, 705, 109 N. W. 867, holding state may inquire into franchise granted by city for use of its streets by street railway; Olathe v. Missouri & K. I. R. Co. 78 Kan. 196, 96 Pac. 42, holding city proper plaintiff in suit to forfeit franchise granting use of its streets for street railway purposes; Kavanaugh v. St. Louis, 220 Mo. 511, 119 S. W. 552, holding city has no power to declare a forfeiture of franchise without resort to courts.

Availability of plea of estoppel.

Cited in Turner v. Edmonston, 210 Mo. 428, 124 Am. St. Rep. 739, 109 S. W. 33, holding estoppel not available unless pleaded; McQueen v. Bank of Edgemont, 20 S. D. 381, 107 N. W. 208, holding plea that plaintiff knew her cattle were branded similarly to those mortgaged insufficient to estop her from recovering her own cattle wrongfully mortgaged.

Enforcement in equity of forfeiture of franchise.

Cited in Hook v. Bowden, 144 Mo. App. 345, 128 S. W. 261, holding that court of equity will not enforce forfeiture of franchise of telephone corporation at suit of another rival company but will leave latter to remedy at law.

38 L. R. A. 224, STATE *ex rel.* NISBETT v. TOOLE, 69 Minn. 104, 65 Am. St. Rep. 553, 72 N. W. 53.

Right to revoke extradition warrant.

Cited in note (112 Am. St. Rep. 142) on right of executive to revoke his extradition warrant.

Grounds for refusal to surrender fugitive.

Cited in note (68 Am. St. Rep. 131–133) on grounds for refusal by state to surrender person demanded by authorities of another.

38 L. R. A. 225, STATE *ex rel.* RAILROAD & W. COMMISSION v. ADAMS EXP. CO. 66 Minn. 271, 68 N. W. 1085.

Court's exercise of nonjudicial powers.

Cited in footnotes to State *ex rel.* Godard v. Johnson, 49 L. R. A. 662, which holds void, statute creating court of visitation empowered to regulate operation of railroads; Zanesville v. Zanesville Teleg. & Teleph. Co. 52 L. R. A. 150, which sustains statute empowering probate court to devest mode of constructing telegraph or telephone line in street; *Re* Davies, 56 L. R. A. 855, which holds supreme court justice may be empowered to appoint referee to take testimony to aid in suppressing monopoly.

Power to require information as to business.

Cited in footnote to State *ex rel.* Railroad & W. Commission v. United States Exp. Co. 50 L. R. A. 667, which sustains state's right to require information as to business within state of unincorporated express company of other state.

Service of process.

Cited in Adams Exp. Co. v. Schofield, 111 Ky. 836, 64 S. W. 903, holding that association of three thousand members will be considered a quasi corporation for purpose of service of process.

Cited in note (50 L. R. A. 594) on what service of process is sufficient to constitute due process of law.

Joint stock associations.

Cited in Hibbs v. Brown, 190 N. Y. 180, 82 N. E. 1108, on the similarity of joint stock associations to corporations.

Delegation of power to regulate carriers.

Cited in note (32 L.R.A.(N.S.) 646) on delegation of power to regulate carriers.

38 L. R. A. 228, STATE v. GERRY, 68 N. H. 495, 38 Atl. 272.

Jurisdiction of justice of the peace.

Cited in State v. Jackson, 69 N. H. 512, 43 Atl. 749, holding that justice of the peace has power to impose fine of $1 and costs for violation of statute relating to fast driving; Wilmarth v. King, 74 N. H. 513, 18 L.R.A.(N.S.) 399, 69 Atl. 889, holding statute giving justices of peace jurisdiction in criminal cases where punishment does not exceed six months valid.

Right to jury trial.

Cited in Alford v. State, 170 Ala. 209, 54 So. 213, Ann. Cas. 1912 C, 1093, holding that statute does not deprive one of right to trial by jury although it directs trial in first instance to be had by court, as it secures defendant appeal to court having jury and right to jury trial.

Constitutionality of statute by acquiescence.

Cited in Wyatt v. State Board, 74 N. H. 594, 70 Atl. 387 (dissenting opinion) on tax on saving banks as not a proportional tax upon property in meaning of constitutional rule of equal taxation.

Construction of statutes.

Cited in State v. Corron, 73 N. H. 445, 62 Atl. 1044, 6 Ann. Cas. 486, holding finding of license commissioners conclusive on court in action on bond conditioned on its nonviolation.

— As consistent with constitution.

Cited in Canaan v. Enfield Village Fire Dist. 74 N. H. 541, 70 Atl. 250, denying power of court to make invalid tax law valid by extending it so as to include property which it ought to have included.

Dismissal of appeal.

Distinguished in Bickford v. Franconia, 73 N. H. 196, 60 Atl. 98, holding appeal will not be set aside because one selectman was disqualified where their jurisdiction was complete.

38 L. R. A. 236, McCANN v. CONSOLIDATED TRACTION CO. 59 N. J. L. 481, 36 Atl. 888.

Liability for servant's negligence.

Cited in McCauley v. Hutkoff, 20 Misc. 100, 45 N. Y. Supp. 85, holding plate-glass insurance company liable for servant's interference with gas fixtures when replacing window.

Cited in note (17 Eng. Rul. Cas. 279) on master's liability for acts of servant.

Liability for fright of horse.

Followed in Ayars v. Camden & Suburban R. Co. 63 N. J. L. 420, 43 Atl. 678, affirming recovery for injuries caused by fright of horse at trolley car running into pool, throwing water sidewise, and making unusual noise.

Cited in Johnston v. New York & L. B. R. Co. 65 N. J. L. 423, 47 Atl. 586,

affirming recovery for damages caused by fright of horse at sudden raising of red flag by mechanical contrivance in highway; Esler v. Camden & Suburban R. Co. 71 N. J. L. 182, 58 Atl. 113, holding it for jury whether running dirt car in front of train that was usually run attached to rear was negligence such as would cause fright of horse; Mumma v. Easton & A. R. Co. 73 N. J. L. 659, 65 Atl. 208, holding direction of nonsuit error where defendant's engineer without any reason blew his whistle and suddenly emitted clouds of steam while under a bridge thereby frightening horse passing over it; Butler v. Easton & A. R. R. Co. 74 N. J. L. 246, 65 Atl. 872, holding burden of proof on plaintiff to show unusual size and color of engine in action for fright of horse alleged to have been caused thereby; Bennett v. Busch, 75 N. J. L. 243, 67 Atl. 188, holding it for jury whether going to garage several blocks away when owner ordered chauffeur to go only downstairs in hotel for oil for automobile was an act in scope of authority; Butler v. Easton & A. R. Co. 76 N. J. L. 705, 71 Atl. 276, holding it for jury whether passing an engine left negligently in highway after stopping for reasonable time to see if it would move or horse would be frightened by it was contributory negligence; Denison & S. R. Co. v. Powell, 35 Tex. Civ. App. 459, 80 S. W. 1054, holding it negligence for either street car conductor or motorman to sound gong after one of them saw it was causing fright of horse.

Cited in footnote to Oates v. Metropolitan Street R. Co. 58 L. R. A. 447, which holds company liable for motorman's sounding gong or ringing bell after seeing horse is frightened.

Cited in note (21 L.R.A.(N.S.) 286) on frightening of horse by street car.

38 L. R. A. 238, ROBBINS v. RASCOE, 120 N. C. 79, 58 Am. St. Rep. 774, 26 S. E. 807.

Delivery of deed.

Cited in Bond v. Wilson, 129 N. C. 330, 40 S. E. 179, holding delivery of deed to agent, sufficient; Tarlton v. Griggs, 131 N. C. 221, 42 S. E. 591, holding delivery of deed not presumed from acknowledgment of husband and acknowledgment and privy examination of wife; Chapin v. Nott, 203 Ill. 347, 67 N. E. 833, holding delivery of recorded deed to mother of infant grantee, without conditions, prima facie valid; Graham v. Suddeth, 97 Ark. 286, 133 S. W. 1033, holding that registration of deed raises presumption of its delivery to and acceptance by grantee; Clark v. Creswell, 112 Md. 342, 76 Atl. 579, holding actual delivery of deed not necessary where mother purchases land for daughter and has deed made to daughter although mother pays the purchase price and any subsequent alteration is void as to daughter; Craddock v. Barnes, 142 N. C. 96, 54 S. E. 1003, holding original delivery in escrow sufficient to pass title on performance by grantee of conditions; Fortune v. Hunt, 149 N. C. 360, 63 S. E. 82, holding delivery in escrow not complete where grantor tells the one intrusted with deed to give it to grantee in case he does not demand its return and dies a few days later having made no demand.

Cited in note (54 L. R. A. 872, 903) on delivery of deed to third person, or record, or delivery for record, by grantor.

38 L. R. A. 240, WILSON v. LEARY, 120 N. C. 90, 58 Am. St. Rep. 778, 26 S. E. 630.

Grantor's interest in real estate of dissolved corporation.

Cited in Geddis v. Northwestern Trust Co. 23 S. D. 536, 122 N. W. 587, holding that property of corporation does not escheat or revert to grantor upon its

dissolution; Richards v. Northwestern Coal & Min. Co. 221 Mo. 169, 119 S. W. 953, holding real estate of corporation does not vest in grantor upon dissolution of corporation where they received a valuable consideration therefor; McAlhany v. Murray, 89 S. C. 449, 35 L.R.A.(N.S.) 899, 71 S. E. 1025, holding that land conveyed for valuable consideration to association incorporated for social and benevolent purposes, does not revert to grantor upon dissolution of corporation.

Cited in notes (69 L.R.A. 133, 140) on effect of corporate dissolution on property and assets; (35 L.R.A.(N.S.) 897) on disposition of realty upon dissolution or benevolent or social corporation.

38 L. R. A. 242, BROWN v. BROWN, 121 N. C. 8, 27 S. E. 998.

Right to file lien against married woman's property.

Cited in Finger v. Hunter, 130 N. C. 531, 41 S. E. 890, sustaining statute allowing laborer to file lien against married woman's property.

Wife's right of action for causing abandonment by husband or alienation of affections.

Cited in second appeal on merits in 124 N. C. 20, 70 Am. St. Rep. 574, 32 S. E. 320, holding instruction that wife entitled to recover for parent's wilfully causing husband to abandon her, error.

Cited in Witty v. Barham, 147 N. C. 482, 61 S. E. 273, holding trust deed by feme covert binding although not signed by husband where he left her destitute for two years although she gave him a horse and told him to go.

Cited in footnotes to Gernerd v. Gernerd, 40 L. R. A. 549, which sustains wife's right of action against one inducing her husband to leave her, though parent's right to give him advice in good faith is upheld; Beach v. Brown, 43 L. R. A. 114, which sustains divorced wife's right of action in own name for prior alienation of husband's affections; Houghton v. Rice, 47 L. R. A. 310, which denies right of action against other woman for alienating husband's affections when unaccompanied by adultery; Dietzman v. Mullin, 50 L. R. A. 808, which sustains wife's right of action for alienating husband's affections; Wolf v. Frank, 52 L. R. A. 102, and Betser v. Betser, 52 L. R. A. 630, which sustains wife's right of action for alienating her husband's affection.

Cited in note (4 L.R.A.(N.S.) 644) on wife's right under enabling acts to sue for alienation of affections.

Validity of married women's acts.

Cited in Council v. Pridgen, 153 N. C. 452, 69 S. E. 404, to the point that statute providing that if any husband shall abandon his wife or maliciously turn her out of doors she shall become "free trader" was constitutional.

38 L. R. A. 243, NORFOLK STATE BANK v. MURPHY, 40 Neb. 735, 59 N. W. 706.

Priority of judgment lien.

Followed in Ocobock v. Baker, 52 Neb. 450, 66 Am. St. Rep. 519, 72 N. W. 582, holding lien of judgment superior to mortgage filed after opening of term and prior to rendition.

Cited in Chadron Bldg. & L. Asso. v. Hamilton, 45 Neb. 372, 63 N. W. 808, holding lien of judgment subject to mortgagee's equity as to land inadvertently omitted from mortgage; Hoagland v. Green, 54 Neb. 167, 74 N. W. 424, holding that rendition of deficiency judgment at term subsequent to commencement of foreclosure creates lien superior to conveyance executed after opening of term,

but prior to actual rendition; Doe v. Startzer, 62 Neb. 720, 87 N. W. 535, and Olander v. Tighe, 43 Neb. 347, 61 N. W. 633, holding that recovery of judgment against vendor creates lien as to unpaid purchase money due from vendee; Hayden v. Huff, 60 Neb. 626, 83 N. W. 920, holding judgment lien superior to deed executed prior to rendition, but subsequent to first day of term.

Cited in footnote to Goetzinger v. Rosenfeld, 38 L. R. A. 257, which holds mortgage for antecedent consideration on equality with judgment subsequently entered on same day.

— Time of taking appeal.

Cited in Morrison v. Gosnell, 76 Neb. 541, 107 N. W. 753, holding appeal taken within six months of date of recording of judgment in lower court is valid; Anderson v. Griswold, 87 Neb. 579, 127 N. W. 883, to the point that time within which appeal may be taken from decree of district court does not begin to run until such decree has been entered of record.

38 L. R. A. 257, GOETZINGER v. ROSENFELD, 16 Wash. 392, 47 Pac. 882.

Sufficiency of assignment of error.

Cited in Rhode Island Mortg. & T. Co. v. Spokane, 19 Wash. 620, 53 Pac. 1104, holding that statement that complaint does not state cause of action constitutes sufficient assignment of error.

Priority of liens.

Cited in notes (38 L.R.A. 250) on priority of judgment over conveyance made after beginning of term; (33 L.R.A.(N.S.) 60) on protection under recording acts of mortgage for preexisting debt.

Distinguished in Dawson v. McCarty, 21 Wash. 319, 75 Am. St. Rep. 841, 57 Pac. 816, holding unrecorded mortgage entitled to priority over subsequent judgment.

Computation of time.

Cited in notes (78 Am. St. Rep. 383) on computation of time; (1 L.R.A. (N.S.) 837 on fraction of day as determining priorities or precedence of rights.

38 L. R. A. 259, GERMAN-AMERICAN SAV. BANK v. SPOKANE, 17 Wash. 315, 47 Pac. 1103, 49 Pac. 542.

Municipal liability for street improvement and condemnation awards.

Followed without discussion in Doxy v. Port Townsend, 21 Wash. 707, 57 Pac. 1103.

Cited in Bowman v. Colfax, 17 Wash. 346, 49 Pac. 551, holding that mere unreasonable delay in enforcing special assessment for street improvements does not render city liable; Seattle v. deWolfe, 17 Wash. 351, 49 Pac. 553, holding personal action not maintainable in name of city to enforce assessment for local improvement; Seavey v. Seattle, 17 Wash. 363, 49 Pac. 517, denying city's liability for condemnation awards before loss of right to prosecute collection by assessment; Wilson v. Aberdeen, 19 Wash. 90, 52 Pac. 524; Rhode Island Mortg. & T. Co. v. Spokane, 19 Wash. 620, 53 Pac. 1104; Northwestern Lumber Co. v. Aberdeen, 20 Wash. 102, 54 Pac. 935; North Western Lumber Co. v. Aberdeen, 22 Wash. 406, 60 Pac. 1115; Potter v. Whatcom, 25 Wash. 210, 65 Pac. 197,— holding city not liable out of general fund for cost of street improvement payable on warrants drawn on special fund; State ex rel. American Freehold-Land Mortg. Co. v. Tanner, 45 Wash. 359, 88 Pac. 321, on liability of a city for failure to provide and collect special fund for street improvements; Broad v. Moscow, 15 Idaho, 623, 99 Pac. 101, holding where contract provides that contractor must look to the fund out of which contract is to be paid, city is

not liable by reason of failure of officers to do their duty; State ex rel. Security Sav. Soc. v. Moss, 44 Wash. 96, 86 Pac. 1129, holding no general liability exists against city by reason of contract for grading of a special assessment district; Union Trust Co. v. California, 154 Cal. 727, 24 L.R.A. (N.S.) 1115, 99 Pac. 183, holding where right to compel levy and collection of assessments to discharge bonds exists a general judgment cannot be secured; Turner v. Guthrie, 13 Okla. 32, 73 Pac. 283, holding failure for an unreasonable time to make levy where warrants are made payable out of a special fund to be raised will not render city liable to general judgment; Soule v. Ocosta, 49 Wash. 520, 95 Pac. 1083, holding where there existed no basis for a special fund and none was ever provided there was no general liability against the city.

Cited in note (32 L.R.A.(N.S.) 171) on liability of municipality failing to enforce assessments for improvements.

Distinguished in Philadelphia Mortg. & T. Co. v. New Whatcom, 19 Wash. 232, 52 Pac. 1063, granting mandamus to compel city to include in new assessment, interest accruing on void warrant for street improvement.

— For failure to exact bond.

Distinguished in Rounds v. Whatcom County, 22 Wash. 109, 60 Pac. 139, holding county liable to material man for failure to exact bond of contractor on public works.

Liability on special indebtedness.

Cited in Dean v. Walla Walla, 48 Wash. 76, 92 Pac. 895, holding bonds outstanding and payable out of revenues of the water system do not constitute part of the general indebtedness of the municipality; McGilvery v. Lewiston, 13 Idaho, 348, 90 Pac. 348, holding where the obligation is required to be paid out of special assessments to be levied on property benefited the liability is not one within constitutional provision requiring submission to vote of people.

— Enforcement.

Overruled in Jurey v. Seattle, 50 Wash. 276, 97 Pac. 107, holding an action against a city for wrongful neglect to collect special assessment fund is not an action ex contractu.

Change of remedy as impairment of obligation.

Cited in footnote to Peninsular Lead & Color Works v. Union Oil & Paint Co. 42 L. R. A. 331, which holds statute for dissolution of attachment by assignment for creditors within ten days, void as to contracts made when right of attachment absolute.

38 L. R. A. 267, GERMAN SAV. & L. SOC. v. WEBER, 16 Wash. 95, 47 Pac. 224.

Agreement as to fixtures.

Cited in Woodland Co. v. Mendenhall, 82 Minn. 490, 83 Am. St. Rep. 445, 85 N. W. 164, upholding lien for purchase price of trolley wire strung on poles under agreement that vendor should retain control until payment; Lynn v. Waldron, 38 Wash. 85, 80 Pac. 292, holding evidence of intention of parties admissible on determination of whether buildings became fixtures.

Cited in footnotes to Thomson v. Smith, 50 L. R. A. 780, which sustains right of purchaser at sheriff's sale to wagon scales constituting fixture bought on conditional sale; Schellenberg v. Detroit Heating & Lighting Co. 57 L. R. A. 632, which holds heating apparatus bought under contract reserving title in seller, not fixture, though permanently placed in building; Peaks v. Hutchinson, 59 L. R. A. 279, which holds building on stone posts, erected under parol agreement

that it shall remain builder's, does not pass to bona fide purchaser of land; Beeler v. C. C. Mercantile Co. 60 L. R. A. 283, which holds hotel building affixed to and conveyed with land cannot afterward become a chattel by mere agreement of parties.

Cited in note (84 Am. St. Rep. 880, 889, 890) on fixtures retaining by agreement the character of personal property.

Mortgagee's rights as to fixtures.

Cited in Neufelder v. Third Street & Suburban R. Co. 23 Wash. 475, 53 L. R. A. 603, footnote p. 601, 83 Am. St. Rep. 831, 63 Pac. 197, holding machinery secured by bolts and screws, fastening it to building, not fixture as to mortgagee; Fuller-Warren Co. v. Harter, 110 Wis. 87, 53 L. R. A. 607, footnote p. 603, 84 Am. St. Rep. 867, 85 N. W. 698, denying right of vendor and vendee of personalty permanently annexed to land, to retain property as personalty as against owner of existing mortgage; Paine v. McDowell, 71 Vt. 34, 41 Atl. 1042, holding mortgagee not entitled to sawmill and machinery erected by mortgagor's lessee; Tippett v. Barham, 37 L.R.A.(N.S.) 130, 103 C. C. A. 430, 180 Fed. 79, holding as against mortgage creditors a stand pipe attached by bolts to a concrete foundation became a fixture, notwithstanding reservation of right of contractor to remove for failure to pay purchase price.

Cited in footnotes to Anderson v. Creamery Package Mfg. Co. 56 L. R. A. 554, which holds mortgage to seller of machinery purchased for use in permanent building, superior to existing real-estate mortgage; Schmaltz v. York Mfg. Co. 59 L. R. A. 907, which sustains jurisdiction in equity in one state of suit by citizen to enjoin other citizen from removing alleged fixtures from land on which former has mortgage.

Cited in notes (37 L.R.A.(N.S.) 121; 1 Brit. Rul. Cas. 678) on rights of seller of fixtures retaining title or lien, as against purchasers or encumbrancers of realty.

What are fixtures.

Cited in footnotes to Philadelphia Mortg. & T. Co. v. Miller, 44 L.R.A. 559, which holds bath tub, water heaters, and stove mantles not fixtures *per se;* Gartlan v. Hickman, 67 L.R.A. 694, which holds that machinery placed on property for prosecution of work under oil and gas lease giving lessees privilege of removing all machinery and fixtures placed on premises do not become part of the freehold.

38 L. R. A. 271, N. K. FAIRBANK & CO. v. CINCINNATI, N. O. & T. P. R. CO. 26 C. C. A. 402, 47 U. S. App. 744, 81 Fed. 289.

What is "machinery" within exemption contract.

Cited on second appeal in 33 C. C. A. 615, 62 U. S. App. 231, 90 Fed. 471, holding release of carrier's liability for damage caused by "accident to machinery" does not include breaking of axle.

Cited in Murphy v. O'Neil, 204 Mass. 47, 26 L.R.A.(N.S.) 147, 90 N. E. 406, holding the harness of a horse used by dealer to draw wagon is not part of the "ways, works or machinery."

Limitation of carrier's liability in bills of lading.

Cited in note (88 Am. St. Rep. 119) on limitation of carrier's liability in bills of lading.

38 L. R. A. 275, *Re* MELON STREET, 182 Pa. 397, 38 Atl. 482.

Appeal from final judgment making awards quashed in 192 Pa. 332, 44 W. N. C. 361, 43 Atl. 1013.

Damages for injury to abutter's easement.

Cited in *Re* Chatham Street, 191 Pa. 606, 43 Atl. 365, holding abutter entitled to damages for injury to drainage caused by change of street grade; Lewis v. Homestead, 194 Pa. 204, 45 Atl. 123, holding owner entitled to damages for injury to property, caused by change of street grade, although change not immediately in front of premises; Cram v. Laconia, 71 N. H. 49, 57 L. R. A. 286, footnote p. 282, 51 Atl. 635, denying recovery for injury by discontinuing part of street on which property abuts; Sensenig v. Lancaster, 20 Lanc. L. Rev. 131, holding in absence of statute, city not liable for vacation of street deeded to it by abutting owners; Lafean v. York County, 20 Pa. Super. Ct. 580, holding abutter entitled to damages for partial interference with light, air, and access to property, due to elevation of approach to bridge; Cooper v. Scranton City, 21 Pa. Super. Ct. 21, holding city liable, but not in action for trespass, for damages to abutting property resulting from change of street grade causing water to accumulate; Fyfe v. Turtle Creek, 22 Pa. Super. Ct. 298, holding municipal corporation liable for damage to house directly resulting from removing lateral support by construction of sewers; Walsh v. Scranton, 23 Pa. Super. Ct. 278, holding that construction of retaining wall at intersection of two streets, resulting in *cul de sac*, entitled abutter to damages; Nocton v. Pennsylvania R. Co. 20 Mortg. Co. L. Rep. 78, holding that abutting owner has no right to damages because of vacation of street unless statute gives such right; Nocton v. Norristown, 20 Montg. Co. L. Rep. 195, holding that under statute abutting owners upon part of street vacated are entitled to recover damages sustained by reason of such vacation; Heller's Appeal, 17 Pa. Dist. R. 104, 11 North. Co. Rep. 222, holding that abutting property owner on street proposed to be vacated by city, has no legal cause of complaint for appeal as "person aggrieved" under statute; Newark v. Hatt, 79 N. J. L. 552, 30 L.R.A.(N.S.) 641, 77 Atl. 47, holding that where part of street between two next adjacent streets is vacated, all of land between cross streets bounding on partly vacated street suffers special injury, whether it abuts on vacated portion or not; Blackwell, E. & S. W. R. Co. v. Gist, 18 Okla. 524, 90 Pac. 889, holding the right of an abutter to ingress and egress where fee of street is in the public constitutes property for which adequate compensation must be made; Howell v. Morrisville, 212 Pa. 352, 61 Atl. 932, holding the legislature has power to provide for damages caused abutting landowners by reason of vacation of road; Re Penrose Ferry Ave. 27 Pa. Super. Ct. 343, affirming 13 Pa. Dist. 398, holding that damages for the vacation of a street could be assessed though no benefits were assessed; Sensening v. Lancaster, 12 Pa. Dist. R. 390, holding that in the absence of statutory provision a city is not liable for damages arising from the vacation of a street deeded to it by the abutting owners; Highbarger v. Milford, 71 Kan. 345, 80 Pac. 633 (dissenting opinion), on right of an abutter to damages from mere vacation of street; Jackson v. Birmingham Foundry & Mach. Co. 154 Ala. 474, 45 So. 660, holding there is no infringement of a private right by vacating a street where property owner has a convenient and reasonable outlet left to the neighboring thoroughfares; Re Ruscomb Street, 33 Pa. Super. Ct. 149, on rehearing affirming 30 Pa. Super Ct. 478, which affirmed 14 Pa. Dist. R. 185, holding that where the effect of the vacation of a street is not to cut off access to lots, but merely makes necessary a more circuitous route, the owner of the lot cannot recover damages; Re Ogontz Ave. 225 Pa. 130, 73 Atl. 1096, on what constitutes an injury to property by the opening or widening of streets.

Cited in footnote to Borghart v. Cedar Rapids, 68 L.R.A. 306, which sus-

tains property owner's right of action for vacation of public square cutting off only means of access to his property.

Cited in note (2 L.R.A.(N.S.) 271) on right of property owner whose access from one direction is shut off or interfered with by closing of street.

Distinguished in Stork v. Philadelphia, 195 Pa. 106, 49 L. R. A. 603, 45 Atl. 678, denying damages for settling of walls of house, caused by improper construction of subway in street; Rockafeller v. Northern C. R. Co. 30 Pa. Co. Ct. 105, holding that damages will not be assessed against a railroad company for appropriating a part of a public road, where it provided another road which was officially accepted.

Disapproved in Newark v. Hatt, 77 N. J. L. 53, 71 Atl. 330, holding damages limited to those directly injured by being deprived of access to their land.

— Statutes relating thereto.

Cited in Re Umbria Street, 32 Pa. Super. Ct. 334, holding statute providing for the assessment of damages for the vacation of streets, is constitutional; Re Toronto Street, 10 Pa. Dist. R. 351, holding that the act of 1891 relating to the vacation of streets and other improvements thereof does not repeal the act of 1858 providing for the vacation of streets and the assessment of damages therefor.

Assessment of damages as necessary to vacation of street.

Cited in Vanderburgh v. Minneapolis, 98 Minn. 335, 6 L.R.A.(N.S.) 744, 108 N. W. 480, holding where no property is taken and damages are consequential only, it is not necessary to right to vacate street that damages be first ascertained and paid.

Decree confirming vacation of street.

Cited in *Re* William Street, 7 Pa. Dist. R. 4, 43 W. N. C. 8, holding decree unnecessary to complete vacation of street, struck off by revision of city plan.

Appointment of jury to assess damages.

Cited in *Re* Toronto Street, 26 Pa. Co. Ct. 98, holding that proceedings for appointment of jury to assess damages, caused by vacation of street should be brought in court of quarter sessions; Re Tabor Street, 25 Pa. Super. Ct. 356; Re Butler Street, 25 Pa. Super. Ct. 361,—holding that if the petition to appoint viewers to assess damages for the vacation of a street is not presented until six years after the confirmation of the vacation the right to damages is barred; Diller's Petition, 20 Pa. Dist. R. 104, 37 Pa. Co. Ct. 547, holding that where pavement sixteen inches above petitioner's grade was laid upon adjoining alley, but no change of grade was made of street upon which petitioner's property abutted, viewers would not be appointed to determine damages.

Sufficiency of report of reviewers.

Cited in Re Greenwood Twp. Road, 27 Pa. Super. Ct. 551, holding that the reviewer's report need not state that they met at the time and place designated in the notice; Re Cornplanter Twp. Road, 26 Pa. Super. Ct. 28, holding that the only question which can be brought for review before the courts is the sufficiency of the reviewer's report, which need not state that they endeavored to obtain releases, but it will be presumed that they did their duty.

Assessment of nonabutting property.

Cited in *Re* Orkney Street, 194 Pa. 425, 48 L. R. A. 274, 45 Atl. 314, Affirming 9 Pa. Super. Ct. 610, 44 W. N. C. 12, holding that no assessment for benefits from opening street can be imposed upon nonabutting property.

Distinguished in Re Ruscomb Street, 31 Pa. Co. Ct. 64, holding that damages

cannot be assessed for the vacation of a street at a distance where there are streets intersecting between it and the property damaged.

Power of council to vacate street.

Cited in Wetherill v. Pennsylvania R. Co. 195 Pa. 159, 45 Atl. 658, refusing to enjoin vacation of street under authority of council; O'Donnell v. Pittsburg, (Re Metzger Street) 59 Pittsb. L. J. 350, holding that city may be restrained from vacating street where lots were sold according to plan, which showed to be on street; Carroll v. Asbury, 28 Pa. Super. Ct. 359; Wickham v. Twaddell, 25 Pa. Super. Ct. 193,—holding that one purchasing land according to a recorded plan is a purchaser by implied covenant of the right that the street shall remain open and the vacation of the street does not divest him of the right.

Service of notice as to laying out road.

Cited in *Re* Derry Twp. Road, 11 Pa. Super. Ct. 238, holding that viewers' report raises presumption of service of notice on land owners as to laying out new road.

Conclusiveness of judgment establishing boundary.

Cited in footnote to Long v. Wilson, 60 L. R. A. 720, which holds judgment establishing boundary of highway in suit against owner on one side not conclusive on opposite owner.

Terminus for public road.

Cited in *Re* Schuylkill River Road, 19 Pa. Super. Ct. 378, holding large manufacturing center sufficient terminus for public road as "place of public resort."

38 L. R. A. 289, *Re* DAVIS, 120 N. C. 9, 58 Am. St. Rep. 771, 26 S. E. 636.

Probate of joint or mutual wills.

Cited in Baker v. Syfritt, 147 Iowa, 54, 125 N. W. 998, holding that joint or mutual character of will does not in itself affect its validity, and it may be probated and enforced as will of testator dying first.

Cited in note (34 L.R.A.(N.S.) 964, 968, 976) on contents of will as affecting right to probate.

Right to revoke will jointly executed.

Annotation cited in Buchanan v. Anderson, 70 S. C. 457, 50 S. E. 12, holding a will of husband and wife by which each disposes of separate property is not a mutual will and either may revoke; Wilson v. Gordon, 73 S. C. 164, 53 S. E. 79, holding absolute devises by two sisters without limitation to the survivor does not constitute a mutual will in absence of contract showing such intention.

Effect of two wills in one instrument.

Cited in Gerbrich v. Freitag, 213 Ill. 555, 104 Am. St. Rep. 234, 73 N. E. 338, 2 Ann. Cas. 24, holding it no objection that will is a single instrument unless it attempts to suspend, after death of one until death of the other, the disposition of the property.

Cited in note (136 Am. St. Rep. 594, 602) on joint, mutual, reciprocal, or multi-wills.

Distinguished in Deseumeur v. Rondel, 76 N. J. Eq. 401, 74 Atl. 703, holding that testamentary disposition contained in one writing disposing of property held jointly is joint will.

38 L. R. A. 294, CARR v. BROWN, 20 R. I. 215, 78 Am. St. Rep. 855, 38 Atl. 9.

Validity of statutes under fourteenth amendment.

Cited in State v. Dalton, 22 R. I. 82, 48 L. R. A. 779, 84 Am. St. Rep. 818, 46

Atl. 234, holding statute prohibiting vendor from giving purchaser stamp or coupon which entitles him to receive article from third person, void; State v. Foster, 22 R. I. 173, 50 L. R. A. 343, 46 Atl. 833, sustaining statute requiring transient dealers to make deposit of $1,000, and pay $200 for state, and $100 to $350 for local, license; Crafts v. Ray, 22 R. I. 186, 49 L. R. A. 608, 46 Atl. 1043, sustaining exemption from taxation for ten years of private manufacturing corporation on condition it locate in town; Church v. South Kensington, 22 R. I. 385, 53 L. R. A. 741, 48 Atl. 3, declaring void, provision charging town with maintenance of pauper upon report of commissioners not required to take or administer oaths; Cunnius v. Reading School Dist. 25 Pa. Co. Ct. 18, holding act relating to administration on estates of persons presumed to be dead, void; Gunn v. Union R. Co. 23 R. I. 302, 49 Atl. 999, holding that statute empowering appellate court to grant new trial "for reasons for which it is granted at common law" does not deprive person of property without due process of law or interfere with right to jury trial; *Re* Ten-Hour Law, 24 R. I. 619, 61 L. R. A. 618, 54 Atl. 602, holding exemption of certain contracts from operation of statute limiting hours of labor of employees of street railway companies, not void as being oppressive; Clapp v. Hong. 12 N. D. 605, 65 L.R.A. 760, footnote p. 157, 102 Am. St. Rep. 589, 98 N. W. 710, 1 Ann. Cas. 110, holding the notice required by statute to be given of appointment of a general administrator is not a notice to the owner of the estate.

Cited in notes (4 L.R.A.(N.S.) 945) on constitutionality of statutes providing for administration of absentee's estate; (115 Am. St. Rep. 950) on due process of law.

Disapproved in Nelson v. Blinn, 197 Mass. 281, 15 L.R.A.(N.S.) 653, 125 Am. St. Rep. 364, 83 N. E. 889, 14 Ann. Cas. 147, holding state may provide for distribution of property of an absentee after property has been in a receiver's hands for a fixed number of years; Cunnins v. Reading School Dist. 198 U. S. 475, 49 L. ed. 1132, 25 Sup. Ct. Rep. 721, 3 Ann. Cas. 1121, holding the state has power to provide by a special proceeding for the administration and care of property of absentees.

38 L. R. A. 297, SWEENEY v. METROPOLITAN L. INS. CO. 19 R. I. 171, 61 Am. St. Rep. 751, 36 Atl. 9.

Warranty of answers in insurance application.

Cited in Leonard v. State Mut. Life Assur. Co. 24 R. I. 8, 96 Am. St. Rep. 698, 51 Atl. 1049, holding statements in application made as of applicants own knowledge, are warranties; Mutual Reserve Fund L. Asso. v. Austin, 6 L.R.A. (N.S.) 1066, 73 C. C. A. 498, 142 Fed. 401, holding warranties in the policy create a condition precedent to the incurring of obligation; Bottomley v. Metropolitan L. Ins. Co. 170 Mass. 278, 49 N. E. 438, holding no revival of a lapsed policy takes place where one of declarations contained in the application was untrue.

Cited in footnote to Globe Mut. L. Ins. Asso. v. Wagner, 52 L. R. A. 649, which holds policy not avoided by false statement that none of applicant's brothers dead.

Presumption in favor of truthfulness.

Cited in Hennessy v. Metropolitan L. Ins. Co. 74 Conn. 705, 52 Atl. 490, holding a natural presumption of fact exists in favor of the truth of solemn acts of an applicant since dead where a policy has been issued and premiums paid; Mohr v. Prudential Ins. Co. 32 R. I. 180, 78 Atl. 554, holding that presumption of good health of insured arises upon delivery of policy, but this pre-

sumption may be rebutted; prima facie case made by presumption not shifting burden to defendant but merely lifting it.

Burden of proof.

Cited in Guiltinan v. Metropolitan L. Ins. Co. 69 Vt. 475, 38 Atl. 315, holding insured not bound to aver and prove truthfulness of answers made in application; Ley v. Metropolitan L. Ins. Co. 120 Iowa, 218, 94 N. W. 568, on burden of proving untrue statements in application.

38 L. R. A. 299, IRELAND v. GLOBE MILL. & REDUCTION CO. 20 R. I. 190, 38 Atl. 116.

Right to enact by-laws.

Cited on third appeal in 21 R. I. 10, 79 Am. St. Rep. 769, 41 Atl. 258, denying right of corporation to enact by-law relating to sale of stock, before filing certificate of organization.

Liability of corporation on contract of promoters.

Cited in Tuttle v. Tuttle, 101 Mo. 292, 64 Atl. 496, 8 Ann. Cas. 260, holding there must be an express resolution or some other act by the corporation subsequent to organization showing an intent to be bound.

38 L. R. A. 302, CZECH v. GREAT NORTHERN R. CO. 68 Minn. 38, 64 Am. St. Rep. 452, 70 N. W. 791.

Duty of railroad company at crossings.

Cited in Croft v. Chicago G. W. R. Co. 72 Minn. 48, 74 N. W. 898, holding railroad company liable for negligently killing cow at crossing; Mack v. South Bound R. Co. 52 S. C. 340, 40 L. R. A. 686, 68 Am. St. Rep. 913, 29 S. E. 905, holding evidence of failure to give statutory signals at crossing near accident, competent on question of reckless negligence; Louisville & N. R. Co. v. Bodine, 109 Ky. 515, 56 L. R. A. 508, footnote p. 506, 59 S. W. 740, requiring signals at private crossing for special train running at high speed, when crossing particularly dangerous; Kinyon v. Chicago & N. W. R. Co. 118 Iowa, 359, 96 Am. St. Rep. 382, 92 N. W. 40, holding operation of train over crossing at high rate of speed not, of itself, negligence; Libaire v. Minneapolis & St. L. R. Co. 113 Minn. 522, 130 N. W. 8, holding that failure of railroad to ring bell or blow whistle upon approach of train to crossing is prima facie evidence of negligence.

38 L. R. A. 305, HARRINGTON v. PROVIDENCE, 20 R. I. 233, 38 Atl. 1.

Exercise of municipal powers.

Cited in California Reduction Co. v. Sanitary Reduction Works, 61 C. C. A. 98, 126 Fed. 36, sustaining power of municipality to contract for removal of garbage, and give exclusive privilege for fifty years, with requirement as to erection of crematory within certain time.

Cited in footnotes to Helena v. Dwyer, 39 L. R. A. 266, which holds void, ordinance against selling fresh pork or sausage between specified dates; Iler v. Ross, 57 L. R. A. 895, which denies city's right to grant monopoly by contract for removal of ashes, etc.

Cited in note (70 L.R.A. 242) on compulsory drainage.

— Over nuisances.

Cited in footnotes to State *ex rel.* Moriarity v. McMahon, 38 L. R. A. 675, which holds business of scavenger within control of city having power to make ordinances for protection of health; Knauer v. Louisville, 41 L. R. A. 219, which holds void, as indirect confiscation, ordinance prohibiting owner's removal of carcass of dead animal; Valparaiso v. Bozarth, 47 L. R. A. 487, which holds

notice or request to remove building encroaching on street unnecessary before action to abate it; Western & A. R. Co. v. Atlanta, 54 L. R. A. 294, which holds power to abate nuisance in city to be in police court only; Northwood v. Barber Asphalt Paving Co. 54 L. R. A. 454, which holds compliance with insufficient special directions for abatement of nuisance, not excuse disobedience of general clause of decree; Wygant v. McLauchlan, 54 L. R. A. 637, which denies city's power unreasonably to prohibit all interments within city; Mercer County v. Harrodsburg, 56 L. R. A. 583, which authorizes city to enjoin replacing of hitching posts removed as nuisances; Philadelphia v. Bradender, 58 L. R. A. 220, which sustains ordinance against casting advertisements, etc., into vestibules of dwellings; St. Louis v. Galt, 63 L. R. A. 778, which sustains ordinance requiring cutting of weeds on city lots; Richmond v. Caruthers, 70 L.R.A. 1005, which denies right of city to deprive owner of dead animal of his property right in carcass by giving public contractors exclusive right to dispose thereof before it becomes a nuisance.

Cited in notes (38 L. R. A. 161) on municipal power over buildings and other structures as nuisances; (38 L. R. A. 641) on municipal power over nuisances relating to trade or business; (39 L. R. A. 520) on municipal power as to nuisances affecting public morals, decency, peace, and good order; (39 L. R. A. 551) on municipal control over smoke as public nuisance; (39 L. R. A. 621) on municipal control over public nuisances on public streets and highways, created by street railroad and other electrical companies; (39 L. R. A. 649, 653, 677, 685) on municipal power over nuisances affecting highways and waters; (40 L. R. A. 465) on injunction by municipalities against nuisances in waters and water courses; (41 L. R. A. 321, 322, 324–326) on injunction by municipal corporation against nuisances affecting public morals, peace and good order, and health and safety.

Distinguished in Brown v. Narragansett, 21 R. I. 505, 44 Atl. 932, holding no appeal lies from order of district council of Narragansett as to abatement of nuisances.

Right to maintain nuisance.

Cited in State v. Robb, 100 Me. 187, 60 Atl. 874, 4 Ann. Cas. 275, holding fact that house offal may have some appreciable value does not save it from police regulations if it is noxious or in a condition requiring prompt intervention.

Cited in note (53 L. R. A. 895, 897) on prescriptive right to maintain public nuisance.

What is a nuisance.

Cited in Miller v. Syracuse, 168 Ind. 233, 8 L.R.A.(N.S.) 472, 120 Am. St. Rep. 366, 80 N. E. 411, holding it sufficient that statute or ordinance treats a thing as a nuisance without a formal declaration that it is such.

Cited in footnote to Kleebauer v. Western Fuse & Explosives Co. 60 L. R. A. 377, which holds storage of gunpowder necessary for business of making fuses, carefully conducted in proper location, not nuisance *per se*.

Cited in note (17 L.R.A.(N.S.) 1029) on stable for horses as nuisance.

State's exercise of police powers.

Cited in State v. Dalton, 22 R. I. 80, 48 L. R. A. 778, 84 Am. St. Rep. 818, 46 Atl. 234, holding statute prohibiting vendor from giving purchaser stamp or coupon which entitled him to receive article from third person void; State v. Foster, 22 R. I. 172, 50 L. R. A. 343, 46 Atl. 833, sustaining statute requiring transient merchants to deposit $1,000 and pay $200 for state, and $100 to $350 for local, license; Ewing v. Chase, 37 App. D. C. 58, holding that police regula-

tion requiring changes in levels of floors of existing theater buildings used for public assemblies to be made by inclines and not steps, is constitutional: Moeschen v. Tenement House Dept. 203 U. S. 583, 51 L. ed. 328, 27 Sup. Ct. Rep. 781, affirming without discussion 89 App. Div. 532, 85 N. Y. Supp. 704, which sustains act requiring individual water closets, instead of school sinks, to be used in tenement houses.

Cited in footnotes to State v. Hyman, 64 L.R.A. 637, which holds prohibition against use of room in tenement or dwelling house for manufacture of clothing, except by immediate member of family, within police power: Tenement House Department of City of N. Y. v. Moeschen, 70 L.R.A. 704, which holds requirement that waterclosets be substituted for school sinks in tenement houses proper exercise of police power.

Cited in note (24 L.R.A.(N.S.) 242) on power of health authorities to require alteration of private property in a particular manner.

38 L. R. A. 326, DARLINGTON v. WARD, 48 S. C. 570, 26 S. E. 906.

Exercise of municipal powers.

Cited in State *ex rel.* Southern R. Co. v. Earle, 66 S. C. 198, 44 S. E. 781, sustaining ordinance requiring railroad companies whose tracks cross city streets, to station flagman both day and night, whose duty it shall be to wave red flag or light upon approach of trains; State v. Rice, 158 N. C. 638, 39 L.R.A.(N.S.) 270. 74 S. E. 582, holding that municipality may forbid keeping of hogs; Kellam v. Newark, 79 N. J. L. 368, 75 Atl. 548, holding that requirement of license or special permission for removal of dead animal that is in no immediate danger of becoming nuisance, is not reasonable; Miller v. Syracuse, 168 Ind. 235, 8 L.R.A.(N.S.) 473, 120 Am. St. Rep. 366, 80 N. E. 411, sustaining power of municipality to prohibit keeping of hogs in pens within corporate limits; Kirk v. Board of Health (Kirk v. Wyman) 83 S. C. 381, 23 L.R.A.(N.S.) 1192, 65 S. E. 387, on power of municipal corporations over nuisances.

Cited in footnote to State *ex rel.* Indianapolis v. Indianapolis Union R. Co. 60 L. R. A. 831, which denies city's power to declare anything a nuisance *per se*, not recognized as such by common law.

Cited in notes (38 L.R.A. 332) on municipal power over nuisances affecting safety, health, and personal comfort; (39 L.R.A.(N.S.) 267) on power of municipality to prohibit keeping of live stock.

Disapproved in Comfort v. Kosciusko, 88 Miss. 616, 41 So. 268, 9 Ann. Cas. 178, holding an ordinance prohibiting the keeping of hogs in a city without reference to whether they are a nuisance, invalid.

— Judicial control.

Cited in Brunson v. Youmans, 76 S. C. 129, 56 S. E. 651, holding an authorized ordinance cannot be set aside by a court for mere unreasonableness not extending to the violation of a constitutional right; Thomasson v. Southern R. Co. 72 S. C. 9, 51 S. E. 443, holding a municipal ordinance within the constitutional grant of the Legislature cannot be impeached in court for mere unreasonableness.

38 L. R. A. 339, FARRINGTON v. PUTNAM, 90 Me. 405, 37 Atl. 652.

Ultra vires as defense to recovery of corporate property.

Cited in Manchester Street R. Co. v. Williams, 71 N. H. 321, 52 Atl. 461, holding that officer of corporation selling its property as his own gives vendee no rights as against corporation, although latter acquired property by *ultra vires* act.

Right to attack devise to corporation.

Cited in Brigham v. Peter Bent Brigham Hospital, 126 Fed. 801, denying right of heirs to object to devise to hospital corporation on ground that it will increase amount of property beyond limit fixed by charter; Hubbard v. Worcester Art Museum, 194 Mass. 288, 9 L.R.A.(N.S.) 694, 80 N. E. 490, 10 Ann. Cas. 1025, on right to collaterally attack devise for charitable purposes.

Cited in note (60 Am. St. Rep. 319) on right of heirs to assail legacy to corporation.

Right to question corporate title.

Cited in Louisville School Bd. v. King, 127 Ky. 837, 15 L.R.A.(N.S.) 385, 107 S. W. 247, holding title of a corporation to land is good until invalidated by the state by a direct proceeding, though corporation was forbidden to hold real estate; Foster-Eddy v. Baker, 192 Fed. 631, to the point that conveyances made to charitable corporations in excess of statutory limitations are valid as against heirs and all others except state.

What constitutes charity.

Cited in Webber Hospital Asso. v. McKenzie, 104 Me. 329, 71 Atl. 1032, holding a public hospital where the poor are treated gratuitously and carried on by means of donations, comes within definition of a charitable corporation; Jensen v. Maine Eye & Ear Infirmary, 107 Me. 411, 33 L.R.A.(N.S.) 143, 78 Atl. 898, holding that corporation is charitable institution which conducts hospital mainly by charity, though it makes charge to those who are able to pay.

38 L. R. A. 355, STOCK v. JEFFERSON TWP. 114 Mich. 357, 72 N. W. 132.

Subsequent contempt proceedings for alleged violation of injunction in 132 Mich. 96, 92 N. W. 769.

Injunction to protect or restore easement.

Cited in Hyatt v. Albro, 121 Mich. 640, 80 N. W. 641, enjoining riparian owners from deepening outlet, thereby depriving mill owner of sufficient power; Ives v. Edison, 124 Mich. 410, 50 L. R. A. 138, 83 Am. St. Rep. 329, 83 N. W. 120, holding that owner of easement may compel restoration of stairway, although cost of rebuilding greater than injury; Wilkinson v. Dunkley-Williams Co. 139 Mich. 622, 103 N. W. 170, holding an injunction lies to restrain cutting through streets bordering stream where access by owner was possible only along such streets.

Comparison of damage in granting injunction.

Cited in American Smelting & Ref. Co. v. Godfrey, 89 C. C. A. 139, 158 Fed. 232, 4 Ann. Cas. 8, granting an injunction against the operation of a smelter at the suit of over four hundred neighboring land owners aggregating over nine thousand acres of farm lands; Freud v. Detroit & P. R. Co. 133 Mich. 418, 95 N. W. 559, on right of injunction to restrain unlawful taking of property regardless of purpose for which taken.

Rights in stream.

Cited in Neely v. Detroit Sugar Co. 138 Mich. 485, 101 N. W. 664, approving instruction of lower court on the rights of the owner of a mill dam to the unimpaired flow of the stream.

38 L. R. A. 358, NEBRASKA MEAL MILLS v. ST. LOUIS S. W. R. CO. 64 Ark. 169, 62 Am. St. Rep. 183, 41 S. W. 810.

Construction of statute regulating delivery of goods.

Cited in Re T. H. Bunch Co. 180 Fed. 526, holding that under the statute

providing a penalty for a delivery of the goods without a presentation and cancellation of the bill of lading, the carrier may recover the goods delivered to the consignee and converted to his use.

To whom delivery may be made under bill of lading.

Annotation cited in Paxson Bros. v. Warfield, 6 Ga. App. 317, 65 S. E. 34, holding that neither the designated consignee nor the consignor can claim the goods, as against a person to whom the bill of lading has been delivered as a conveyance of the property, where the carrier was to deliver it to the person holding the bill of lading.

Cited in footnotes to Chicago Packing & Provision Co. v. Savannah, F. & W. R. Co. 40 L. R. A. 367, which sustains delivery of goods without surrender of bill of lading to consignee, or on his order or direction; Southern R. Co. v. Atlanta Nat. Bank, 56 L. R. A. 546, which holds carrier liable to holder of bill of lading for loss of cotton by delivery from its compress to third person at consignor's direction; Clegg v. Southern R. Co. 65 L.R.A. 717, which holds carrier refusing to deliver freight because of refusal of excessive charge liable for ensuing loss, though the one making the demand had not obtained the bill of lading nor an order for delivery; National Newark Banking Co. v. Delaware L. & W. R. Co. 66 L.R.A. 595, which holds carrier bound to deliver goods to true owner claiming under consignee when it has notice of true owner's rights and bill of lading has already been surrendered.

— Delivery to consignee.

Cited in Bonds-Foster Lumber Co. v. Northern P. R. Co. 53 Wash. 304, 101 Pac. 877, holding that a delivery of the goods to the consignee in the absence of statute or stipulation to the contrary in the bill of lading, exonerated the carrier from liability; Nashville, C. & St. L. R. Co. v. Grayson County Nat. Bank, 100 Tex. 22, 93 S. W. 431, holding that the carrier may deliver to the consignee unless it is stipulated to the contrary in the bill of lading or it has notice in favor of an adverse claimant; Singer v. Merchants' Despatch Transp. Co. 191 Mass. 456, 114 Am. St. Rep. 635, 77 N. E. 882, holding that the carrier performed its contract by delivering the goods to the person named as consignee at Springfield, Ill., though it was intended for a person of the same name at Springfield, Mass., the address having been incorrect; Templeton v. Equitable Mfg. Co. 79 Ark. 459, 116 Am. St. Rep. 88, 96 S. W. 188, holding a delivery of the goods to the consignee was proper where the goods were not shipped to the order of the consignor, though the bill of lading was negotiable.

38 L. R. A. 367, MACNAUGHTAN CO. v. McGIRL, 20 Mont. 124, 63 Am. St. Rep. 610, 49 Pac. 651.

Statutes regulative of interstate commerce.

Cited in Ryman S. B. Line v. Com. 125 Ky. 261, 10 L.R.A.(N.S.) 1189, 101 S. W. 403, holding invalid as to steamship companies engaged in interstate commerce, a statute providing that not all corporations engaged in business shall have a known place of business and an agent on whom process may be served.

Actions by foreign corporations involving interstate commerce.

Cited in Kent & S. Co. v. Tuttle, 20 Mont. 207, 50 Pac. 559, holding that foreign corporation suing for value of goods sold in state must allege facts showing sale in nature of interstate commerce; Zion Co-op. Mercantile Asso. v. Mayo, 22 Mont. 102, 55 Pac. 915, holding that foreign corporation suing on domestic contract need not allege compliance with requirements, where petition shows

transaction prima facie interstate commerce; La Moine Lumber & Trading Co. v. Kesterson, 171 Fed. 983, holding that corporations possess the same freedom from state regulations when engaged in interstate commerce as do individuals.

Who engaged in interstate commerce.

Cited in footnotes to Smith v. Jackson, 47 L. R. A. 416, which holds agent collecting garments and sending them to laundry outside of state and redelivering to owners, not engaged in commerce; Racine Iron Co. v. McCommons, 51 L. R. A. 134, which holds traveling agent taking orders and distributing contents of original package among customers not engaged in interstate commerce; Croy v. Epperson, 51 L. R. A. 254, which holds one taking orders in own name for articles manufactured in other state and delivering separate articles to customers, not engaged in interstate commerce; French v. State, 52 L. R. A. 160, which holds agent of nonresident company selling organ taken with him, or taking orders for others to be delivered by him, engaged in interstate commerce; State v. Willingham, 52 L. R. A. 198, which holds interstate commerce, delivery of portraits and frames by agent previously taking order for nonresident manufacturer.

Cited in note (9 L.R.A.(N.S.) 1217) on soliciting trade as doing business within state.

Taxation of corporate franchises.

Cited in note (57 L. R. A. 85) on taxation of corporate franchises in United States.

38 L. R. A. 373, JOHNSON v. STATE, 59 N. J. L. 535, 37 Atl. 949.

Effect of void portion of act upon remainder.

Cited in Bernards Twp. v. Allen, 61 N. J. L. 242, 39 Atl. 716, raising, without deciding, as to effect of void portions of act upon valid portions; Grey v. Dover, 62 N. J. L. 50, 40 Atl. 640, holding that constitutional portion of statute will be sustained when separable from void part; Iowa L. Ins. Co. v. Eastern Mut. L. Ins. Co. 64 N. J. L. 345, 45 Atl. 762, holding that interdependent portions of statute fall when one invalid; Doran v. Camden, 64 N. J. L. 668, 46 Atl. 724, holding that invalidity of provision for imprisonment will not avoid entire ordinance relating to fine and imprisonment; McArdle v. Jersey City, 66 N. J. L. 599, 88 Am. St. Rep. 496, 49 Atl. 1013, holding that invalidity of manner of establishing excise board defeats entire excise act; Riccio v. Hoboken, 69 N. J. L. 661, 63 L. R. A. 491, 55 Atl. 1109, holding school law classifying school districts without adhering to any method of classification germane to purpose of enactment, void, as being local and special law providing for management of public schools; Eastwood v. Russell, 81 N. J. L. 678, 81 Atl. 108, holding that if invalid portion of statute can be separated from rest and there will then remain complete statute, embracing primary object of legislature, such portion will be upheld as valid; State v. Davis, 72 N. J. L. 348, 61 Atl. 2, holding that though a portion of the act be unconstitutional as not embraced within the title, the remainder will be enforced if it is the primary object of the act; Bryant v. Skillman Hardware Co. 76 N. J. L. 49, 69 Atl. 23, on the effect of the invalidity of a part of statute where severable from the rest; State v. Cudahy Packing Co. 33 Mont. 189, 115 Am. St. Rep. 804, 82 Pac. 833, 8 Ann. Cas. 717, holding whole statute invalid which prohibited combinations in restraint of any article of commerce, excepting those engaged in horticulture or agriculture, as the qualification denies the equal protection of the law.

Distinguished in Albright v. Sussex County Lake & Park Commission, 71 N. J. L. 310, 69 L.R.A. 771, 59 Atl. 146, holding that where the invalid part is

such that it is donbtful that the remainder would have been enacted without it, the whole act is valid.

Repeal of statute by implication.

Cited in Holle v. State, 62 N. J. L. 535, 41 Atl. 832, holding that act repealing statute which abolished certain courts has no effect upon act reducing number of judges of such courts.

Protection of courts against changes.

Cited in footnote to Love v. Liddle, 62 L. R. A. 482, which denies power to regulate jurisdiction of justices of the peace by classification of cities in which they reside.

Exclusion of negroes from jury duty.

Cited in Bullock v. State, 65 N. J. L. 564, 86 Am. St. Rep. 668, 47 Atl. 62, holding absence of colored man from panel of jurors returned to try colored man, no error.

Evidence as to comparison of traces left by criminals.

Cited in State v. Miller, 71 N. J. L. 534, 60 Atl. 202, holding that it was not erroneous to admit in evidence a section of a wall containing a print of the hand of the defendant placed there by him and the print of a bloody hand near the place where the homicide took place.

Cited in note (94 Am. St. Rep. 343) on comparison of footprints.

38 L. R. A. 376, McNULTY v. PENNSYLVANIA R. CO. 182 Pa. 479, 61 Am. St. Rep. 721, 38 Atl. 524.

Employee as passenger or fellow servant.

Cited in Louisville & N. R. Co. v. Stuber, 54 L. R. A. 698, 48 C. C. A. 152, 108 Fed. 937, holding foreman of water supply department fellow servant of engineer while in engine, going from place to place to supervise tanks; Dickinson v. West End Street R. Co. 177 Mass. 368, 52 L. R. A. 328, footnote p. 326, 83 Am. St. Rep. 284, 59 N. E. 60, holding street railway employee riding free not fellow servant of motorman; Chattanooga Rapid Transit Co. v. Venagle, 105 Tenn. 469, 51 L. R. A. 889, footnote p. 886, 58 S. W. 861, holding night watchman at depot boarding train to report readiness to resume duty, passenger; Dishon v. Cincinnati, N. O. & T. P. R. Co. 126 Fed. 202, holding section hand who lived in section house near track, and who, while on way to depot for own purpose, was injured by closing together of cars which had been separated to give section men passageway, fellow servant of those operating cars; Simmons v. Oregon R. Co. 41 Or. 163, 69 Pac. 440, holding employee of railroad company a passenger while riding free on extra freight on return from consultation with company's physician, whose fees are paid by company retaining sum from employees' pay checks; Headline v. Great Northern R. Co. 113 Minn. 80, 128 N. W. 1115, to the point that employee of railroad, who was carried to and from work on train in consideration of reduction in price of wages, was passenger; Westphal v. Chester Traction Co. 11 Del. Co. Ct. 526, holding that where employee of railroad is being carried free as part of his wages he is passenger; Dayton Coal & I. Co. v. Dodd, 37 L.R.A.(N.S.) 463, 110 C. C. A. 395, 188 Fed. 606, holding that employees in mine who are gratuitously carried by mine owner between their homes and place of work on private railroad are employees and not passengers during transportation; Harris v. City & Elm Grove R. Co. 69 W. Va. 66, — L.R.A.(N.S.) —, 70 S. E. 859, Ann. Cas. 1912D. 59, holding that servant employed in power house of railroad, and who was furnished with free pass to and from work was passenger; Hobert v. Portland R. Co. 103 Me. 322, 125 Am. St. Rep. 297, 69 Atl. 266, 13 Ann. Cas. 886, holding an employee while

riding to work upon a regular street car and paying his fare with tickets issued as a part of his wages, is a passenger: Haas v. St. Louis & Suburban R. Co. 111 Mo. App. 713, 90 S. W. 1155, holding that a laborer while riding to the place of his work was a passenger though travelling upon an employee's free pass; Goehring v. Beaer Valley Traction Co. 222 Pa. 604, 72 Atl. 259, holding a policeman employed by a traction company to preserve order upon its cars, was a passenger though he did not pay fare; Enos v. Rhode Island Suburban R. Co. 28 R. I. 293, 12 L.R.A.(N.S.) 246, 67 Atl. 5, holding fireman who was riding home from work on a ticket furnished him as a part of his wages, was a passenger; Missouri, K. & T. R. Co. v. Hendricks, 49 Tex. Civ. App. 324, 108 S. W. 745, holding where a brakeman was injured by being struck by a switch engine, while on his way across the yards he not being then engaged in the discharge of his duties, was not a fellow servant of the engineer.

Cited in footnotes to Iannone v. New York, N. H. & H. R. Co. 46 L. R. A. 730, which holds railroad employee gratuitously carried home after work not a passenger; Travelers' Ins. Co. v. Austin, 59 L. R. A. 107, which holds railroad paymaster traveling on company's business from station to station not a passenger within meaning of accident policy; Sanderson v. Panther Lumber Co. 55 L. R. A. 908, which holds foreman of lumber camp riding on log train to and from camp, fellow servant of persons operating train: Louisville & N. R. Co. v. Weaver, 50 L. R. A. 381, which holds station agent riding on train without paying fare, several hours after work ended, passenger; Peterson v. Seattle Traction Co. 53 L. R. A. 586, which holds member of construction gang riding home on ticket after day's work not fellow servant of those operating car; Whitney v. New York, N. H. & H. R. Co. 50 L. R. A. 615, which holds employee of railroad company riding on pass while making trip for own convenience, and which was given him under stipulation in his contract of employment, a passenger.

Cited in note (12 L.R.A.(N.S.) 857) on existence of relationship when servant goes on master's premises at other than hours of actual labor.

Cited as distinguished in Pigeon v. Lane, 80 Conn. 244, 67 Atl. 886, 111 Ann. Cas. 371, holding that where an employee was permitted as a favor to ride upon a sleigh provided for another, the driver and the servant were not fellow servants so that the defendant whose servants they were, was liable for the negligence of the driver.

38 L. R. A. 378, *Re* LENNIG, 182 Pa. 485, 61 Am. St. Rep. 725, 38 Atl. 466.

Transfer of expectancy.

Cited in Bechtel v. Lauer Brewing Co. 21 Pa. Co. Ct. 450, holding assignment of verdict before judgment, though not of record, entitles assignee to fund as against subsequent attaching creditor of assignor; Conrad v. Conrad, 22 Montg. Co. L. Rep. 194, 36 Pa. Super. Ct. 160, on the necessity of a consideration in the assignment of an expectancy.

Cited in notes (25 L.R.A.(N.S.) 437) on sale of expectancy by prospective heir; (24 Eng. Rul. Cas. 771) on validity and enforceability of assignment of expectancy.

Distinguished in Simon's Estate, 9 Pa. Dist. R. 59, holding deed of interests taking effect at termination of existing life estate, valid; Richards v. Lawrence, 13 Pa. Dist. R. 208, 30 Pa. Co. Ct. 162, affirming 12 Pa. Dist. R. 677, holding that any remainder vested or contingent could be assigned.

— Contracts relating to.

Cited in De Boer v. Harmsen, 131 Mich. 94, 90 N. W. 1036, holding agreement

by prospective heir to induce ancestor not to change will, valid, if latter is informed of arrangement.

Validity of voluntary conveyance.

Cited in Fidelity Title & T. Co. v. McClure, 35 Pittsb. L. J. N. S. 360, holding that conveyance made under misapprehension of material fact is voidable and equity can declare it void.

38 L. R. A. 382, O'NEIL v. BEHANNA, 182 Pa. 236, 61 Am. St. Rep. 702, 37 Atl. 843.

Enjoining strikers' interference with business.

Cited in York Mfg. Co. v. Oberdick, 25 Pa. Co. Ct. 334, enjoining strikers from interfering with manufacturer by intimidating employees; Marietta Casting Co. v. Thuma, 28 Pa. Co. Ct. 260, 20 Lanc. L. Rev. 192, authorizing injunction restraining strikers from interfering with workmen by calling them names and picketing factory; Patterson v. Building Trades, 11 Kulp, 25, authorizing injunction against strikers declaring boycott against manufacturer; Underhill v. Murphy, 117 Ky. 649, 111 Am. St. Rep. 262, 78 S. W. 482, 4 Ann. Cas. 780, holding that a strike injunction would be issued and could not be refused on the ground that the acts of the strikers were unlawful; Marietta Casting Co. v. Thuma, 12 Pa. Dist. R. 555; State Line & S. R. Co. v. Brown, 11 Pa. Dist. R. 513, holding that equity will interfere to prevent strikers by threats and intimidations to compel employees to join strike.

Cited in note (11 L.R.A.(N.S.) 204) on injunction against inducing, or assisting in continuance of, breach of contract.

— Unlawful acts of strikers.

Cited in Westmoreland Coal Co. v. McCartney, 20 Pa. Dist. R. 59, holding that striking miners who by marching, use of epithets and physical force, intimidate employees of mine owners, will be enjoined; State v. Stockford, 77 Conn. 238, 107 Am. St. Rep. 28, 58 Atl. 769, holding that any words or acts which are calculated and intended to cause an ordinary person to fear an injury to his person, business, or property are equivalent to threats and unlawful if for the purpose of inducing a strike; Allis-Chalmers Co. v. Iron Molders' Union No. 125, 150 Fed. 181, holding that picketing may be unlawful and amount to an intimidation of employees if it is intended to convey a threat; Christensen v. People, 114 Ill. App. 66, holding that the stationing of pickets, whose attitude was threatening and menacing was an exercise of force such as would be enjoined; York Mfg. Co. v. Oberdick, 10 Pa. Dist. R. 471, holding that placing pickets for the purpose of intercepting employees on their way to work, and stopping them to persuade them to break their contracts, is unlawful.

Constitutionality of the striker's act as to conspiracies.

Cited in Erdmann v. Mitchell, 10 Pa. Dist. R. 711, holding constitutional an act to relieve employees from criminal prosecutions for conspiracy; Patterson v. Building Trades Council, 11 Pa. Dist. R. 507, on the constitutionality of statute relative to combinations interfering with another's business.

Liability for enticing servant to quit.

Cited in note (5 L.R.A.(N.S.) 1097) on civil liability for enticing servant to quit.

What constitutes intimidation.

Cited in Goldfield Mines Co. v. Goldfield Miners' Union Co. 159 Fed. 522, holding that massing unnecessary number of pickets at point which must be passed by nonunion men, whom strikers desire to influence, is in itself act of intimidation.

Cited in note (116 Am. St. Rep. 473) on threats to incite strikes or boycotts or prevent their discontinuance as constituting extortion.

38 L. R. A. 387, EVEY v. MEXICAN C. R. CO. 26 C. C. A. 407, 52 U. S. App. 118, 81 Fed. 294.

Right of action for injury caused in another state or country.

Followed in Mexican C. R. Co. v. Marshall, 34 C. C. A. 137, 91 Fed. 937; Mexican C. R. Co. v. Murray, 42 C. C. A. 344, 102 Fed. 273; Mexican C. R. Co. v. Eckman, 42 C. C. A. 347, 187 U. S. 433, 47 L. ed. 247, 23 Sup. Ct. Rep. 211, Affirming 102 Fed. 276; Mexican C. R. Co. v. Jones, 48 C. C. A. 231, 107 Fed. 69, — holding that railroad employee injured in Mexico may sue in Federal court having jurisdiction of parties and subject-matter, since Mexican law not too indefinite to be administered in state.

Cited in Law v. Western R. Co. 91 Fed. 819, sustaining recovery of damages against railroad company for death of employee, allowed by statute of state where injury occurred and which is enforceable in another state having jurisdiction of parties; Slater v. Mexican National R. Co. 194 U. S. 135, 48 L. ed. 906, 24 Sup. Ct. Rep. 586 (dissenting opinion), majority denying Federal court's jurisdiction of common-law action founded on liability for death by wrongful act, created by Mexican law, because of lack of power to make decree of kind required by such laws; Bradbury v. Chicago, R. I. & P. R. Co. 149 Iowa, 59, 40 L.R.A.(N.S.) 690, 128 N. W. 1, holding that state courts may take jurisdiction of actions by employees against railroads under Federal employer's liability act; Dorr Cattle Co. v. Des Moines Nat. Bank, 127 Iowa, 163, 98 N. W. 918, 4 Ann. Cas. 519, holding that the right to sue for a tort, the liability of the perpetrator, and the defenses available are governed by the law of the place where the wrong occurred, but the items of damage that may be recovered affect the remedy and are governed usually by the law of the forum; Southern P. Co. v. Dusablon, 48 Tex. Civ. App. 207, 106 S. W. 766, holding that an action could not be maintained in Texas for an injury to a citizen of New Mexico, since the statute of the latter required that all actions for injuries be maintained in the courts of that territory.

Cited in footnotes to Chicago & E. I. R. Co. v. Rouse, 44 L. R. A. 410, which holds master's liability for fellow servant's act governed by law of place where cause of action arises; Jones v. Chicago, St. P. M. & O. R. Co. 49 L. R. A. 640, which holds statute of state where railroad employee injured, as to presumptive evidence of employer's knowledge of defect in appliance, not govern in action in other state; Baltimore & O. S. W. R. Co. v. Read, 56 L. R. A. 468, which denies right to recover in other state for injury from fellow servant's negligence in state where no remedy given.

Cited in notes (56 L.R.A. 196, 197, 205, 206, 208, 209, 222) on conflict of laws as to action for death or bodily injuries; (40 L.R.A.(N.S.) 1098) on jurisdiction of action for death under statute of another state as affected by character of statute, or differences between lex loci delicti and lex fori as to character of damages; (91 Am. St. Rep. 728) on conflict of laws as to measure of damages.

Local construction of statute as binding on foreign court.

Cited in Southern R. Co. v. Decker, 5 Ga. App. 24, 62 S. E. 678, holding that the courts may determine for themselves whether a foreign law giving a right of action for tort is penal, but in doing so they will give to the statute the same meaning as the courts of that state.

Force of state decisions on Federal courts.

Cited in note (40 L.R.A.(N.S.) 427) on questions of state law as to which

state court decisions must be followed in actions originating in, or removed to, Federal courts.

38 L. R. A. 397, PIONEER SAV. & L. CO. v. PROVIDENCE-WASHINGTON INS. CO. 17 Wash. 175, 49 Pac. 231.

Invalidity of policy because of mortgage.

Cited in Neher v. Western Assur. Co. 40 Wash. 159, 82 Pac. 166, holding where the insured made an oral application for insurance not knowing the rules of the company against insuring mortgaged property, and he made no representations as to mortgages on his property, he could recover for a loss, though the policy provided it should be void if the property were mortgaged.

Distinguished in Rice v. Hartford Ins. Co. 50 Wash. 347, 97 Pac. 238, holding that policy providing that it should be void if there was a mortgage upon the property or one was thereafter placed thereon, was avoided by subsequently placing a mortgage upon the property.

Mortgagee's interest in proceeds of insurance.

Cited in Burrows v. McCalley, 17 Wash. 275, 49 Pac. 508, holding mortgagee entitled to recover under policy payable to "mortgagee, as interest may appear," procured by executor of deceased mortgagor; Boyd v. Thuringia Ins. Co. 25 Wash. 450, 55 L. R. A. 167, 65 Pac. 785, holding policy issued to mortgagee, payable as interest may appear, not forfeited by mortgagor's conveyance.

Cited in note in (18 L.R.A.(N.S.) 204) on effect of breach of insurance policy by mortgagor on rights of mortgagee.

38 L. R. A. 402, PALMER v. VAN SANTVOORD, 153 N. Y. 612, 47 N. E. 915.

Who are employees.

Cited in United States v. Schlierholz, 137 Fed. 624, holding that a special agent of the land office for the purpose of protecting the timber on the public lands of the United States, he having no fixed salary, and there being no fixed tenure of office, was not an officer but an employee of the government; Goodridge v. Alton, 140 Ill. App. 375, holding a transit man and topographer an employee under the statute allowing attorney's fees when mechanic, artisan, servant, etc. sues for wages.

Who are entitled to preferences as employees.

Cited in *Re* Fowler, 29 Misc. 426, 60 N. Y. Supp. 545, holding salesman not entitled to preference as to commissions earned under independent agreement; Cochran v. A. S. Baker Co. 30 Misc. 50, 61 N. Y. Supp. 724, holding salary of bookkeeper not preferred claim on dissolution of corporation; *Re* Ginsburg, 27 Misc. 751, 59 N. Y. Supp. 656, and *Re* Luxton & B. Co. 35 App. Div. 245, 54 N. Y. Supp. 778, holding salesman, paid by commissions and salary, an employee entitled to preferential payment; *Re* American Lace & Fancy Paper Works, 30 App. Div. 323, 51 N. Y. Supp. 818, holding manager who has supervision over business not entitled to preferential payment as employee; *Re* Kimberly, 37 App. Div. 109, 55 N. Y. Supp. 1024, holding truckman not entitled to preference in payment by assignee for creditors; *Re* Stryker, 158 N. Y. 530, 70 Am. St. Rep. 489, 53 N. E. 525, holding employees earning salaries from $100 to $225 monthly not entitled to preference; Heckman v. Tammen, 184 Ill. 148, 56 N. E. 361, Affirming 84 Ill. App. 544, holding compositors, pressmen, cylinder-feeders, and bookkeepers entitled to preferences for wages, from assets of assigned estate; Hopkins v. Cromwell, 89 App. Div. 483, 85 N. Y. Supp. 839, holding one engaged to call upon farmers and contract for pickles in name of corporation, and after delivery to salt and weigh them, prepare brine, and care for them gen-

erally, an employee entitled to preference; Gay v. Hudson River Electric Power Co. 178 Fed. 503, holding a person employed by a corporation to secure options on various lands for the purpose of increasing its plant and sphere of action, was not an employee entitled to a preference for his wages.

Cited in footnote to Clark v. Renninger, 44 L. R. A. 413, which holds one cutting timber by contract not employee within statute as to receivership.

Distinguished in *Re* Mayer, 101 Fed. 228, holding salesman receiving commissions as compensation not entitled to preference.

38 L. R. A. 405, UNDERHILL v. HERNANDEZ, 13 C. C. A. 51, 26 U. S. App. 573, 65 Fed. 577.

Affirmed on certiorari in 168 U. S. 250, 42 L. ed. 457, 18 Sup. Ct. Rep. 83.

Suits against foreign countries.

Cited in American Banana Co. v. United Fruit Co. 92 C. C. A. 325, 166 Fed. 265, affirming 160 Fed. 188, holding that neither a foreign country nor its officers could not be sued in the courts of the United States for depredations made upon the plaintiff's plantation in a country under the control of such former country, nor could the corporation at whose instance the tort was committed.

38 L. R. A. 410, CAMPBELL v. COON, 149 N. Y. 556, 44 N. E. 300.

Right of nonresident to file mechanic's lien.

Cited in *Re* Simonds Furnace Co. 30 Misc. 211, 61 N. Y. Supp. 974, holding that foreign corporation, not authorized to transact business in state, may file mechanic's lien against owner; Stearns-Roger Mfg. Co. v. Aztec Gold Min. & Mill. Co. 14 N. M. 321, 93 Pac. 706, upholding validity of mechanic's lien where materials were delivered outside state; Genest v. Las Vegas Masonic Bldg. Asso. 11 N. M. 271, 67 Pac. 743, holding that where the materials furnished were used in the construction of a particular building within the state, the party furnishing the materials was entitled to a lien, although the material was sold and delivered in another state; New York Architectural Terra-Cotta Co. v. Williams, 102 App. Div. 5, 92 N. Y. Supp. 808, on the same point.

Enforcement of mechanic's lien.

Cited in Schmohl v. O'Brien, 25 Misc. 699, 55 N. Y. 629, holding that subcontractor's lien attaches to balance in owner's hand over contract price, where contractor defaults and owner completes work; McConologue v. Larkins, 32 Misc. 169, 66 N. Y. Supp. 188, holding preference of subcontractor over contractor as to proceeds under building contract not abrogated by lien law; New Jersey Steel & I. Co. v. Robinson, 74 App. Div. 489, 77 N. Y. Supp. 547, Affirming 33 Misc. 365, 68 N. Y. Supp. 577 (dissenting opinion), majority holding contractor's assignee entitled to money due on building contract where contractor has defaulted and owner completed work, in preference to holders of mechanics' liens subsequently filed.

Cited in footnote to Kirchman v. Standard Coal Co. 52 L. R. A. 318, which holds lienor not estopped to enforce lien by mistaken statement of its payment, without knowledge of other person's intention to buy property.

Waiver of architect's certificate.

Cited in Ocorr & R. Co. v. Little Falls, 77 App. Div. 611, 79 N. Y. Supp. 251, holding architect's certificate required by contract before payments were due, waived by owners declaring contract forfeited and taking possession of building for purpose of completing it.

Cited in note in (56 Am. St. Rep. 313) on architects' certificates and engineers' estimates.

38 L. R. A. 413, BURNEY v. CHILDREN'S HOSPITAL, 169 Mass. 57, 61 Am. St. Rep. 370, 47 N. E. 401.

Property in, and right to control disposition of, dead body.

Cited in Keyes v. Konkel, 119 Mich. 551, 44 L. R. A. 243, 75 Am. St. Rep. 423, 78 N. W. 649, holding action in replevin not maintainable for corpse under statute for taking chattels; Doxtator v. Chicago & W. M. R. Co. 120 Mich. 597, 45 L. R. A. 536, 79 N. W. 922, holding railroad company not liable for failure to deliver to widow parts of husband's limbs amputated by surgeons; *Re* Richardson, 29 Misc. 369, 60 N. Y. Supp. 539, upholding widow's right to choose husband's burial place; Wilson v. St. Louis & S. F. R. Co. 160 Mo. App. 657, 142 S. W. 775, holding that husband has quasi property right in dead body of his wife which entitles him to possession and control of same for purpose of decent burial; Louisville & N. R. Co. v. Wilson, 123 Ga. 68, 51 S. E. 24, 3 Ann. Cas. 128, holding that an action by the widow would lie for negligence and tort of the carrier's agents in transporting the body and leaving same stand out in rain; Wright v. Beardsley, 46 Wash. 19, 89 Pac. 172, holding that actual damages for mental anguish because of the improper burial of a child may be recovered by the parents of the child in an action for a breach of contract to bury the child; Beaulieu v. Great Northern R. Co. 103 Minn. 52, 19 L.R.A. (N.S.) 569, 114 N. W. 353, 14 Ann. Cas. 462, holding nominal damages could be recovered for the negligence of the carrier in carrying a dead body past its destination and delaying the funeral for twenty-four hours; Koerber v. Patek, 123 Wis. 459, 68 L.R.A. 959, 102 N. W. 40, holding that the son may maintain an action for the mutilation of the dead body of the parent, where the other parent is also dead; Philipps v. Montreal General Hospital, Rap. Jud. Quebec, 33 C. S. 488, holding that an unauthorized autopsy constitutes an unlawful trespass giving a right of action to the widow.

Cited in footnote to Thompson v. State, 51 L. R. A. 883, which holds attempt to make unauthorized sale of dead body of human being, a misdemeanor.

Cited in note (75 Am. St. Rep. 425) on rights in and to dead bodies and remedies for their enforcement.

Distinguished in Long v. Chicago, R. I. & P. R. Co. 15 Okla. 514, 6 L.R.A. (N.S.) 885, 86 Pac. 289, 6 Ann. Cas. 1005, holding that the parents of an infant child are not entitled to recover damages for mental pain and anguish occasioned by the mutilation of the dead body of the infant.

Action for injury to dead body.

Cited in Darcy v. Presbyterian Hospital, 202 N. Y. 262, 95 N. E. 695, Ann. Cas. 1912 D, 1238, holding that surviving husband or wife may maintain action against person unlawfully mutilating remains of deceased spouse; Feeley v. Andrews, 191 Mass. 315, 77 N. E. 766, holding that the only action which could be brought for injury to a dead body after it had been placed in the ground was trespass quare clausum fregit, as the body became a part of the ground.

38 L. R. A. 415, MINNEAPOLIS BASEBALL CO. v. CITY BANK, 66 Minn. 441, 69 N. W. 331.

Enforcement of stockholder's liability.

Cited in Somers v. Dawson, 86 Minn. 43, 90 N. W. 119; Ueland v. Haugan, 70 Minn. 352, 73 N. W. 169, holding that receiver of insolvent banking corporation may enforce stockholder's individual liability; Colton v. Mayer, 90 Md. 717, 47 L.R.A. 621, footnote p. 617, 78 Am. St. Rep. 456, 45 Atl. 874, denying

receiver's right to enforce stockholder's liability; Hamilton v. Loeb, 179 Fed. 734, to the point that receiver cannot enforce double liability of stockholders unless statute so provided: Way v. Barney, 116 Minn. 288, 38 L.R.A.(N.S.) 650, 133 N. W. 801, Ann. Cas. 1913 A, 719, holding that discharge of corporation under bankruptcy act does not extinguish constitutional liability of its stockholders for payment of its debts; Dight v. Chapman, 44 Or. 276, 65 L.R.A. 798, 75 Pac. 585, holding that a receiver appointed to collect unpaid stock subscriptions, is the agent of the creditors for the purpose of proving a claim of the corporation therefor against a bankrupt stockholder.

Cited in note (31 L.R.A.(N.S.) 365) on right of receiver, assignee, or trustee to recover statutory added liability of corporate shareholder.

— Outside of jurisdiction.

Cited in Hanson v. Davison, 73 Minn. 465, 76 N. W. 254 (dissenting opinion), majority holding liability of nonresident stockholder may be enforced by receiver in original action when property found within jurisdiction; Finney v. Guy, 106 Wis. 275, 49 L.R.A. 494, 82 N. W. 595, and Hale v. Allison, 188 U. S. 61, 47 L. ed. 386, 23 Sup. Ct. Rep. 244,—holding absent stockholders of insolvent corporation not bound by making corporation party to action to enforce stockholders' statutory liability; Hale v. Hardon, 37 C. C. A. 240, 95 Fed. 763, holding that receiver may maintain ancillary suits against nonresidents to enforce stockholders' liability for benefit of all creditors.

Cited in footnote to Howarth v. Lombard, 49 L. R. A. 301, which authorizes suit to enforce stockholders' liability in foreign jurisdiction.

Statutory liability of stockholders as a contractual obligation.

Cited in Converse v. Ætna Nat. Bank, 79 Conn. 173, 64 Atl. 341, 7 Ann. Cas. 75, holding that the liability which is imposed upon stockholders by statute is a contractual obligation so that to change their obligations would be impairing the contract and would be unconstitutional; Converse v. Ayer, 197 Mass. 453, 84 N. E. 98, on the right of a receiver of a corporation to enforce the statutory liability of stockholders, where the law allowing him to do so was passed subsequent to the acquisition of stock.

Powers of receivers.

Cited in Forte v. Chamberlin, 93 Ark. 118, 124 S. W. 234, holding that receiver of insolvent mutual insurance company is not authorized to enforce indemnity bond, given under statute, as that is not asset of corporation.

38 L. R. A. 419, CONROY v. CHICAGO, ST. P. M. & O. R. CO. 96 Wis. 243, 70 N. W. 486.

Rights of one temporarily leaving car.

Cited in Layne v. Chesapeake & O. R. Co. 66 W. Va. 627, 67 S. E. 1103, holding that court may instruct that if passenger left train for purpose of engaging in quarrel with servant of railroad by whom he was killed, carrier is not liable.

Cited in footnotes to Chicago, R. I. & P. R. Co. v. Sattler, 57 L.R.A. 890, which holds one leaving for own purpose, car standing on side track, not a passenger; Allen v. Northern Pac. R. Co. 66 L.R.A. 805, which holds that passenger attempting to re-enter train which he left while it was crossing ferry injured by being thrown by sudden starting forward of train against appliance necessary for operation of ferry within 26 inches of car cannot charge carrier with negligence because of its location where it had no reason to believe that

passengers would attempt to enter cars at such point and no notice of his attempt.

When the relationship as passenger continues.

Cited in Wilson v. Detroit United R. Co. 167 Mich. 119, 132 N. W. 762, holding that relation of carrier and passenger continues while passenger is transferring from one car to another, as part of continuous trip after having received transfer ticket; Bugge v. Seattle Electric Co. 54 Wash. 491, 103 Pac. 824, holding where the passengers on a car were notified that because of a washout no car would cross the trestle during the night but that the passengers could walk across and take a car from the other end, the relationship of passenger continued while they were walking across.

Care required of carrier for safety of passengers not upon train.

Cited in Pere Marquette R. Co. v. Strange, 171 Ind. 168, 20 L.R.A.(N.S.) 1048, 84 N. E. 819, holding that a carrier is bound to use only ordinary and reasonable care for the safety and protection of passengers who are about to enter the train; Pittsburgh, C. C. & St. L. R. Co. v. Harris, 38 Ind. App. 79, 77 N. E. 1051, holding erroneous an instruction to the effect that the highest degree of care was required of a carrier for the safety of passengers boarding and alighting from trains, since they are required to exercise only ordinary care toward these.

Care required of a passenger for his own safety.

Cited in Cleveland, C. C. & St. L. R. Co. v. Hadley, 170 Ind. 207, 16 L.R.A. (N.S.) 530, 82 N. E. 1025, 16 Ann. Cas. 1, holding a passenger is bound to use only ordinary care for his safety.

Duty of carrier to provide safe depots.

Cited in Bates v. Chicago, M. & St. P. R. Co. 140 Wis. 240, 133 Am. St. Rep. 1069, 122 N. W. 745, holding that it is the duty of the carrier to provide reasonably safe depot buildings in which freight transported over its road may be stored.

Contributory negligence.

Cited in Indiana Natural Gas & Oil Co. v. O'Brien, 160 Ind. 276, 65 N. E. 918, holding it not contributory negligence for one riding for pleasure, to drive upon temporary bridge over wide ditch dug in park.

Modification of judgment to conform to facts.

Cited in Innes v. Milwaukee, 96 Wis. 174, 70 N. W. 1064, which holds finding that elbow in blow-off pipe was made of material ordinarily used, inconsistent with finding of negligence causing attendant's death by bursting of elbow; Keller v. Schmidt, 104 Wis. 602, 80 N. W. 935, and Dummer v. Milwaukee Electric R. & Light Co. 108 Wis. 593, 84 N. W. 853, holding that appellate court will refuse to direct judgment when defendant fails to move in trial court to make judgment conform to undisputed evidence; Zahn v. Milwaukee & S. R. Co. 114 Wis. 43, 89 N. W. 889; Stafford v. Chippewa Valley Electric R. Co. 110 Wis. 362, 85 N. W. 1036; Wanzer v. Chippewa Valley Electric R. Co. 108 Wis. 324, 84 N. W. 423, — holding that trial court should modify special findings of jury to conform to undisputed facts.

Entry of judgment by order of appellate court.

Cited in Muench v. Heinemann, 119 Wis. 448, 96 N. W. 800, holding that appellate court will direct entry of judgment instead of new trial, where defendant moved in trial court for judgment and it appears that motion should have been granted.

New trial because of inconsistent findings.

Cited in Campshure v. Standard Mfg. Co. 137 Wis. 158, 118 N. W. 633, on the granting of a new trial because of inconsistent findings.

What special verdict must contain.

Cited in note (24 L.R.A.(N.S.) 69, 73) on what special verdict must contain.

38 L. R. A. 424, FARMERS' LOAN & T. CO. v. OREGON P. R. CO. 31 Or. 237, 65 Am. St. Rep. 822, 48 Pac. 706.

Demand of payment on receiver.

Cited in Jackson v. McInnis, 33 Or. 531, 43 L. R. A. 129, 72 Am. St. Rep. 755, 54 Pac. 884, holding demand of payment on receiver *pendente lite* of insolvent bank insufficient to bind indorser on negotiable certificate of deposit.

Costs of receivership.

Approved in Atlantic Trust Co. v. Chapman, 208 U. S. 375, 52 L. ed. 535, 28 Sup. Ct. Rep. 406, 13 Ann. Cas. 1155, holding that the trustee in a mortgage of the property of a canal and irrigation company was not liable for money borrowed and expenses incurred by the receiver under the orders of the court in keeping the corporation up as a going concern.

Cited in Chapman v. Atlantic Trust Co. 56 C. C. A. 69, 119 Fed. 265, holding that court may render judgment against mortgagee for difference between proceeds of sale of mortgaged property and expenses of receiver appointed to manage such property; Illinois Steel Co. v. Ramsey, 100 C. C. A. 323, 176 Fed. 865, holding that a court of equity was unauthorized to order the issuance of receiver's certificates which amount rather to a confiscation of the assets than to a conservation of them; McLean v. Gillespie, 130 Ill. App. 364, holding that party obtaining a receiver is not liable for the losses incurred by such receiver in operating the plant, where money sufficient to pay ordinary expenses had been received by the receiver.

Cited in note (25 L.R.A.(N.S.) 418) on liability for cost of receivership where final judgment is against the moving party.

Claims for labor against receiver.

Cited in note (2 L.R.A.(N.S.) 1044) on priority of claims for labor against property in hands of receiver over recorded liens.

38 L. R. A. 427, WEST MEMPHIS PACKET CO. v. WHITE, 99 Tenn. 256, 41 S. W. 583.

Carrier's duty to protect passengers.

Cited in Illinois C. R. Co. v. Kuhn, 107 Tenn. 125, 64 S. W. 202, affirming passenger's recovery for injuries resulting from derailment of sleeping car; Farrier v. Colorado Springs Rapid Transit R. Co. 42 Colo. 339, 126 Am. St. Rep. 158, 95 Pac. 294, holding that a carrier must exercise the same degree of care to protect a passenger from the negligence and wilful conduct of a fellow passenger as in otherwise caring for his safety; Grimsley v. Atlantic Coast Line R. Co. 1 Ga. App. 559, 57 S. E. 943, holding that the carrier is bound to exercise extraordinary care to protect passengers from injuries by other passengers; Pittsburgh, C. C. & St. L. R. Co. v. Richardson, 40 Ind. App. 506, 82 N. E. 536, approving an instruction in an action for injuries by a fellow passenger, which was to the effect that the carrier is bound to protect the passenger against danger known to the carrier, and must exercise the highest degree of care to protect him from injuries from fellow passengers; Brown v. Chicago, R. I. & P. R. Co. 2 L.R.A.(N.S.) 108, 72 C. C A. 20, 139 Fed. 974, 3 Ann. Cas. 251; McWilliams v. Lake Shore & M. S. R. Co. 146 Mich. 222, 109 N. W. 272,—

holding that where a carrier knows that the actions of passenger are such as to threaten the safety of other passengers, it must exercise the highest degree of care possible to protect them; St. Louis, I. M. & S. R. Co. v. Hatch, 116 Tenn. 591, 94 S. W. 671, holding that a carrier must exercise a high degree of care to protect its passengers from the acts of fellow passengers or strangers, but a sleeping car company need exercise only ordinary care; Nashville, C. & St. L. R. Co. v. Flake, 114 Tenn. 676, 108 Am. St. Rep. 925, 88 S. W. 326, holding carrier liable for injuries to a passenger through the actions of fellow passengers in discharging guns while upon the train; Northern Commercial Co. v. Nestor, 70 C. C. A. 523, 138 Fed. 386, holding same as to passenger upon steamboat.

Cited in note (37 L.R.A.(N.S.) 724) on carrier's liability for negligent or meddlesome act of fellow passenger.

— From assault.

Cited in Louisville & N. R. Co. v. Ray, 101 Tenn. 8, 46 S. W. 554, affirming recovery for injuries inflicted by employee upon passenger attempting to board train at place where he alighted by mistake; Savannah, F. & W. R. Co. v. Boyle, 115 Ga. 839, 59 L. R. A. 105, footnote p. 104, 42 S. E. 242, denying carrier's liability to passenger shot by negro tramp attempting to escape from arrest for stealing ride; Tall v. Baltimore Steam Packet Co. 90 Md. 256, 47 L. R. A. 123, footnote p. 120, 44 Atl. 1007, denying carrier's liability to passenger shot during quarrel with other passengers over cards.

Cited in footnotes to Savannah, F. & W. R. Co. v. Quo, 40 L.R.A. 483, which holds carrier liable for baggage master's assault with intent to rape passenger; United R. & Electric Co. v. State, 54 L. R. A. 942, which holds carrier liable for injuries inflicted on passenger by drunken passenger permitted to return and remain after removal; Spangler v. St. Joseph & G. I. R. Co. 63 L. R. A. 634, which holds carrier liable for injury to passenger by missile thrown through window by fellow passengers known to be intoxicated and to have threatened revenge on those interfering with their disorderly conduct.

Cited in notes (55 L.R.A. 719) on carrier's liability for assault on passenger by strikers, mob, or third persons; (2 L.R.A.(N.S.) 106) on liability of carrier for stranger's assault on passenger.

Care as to car brakes as question for jury.

Cited in Texas & P. R. Co. v. Storey, 29 Tex. Civ. App. 485, 68 S. W. 534, holding it question for jury whether railroad company should have anticipated drunken passenger's act in uncoupling from train, car whose brakes were sufficient when coupled to train, but insufficient when detached to prevent collision.

38 L. R. A. 433, CLARK v. TURNER, 50 Neb. 290, 69 N. W. 843.

Admissibility of testator's declarations.

Cited in Ewing v. McIntyre, 141 Mich. 517, 104 N. W. 787, holding that the declarations of the testator are competent evidence to rebut the presumption of revocation arising from the loss of a will, in a proceeding to probate a lost will; Miller's Will, 49 Or. 470, 124 Am. St. Rep. 1051, 90 Pac. 1002, 14 Ann. Cas. 277, holding that declarations of the testatrix were admissible to show that the will had not been returned to her nor canceled, when corroborated by direct evidence.

Annotation cited in Giles v. Giles, 204 Mass. 386, 90 N. E. 595, holding that under the statute the declarations of the testator as to the execution of a will or of a writing containing a revocation of it, are inadmissible.

Cited in note (107 Am. St. Rep. 468, 469) on admissibility of testator's declarations to sustain, defeat or aid in construction of alleged will.

Annotation in 38 L. R. A. 433, referred to particularly in *Re* Kennedy, 53 App. Div. 116, 65 N. Y. Supp. 879 (dissenting opinion), affirming 30 Misc. 6, 62 N. Y. Supp. 1011, majority holding testatrix's declarations, made just before death, admissible as indicating continued existence of will.

Proof of lost will.

Cited in McCarn v. Rundall, 111 Iowa, 409, 82 N. W. 924, holding paper offered as copy of lost will not proved by witness saying "it is right, as near as I can recollect;" Williams v. Miles, 68 Neb. 474, 62 L.R.A. 387, 110 Am. St. Rep. 431, 94 N. W. 705, 4 Ann. Cas. 306, holding that last will cannot be proved solely by testator's declarations; Williams v. Miles, 87 Neb. 479, 127 N. W. 904, holding that proof of execution and contents of lost will should be clear and convincing and declarations of testator alone that instrument he is signing is his will, will not be held to revoke former will, where there is no evidence as to contents.

Cited in note (110 Am. St. Rep. 470) on lost or destroyed wills and proceedings for their probate.

Presumption as to destruction of will.

Cited in McIntosh v. Moore, 22 Tex. Civ. App. 27, 53 S. W. 611, and Williams v. Miles, 68 Neb. 467, 62 L.R.A. 385, 110 Am. St. Rep. 431, 94 N. W. 705, 4 Ann. Cas. 306, upholding presumption that testator destroyed will, where evidence shows will last seen in his possession and not found after death.

Annotation cited in Re Colbert, 31 Mont. 468, 107 Am. St. Rep. 439, 78 Pac. 971, 3 Ann. Cas. 952, holding that the will having been in the possession of the testator when last seen, and he was in possession of his mental faculties, the presumption arises that he destroyed the will, and the burden is upon the proponent to overcome the same with clear, satisfactory and convincing evidence.

Heirs as witnesses.

Cited in McCoy v. Conrad, 64 Neb. 156, 89 N. W. 665, holding heirs not disqualified as witnesses as to transactions with decedent in contest proceedings for probate of will.

Allowance of attorney's fees.

Cited in Re Hentges, 86 Neb. 78, 26 L.R.A.(N.S.) 762, 124 N. W. 929, holding that ordinarily the executor should be credited with the amount paid for attorney's fees in the probating of the will.

38 L. R. A. 458, JEFFERSON v. BIRMINGHAM R. & ELECTRIC CO. 116 Ala. 294, 67 Am. St. Rep. 116, 22 So. 546.

Liability for injury to trespasser.

Cited in Highland Ave. & Belt R. Co. v. Robbins, 124 Ala. 118, 82 Am. St. Rep. 153, 27 So. 422, holding that failure to allege company's wanton negligence in killing child while trespassing on track bars recovery; Alabama G. S. R. Co. v. Moorer, 116 Ala. 645, 22 So. 900, holding that diligence in reversing engine bars recovery for death of child killed while running along tracks; Southern R. Co. v. Benefield, 172 Ala. 595, 35 L.R.A.(N.S.) 423, 55 So. 252, holding that child is trespasser in attempting to crawl over or under drawbars of cars standing in school playground; Birmingham R. Light & P. Co. v. Jones, 153 Ala. 163, 45 So. 177, holding that a railroad company owes no duty to a trespasser on its tracks to keep a lookout for him; Chambers v. Milner Coal & R. Co. 143 Ala. 261, 39 So. 170, holding defendant not liable for injuries to a child while tres-

passing in the defendant's powder magazine, which was situated one hundred and fifty yards from the road and some distance from a traveled path.

Cited in footnote to Biggs v. Consolidated Barb-Wire Co. 44 L. R. A. 655, which holds owner liable for maintaining dangerous machinery on private grounds unprotected from visits of trespassing children.

Cited in notes (19 L.R.A.(N.S.) 1162) on attractive nuisance; (32 L.R.A. (N.S.) 575) on duty of property owner to trespassing child.

Child's capacity question for jury.

Cited in Tutwiler Coal, Coke & I. Co. v. Enslen, 129 Ala. 346, 30 So. 600, holding capacity of thirteen-year-old child to be guilty of contributory negligence for jury to determine.

Cited in note (29 L.R.A.(N.S.) 488) on presumption and burden of proof as to capacity of minor servant to comprehend and avoid danger.

Allegations of negligence.

Cited in note (59 L. R. A. 247) on sufficiency of general allegations of negligence.

38 L. R. A. 460, SAN DIEGO WATER CO. v. SAN DIEGO, 118 Cal. 556, 62 Am. St. Rep. 261, 50 Pac. 633.

Regulation of public utilities.

Approved in Cumberland Teleph. & Teleg. Co. v. Railroad Comrs. 156 Fed. 829, holding that if the railroad commission acts arbitrarily without investigation in attempting to establish rates, charges, etc., it goes beyond the powers conferred upon it.

Cited in Home Teleph. & Teleg. Co. v. Los Angeles, 211 U. S. 278, 53 L. ed. 185, 29 Sup. Ct. Rep. 50, Affirming 81 C. C. A. 120, 155 Fed. 580, holding that a municipal ordinance fixing telephone rates was not unconstitutional because it did not provide for notice, hearing and investigation, where it was provided that the rates should be fixed at a certain meeting of the council, and be based upon a report required of the company.

Cited in notes (62 Am. St. Rep. 182) on protection of corporations from special and hostile legislation; (62 Am. St. Rep. 295) on regulation of rates.

— Value used in determining fairness of rates.

Cited in Consolidated Gas Co. v. New York, 157 Fed. 876, holding that in fixing rates the measure of the value of the business on which the owner is entitled to a fair return, is the reproductive value at the time of the inquiry without regard to the original cost; Southern P. Co. v. Bartine, 170 Fed. 751, holding that in determining the value to be used in determining the reasonableness of railroad rates, the cost of construction and of reproduction are to be considered but neither are absolutely controlling; Contra Costa Water Co. v. Oakland, 165 Fed. 531, on the determination of the value of a water company's plant in fixing rates.

Cited in note (38 L.R.A.(N.S.) 1215) on allowance for depreciation in plant in fixing rates of public service corporation.

Municipal power to regulate water supply and rates.

Cited in Knoxville v. Knoxville Water Co. 107 Tenn. 672, 61 L. R. A. 895, 64 S. W. 1075, sustaining city's power to reduce water rate; Los Angeles City Water Co. v. Los Angeles, 88 Fed. 748, holding ordinance passed pursuant to constitutional requirement reducing water rate below amount fixed by contract, void; San Diego Land & Town Co. v. National City, 174 U. S. 751, 43 L. ed. 1159, 19 Sup. Ct. Rep. 804, sustaining ordinance regulating water rates.

Cited in footnotes to Ladd v. Boston, 40 L. R. A. 171, which upholds city's

removal of water meter, though fixtures so arranged as to cost consumer, after removal, twenty times as much as others pay; *Re* Janvrin, 47 L. R. A. 319, which sustains action empowering court to affix maximum water rates on petition of party aggrieved.

Cited in note (53 L. ed. U. S. 371–375) on reasonableness of governmental regulation of water rates.

Distinguished in Woodruff v. East Orange, 71 N. J. Eq. 432, 64 Atl. 466, holding that a water rate at so much a thousand feet meter-measure was not unreasonable as to hotels and boarding houses, though ordinary residents were charged at a fixture rate.

Court's power over water rates.

Cited in Cedar Rapids Water Co. v. Cedar Rapids, 118 Iowa, 260, 91 N. W. 1081, holding that court will not interfere with water rates fixed by city, where at such rates, company will receive 4⅞ to 5½ per cent interest on value of its property; Spring Valley Waterworks v. San Francisco, 124 Fed. 585, sustaining power of court to determine reasonableness of ordinance fixing water rates; Lake Forest Water Co. v. Lake Forest, 154 Ill. App. 194, holding that presumption is that water rates fixed by ordinance are fair and reasonable, and courts will not interfere unless rates fixed are plainly unreasonable; Contra Costa Water Co. v. Oakland, 159 Cal. 333, 113 Pac. 668, holding that if ordinance fixing water rates, give rate of return, which although low, is not palpably unreasonable, court will not interfere because it may think higher rate appropriate; Spring Valley Waterworks Co. v. San Francisco, 192 Fed. 190, holding that water company is not entitled to charge expense of reorganization of company, as part of operating expenses to be deducted from gross earnings, in suit to enjoin enforcement of water rates fixed by ordinance; Spring Valley Water Co. v. San Francisco, 165 Fed. 664, holding that the reasonableness of the rates for a water company fixed by a municipal ordinance may be determined by the courts as to whether they afford proper compensation; Spring Valley Water Co. v. San Francisco, 165 Fed. 683, holding that the courts could determine whether the rates afford just compensation or amount to a taking of property without due compensation.

Condemnation of water plant.

Cited in Kennebec Water Dist. v. Waterville, 97 Me. 216, 60 L. R. A. 867, 54 Atl. 6, holding that cost of replacing water plant must be considered in determining value when appropriated by eminent domain.

Cited in notes (58 L. R. A. 247) on acquisition of water supply by right of eminent domain; (61 L. R. A. 100, 101, 104) on establishment and regulation of municipal water supply.

City's liability for water.

Cited in Contra Costa Water Co. v. Breed, 139 Cal. 446, 73 Pac. 189 (dissenting opinion), majority holding city estopped to deny validity of claim for water on ground of lack of ordinance, where it has received water in absence of contract as to price.

38 L. R. A. 471, KELSEY v. GREEN, 69 Conn. 291, 37 Atl. 679.

Right to custody of children.

Cited in McKercher v. Green, 13 Colo. App. 282, 58 Pac. 406, holding mother entitled to custody of six-year-old child, where infant in delicate health and has never known father; Re Jones, 153 N. C. 315, 138 Am. St. Rep. 670, 69 S. E. 217, holding that best interest of child is principal question to be determined upon application to court to award its custody to applicant; Morrill v. Mor-

rill, 83 Conn. 489, 77 Atl. 1, holding that welfare of children is paramount consideration upon application to determine as to their custody and it is addressed to discretion of court; Re Parker, 144 N. C. 173, 56 S. E. 878, on the best interests of the child as the controlling feature in determining in whose custody it will be placed.

Cited in footnotes to Stringfellow v. Somerville, 40 L. R. A. 623, which denies father's right to claim custody of child against its welfare, after permitting it to remain with his deceased wife's sisters for several years; Anderson v. Young, 44 L. R. A. 277, which sustains court's power to uphold, in interest of child, custody held under void agreement with parent; Hibbette v. Bains, 51 L. R. A. 839, which sustains father's right to custody of child, notwithstanding assent to wife's deathbed contract to give custody to her relatives; State *ex rel.* Lasserre v. Michel, 54 L. R. A. 927, which denies father's absolute right to custody of minor child; Stapleton v. Poynter, 53 L. R. A. 784, which upholds custody of child taken against its will from wealthy grandparent and given to parent of moral habits; Jones v. Bowman, 67 L.R.A. 860, which holds that religious belief will not in absence of statutory requirement be considered in determining the proper custodian of an infant.

Cited in notes (7 L.R.A.(N.S.) 307) on recognition of right emanating from foreign power to custody of child; (89 Am. St. Rep. 276) on common law powers of guardians over ward's person.

Minor child's domicil.

Cited in footnote to Fox v. Hicks, 50 L. R. A. 663, which holds domicil of minor awarded to divorced mother follows mother's.

38 L. R. A. 474, FISK v. HARTFORD, 69 Conn. 375, 37 Atl. 983.

Diversion of stream for city purposes.

Cited on second appeal in 70 Conn. 729, 66 Am. St. Rep. 147, 40 Atl. 906, holding that knowingly permitting city for many years to take water in increasing quantities from head of stream by means of expensive distributing mains bars riparian owners' right to injunction; *Re* Barre Water Co. 72 Vt. 416, 48 Atl. 653, holding city's return of water in form of sewage into stream above property of mill-owners not element of damages.

38 L. R. A. 480, EAGLE MFG. CO. v. DAVENPORT, 101 Iowa, 493, 70 N. W. 707.

Conveyances in fraud of street assessments.

Cited in Smith v. Des Moines, 106 Iowa, 592, 76 N. W. 836, holding that assessment for street improvement cannot be defeated by conveyance made with intent to evade tax: Ransom v. Burlington, 111 Iowa, 79, 82 N. W. 427, holding conveyance to relative, without consideration, of 15-foot strip to avoid street assessment, fraudulent.

Method of assessing abutting property.

Cited in Allen v. Davenport, 107 Iowa, 103, 77 N. W. 532, sustaining front-foot rule applied to paving assessment of land abutting street, although tax exceeds benefits.

Special assessment as lien on abutting property.

Cited in Cemansky v. Fitch, 121 Iowa, 188, 96 N. W. 754, holding that filing of record of city council containing order for new sidewalk makes special assessment for construction of walk a lien on abutting property.

Subterfuges to avoid statutes.

Cited in McColl v. Rally, 127 Iowa, 635, 103 N. W. 972, holding that by the construction of a partition so that a saloon would be fifty feet from certain

property, being a mere subterfuge to evade the liquor law requiring the consent of all the resident freeholders within fifty feet of the saloon, the owner had not complied with the statute.

38 L. R. A. 485, STATE v. EIFERT, 102 Iowa, 188, 63 Am. St. Rep. 433, 65 N. W. 309, 71 N. W. 248.

Admissibility of evidence.

Cited in Wallace v. State, 41 Fla. 573, 26 So. 713, holding that cross-examination should be limited to matters covered by direct.

Distinguished in Metropolitan Nat. Bank v. Commercial State Bank, 104 Iowa, 694, 74 N. W. 26, holding defendant's offer of evidence in contradiction of incompetent matter, no waiver of right to object to plaintiff's rebuttal evidence.

Receiving deposit when bank insolvent.

Cited in State v. Mitchell, 96 Miss. 271, 26 L.R.A.(N.S.) 1075, 51 So. 4, Ann. Cas. 1912 B, 309, holding that a director of a bank may be convicted of receiving money into an insolvent bank, if the bank was kept open by the directors after they had knowledge of its insolvent condition though they did not themselves receive the money into the bank.

Cited in footnote to Richardson v. Olivier, 53 L. R. A. 113, which sustains shareholder's right to recover back deposit fraudulently taken while bank insolvent.

Cited in notes (31 L.R.A. 125) on criminal liability for receiving deposit in bank, knowing of its insolvency; (26 L.R.A.(N.S.) 1073) as to whether actual personal receipt of deposit by officer or employee of insolvent bank is essential to conviction; (78 Am. St. Rep. 249) on acts as to fraudulent banking which legislature may declare criminal.

Liability of officer of a corporation for criminal acts of a servant of the corporation.

Cited in State v. Carmean, 126 Iowa, 297, 106 Am. St. Rep. 352, 102 N. W. 97, holding that an officer of a corporation is not liable for the criminal acts of a servant of the corporation though done in the usual course of his employment, unless it is shown that they were directly authorized or consented to by such officer; State v. Cramer, 20 Idaho, 649, 119 Pac. 30, holding that officers of insolvent bank are liable under statute where they knew employees were receiving money on deposit.

Impeachment of witness.

Cited in State v. Rutledge, 135 Iowa, 586, 113 N. W. 461, holding that it was error to refuse to permit defendant to show the acts of one of the state's witnesses in endeavoring to intimidate witnesses for the state, and other acts of hostility toward the defendant.

38 L. R. A. 490, DUMMER v. SMEDLEY, 110 Mich. 466, 68 N. W. 260.

Stock assessments.

Cited in note (45 L. R. A. 647, 653) on assessments on paid-up stock.

Bonus stock of corporations.

Cited in Kraft v. Griffon Co. 82 App. Div. 33, 81 N. Y. Supp. 438, denying right of corporation, under statute, to issue stock as bonus on sale of corporate bonds.

Cited in note (44 L. ed. U. S. 423, 424) on stock as bonus to purchaser of bonds.

Additional issues of stock.

Cited in Speer v. Bordeleau, 20 Colo. App. 422, 79 Pac. 332, holding that if a corporation in good faith increases its stock and sells it for the best price obtainable on the market, the purchasers are not liable as for unpaid stock though purchased below par.

Mortgages to secure future advances.

Cited in Merchants State Bank v. Tufts, 14 N. D. 245, 116 Am. St. Rep. 682, 103 N. W. 760, holding that a deed or mortgage given to secure future advances is valid if made in good faith.

Issuance of stock or bonds at discount.

Cited in McKee v. Title Ins. & T. Co. 159 Cal. 219, 113 Pac. 140, holding that constitutional provision that no corporation shall issue stock "except for money paid, etc.," does not forbid sale of bonds at discount.

Cited in note (8 L.R.A.(N.S.) 265) on issuance of stock at discount as affecting stockholder's liability.

Relation of receivers to pre-existing liens.

Cited in note (71 Am. St. Rep. 363, 369) on relation of receivers to pre-existing liens and remedies for their enforcements.

38 L. R. A. 503, UNION NAT. BANK v. BROWN, 72 Am. St. Rep. 420, 41 S. W. 273.

Validity of statutes regulating sales of patents.

Cited in National Bank v. Current, 142 Ky. 355, 134 S. W. 479, to the point that vendors of patent rights could be subjected to burden of having their notes made non-negotiable, if named in statute, because such statute is police regulation; Woods v. Carl, 75 Ark. 334, 87 S. W. 621, 3 Ann. Cas. 423, holding that a statute requiring notes given in payment of a patented article or patent right to state on their faces for what they were given, was valid as not being in conflict with the Federal Constitution giving Congress control over patents; Allen v. Riley, 71 Kan. 379, 114 Am. St. Rep. 481, 80 Pac. 952, 6 Ann. Cas. 158, holding valid statute requiring copies of letters patent and affidavits of their genuineness to be filed with the clerk of the court before sale of the patent.

Cited in note (114 Am. St. Rep. 488) on requirement of notes given for patent rights.

Validity of "peddler's note" statute.

Cited in Rumbley v. Hall, 107 Ky. 351, 54 S. W. 4, and Nunn v. Citizens Bank, 107 Ky. 264, 53 S. W. 665, sustaining act providing that notes given for articles sold by peddler shall be invalid unless words "peddler's note" written across face.

Exercise of police power.

Cited in Levy v. State, 161 Ind. 261, 68 N. E. 172, sustaining statute exempting sheriffs, assignees, and receivers from operation of statute requiring license of transient merchants; Com. v. Remington Type-Writer Co. 127 Ky. 190, 105 S. W. 399, sustaining statute requiring all corporations to place after their names on all advertising or printed matter the word "Incorporated" as a valid exercise of the police power.

Defenses as against bona fide holder.

Cited in Alexander v. Hazelrigg, 123 Ky. 684, 97 S. W. 353, holding that the invalidity of a note given for a gambling debt was a good defense as against a bona fide holder in due course.

Cited in notes (10 L.R.A.(N.S.) 843) on right of bona fide holder to enforce note not indicating nature of consideration as required by statute; (119 Am. St. Rep. 177) on defenses to obligations given for gambling debts.

38 L. R. A. 505. BREWSTER v. C. MILLER'S SONS CO. 101 Ky. 368, 41 S. W. 301.

Legality of combinations affecting business or employment.

Cited in Baker v. Metropolitan L. Ins. Co. 23 Ky. L. Rep. 1175, 55 L. R. A. 272, 64 S. W. 913, denying recovery to one discharged by reason of agreement between employer and others not to engage one who had been employed by either party; New York, C. & St. L. R. Co. v. Schaffer, 65 Ohio St. 421, 62 L. R. A. 935, 87 Am. St. Rep. 628, 62 N. E. 1036, holding that railroad companies may lawfully agree not to engage servant who cannot furnish clearance record of service; Beck v. Railway Teamsters' Protective Union, 118 Mich. 519, 42 L. R. A. 416, 74 Am. St. Rep. 421, 77 N. W. 13, enjoining strikers from establishing pickets, distributing boycott circulars, and intimidating employees and customers; Ætna Ins. Co. v. Com. 106 Ky. 892, 45 L. R. A. 362, 51 S. W. 624, holding combinations for purpose of maintaining rates of insurance not illegal at common law; Chambers v. Probst, 145 Ky. 382, 36 L.R.A.(N.S.) 1207, 140 S. W. 572, holding that one who causes another to be discharged from his employment by false statements as to manner in which he performs his duties is liable to him in damages; Lohse Patent Door Co. v. Fuelle, 215 Mo. 453, 22 L.R.A.(N.S.) 619, 128 Am. St. Rep. 492, 114 S. W. 997, holding that an organization between laborers not to work for concerns which required them to work longer than a certain number of hours a day was lawful, but not where they attempted to enforce their demands by boycotting persons who continue to handle the goods of the concern refusing their demands; Walsh v. Association of Master Plumbers, 97 Mo. App. 289, 71 S. W. 455, holding that an agreement between plumbers and dealers whereby the latter agreed not to sell to plumbers not members of the association and the former not to deal with dealers selling to persons not members, was unlawful; Master Builders' Asso. v. Domascio, 16 Colo. App. 32, 63 Pac. 782, holding where the defendant association sent a letter to the architects of a building stating that they would not bid on a building if the plaintiff's bid was received, was not unlawful so as to sustain an action for damages, nor the issuance of an injunction; Willis v. Muscogee Mfg. Co. 120 Ga. 600, 48 S. E. 177, 1 Ann. Cas. 472, holding lawful an agreement among certain manufacturers to enforce a rule requiring a six day notice from employes when leaving their employ and to report to the other members persons leaving their employ without giving such notice.

Cited in footnotes to Doremus v. Hennessy, 43 L. R. A. 797, which holds members of trade association combining to prevent other persons dealing with nonmember, liable for resulting injury; Ertz v. Produce Exchange, 48 L. R. A. 90, which holds malicious conspiracy to injure dealer by inducing other people not to deal with him; Gatzow v. Buening, 49 L. R. A. 475, which holds by-law of liverymen's association prohibiting furnishing hearse or carriages to nonunion liverymen, illegal; Ertz v. Produce Exchange, 51 L. R. A. 825, which holds produce exchange discriminating against nonmembers and controlling delivery of goods, an illegal combination; West Virginia Transp. Co. v. Standard Oil Co. 56 L. R. A. 804, which sustains malicious competition to get customers from rival and obtain business for one's self; Brown v. Jacobs Pharmacy Co. 57 L. R. A. 548, which sustains right to injunction against combination of merchants to prevent sales to other dealer unless he sells at fixed prices; Brown v.

American F. L. M. Co. 67 L.R.A. 195, which holds loan agents entitled to sue for statements that they are inattentive, neglectful, insolvent, and guilty of fraud for which their principal has taken business from them made to break up their business and secure their custom.

Cited in notes (64 L.R.A. 723, 728) on illegal trusts under modern antitrust laws; (5 L.R.A.(N.S.) 138) on legality, under modern anti-trust acts of combinations or agreements which restrict class of persons to whom commodities shall be sold, or from whom bought; (7 L.R.A.(N.S.) 977) on combination of dealers as giving common law right of action to merchant prevented from obtaining goods; (26 L.R.A.(N.S.) 151) on right of injured person not party to agreement to assail validity as tending to monopoly; (33 L.R.A.(N.S.) 1039) on lawfulness of boycott for other than labor union.

Distinguished in Ferd Heim Brewing Co. v. Belinder, 97 Mo. App. 77, 71 S. W. 691, holding agreement among brewers to refuse to sell to anyone indebted to parties to agreement, illegal; Walsh v. Association of Master Plumbers, 97 Mo. App. 289, 71 S. W. 455, holding agreement between plumbers' association, and dealers and manufacturers, whereby latter promise not to sell supplies except to members of association, illegal; Brown v. Jacobs' Pharmacy Co. 115 Ga. 451, 57 L. R. A. 558, 90 Am. St. Rep. 126, 41 S. E. 553, holding combination of dealers to compel another to sell at fixed price, and, upon refusal, to prevent sales being made to him, illegal; Standard Oil Co. v. Doyle, 118 Ky. 668, 111 Am. St. Rep. 331, 82 S. W. 271, holding unlawful a conspiracy to injure one in his business by threatening his customers, and harassing his servants in the performance of their duties, and by circulating injurious reports about his business; Ferd Heim Brewing Co. v. Belinder, 97 Mo. App. 77, 71 S. W. 691, holding that an agreement between all the brewers of a city that they would not sell to any person who was in debt to any one of the association for beer, until such debt was paid, was in violation of the statute prohibiting combinations to lessen competition; Purington v. Hinchliff, 120 Ill. App. 533, holding an agreement unlawful where all the contractors in a certain community agree to use the bricks of a certain manufacturer and he would not sell to any one else and all brick layers agree to lay no other brick; Arbour v. Pittsburgh Produce Trade Asso. 39 Pittsb. L. J. (N. S.) 157, 35 Pa. Co. Ct. 602, holding an association of wholesalers to protect trade, whereby they agreed to refuse to sell to persons placed on the delinquent list, was unlawful where it resulted in requiring persons to pay bills twice.

Liability of members of association for dealing with nonmembers.

Cited in footnotes to Martell v. White, 64 L. R. A. 260, which holds action maintainable on behalf of quarry owner against members of association to which he does not belong, enforcing by-law imposing fine on members dealing with nonmembers; Downs v. Bennett, 55 L. R. A. 560, which denies right of one only remotely affected, to injunction fining or expelling member for violation of by-law prohibiting members from dealing with nonmembers, or with others who deal with such nonmembers.

Damages for refusal to compete.

Cited in Master Builders' Asso. v. Domascio, 16 Colo. App. 32, 63 Pac. 782, holding action not maintainable against members of builders' association for their giving architect notice of refusal to bid if certain bid is received in competition, where proof shows that only one fourth of contractors of city are members of association.

Effect of bad motive.

Cited in note (62 L. R. A. 715, 725, 728) on effect of bad motive to make actionable what would otherwise not be.

38 L. R. A. 509, HOOPER v. BALTIMORE CITY PASS. R. CO. 85 Md. 509, 37 Atl. 359.

Motive power used for street railways.

Cited in footnote to Chicago General R. Co. v. Chicago City R. Co. 50 L. R. A. 734, which denies liability for collision with cars of other company because of running cable cars under authority to use animal power only.

Enforcement of right to lay conduits.

Cited in Chesapeake & P. Teleph. Co. v. Baltimore City, 89 Md. 717, 43 Atl. 784 (distinguished in dissenting opinion), holding that injunction will protect right of telephone company to construct conduits on street, granted by ordinance and ratified by legislature; Baltimore v. Baltimore County Water & Electric Co. 95 Md. 241, 52 Atl. 670, holding that injunction is remedy to enforce water company's statutory right to lay conduits within certain territory.

Proper remedy to make available street franchise.

Cited in note (6 L.R.A.(N.S.) 782) on proper remedy to make available street franchise as against municipality.

38 L. R. A. 512, SPADE v. LYNN & B. R. CO. 168 Mass. 285, 60 Am. St. Rep. 393, 47 N. E. 88.

Report of second appeal in 172 Mass. 488, 43 L. R. A. 832, 70 Am. St. Rep. 298, 52 N. E. 747.

Fright or mental suffering as basis of recovery.

Approved in White v. Sander, 168 Mass. 297, 47 N. E. 90, denying recovery for bodily injury resulting from mere fright.

Cited in Silsbee v. Webber, 171 Mass. 380, 50 N. E. 555, raising, without deciding, question as to liability for threats causing fright; Smith v. Postal Teleg. Cable Co. 174 Mass. 577, 47 L. R. A. 324, footnote p. 323, 75 Am. St. Rep. 374, 55 N. E. 380, denying recovery for sickness due to fright caused by grossly negligent act of one knowing result would follow; Mahoney v. Dankwart, 108 Iowa, 324, 79 N. W. 134, denying damages for loss of health indirectly due to fright caused by blasting; Lee v. Burlington, 113 Iowa, 357, 86 Am. St. Rep. 379, 85 N. W. 618, denying recovery for loss of horse killed by fright at negligent use of street roller; Ford v. Schliessman, 107 Wis. 483, 83 N. W. 761, holding trespass causing fright alone, not element of damages; Nelson v. Crawford, 122 Mich. 470, 80 Am. St. Rep. 577, 81 N. W. 335, denying liability for miscarriage caused by fright at man wearing woman's clothes; Western U. Teleg. Co. v. Ferguson, 157 Ind. 77, 54 L. R. A. 850, 60 N. E. 674, affirming 26 Ind. App. 219, 59 N. E. 416, denying damages for mental suffering due to nondelivery of telegram; Kline v. Kline, 158 Ind. 607, 58 L. R. A. 399, footnote p. 397, 64 N. E. 9, sustaining right to damages for mental suffering for assault by pointing gun with threat to shoot unless house vacated; Prince v. Ridge, 32 Misc. 667, 66 N. Y. Supp. 454, denying recovery for shame and suffering due to improper proposal; Preiser v. Wielandt, 48 App. Div. 573, 62 N. Y. Supp. 890, sustaining liability for fright causing death, resulting from landlord's tearing down house after expiration of term; Hickey v. Welch, 91 Mo. App. 14, holding anguish due to trespasser's violent conduct, element of damages; Haas v. Metz, 78 Ill. App. 53, denying recovery for mental disturbance caused by harsh words; Watson v. Dilts, 116 Iowa, 251, 57 L. R. A. 560, footnote p. 557, 93 Am. St. Rep. 239, holding one liable for frightening woman, causing nervous prostration, by stealthily entering home at night; Linn v. Duquesne, 204 Pa. 554, 93 Am. St. Rep. 800, 54 Atl. 341, holding mental suffering not element of damages for permanent injury to married woman's hands; Cameron v. New England Teleph.

& Teleg. Co. 182 Mass. 311, 65 N. E. 385, sustaining right to recover for miscarriage caused by fright due to negligent explosion of dynamite near house where woman was sitting: Driscoll v. Gaffey, 207 Mass. 105, 92 N. E. 1010, holding that no recovery can be had for fright, or distress of mind unaccompanied by some physical injury: Levy v. Dunie, 9 North. Co. Rep. 360, holding that negligent blasting producing fright, unless attended by physical injury is not subject of right of action: Dunn v. Western U. Teleg. Co. 2 Ga. App. 852, 59 S. E. 189, holding damages recoverable for humiliation due to insulting denial of safe and decent access to telegraph office by agent in charge: Lonergan v. Small, 81 Kan. 51, 25 L.R.A.(N.S.) 978, 105 Pac. 27, holding damages recoverable for mental suffering due to assault though unaccompanied by bodily injury: Green v. Shoemaker, 111 Md. 83, 23 L.R.A.(N.S.) 673, 73 Atl. 688, holding woman suffering nervous prostration by reason of fright caused by blasting near and casting of stones on and about her house may recover damages for such physical injury; Huston v. Freemansburg, 212 Pa. 551, 3 L.R.A.(N.S.) 53, 61 Atl. 1022, holding there can be no recovery of damages from fright or other merely mental suffering unconnected with physical injury: Miller v. Baltimore & O. S. W. R. Co. 78 Ohio St. 317, 18 L.R.A.(N.S.) 951, 125 Am. St. Rep. 699, 85 N. E. 499, holding that in action for negligence unaccompanied by any element of wantonness or intentional wrong, no recovery can be had for physical injury due to fright or shock: Kagy v. Western U. Teleg. Co. 37 Ind. App. 83, 117 Am. St. Rep. 278, 76 N. E. 792, holding damages not recoverable for physical injury due to mental suffering caused by negligent failure to deliver message: Buchanan v. Stout, 123 App. Div. 649, 108 N. Y. Supp. 38, holding damages for shock and distress of mind caused by seeing pet cat mangled by dog not recoverable, where there was no willfulness or gross negligence on defendant's part.

Cited in footnotes to Sanderson v. Northern P. R. Co. 60 L. R. A. 403, which denies right to recover for fright resulting in physical injury, but without contemporaneous injury, unless fright proximate result of legal wrong; Reed v. Maley, 62 L. R. A. 900, which holds that merely soliciting woman to sexual intercourse gives her no right of action for damages for suffering due to such proposal.

Cited in notes (3 L.R.A.(N.S.) 54, 60) on right to recover for physical injury resulting from fright caused by wrongful act: (25 L.R.A.(N.S.) 976) on right to recover for mental suffering caused by assault where no bodily injury inflicted; (77 Am. St. Rep. 862, 863, 864, 867) on fright as element of recoverable damages.

Disapproved in Simon v. Rhode Island Co. 28 R. I. 193, 9 L.R.A.(N.S.) 743, 66 Atl. 202, holding damages recoverable for fright followed by series of physical ills as its natural consequence: Pankopf v. Hinkley, 141 Wis. 149, 24 L.R.A. (N.S.) 1161, 123 N. W. 625, holding that when physical injury flows directly from extreme fright or shock, caused by ordinary negligence, such fright or shock is a link in the chain of proximate causation as efficient as physical impact from which like results flow.

Disapproved in effect in Watkins v. Kaolin Mfg. Co. 131 N. C. 543, 60 L. R. A. 620, footnote p. 617, 42 S. E. 983, sustaining right of action for disease resulting from nervous shock due to negligent acts.

— Caused by carrier.

Cited in Berard v. Boston & A. R. Co. 177 Mass. 182, 58 N. E. 586, raising, without deciding, question as to liability for personal injuries caused by fright; Homans v. Boston Elev. R. Co. 180 Mass. 457, 57 L. R. A. 292, footnote p. 291,

91 Am. St. Rep. 324, 62 N. E. 737, holding carrier liable for nervous shock due to slight injury caused by being thrown from seat; Kalen v. Terre Haute & I. R. Co. 18 Ind. App. 211, 63 Am. St. Rep. 343, 47 N. E. 694, denying recovery for mental anguish resulting from fright of horse at negligent closing of railroad gate; Cleveland, C. C. & St. L. R. Co. v. Stewart, 24 Ind. App. 388, 56 N. E. 917, denying liability for impairment to health due to fright at peril of another; St. Louis, I. M. & S. R. Co. v. Bragg, 69 Ark. 405, 86 Am. St. Rep. 206, 64 S. W. 226, holding nervous prostration not probable consequence of carrier's negligence in putting passenger off at wrong place; Mack v. South Bound R. Co. 52 S. C. 332, 40 L. R. A. 683, footnote p. 679, 68 Am. St. Rep. 913, 29 S. E. 905, sustaining liability for personal injuries from fright; Gulf, C. & S. F. R. Co. v. Hayter, 93 Tex. 242, 47 L. R. A. 326, 77 Am. St. Rep. 856, 54 S. W. 544, holding that physical injury resulting from mental emotion entitles one to recover; Ward v. West Jersey & S. R. Co. 65 N. J. L. 384, 47 Atl. 561, denying right of recovery for shock received from negligent operation of railroad gates; Steverman v. Boston Elev. R. Co. 205 Mass. 512, 91 N. E. 919, to the point that no recovery can be had for fright or distress of mind, unaccompanied by some physical injury; Reardon v. Philadelphia Rapid Transit Co. 43 Pa. Super. Ct. 350, holding that passenger cannot recover damages on account of fright alone or consequences of it.

Distinguished in Bacon v. Pullman Co. 16 L.R.A.(N.S.) 582, 89 C. C. A. 1, 159 Fed. 7, 14 Ann. Cas. 516, holding damages recoverable for physical pain and mental distress suffered by sick passenger owing to deprivation of medicines and stimulants provided for journey and contained in hand bag which was stolen by porter.

Explained in Gannon v. New York, N. H. & H. R. Co. 173 Mass. 42, 43 L. R. A. 834, 52 N. E. 1075, holding carrier liable for injury to passenger while impulsively attempting to escape from car containing burning oil, because of reasonable fear of injury.

Proximate cause.

Cited in Stone v. Boston & A. R. Co. 171 Mass. 542, 41 L. R. A. 798, 51 N. E. 1, holding negligence in storing oil upon platform in violation of statute not proximate cause of damage by fire started by shipper carelessly dropping match; Mullin v. Boston Elev. R. Co. 185 Mass. 525, 70 N. E. 1021, on negligence as cause of injury.

Transportation of sick passenger.

Cited in Connors v. Cunard S. S. Co. 204 Mass. 319, 26 L.R.A.(N.S.) 178, 134 Am. St. Rep. 662, 90 N. E. 601, 17 Ann. Cas. 1051, holding person who is ill presenting herself to common carrier for transportation by water is under duty to state she is ill and make special arrangements as person in need of medical attention.

Generality of rules of law.

Cited in Iamurri v. Saginaw City Gas Co. 148 Mich. 62, 111 N. W. 884, as illustrating reluctance of court to recognize as rule of law that which in its usual application will not work substantial justice.

38 L. R. A. 514, HUNT v. NEW HAMPSHIRE FIRE UNDERWRITERS' ASSO. 68 N. H. 305, 73 Am. St. Rep. 602, 38 Atl. 145.

Third person's right to sue on contract for his benefit.

Cited in First Nat. Bank v. Hunton, 70 N. H. 227, 46 Atl. 1049, holding that wife's repudiation of note given to discharge husband's debt entitles payee to be subrogated to her rights in proceeds of note given by husband to indemnify

her; Bank Comrs. v. Security Trust Co. 70 N. H. 553, 49 Atl. 113, holding owner of note may prove claim in insolvency upon guaranty; White v. Fernald–Woodward Co. 75 N. H. 505, 77 Atl. 401, holding that creditor of insolvent debtor may avail himself of any subsisting provision made by his debtor for payment of his debt.

Indemnity insurance.

Cited in Sanders v. Frankfort M. Acci. & Plate Glass Ins. Co. 72 N. H. 494, 101 Am. St. Rep. 688, 57 Atl. 655, holding that one taking out employer's liability policy may compel insurance company to pay him amount of employee's judgment for injuries, although insured is unable to pay such judgment by reason of insolvency; Bain v. Atkins, 181 Mass. 245, 57 L. R. A. 793, 92 Am. St. Rep. 411, 63 N. E. 414, holding money due under policy against liability to third persons not trust fund for benefit of person whose injury caused liability.

Distinguished in Cushman v. Carbondale Fuel Co. 122 Iowa, 658, 98 N. W. 509, holding employee's unpaid judgment for personal injuries against employer not enforceable by employee against company issuing employer's liability policy.

Reinsurance.

Cited in Allison v. Fidelity Mut. F. Ins. Co. 81 Neb. 497, 129 Am. St. Rep. 694, 116 N. W. 274, holding contract of reinsurance is purely contract of indemnity against loss by or on account of outstanding contract of insurance with owner of property; Ruohs v. Traders F. Ins. Co. 111 Tenn. 421, 102 Am. St. Rep. 790, 78 S. W. 85, holding company reinsuring is liable to policy holders in original company when it assumes policies of latter and takes over its assets.

Cited in notes (8 L.R.A.(N.S.) 859) on liability of reinsurer; (52 L. ed. U. S. 816) on liability of reinsurer as affected by nonpayment of loss by reinsured.

38 L. R. A. 516, NEW YORK & G. L. R. CO. v. NEW JERSEY ELECTRIC R. CO. 60 N. J. L. 52, 37 Atl. 627.

Bailor's recovery for negligence of bailee and third party.

Cited in New Jersey Electric R. Co. v. New York, L. E. & W. R. Co. 61 N. J. L. 287, 43 L. R. A. 849, 41 Atl. 1116, Affirming 60 N. J. L. 340, 38 Atl. 828, holding bailor entitled to recover for damage to locomotive resulting from collision with trolley car, due to negligence of bailee of locomotive and street car company.

Negligence a question for jury.

Cited in Exton v. Central R. Co. 63 N. J. L. 356, 56 L. R. A. 510, 46 Atl. 1099, Affirming 62 N. J. L. 12, 56 L. R. A. 510, 42 Atl. 486, holding it question for jury whether company used proper care in keeping passage to baggage room free from defects; Ruch v. Gas Electric Co. 65 N. J. L. 401, 47 Atl. 504, holding it question for jury whether use of lighted match to locate gas leak constitutes negligence.

38 L. R. A. 519, STATE *ex rel.* MONNET v. GUILBERT, 56 Ohio St. 575, 60 Am. St. Rep. 756, 47 N. E. 551.

Exercise of police power.

Cited in France v. State, 57 Ohio St. 18, 47 N. E. 1041, sustaining act requiring medical practitioner to obtain license from state board.

Statutes relating to constructive notice.

Cited in State ex rel. Andreu v. Canfield, 40 Fla. 65, 42 L.R.A. 82, 23 So. 591 (dissenting opinion), majority sustaining act relating to constructive service

on defendants in error by recording writ of error; Comrs. (Bear Lake Co.) v. Budge, 9 Idaho, 711, 108 Am. St. Rep. 179, 75 Pac. 614, holding section of statute authorizing water commissioner to bring action against claimants of right to use water of certain stream to quiet title providing that service upon defendants shall be by publication is invalid; In re Vacation Sherman Ave. 19 Ohio S. & C. P. Dec. 864, holding that statute authorizing notice by publication of application to vacate street is valid.

Cited in notes in 87 Am. St. Rep. 358, 359, 360, 362, on statutes authorizing proceedings against unknown owners: 44 L.R.A. 801, on constitutionality of Torrens registration acts.

Distinguished in Title & Document Restoration Co. v. Kerrigan, 150 Cal. 317, 8 L.R.A.(N.S.) 682, 119 Am. St. Rep. 199, 88 Pac. 356, sustaining statute providing for action to establish title to real estate, where public records have been destroyed by flood, fire or earthquake, and allowing substituted service upon partner who cannot be personally served, statute requiring plaintiff to designate and serve as known claimants all whom with reasonable diligence he can ascertain to be claimants; People v. Simon, 176 Ill. 179, 44 L.R.A. 801, 68 Am. St. Rep. 175, 52 N. E. 910, and State v. Westfall, 85 Minn. 446, 57 L.R.A. 297, 89 Am. St. Rep. 571, 89 N. W. 175, sustaining act for Torrens system of registering land titles.

Disapproved in Tyler v. Registration Ct. Judges, 175 Mass. 73, 51 L.R.A. 434, footnote p. 433, 55 N. E. 812, holding land registration act not invalidated by failure to provide for notice of transfers.

Validity of conferring on one branch of government powers of another.

Cited in Zanesville Teleph. & Teleg. Co. v. Zanesville (City) 8 Ohio N. P. 77, 10 Ohio S. & C. P. Dec. 141, holding that statute requiring probate court to direct mode of use of street by telegraph company confers legislative power and is void.

— Encroachment upon judicial power.

Cited in Title & Document Restoration Co. v. Kerrigan, 150 Cal. 321, 8 L.R.A. (N.S.) 682, 119 Am. St. Rep. 199, 88 Pac. 356, holding statutory action for establishing title to realty where public records have been destroyed by flood, fire or earthquake is judicial proceeding; Voorhies v. Voorhies, 66 Misc. 80, 120 N. Y. Supp. 677, on giving, in title registration law, to official examiner's certificate force of evidence as delegation of judicial power; Bridge Street & A. Gravel Road Co. v. Hogadone, 150 Mich. 654, 114 N. W. 917, holding statute giving order of toll-road commissioner in proceeding to determine whether toll-road has been abandoned full force and effect until revoked by order of court is invalid because it confers judicial power on commissioner.

Distinguished in Speer v. Stephenson, 16 Idaho, 722, 102 Pac. 365, holding duties of state engineer in matter of hearing and determination of contest for cancellation of water permit are only quasi judicial and may be imposed upon ministerial officer.

38 L. R. A. 529, TURNER v. FIDELITY & C. CO. 112 Mich. 425, 67 Am. St. Rep. 428, 70 N. W. 898.

What constitutes "total disability."

Cited in Hohn v. Inter-State Casualty Co. 115 Mich. 85, 72 N. W. 1105, holding ability to go to place of business, without strength to work, no bar to recovery in policy insuring against total disablement; Lobdill v. Laboring Men's Mut. Aid Asso. 69 Minn. 16, 38 L. R. A. 539, 65 Am. St. Rep. 542, 71 N. W. 696, holding ability to perform occasionally some trivial act connected with occupation no bar to recovery on policy for total disability; Coad v. Travelers' Ins. Co.

61 Neb. 568, 85 N. W. 558, holding that injury causing partial disability does not entitle insured to recover on policy for total disability; Commercial Travelers' Mut. Acci. Asso. v. Springsteen, 23 Ind. App. 667, 55 N. E. 973, holding instruction that insured may recover if disabled to extent that he could not do all kinds of business relating to his occupation, not error; Industrial Mut. Indemnity Co. v. Hawkins, 94 Ark. 420, 29 L.R.A.(N.S.) 637, 127 S. W. 457, 21 Ann. Cas. 1029, holding that injury which wholly incapacitates manual laborer from performing any and every kind of business which he is able to do, is within terms of policy providing indemnity for total disability; United States Casualty Co. v. Hanson, 20 Colo. App. 398, 79 Pac. 176, holding question of total disability of insured was for jury, where he was unable to do any substantial acts necessary to his employment, though able to travel about in search of medical and surgical aid; Wall v. Continental Casualty Co. 111 Mo. App. 528, 86 S. W. 491, holding true test of total disability is whether person's earning power is destroyed; James v. United Casualty Co. 113 Mo. App. 628, 88 S. W. 125, holding "wholly disabled" in policy means to be disabled from performing substantially occupation mentioned in policy.

Annotation cited in United Commercial Travelers' v. Barnes, 72 Kan. 303, 80 Pac. 1020, 7 Ann. Cas. 809, as to what constitutes total disability.

Cited in notes (23 L.R.A.(N.S.) 352, 356) on what constitutes total disability of insured; (28 L.R.A.(N.S.) 742) on liability for death under policy insuring against permanent or total disability.

Annotation in 38 L. R. A. 529 referred to particularly in Fuller v. Locomotive Engineers' Mut. Life & Acci. Ins. Asso. 122 Mich. 552, 48 L. R. A. 88, footnote p. 86, 80 Am. St. Rep. 598, 81 N. W. 326, denying right to whole amount of insurance for amputation of "limb (whole hand or foot)," on amputation of part of foot.

Distinguished in Letherer v. United States Health & Acci. Ins. Co. 145 Mich. 311, 108 N. W. 491, where insured continued in his employment for a week after injury, though suffering pain, and, after leaving his employment, did other work.

Liability on policy during "confinement to house."

Cited in Hoffman v. Michigan Home & Hospital Asso. 128 Mich. 328, 54 L. R. A. 748, 87 N. W. 265, holding recovery on policy limiting liability to period of insured's confinement to house not defeated by insured's occasionally taking airing by physician's direction; Ramsey v. General Acci. F. & L. Ins. Co. 160 Mo. App. 242, 142 S. W. 763, holding that policy of health insurance, should not be construed to mean that assured should be actually within walls of house all time of sickness, in order to recover.

Estoppel to claim forfeiture of benefit certificate.

Cited in Lord v. National Protective Soc. 129 Mich. 341, 88 N. W. 876, holding benefit society estopped to claim forfeiture of certificate for nonpayment of assessments, where it accepts past-due assessments and retains them till after suit commenced by beneficiary.

Construction of insurance policy.

Cited in Peterson v. Modern Brotherhood, 125 Iowa, 573, 67 L.R.A. 636, footnote p. 631, 101 N. W. 289 (dissenting opinion), on construction of policy most strictly against insurer.

Waiver of conditions of policy by insurer.

Cited in Dolsen v. Phœnix Preferred Acci. Ins. Co. 151 Mich. 232, 115 N. W. 50, holding contract limitation as to time of bringing suit upon policy waived

by letter of general counsel of insurance company asking forbearance until he could investigate claim.

Distinguished in Harris v. Phœnix Acci. & Sick Ben. Asso. 149 Mich. 287, 112 N. W. 935, holding insurance company did not waive provisions of policy as to time of bringing suit thereon, where, in correspondence concerning claim, it stated it would not do so.

38 L. R. A. 537, LOBDILL v. LABORING MEN'S MUT. AID ASSO. 69 Minn. 14, 65 Am. St. Rep. 542, 71 N. W. 696.

What constitutes "total disability."

Cited in Hohn v. Inter-State Casualty Co. 115 Mich. 85, 72 N. W. 1105, holding ability to go to place of business, without strength to work, no bar to recovery under policy insuring against total disablement; Coad v. Travelers' Ins. Co. 61 Neb. 570, 85 N. W. 558, holding that injury causing partial disability will not entitle insured to recover on policy for total disablement; Commercial Travelers' Mut. Acci. Asso. v. Springsteen, 23 Ind. App. 667, 55 N. E. 973, holding instruction that insured may recover if disabled to extent that he could not do all kinds of business relating to his occupation, not error; Fidelity & C. Co. v. Getzendanner, 93 Tex. 490, 56 S. W. 326, affirming 22 Tex. Civ. App. 78, 53 S. W. 838, holding charge authorizing recovery on policy of insured who was prevented from performing duties as effectively as before accident, erroneous; Brendon v. Traders' & Travelers' Acci. Co. 84 App. Div. 533, 82 N. Y. Supp. 860, holding physician totally disabled to perform his duties within meaning of policy where, day following injury to knee, he was obliged to take to his bed, and call physician who put knee in splints; Monahan v. Supreme Lodge, O. of C. K. 88 Minn. 228, 92 N. W. 972, holding insured's acting as nominal manager of mine, assisted by son, not deprived of benefit of total disability clause in policy, where he was healthy and vigorous before injury; Industrial Mut. Indemnity Co. v. Hawkins, 94 Ark. 420, 29 L.R.A.(N.S.) 637, 127 S. W. 457, 21 Ann. Cas. 1029, holding that injury which wholly incapacitates manual laborer from performing any and every kind of business which he is able to do is within terms of policy providing indemnity for total disability; Wall v. Continental Casualty Co. 111 Mo. App. 528, 86 S. W. 491; Order of United Commercial Travelers' v. Barnes, 72 Kan. 303, 80 Pac. 1020, 7 Ann. Cas. 809,—considering the scope of the term "total disability" used in contracts of indemnity against injury by accident.

Cited in footnote to Peterson v. Modern Brotherhood of America, 67 L.R.A. 631, which holds a Pott's fracture not covered by policy providing indemnity in case of breaking of shafts of both bones between knee and ankle joints.

Cited in note (38 L.R.A. 529) on what constitutes total disability of insured.

Nature of indemnity contract against accidents.

Cited in Rayburn v. Pennsylvania Casualty Co. 141 N. C. 434, 54 S. E. 283, on the nature of a contract of indemnity against accident.

38 L. R. A. 541, TOWER v. TOWER & S. STREET R. CO. 68 Minn. 500, 64 Am. St. Rep. 493, 71 N. W. 691.

38 L. R. A. 545, GARRATT FORD CO. v. VERMONT MFG. CO. 20 R. I. 187, 78 Am. St. Rep. 852, 37 Atl. 948.

Validity of contracts of foreign corporations not authorized to do business.

Cited in Commonwealth Mut. F. Ins. Co. v. Place, 21 R. I. 249, 43 Atl. 68,

sustaining policy issued by foreign insurance company before it was authorized to do business in state; Swift & Co. v. Little, 28 R. I. 113, 65 Atl. 616, holding foreign corporation can maintain action upon contract made before it has appointed resident attorney upon whom process may be served if such appointment is made prior to commencement of action; Kendrick & Roberts v. Warren Bros. Co. 110 Md. 71, 72 Atl. 461, holding that by statute imposing penalty upon officers of foreign corporations transacting business without complying with law it was not intended that its violation should avoid contracts made before compliance with law.

Cited in notes (4 L.R.A.(N.S.) 689) on imposition of penalty as affecting validity of contract by foreign corporation without complying with statutory conditions of doing business; (123 Am. St. Rep. 548) on right of unauthorized foreign corporation to enforce contract.

38 L. R. A. 546, LUBRANO v. IMPERIAL COUNCIL, O. OF U. F. 20 R. I. 27, 37 Atl. 345.

Service of process.

Cited in footnotes to National Bank v. Furtick, 44 L. R. A. 115, which requires service on foreign insurance company as garnishee to be made on president, treasurer, cashier, or paying clerk; Mutual Reserve Fund Life Asso. v. Boyer, 50 L. R. A. 538, which denies right to serve process on state officer designated by foreign insurance company which has ceased to do business in state.

Cited in note (47 L. ed. U. S. 988) on service on state officer as service on foreign corporations.

38 L. R. A. 549, JONATHAN TURNER'S SONS v. LEE GIN & MACH. CO. 98 Tenn. 604, 41 S. W. 57.

Deposit in court as payment pro tanto.

Cited in Caesar v. Capell, 83 Fed. 430, holding that court may permit withdrawal of money paid into court in foreclosure suit as payment *pro tanto*.

38 L. R. A. 554, STATE, *ex rel.* ASHBAUGH v. CIRCUIT COURT, 97 Wis. 1, 65 Am. St. Rep. 90, 72 N. W. 193.

Contempt by newspaper publication during pending trial.

Cited in Fellman v. Mercantile F. & M. Ins. Co. 116 La. 729, 41 So. 49, holding by analogy writing of private letter concerning judgment rendered and executed is not contempt of court; People ex rel. Atty. Gen. v. News-Times Pub. Co. 35 Colo. 415, 84 Pac. 912 (dissenting opinion), on contempt of court in newspaper publication.

Cited in footnotes to State v. Tugwell, 43 L. R. A. 717, which holds publication of embarrassing articles within time allowed for modification of opinion, a contempt; State v. Bee Pub. Co. 50 L. R. A. 195, which sustains punishment for contempt of newspaper publishing articles threatening judges with public odium if they decide pending cause in certain way; *Ex parte* Foster, 60 L. R. A. 631, which denies court's power to adjudge, on own motion, publisher in contempt for disobeying oral order not to publish testimony in pending case.

Criticism of judiciary.

Cited in Re Egan, 24 S. D. 324, 123 N. W. 478, holding that criticism of judicial officers, made after termination of cause, is not ground for disbarment of attorney nor for punishment for contempt: State Law Examiners v. Hart, 104 Minn. 116, 17 L.R.A.(N.S.) 591, 116 N. W. 212, 15 Ann. Cas. 197, holding that every citizen has the unrestricted right to comment upon, and

criticise rulings of the courts, after the litigation is concluded, subject only to liability in a criminal or civil action.

Cited in footnote to Ex parte Green, 66 L.R.A. 727, which holds criticism of manner in which trials are conducted without referring to particular case in court not punishable as contempt.

Cited in notes (68 L.R.A. 255) on statement with respect to ended cause as contempt; (17 L.R.A.(N.S.) 574) on criticism of decision or opinion after case determined as contempt or ground for disbarment.

Supervisory control by court.

Cited in State *ex rel.* Fourth Nat. Bank v. Johnson, 103 Wis. 617, 51 L. R. A. 59, 79 N. W. 1081, holding trial court without authority to deny creditors' right to examine assignee as to settlement of affairs of insolvent bank; State *ex rel.* Rose v. Superior Court, 105 Wis. 678, 48 L. R. A. 829, 81 N. W. 1046, denying court's jurisdiction over passage of ordinance within general power of municipality, creating contract between city and street railway company; State *ex rel.* Milwaukee v. Ludwig, 106 Wis. 231, 82 N. W. 158, denying mandamus to reverse decision of lower court and compel discontinuance of action to restrain performance of contract between city and street car company; State ex rel. Pabst Brewing Co. v. Carpenter, 129 Wis. 190, 8 L.R.A.(N.S.) 793, 108 N. W. 641, granting writ prohibiting unauthorized action of court in compelling corporation to produce books and papers as aid in determining value of stock held by decedent, upon whose estate proceedings to assess inheritance tax are pending; State ex rel. Umbreit v. Helms, 136 Wis. 449, 118 N. W. 158, on supervisory power of supreme court over other courts.

Cited in notes (51 L.R.A. 73, 76, 109) on superintending control and supervisory jurisdiction of superior over inferior or subordinate tribunal; (111 Am. St. Rep. 950, 951) on writ of prohibition in proceedings to punish contempts.

Distinguished in effect in State ex rel. Pulliam v. Fort, 107 Mo. App. 339, 81 S. W. 476, holding writ of prohibition will not issue to prohibit circuit court from interfering with county court by prohibiting it from considering and passing upon petition for dramshop license, since refusal of license works no irreparable injury.

Violation of injunction as contempt.

Cited in McEvoy v. Gallagher, 107 Wis. 335, 83 N. W. 633, which holds finding defendants guilty of technical violation of injunction without impairing plaintiff's rights not ground for contempt.

Insufficiency of court's finding.

Cited in *Re* McCormick, 108 Wis. 239, 81 Am. St. Rep. 890, 84 N. W. 148, holding that county court's failure to find as to parent's abandonment of child invalidates order of adoption by another.

Punishment for contempt.

Cited in Jos. Schlitz Brewing Co. v. Washburn Brewing Asso. 122 Wis. 518, 100 N. W. 832, holding statute concerning limitation of time of imprisonment until fine and costs are paid or discharged relates to offenses punishable by law following convictions in actions, not to punishments for contempt; Emerson v. Huse, 127 Wis. 224, 106 N. W. 518, on criminal contempts and procedure for their punishment.

38 L. R. A. 561, STATE v. HIGGINS, 51 S. C. 51, 28 S. E. 15.

Special legislation.

Cited in State v. Tucker, 54 S. C. 252, 32 S. E. 361, sustaining act requiring

land owners in certain counties to remove trash from streams; Carolina Grocery Co. v. Burnet, 61 S. C. 211, 58 L. R. A. 689, 39 S. E. 381, holding county board of commissioners a legal body authorized to approve claim against county, although act conferring such authority was a special provision in a general law; State v. Hammond, 66 S. C. 223, 44 S. E. 797, holding statute making it a misdemeanor to neglect to remove dam from running stream in certain countries after notice, void; DeHay v. Berkeley County, 66 S. C. 241, 44 S. E. 790, holding that valid special act relating to schools cannot be legally amended by statute providing salary for school commissioner of one county; Harper v. Galloway, 58 Fla. 265, 26 L.R.A.(N.S.) 799, 51 So. 226, holding section of statute which requires residents of state, not residents of given county, to give notice of intention to hunt and payment of special license tax for privilege of hunting in such county, while no notice or license is required of residents of such county is inoperative as to residents of state; State ex rel. Schroeder v. Burns, 73 S. C. 197, 52 S. E. 960, holding section of statute requiring clerk of court of particular county to pay all costs, fees and commissions due him by virtue of his office to county treasurer, and providing salary in lieu thereof, no other clerk of court being required so to do is unconstitutional, because special legislation; Buist v. Charleston, 77 S. C. 272, 57 S. E. 862, holding that question whether general law can be made applicable so as to avoid enactment of special law is legislative while question whether law is special law concerning one of prohibited subjects mentioned by constitution is judicial.

Cited in footnote to Gustafson v. State, 43 L. R. A. 615, which holds void, act limiting to taxpayers, right to take oysters in public waters.

Cited in note (93 Am. St. Rep. 112) on constitutional inhibition against special legislation where general law can be made applicable.

Right to fish.

Cited in State v. Hill, 98 Miss. 149, 31 L.R.A.(N.S.) 491, 53 So. 411, holding that legislature cannot confer power on county to protect fish for benefit of inhabitants and exclude nonresidents from taking them; McDonald v. Southern Exp. Co. 134 Fed. 284, holding that fish come within general classification of game.

Cited in footnote to State v. Dow, 53 L. R. A. 314, which sustains statute against fishing for trout with intent to sell or trade.

Cited in notes (39 L.R.A. 591) on governmental control over right of fishery; (78 Am. St. Rep. 247) on acts as to fish and game which legislature may declare criminal.

Test of constitutionality of statute under habeas corpus.

Cited in Ex parte Hollman, 79 S. C. 11, 21 L.R.A.(N.S.) 245, 60 S. E. 19, 14 Ann. Cas. 1105, holding constitutionality of statute can be tested under writ of habeas corpus.

38 L. R. A. 562, SUN FIRE OFFICE v. CLARK, 53 Ohio St. 414, 42 N. E. 248.

Change in interest within policy.

Cited in Wolf v. Theresa Village Mut. F. Ins. Co. 115 Wis. 408, 91 N. W. 1014, holding mortgage in form of deed in fee does not operate as change "in interest, title, or possession" within meaning of policy.

Cited in footnote to Fitzgibbons v. Merchants' & B. Mut. F. Ins. Co. 70 L.R.A. 243, which holds that mere accumulation of interest on mortgage of which insurer was notified will not work a forfeiture of insurance.

Cited in note (21 L.R.A.(N.S.) 445) on formation of partnership or change

in personnel of firm as affecting change of title or ownership within provision of policy.

Policy as affected by option to rebuild or other insurance.

Cited in Milwaukee Mechanics' Ins. Co. v. Russell, 65 Ohio St. 256, 56 L.R.A. 161, 62 N. E. 338, holding condition in policy purporting to give insurer right to rebuild, void; Johnson v. North British & M. Ins. Co. 66 Ohio St. 19, 63 N. E. 610, holding that election to treat policy as void when informed of other insurance relieves company from liability; Franklin Ins. Co. v. Wolff, 23 Ind. App. 555, 54 N. E. 772, holding mortgagee bound by mortgagor's violation of policy in procuring other insurance.

Cited in note (1 Brit. Rul. Cas. 40) on void or inoperative policies as breach of condition against other insurance on property.

Vacancy as additional hazard.

Cited in Doten v. Ætna Ins. Co. 77 Minn. 477, 80 N. W. 630, holding answer alleging that insured house became vacant prior to fire, sufficient allegation of additional hazard.

Criticized in Germania F. Ins. Co. v. Werner, 76 Ohio St. 554, 12 L.R.A.(N.S.) 456, 118 Am. St. Rep. 891, 81 N. E. 980, holding statute providing that in absence of any change increasing the risk without consent of insurers, in case of total loss, whole amount mentioned in policy shall be paid, means any change in building or structure insured and valued and cannot be extended to include change in occupation.

Sufficiency of ownership within statute against burning property.

Cited in Jones v. State, 70 Ohio St. 43, 70 N. E. 952, holding that insurer who burns property worth $50, and in which he has interest, comes within provision of statute making it crime for one to burn his own property.

Waiver by insurance company of additional insurance clause.

Cited in Kehm v. German Mut. Ins. Co. 8 Ohio N. P. 543, 11 Ohio S. & C. P. Dec. 743, holding an insurance company was estopped to assert a forfeiture of policy on ground that consent to other insurance was not indorsed on the policy where agent was given notice of such insurance and made no objection.

38 L. R. A. 570, KIMBALL v. CARTER, 95 Va. 77, 27 S. E. 823.

Sufficiency of bill of exceptions.

Cited in Hughes v. Kelly, 2 Va. Dec. 593, 30 S. E. 387, holding bill of exceptions not setting out testimony insufficient; Kay v. Glade Creek & R. R. Co. 47 W. Va. 478, 35 S. E. 973, refusing to consider exception when answer not incorporated in bill of exceptions; Richmond & P. Electric R. Co. v. Rubin, 102 Va. 819, 47 S. E. 834, holding exception to refusal of court to allow answer to question propounded to expert witness cannot be considered when bill of exceptions does not show what answer of witness would have been had he been permitted to answer; Burton v. Seifert & Co. 108 Va. 355, 61 S. E. 933, holding exception to asking of questions will not be considered where admissibility of evidence objected to depended largely on evidence preceding it and such preceding evidence is not brought to attention of court by the exception.

Rulings on evidence.

Cited in State v. Clifford, 59 W. Va. 11, 52 S. E. 981, holding error in refusing to allow questions will not constitute ground for reversal when council fail to state what they expect to prove in response thereto.

Proof of title in ejectment.

Cited in Pennington v. Underwood, 59 W. Va. 342, 53 S. E. 465, holding

plaintiff in ejectment has burden of locating outer boundary of her grant, and to locate boundaries of excluded parcels, and of showing that land sought to be recovered is within outer boundary of plaintiff's grant and without boundaries of excluded parcels.

"Inclosed land."

Cited in Miller v. Chicago & N. W. R. Co. 133 Wis. 192, 113 N. W. 384, holding "inclosed lands" means lands surrounded by substantial fence or its equivalent, separating premises from outside territory.

38 L. R. A. 573, DOBBINS v. MISSOURI, K. & T. R. CO. 91 Tex. 60, 66 Am. St. Rep. 856, 41 S. W. 62.

Duty to keep premises or street safe.

Cited in Dawson v. St. Louis Expanded Metal Fireproofing Co. 94 Tex. 427, 61 S. W. 118, denying liability of independent contractor for injury to servant of another contractor by falling through cement panel constructed by former; Clapp v. LaGrill, 103 Tenn. 175, 52 S. W. 134, holding that implied invitation to use alley determines liability for maintenance of defective grating; Davis v. Houston E. & W. T. R. Co. 29 Tex. Civ. App. 46, 68 S. W. 733, and Houston, E. & W. T. R. Co. v. Grubbs, 28 Tex. Civ. App. 372, 67 S. W. 519, denying railroad company's duty to light unused portion of platform; Grant v. Hass, 31 Tex. Civ. App. 691, 75 S. W. 342, sustaining right to recover for injury to innocent trespasser, caused by setting off spring gun placed to guard melon patch; Parsons v. Manser, 119 Iowa, 93, 62 L. R. A. 135, 97 Am. St. Rep. 283, 93 N. W. 86, holding owner of bees liable for locating hives near hitching post which he has fixed for fastening horses to; Grundel v. Union Iron Works, 141 Cal. 567, 75 Pac. 184, denying liability for death of one who said he "had business to perform on vesssel" and who was killed by slipping of insecure gangplank; Greenville v. Pitts, 102 Tex. 3, 14 L.R.A.(N.S.) 980, 132 Am. St. Rep. 843, 107 S. W. 50, holding city maintaining electric wire upon partition wall between roofs of buildings not liable for injury of policeman who went upon roof to spy out gamblers in nearby building, came in contact with wire, and was burned; Franks v. Southern Cotton Oil Co. 78 S. C. 18, 12 L.R.A.(N.S.) 471, 58 S. E. 960, on absence at common law of duty of owner of premises to keep them safe for persons coming upon them without invitation express or implied.

Cited in footnotes to Lorenzo v. Wirth, 40 L. R. A. 347, which denies liability of occupant of house for injury to pedestrian stepping in dark into coal hole 2 feet from street line; Rachmel v. Clark, 62 L. R. A. 959, which holds manufacturer storing stone slabs on sidewalk in front of building liable for injuries to person lawfully using the sidewalk; Temby v. Ishpeming, 69 L.R.A. 618, which denies liability of city for injuries to traveler by fall of billboard insecurely fastened by abutting owner.

Cited in notes (5 L.R.A.(N.S.) 733) on duty to trespasser as to excavations or uninclosed land near highway; (25 Eng. Rul. Cas. 114) on liability for injury to trespasser by dangerous instrumentalities.

— For protection of children.

Approved in Walker v. Potomac, F. & P. R. Co. (Pannill v. Potomac, F. & P. R. Co.) 105 Va. 230, 4 L.R.A.(N.S.) 84, 115 Am. St. Rep. 871, 53 S. E. 113, 8 Ann. Cas. 862, denying recovery for death of child whose foot was caught between rails while he was playing at turntable, causing lockjaw, from which he died.

Cited in Dublin Cotton Oil Co. v. Jarrard, 91 Tex. 294, 42 S. W. 959, raising, without deciding, question as to implied invitation to child to enter premises:

San Antonio & A. P. R. Co. v. Morgan, 92 Tex. 103, 42 S. W. 28, holding implied invitation basis of recovery for injury to child upon unlocked turntable; Ryan v. Towar, 128 Mich. 476, 55 L. R. A. 315, 92 Am. St. Rep. 481, 87 N. W. 644, denying liability to child who broke through wall of unused building and suffered injury on water wheel while rescuing playmate; Savannah, F. & W. R. Co. v. Beavers, 113 Ga. 402, 54 L.R.A. 316, footnote p. 314, 39 S. E. 82, denying duty of one making excavation on own land to guard trespassing children from injury; Price v. Atchison Water Co. 58 Kan. 554, 62 Am. St. Rep. 625, 50 Pac. 450, holding water works company liable for failure to guard against accidents to small boys permitted to resort to deep reservoir to fish; Biggs v. Consolidated Barb-Wire Co. 60 Kan. 222, 44 L. R. A. 658, footnote p. 655, 56 Pac. 4, holding owner liable for maintaining dangerous machinery on private grounds unprotected from visits of trespassing children; Ritz v. Wheeling, 45 W. Va. 267, 43 L. R. A. 151, 31 S. E. 993, denying city's liability for death of five-year-old child, drowned while trespassing about reservoir; Uthermohlen v. Bogg's Run Co. 50 W. Va. 462, 55 L. R. A. 913, 88 Am. St. Rep. 884, 40 S. E. 410, denying liability to child injured, when trespassing by cable hauling coal cars; Paolino v. McKendall, 24 R. I. 438, 60 L. R. A. 136, 96 Am. St. Rep. 736, 53 Atl. 268, holding that occupier of land who undertakes to burn rubbish is under no obligation to guard children of tender years who are in habit of resorting there to play; Stamford Oil Mill Co. v. Barnes, 103 Tex. 413, 31 L.R.A.(N.S.) 1220, 128 S. W. 375, Ann. Cas. 1913A, 111, holding that owner of oil mill is under no general duty to exercise care to make it safe for children coming thereto without invitation or allurements; Bottum v. Hawks, 84 Vt. 375, 35 L.R.A.(N.S.) 443, 79 Atl. 858, Ann. Cas. 1913 A, 1025, holding that person maintaining opening into mill race near highway is not liable for death of child who fell into it and was drowned, although no barriers were placed about opening; Indianapolis Water Co. v. Harold, 170 Ind. 177, 83 N. E. 993, denying recovery for death of child who ventured upon log over canal, fell off, and was drowned; Iamurri v. Saginaw City Gas Co. 148 Mich. 53, 111 N. W. 884, on the "turntable doctrine" and doctrine of constructive invitation; Driscoll v. Clark, 32 Mont. 184, 80 Pac. 1, holding complaint under turntable doctrine in action to recover for injury of child caught upon endless chain with projecting flanges is defective in not showing invitation, express or implied; Conrad v. Baltimore & O. R. Co. 64 W. Va. 181, 16 L.R.A.(N.S.) 1132, 61 S. E. 44; Wheeling & L. E. R. Co. v. Harvey, 77 Ohio St. 245, 19 L.R.A.(N.S.) 1145, 122 Am. St. Rep. 503, 83 N. E. 66, 11 Ann. Cas. 981,—denying recovery for injury of child sustained while playing at turntable; Thompson v. Baltimore & O. R. Co. 218 Pa. 451, 19 L.R.A.(N.S.) 1168, 120 Am. St. Rep. 897, 67 Atl. 768, 11 Ann. Cas. 894, holding no recovery can be had for injury of child who while standing near turntable at which other children were playing was struck by projecting bar, thrown into pit and caught between wall and turntable; North Texas Constr. Co. v. Bostick, 98 Tex. 242, 83 S. W. 12, holding cotton gin operator does not owe duty of guarding its premises and machinery against trespassers even though they are children of very immature discretion; Isbell v. Hayward Lumber Co. 47 Tex. Civ. App. 348, 105 S. W. 211, holding same as to owner and operator of saw mill and planing plant; Williamson v. Gulf, C. & S. F. R. Co. 40 Tex. Civ. App. 22, 88 S. W. 279, holding railway bridge abutments, erected on railway right of way, do not furnish evidence of invitation to public or children to go upon same.

Cited in footnotes to Omaha v. Bowman, 40 L. R. A. 531, which denies city's liability for drowning of child on private premises in pond caused by city's ob-

struction of water; Stendal v. Boyd, 42 L. R. A. 288, which holds that attractiveness of pond on one's own premises not render him liable for failure to fence premises Cooper v. Overton, 45 L. R. A. 591, which denies owner's liability for drowning of trespassing child in unfenced city lot in pond formed by damming surface water; Arnold v. St. Louis, 48 L. R. A. 291, which denies liability of city or private owner for drowning of children while skating on pond without invitation; Kramer v. Southern R. Co. 52 L. R. A. 359, which denies railroad company's liability for death of child by fall of pile of cross-ties piled in unused portion of street, unless company knew that children were in habit of playing there; Heimann v. Kinnare, 52 L. R. A. 652, which holds thirteen-year-old boy negligent *per se* in jumping over strip of water onto rotten ice on pond and sliding to point where water was over his head: Kopplekom v. Colorado Cement Pipe Co. 54 L. R. A. 284, which holds owner of uninclosed city lot liable for injury to young child by toppling over of large cement pipe used by children as plaything.

Cited in note (19 L.R.A.(N.S.) 1099, 1107, 1110, 1149) on attractive nuisance.

Railroad company's duty to trespasser on train.

Cited in Crawleigh v. Galveston, H. & S. A. R. Co. 28 Tex. Civ. App. 263, 67 S. W. 140, denying railroad company's liability for death of one who boarded freight car without invitation, and was killed in collision.

Necessity of duty upon which to predicate negligence.

Cited in Louthian v. Ft. Worth & D. C. R. Co. 50 Tex. Civ. App. 615, 111 S. W. 665; Boston & M. R. Co. v. Sargent, 72 N. H. 463, 57 Atl. 688,—holding existence of duty from party sought to be held liable is essential element in actionable negligence.

38 L. R. A. 577, BAUGHN v. STATE, 100 Ga. 554, 28 S. E. 68.

Affirmed in 168 U. S. 398, 42 L. ed. 515, 18 Sup. Ct. Rep. 87.

Inquisition after sentence.

Cited in Rawlins v. Mitchell, 127 Ga. 28, 55 S. E. 958, on inquisition of insanity after sentence; State v. Lyons, 113 La. 1001, 37 So. 890, holding refusal to order jury trial of insanity of accused after his trial and conviction, upon suggestion of his "present" insanity is not denial of due process of law.

Cited in footnote to State v. Nordstrom, 53 L. R. A. 584, which holds trial of alleged insanity after sentence to death discretionary with court.

Cited in note (35 L.R.A.(N.S.) 471) on trial of insane person as former jeopardy.

Discretion as to trial of insane person.

Annotation in 38 L. R. A. 577, referred to particularly in State v. Kelley, 74 Vt. 283, 52 Atl. 434, holding it within discretion of court to proceed with trial of one indicted for assault with intent to kill, after indications of his insanity appear.

Conclusiveness of finding as to insanity.

Annotation in 38 L. R. A. 577, referred to particularly in Chase v. State, 41 Tex. Crim. Rep. 562, 55 S. W. 833, holding special jury's determination that accused was of unsound mind not conclusive of insanity so that issue could not be raised again.

Review of motion denying inquisition.

Distinguished in Sears v. Candler, 112 Ga. 381, 37 S. E. 442, holding superior court judge's refusal to grant application for inquisition reviewable on appeal.

38 L. R. A. 591, PEOPLE *ex rel.* NEW YORK INST. FOR BLIND v. FITCH, 154 N. Y. 14, 47 N. E. 983.

Charitable institutions.

Followed in *Re* New York Juvenile Asylum, 172 N. Y. 59, 64 N. E. 764, Affirming 36 Misc. 635, 74 N. Y. Supp. 364, denying city's liability to asylum for care of child voluntarily surrendered by mother.

Cited in Sargent v. Board of Education, 76 App. Div. 590, 79 N. Y. Supp. 127, Affirming 35 Misc. 325, 71 N. Y. Supp. 954, sustaining right of board of education to pay salaries to teachers in local orphan asylum; Collins v. New York Post Graduate Medical School, 59 App. Div. 70, 69 N. Y. Supp. 106, denying liability of post-graduate school and hospital, supported chiefly by charity, for negligence in operating on patient who pays for board and room only; People *ex rel.* State Charities v. New York Soc. for Prevention of Cruelty to Children, 161 N. Y. 247, 55 N. E. 1063, Reversing 42 App. Div. 86, 58 N. Y. Supp. 953, Which Reversed 25 Misc. 55, 53 N. Y. Supp. 1017, holding New York society for prevention of cruelty to children not subject to visitation by state board of charities; State *ex rel.* Olsen v. Board of Control, 85 Minn. 204, 88 N. W. 533 (dissenting opinion) majority holding state normal schools within provisions of act relating to charitable institutions; Noble v. Hahnemann Hospital, 112 App. Div. 665, 98 N. Y. Supp. 605, holding fact hospital receives compensation for some of its patients does not exclude it from definition of charitable institution; Re Moore, 66 Misc. 121, 122 N. Y. Supp. 828, holding that a colony where epileptics may be treated and may work to produce products to be sold for their support in part is a charity within exemption laws.

Cited in note (63 Am. St. Rep. 251, 260, 264) on what are charitable uses or trusts.

Distinguished in Corbett v. St. Vincent's Industrial School, 177 N. Y. 22, 68 N. E. 997, Affirming 79 App. Div. 343, 79 N. Y. Supp. 369, holding industrial school, supported largely by charity, not liable to boy committed by magistrate, for injuries sustained in consequence of foreman's failure to instruct him concerning operation of machine.

38 L. R. A. 606, SAGE v. NEW YORK, 154 N. Y. 61, 61 Am. St. Rep. 592, 47 N. E. 1096.

Rights as to lands under water.

Cited in DeLancey v. Hawkins, 23 App. Div. 12, 49 N. Y. Supp. 469, holding state's grant to riparian owner of right to build marine railroad, no defense to action in ejectment under deed subject to state's claims, when road used for private purpose; Consolidated Ice Co. v. New York, 53 App. Div. 261, 65 N. Y. Supp. 912, holding city entitled to strip of land formerly under water, acquired under Dongan charter, and reserved in deed by city; Jarvis v. Lynch, 157 N. Y. 447, 52 N. E. 657, holding title to lands between high and low water marks on west side of Harlem river not derivable from Nicoll's grant; Knickerbocker Ice Co. v. Forty-second Street & G. Street Ferry R. Co. 176 N. Y. 417, 68 N. E. 864, holding New York city's title in tideway and submerged lands of Hudson river, acquired under Dongan and Montgomerie charters, subject to rights of public; Oelsner v. Nassau Light & P. Co. 134 App. Div. 286, 118 N. Y. Supp. 960, holding state grants of lands under navigable water are impliedly made subject to rights of navigation; Lewis Blue Point Oyster Cultivation Co. v. Briggs, 198 N. Y. 293, 34 L.R.A.(N.S.) 1087, 91 N. E. 846, 19 Ann. Cas. 694, holding lessee of land under navigable water, who has planted oyster beds, cannot restrain dredging of such lands to improve navigation, where authorized by

Congress; West Chicago Street R. Co. v. Illinois, 201 U. S. 524, 50 L. ed. 852, 26 Sup. Ct. Rep. 518, holding rights of owner of fee of land on either side of river or in its bed, are subject to paramount right of navigation over waters of river; Fulton Light Heat & Power Co. v. State, 65 Misc. 278, 121 N. Y. Supp. 536, as illustrating rights of state in tidal rivers.

Cited in note (42 L. R. A. 164) on title to land under water.

Distinguished in Bent v. Emery, 173 Mass. 497, 53 N. E. 910, holding that dredging of flats, resulting in removal of large quantities of earth and sinking of surface, entitles owner to compensation; Baird v. Campbell, 67 App. Div. 112, 73 N. Y. Supp. 617, sustaining title of freeholders of Harlem to marshes which passed under Harlem patent; Fulton Light, Heat & Power Co. v. State, 65 Misc. 298, 121 N. Y. Supp. 536, holding state cannot appropriate riparian rights in nonnavigable stream for purposes of construction of canal without compensation to owners.

Lands bounded by waters.

Cited in Re New York, 46 Misc. 157, 93 N. Y. Supp. 1107, holding title of owner of upland extends to highwater mark only; Silberman v. Mayer, 48 Misc. 472, 96 N. Y. Supp. 928, holding conveyance of land bounded by "the Atlantic ocean" vests absolute title in grantees only to high-water mark; Fulton Light, Heat & Power Co. v. State, 62 Misc. 195, 116 N. Y. Supp. 1000, holding grant of land upon shore of tide water extends only to high-water mark; Western P. R. Co. v. Southern P. Co. 80 C. C. A. 606, 151 Fed. 400, on the right of the state to occupy and improve waterfront without compensation to riparian owners; Re New York, 182 N. Y. 365, 108 Am. St. Rep. 809, 75 N. E. 156, holding King will not be presumed to have granted tideway on shore of high seas and navigable rivers by merely bounding conveyance upon sea or river, but other words clearly indicating his purpose and intent to convey lands under water, must be used to pass title thereto.

Cited in note (23 Eng. Rul. Cas. 186–188) on ownership of riparian owner to thread of stream.

Distinguished in Bardes v. Herman, 62 Misc. 431, 114 N. Y. Supp. 1098, holding common law of England as to ownership by sovereign of jus privatum never obtained in province of New York, but the jus privatum was abandoned to owners of upland.

Riparian owner's right of access to water front.

Cited in People *ex rel.* Cornwall v. Woodruff, 30 App. Div. 47, 51 N. Y. Supp. 515, sustaining grant to adjoining riparian proprietors, impairing access to dock of first patentee; People v. Mould, 37 App. Div. 37, 55 N. F. Supp. 453, Reversing 24 Misc. 291, 52 N. Y. Supp. 1032, denying state's right to compel removal of wharf by riparian owner, when not shown to obstruct navigation; *Re* New York, 168 N. Y. 139, 56 L. R. A. 502, 61 N. E. 158, Reversing 60 App. Div. 124, 69 N. Y. Supp. 994, holding construction of speedway on tideway of river for pleasure uses only, not exercise of reserved right to improve navigation; Slingerland v. International Contracting Co. 169 N. Y. 69, 56 L. R. A. 499, footnote p. 494, 61 N. E. 995, affirming 43 App. Div. 223, 60 N. Y. Supp. 12, denying riparian owner's right to damages for injuries to right of access by one dredging under government authority; New Whatcom v. Fairhaven Land Co. 24 Wash. 499, 54 L. R. A. 194, 64 Pac. 735, holding that municipal corporation owning land on navigable lake cannot appropriate waters of lake for city purposes to injury of riparian owner whose rights vested before adoption of state Constitution; Scranton v. Wheeler, 179 U. S. 161, 45 L. ed. 136, 21 Sup. Ct. Rep. 48, holding owner of land facing navigable river not entitled to compensation

for obstruction to access from shore by erection of pier under authority of Congress; Home for Aged Women v. Com. 202 Mass. 430, 24 L.R.A.(N.S.) 83, 89 N. E. 124, holding right of access to and from riparian land is held subject to changes in condition of public property made by government in interest of better navigation; Re Public Works Comrs. 135 App. Div. 574, 120 N. Y. Supp. 930, holding where city grants lands between high and low watermark of navigable waters without granting wharfage, it can, upon subsequently acquiring land farther out extend and improve water front for commercial purposes without compensation; Fulton Light, Heat & Power Co. v. State, 62 Misc. 196, 116 N. Y. Supp. 1000, holding owner of land bounding tidal stream has right to access to navigable water not only for purposes of loading boats, drawing nets, and the like, but to wharfout; Fulton Light, Heat & Power Co. v. State, 65 Misc. 278, 121 N. Y. Supp. 536, holding riparian rights of individuals are modified by sovereign right of state to improve navigation; Champlain Stone & Land Co. v. State, 66 Misc. 467, 123 N. Y. Supp. 546 (dissenting opinion), on power of State to make improvements in streams navigable in fact; Brookhaven v. Smith, 188 N. Y. 85, 9 L.R.A.(N.S.) 330, 80 N. E. 665, 11 Ann. Cas. 1, sustaining right of owner of upland to wharf out, though title to land under water is held by municipality.

Cited in notes (40 L.R.A. 600) on right of owner of upland to access to navigable water; (67 L.R.A. 842, 845) on right to improve navigability of stream; (34 L.R.A.(N.S.) 426) on right to obstruct wharf rights in navigable waters for public purposes, without compensation; (127 Am. St. Rep. 50) on relative rights of state and riparian owners in navigable waters; (45 L. ed. U. S. 126) on right in improving navigation to destroy access of riparian owner; (23 Eng. Rul. Cas. 162) on riparian owner's right of access.

Construction of bridge over navigable waters.

Cited in People *ex rel.* Howell v. Jessup, 160 N. Y. 267, 54 N. E. 682, sustaining constitutional power of certain town to authorize riparian proprietor to construct bridge over waters not navigable when power granted town; Lehigh Valley R. Co. v. Canal Bd. 146 App. Div. 159, 130 N. Y. Supp. 978, holding that legislature had power to compel removal of bridge over navigable river which obstructed navigation.

Obstruction of flow of freshet waters.

Cited in Jones v. Seaboard Air Line R. Co. 67 S. C. 194, 45 S. E. 188, holding riparian owner entitled to damages resulting from railroad company's obstruction of flow of freshet waters by faulty construction of piers.

Corporeal appurtenances.

Cited in footnote to Forrest v. Vanderbilt, 52 L. R. A. 473, which holds naphtha launch not appurtenance of yacht with which it is used as tender.

Accretion.

Cited in Re New York, 46 Misc. 158, 93 N. Y. Supp. 1107, holding doctrine of accretion does not apply to land reclaimed by human agencies; Western P. R. Co. v. Southern P. Co. 80 C. C. A. 606, 151 Fed. 397, on same point; Silberman v. Mayer, 48 Misc. 471, 96 N. Y. Supp. 928, holding structure upon piles upon which is frame building used as vaudeville theater and place for sale of intoxicating liquors cannot be regarded as an accretion.

Construction of public grant of lands.

Cited in Geneva v. Henson, 140 App. Div. 53, 124 N. Y. Supp. 588, holding that grant by one state of lands within its limits to another state, reserving its rights of sovereignty over lands conveyed, will not convey title to navigable

body of water, within such territory unless by virtue of express language in grant: People ex rel. Bryan v. State Tax Comrs. 142 App. Div. 804, 127 N. Y. Supp. 858 (dissenting opinion), on title which legislature authorizes to be granted to railway, as depending upon legislative intent as shown by statute.

38 L. R. A. 615, HARROUN v. BRUSH ELECTRIC LIGHT CO. 152 N. Y. 212, 46 N. E. 291.

Court's unanimous decision and its review.

Followed without discussion in Fowler v. Buffalo Furnace Co. 160 N. Y. 666, 55 N. E. 1095.

Cited in Whittleder v. Citizens' Electric Illuminating Co. 47 App. Div. 544, 62 N. Y. Supp. 488, holding decision unanimous when justice of appellate division, who did not hear oral argument, participates in decision to which no one dissents; People v. Helmer, 154 N. Y. 599, 49 N. E. 249, holding that court of appeals cannot review questions of fact on appeal from conviction for exhibiting false books to bank examiner, when affirmance of appellate division unanimous; Warn v. New York C. & H. R. R. Co. 163 N. Y. 526, 57 N. E. 742, holding judgment of appellate division reciting that one justice sat, but did not vote, and rest concurred, nonunanimous; Re White, 101 App. Div. 608, denying motion to amend order by striking out word "unanimously" where every member of court sitting voted for affirmance thereof.

38 L. R. A. 616, PECK v. ELLIOTT, 24 C. C. A. 425, 47 U. S. App. 605, 79 Fed. 10.

Ancillary proceeding by receiver of insolvent corporation.

Cited in Cunningham v. Cleveland, 39 C. C. A. 215, 98 Fed. 660, holding ancillary action to enforce payment of debt of insolvent corporation not affected by legal nature of proceedings when equity has jurisdiction of original action; Hampton Roads R. & Electric Co. v. Newport News & O. P. R. & Electric Co. 131 Fed. 538, on jurisdiction of cause as ancillary and auxillary to receivership of corporation; Harrigan v. Gilchrist, 121 Wis. 300, 99 N. W. 909, as to liabilities enforceable for beneficiaries of trust fund in winding up suit.

Disapproved in Whelan v. Enterprise Transp. Co. 164 Fed. 98, holding jurisdiction of Federal court acquired over controversy by original bill in equity extends to action at law brought in same court to enforce receiver's claim.

Power to compel assessment.

Cited in Johnson Electric-Service Co. v. Detroit Chamber of Commerce, 124 Mich. 118, 82 N. W. 795, holding that by-law authorizing assessment of dues affords creditor no ground to compel assessment, when paid.

Issue of stock as bonus.

Cited in Kraft v. Griffon Co. 82 App. Div. 33, 81 N. Y. Supp. 438, denying right of corporation, under statute, to issue stock as bonus on sale of corporate bonds.

Enactment of by-laws.

Cited in Van Atten v. Modern Brotherhood, 131 Iowa, 235, 108 N. W. 313, holding by-law cannot be so made as to destroy or impair a right; it is merely provision for internal management of corporation.

Cited in footnote to North Milwaukee Town-Site Co. v. Bishop, 45 L. R. A. 174, which holds stockholders, not directors, empowered to enact by-laws.

Increase of capital stock of corporation.

Cited in Marion Trust Co. v. Bennett, 169 Ind. 350, 124 Am. St. Rep. 228, 82 N. E. 782, holding special act providing capital stock of corporation may be

increased as may be determined by vote of majority in value of stockholders is unconstitutional.

Defense against liability on stock subscription.

Cited in note (31 L.R.A.(N.S.) 902) on fraud as ground of relief from subscription to stock after insolvency of corporation.

38 L. R. A. 624, CONSOLIDATED COAL CO. v. PEERS, 166 Ill. 361, 46 N. E. 1105.

Sufficiency of pleading.

Later writ of error in 205 Ill. 534, 68 N. E. 1065, Affirming 97 Ill. App. 188, holding that a count which set forth a cause of action with duplicity was good on general demurrer.

Cited in Stover Mfg. Co. v. Millane, 89 Ill. App. 537, holding demurrer proper remedy to question sufficiency of pleading; Guthrie v. Howland, 164 Ind. 225, 73 N. E. 259, holding motion to strike from files cannot be allowed to serve purpose of demurrer.

Rights and liabilities of assignees and grantees.

Second appeal in 97 Ill. App. 188, holding assignee of lease bound to perform all express covenants of lease running with the land.

Cited in Peck v. Christman, 94 Ill. App. 436, holding assignee liable on covenants running with the land; Springer v. Chicago Real Estate Loan & T. Co. 102 Ill. App. 302, holding that assignee of lease may reassign and relieve himself of liability for rent; Crawford v. Nimmons, 180 Ill. 145, 54 N. E. 209, holding that deed made subject to usurious mortgage does not estop grantee from raising defense of usury on foreclosure; Siegel v. Borland, 191 Ill. 111, 60 N. E. 863, holding purchaser of mortgaged premises not personally liable for debt, when not assumed; Springer v. DeWolf, 194 Ill. 221, 56 L. R. A. 467, footnote p. 465, 88 Am. St. Rep. 155, 62 N. E. 542, Affirming 93 Ill. App. 263, denying assignee's power to absolve himself from liability to lessor for rent by assigning lease to third person; B. Roth Tool Co. v. Champ Spring Co. 93 Mo. App. 540, 67 S. W. 967, holding assignee of lease bound by covenant to furnish steam power; Ray v. Lobdell, 213 Ill. 396, 72 N. E. 1076, holding that if vendee of land encumbered by mortgage or trust deed purchases only vendor's equity of redemption, he is not personally liable to pay encumbrance unless he expressly assumed or agreed to pay same; Van Duyn v. H. S. Chase & Co. 149 Iowa, 224, 128 N. W. 300, holding that purchaser of part of land not subject to building restrictions in original conveyance, is not bound by restrictions, even though his deed is made subject to such restrictions.

Liability for royalty under coal lease.

Cited in Berwind-White Coal Min. Co. v. Martin, 60 C. C. A. 31, 124 Fed. 317, holding that abandonment of leased coal mine entitles lessor to recover royalty which lessee covenanted to pay on specified amount of coal to be mined.

Res adjudicata.

Cited in MacDonald v. Dexter, 234 Ill. 525, 85 N. E. 209, holding that institution of suit pending appeal from decision of the same cause in a foreign jurisdiction does not estop party from setting up final decision in foreign jurisdiction as res adjudicata.

38 L. R. A. 629, TEELE v. BISHOP OF DERRY, 168 Mass. 341, 60 Am. St. Rep. 401, 47 N. E. 422.

Validity of gift manifesting charitable intent.

Approved in Gladding v. St. Matthew's Church, 25 R. I. 636, 65 L.R.A. 230,

105 Am. St. Rep. 904, 57 Atl. 860, 1 Ann. Cas. 537, holding legacy to church lapsed when church ceased to exist, where will showed no general charitable intention of testatrix.

Cited in Dexter v. Harvard College, 176 Mass. 196, 57 N. E. 371, sustaining gift for college purposes, unless it be all expended for scholarship to which testator's kin have preference; Sherman v. Congregational Home Missionary Soc. 176 Mass. 351, 57 N. E. 702, holding court will carry out gift manifesting charitable intent, although particular manner undetermined; Lackland v. Walker, 151 Mo. 258, 52 S. W. 414, holding that equity will carry out charitable devise when particular mode fails; Eliot's Appeal, 74 Conn. 604, 51 Atl. 558, holding bequest for purpose of erecting chapel and supporting mission not void because place selected not favorable; Allen v. Nasson Institute, 107 Me. 126, 77 Atl. 638, holding that if gift was for particular purpose only, and there was no general charitable intention, court cannot by construction apply cy pres to original purpose; Osgood v. Rogers, 186 Mass. 241, 71 N. E. 306, holding gift to one church might be turned over to another church under doctrine of cy pres, where donor manifested general charitable intent; Bowden v. Brown, 200 Mass. 271, 128 Am. St. Rep. 419, 86 N. E. 351, holding that gift to town toward erection of building for sick and poor and those without homes, refused by town failed because of impossibility of execution and of absence of intent to use gift for other charitable purposes; Brown v. Condit, 70 N. J. Eq. 446, 61 Atl. 1055, holding cy pres doctrine inapplicable to gift to hospital fund for sick seaman at navy yard, which it was impossible to execute; Gill v. Atty. Gen. 197 Mass. 237, 83 N. E. 676, holding that a gift for the preservation and exhibition of certain relics fails where there are practically no relics to preserve and the gift is inadequate to maintain room.

Cited in notes (6 L.R.A.(N.S.) 323) on validity of trust to propagate particular religious belief; (63 Am. St. Rep. 264) on what are charitable uses or trusts; (64 Am. St. Rep. 770) on certainty and unity required in charitable trusts.

Distinguished in Ely v. Atty. Gen. 202 Mass. 548, 89 N. E. 166, ordering that gift for founding of kindergarten for deaf children, impracticable for want of money to maintain new home, be administered in accordance with doctrine of cy pres through another home.

Declaration of trust.

Cited in Loring v. Hildreth, 170 Mass. 331, 40 L. R. A. 130, 64 Am. St. Rep. 301, 49 N. E. 652, holding grantor's record of undelivered deed of trust insufficient to create declaration of trust.

Construction of bequest.

Cited in Old Ladies Home v. Hoffman, 117 Iowa, 720, 89 N. W. 1066, holding that bequest to orphan asylum "in" certain city, and if none exists to old ladies' home "in" such city, should be construed as going to orphan asylum located within mile of city but outside corporate limits, instead of to home within city.

Application of doctrine of cy pres.

Cited in footnote to Gladding v. St. Matthew's Church, 65 L.R.A. 225, which holds that legacy to a particular church will not be administered cy pres after termination of its existence in behalf of deaf mutes for whose benefit the church was.

38 L. R. A. 631, KELLEY v. NEW YORK, N. H. & H. R. CO. 168 Mass. 308, 60 Am. St. Rep. 397, 46 N. E. 1063.

Husband's recovery for injury to wife.

Cited in Selleck v. Janesville, 104 Wis. 577, 47 L. R. A. 694, 76 Am. St. Rep.

892, 80 N. W. 944, holding that husband may recover value of wife's services to him, in action for her injury on defective walk; The City of Boston, 182 Fed. 179, holding that under law of Massachusetts husband may recover damages for loss of companionship of wife; Nolin v. Pearson, 191 Mass. 285, 4 L.R.A.(N.S.) 646, 114 Am. St. Rep. 605, 77 N. E. 890, on rights of husband at common law to damages for injury to wife's person or reputation; Duffee v. Boston Elev. R. Co. 191 Mass. 564, 77 N. E. 1036, holding husband's action for expenditures for wife's care and cure and loss of her services and consortium due to negligence is not barred by judgment against wife in action by wife against same defendant; Hey v. Prime, 197 Mass. 476, 17 L.R.A.(N.S.) 572, 84 N. E. 141, holding husband's right of action for loss of services and society of wife due to tort does not survive death of tort-feasor since he does not suffer "damage to the person" under statute; Booth v. Manchester Street R. Co. 73 N. H. 531, 63 Atl. 578, holding husband may maintain action for loss of wife's services and comfort as such, proximately caused by another's wrongful act; Indianapolis & M. Rapid Transit Co. v. Reeder, 42 Ind. App. 523, 85 N. E. 1042, holding husband may recover for loss or impairment of right to conjugal society and assistance of wife and "services" signifies wifely services, such as are due from wife to husband, and includes her society.

Cited in note (33 L.R.A.(N.S.) 1043, 1048) on right to recover for loss of consortium through personal injury to wife.

Overruled in part in Teneff v. New York C. & H. R. R. Co. 203 Mass. 279, 24 L.R.A.(N.S.) 1025, 133 Am. St. Rep. 291, 89 N. E. 436, holding wife cannot maintain action for loss of husband's consortium due to his mental and physical injuries by third person's negligence, where he has himself been fully compensated for such injuries.

38 L. R. A. 633, GRANEY v. ST. LOUIS, I. M. & S. R. CO. 140 Mo. 89, 41 S. W. 246.

Liability for negligence.

Cited in Nixon v. Hannibal & St. J. R. Co. 141 Mo. 436, 42 S. W. 942, holding company liable for injury resulting from failure to repair crossing; Hoepper v. Southern Hotel Co. 142 Mo. 389, 44 S. W. 257, holding erroneous, instruction that defendant not chargeable unless injury was of such character as might reasonably have been foreseen as result of machinery running roughly.

Cited in notes (5 L.R.A.(N.S.) 220) on violation of railroad speed ordinance as negligence; (31 L.R.A.(N.S.) 983) on liability for injuries by suction from negligent operation of trains to persons on adjoining property or highway.

— Proximate cause.

Cited in Chesapeake & O. R. Co. v. Davis, 119 Ky. 645, 60 S. W. 14, holding negligence properly inferred from evidence that train was run through populous city with an iron swinging in and out; MacDonald v. Metropolitan Street R. Co. 219 Mo. 491, 118 S. W. 78, 16 Ann. Cas. 810, holding street car company liable for death of passenger who was injured by derailing of car resulting in angina pectoris from which he later died; Harrison v. Kansas City Electric Light Co. 195 Mo. 629, 7 L.R.A.(N.S.) 303, 93 S. W. 951, holding electric light company which turned on current without ascertaining safety of circuit liable for death of person who took hold of wire charged with electricity as result of act of trespasser; Leine v. Kellerman Contracting Co. 134 Mo. App. 562, 114 S W. 1147, holding that negligence in leaving an opening unguarded is not necessarily the remote cause of injury from falling timber because it was not reasonably to be anticipated that the particular timber in question would fall; J. Q.

Lloyd Chemical Co. v. G. Mathes & Sons Rag Co. 145 Mo. App. 691, 123 S. W. 528, holding evidence of negligence in burning rubbish on a previous day is inadmissible to prove that a similar fire was the proximate cause of burning plaintiff's building.

Distinguished in Chicago & A. R. Co. v. Kansas City Suburban Belt R. Co. 78 Mo. App. 257, holding collision when train running at rate allowed by ordinance not prima facie case for damages: Fussellman v. Wabash R. Co. 139 Mo. App. 202, 122 S. W. 1137, where plaintiff was injured in a railway collision while riding upon a part of the train which defendant company had a right to assume he would not occupy.

Contributory negligence.

Second appeal in 157 Mo. 671, 50 L. R. A. 155, 57 S. W. 276, denying company's liability to one standing at crossing and drawn under train by suction, when result not reasonably anticipated.

Cited in Kreis v. Missouri P. R. Co. 148 Mo. 334, 49 S. W. 877, denying company's liability for death of woman walking along track and killed by venturing too near passing train.

Cited in note (5 L.R.A.(N.S.) 233) on contributory negligence.

Distinguished in Walker v. Wabash R. Co. 193 Mo. 482, 92 S. W. 83, holding boy fourteen years of age guilty of contributory negligence in failing to look and listen for train at crossing, where case was tried on theory boy was sui juris: Deschner v. St. Louis & M. River R. Co. 200 Mo. 326, 98 S. W. 737, holding eleven-year-old boy not guilty of contributory negligence as matter of law in failing to look twice for approaching cars before crossing street railroad tracks.

Power of municipality to regulate speed of trains.

Cited in note (17 L.R.A.(N.S.) 563) on power of municipality to regulate speed of, and signals from, trains at crossings.

38 L. R. A. 637, TRENTON PASS. R. CO. v. COOPER, 60 N. J. L. 219, 64 Am. St. Rep. 592, 37 Atl. 730.

Presumption of negligence.

Cited in Newark Electric Light & P. Co. v. Ruddy, 62 N. J. L. 508, 57 L. R. A. 626, 41 Atl. 712, holding that injury from broken electric light wire trailing on sidewalk creates presumption of negligence: Boyd v. Portland General Electric Co. 40 Or. 131, 57 L. R. A. 622, 66 Pac. 576, and Boyd v. Portland Electric Co. 41 Or. 344, 68 Pac. 810, holding that presumption of negligence arises from injury to traveler in highway, caused by contact with broken electric wire; Gulf, C. & S. F. R. Co. v. Hayden, 29 Tex. Civ. App. 283, 68 S. W. 530, holding presumption of negligence created by injury to operator by starting of lathe machine which would not start except by act of some person, or defect in machine; Dallas Consol. Electric Street R. Co. v. Broadhurst, 28 Tex. Civ. App. 634, 68 S. W. 315, holding that severe electric shock received by one taking hold of hand bar of electric car to get on, raises presumption of negligence: Walters v. Denver Consol. Electric Light Co. 17 Colo. App. 195, 68 Pac. 117, holding that injury from contact with uninsulated electric wire placed 14 inches below window creates presumption of negligence: Daggett v. North Jersey Street R. Co. 75 N. J. L. 634, 68 Atl. 179, holding prima facie case calling for explanatory evidence from defendants made by evidence tending to show defendants' wagon collided with car of defendant railway company in broad daylight, while car was running on straight track on straight street: Mumma v. Easton & A. R. Co. 73 N. J. L. 659, 65 Atl. 208, holding sudden emission of steam by locomotive

under highway bridge whereby horse was frightened makes prima facie case of negligence calling for explanatory evidence.

Cited in footnote to Snyder v. Wheeling Electric Co. 39 L. R. A. 499, which holds death of person by stepping on live electric wire fallen to ground raises presumption of negligence.

Liability for injuries from electric wires.

Cited in New York & N. J. Teleph. Co. v. Bennett, 62 N. J. L. 743, 42 Atl. 759, affirming recovery for injuries from charged electric wire lying in street; Norfolk R. & Light Co. v. Spratley, 103 Va. 384, 49 S. E. 502, holding prima facie case of negligence is made out by establishing ownership and control of wire, and its dangerous condition in public street or highway, coupled with accident; Shawnee Light & Power Co. v. Sears, 21 Okla. 17, 95 Pac. 449, holding in action to recover for personal injury sustained through coming in contact with guy wire charged with electricity that failure to prove details charged in petition was harmless variance, right to recover having appeared by evidence.

Cited in footnotes to Brush Electric Light & Power Co. v. Lefevre, 49 L. R. A. 771, which denies liability for death by uninsulated electric light wire running above awning 16 feet above street; Boyd v. Portland General Electric Co. 52 L. R. A. 509, which holds want of sufficient assistance promptly to replace wires broken by severe storm not excuse, as matter of law, for delay.

Cited in note (100 Am. St. Rep. 536) on duties and liabilities of electric corporations.

Distinguished in Minneapolis General Electric Co. v. Cronon, 20 L.R.A.(N.S.) 823, 92 C. C. A. 345, 166 Fed. 660, holding electric company not liable for killing of person by contract with defectively insulated electric wire in shop, where wire was wholly under control of shop owner.

Declarations as part of res gestæ.

Cited in Hayes v. Jersey City H. & P. Street R. Co. 73 N. J. L. 642, 64 Atl. 119, holding explanatory statement by driver after person injured by overturning wagon had been removed to a hotel was not part of the res gestæ.

Cited in footnote to Sample v. Consolidated Light & R. Co. 57 L. R. A. 186, which holds admissible, declaration of motorman as to cause of accident while car still on body of injured child.

Leading questions.

Cited in Luckenbach v. Sciple, 72 N. J. L. 478, 63 Atl. 244, holding refusal of court to allow leading question is not subject of writ of error.

38 L. R. A. 638, MADDEN v. PENN ELECTRIC LIGHT CO. 181 Pa. 617, 37 Atl. 817.

Interference with internal affairs of foreign corporation.

Followed in American Grease Co. v. Vogellus, 23 Pa. Co. Ct. 665, 9 Pa. Dist. R. 217, denying bill in equity to prevent cancelation of certain shares of stock of foreign company.

Cited in Madden v. Penn Electric Light Co. 21 Pa. Co. Ct. 83, 7 Pa. Dist. R. 305, refusing to inquire into improvident contract made by foreign corporation operating in state under license; Hartley v. Welsh. 8 Pa. Dist. R. 548, 16 Montg. Co. L. Rep. 16, denying court's jurisdiction over election affairs of foreign corporation; Healy v. Eastern Bldg. & L. Asso. 17 Pa. Super. Ct. 395, refusing to construe contract as to rights of withdrawing member of loan association to be performed in another state; Lewisohn Bros. v. Anaconda Copper Min. Co. 26 Misc. 622, 56 N. Y. Supp. 807, denying injunction to minority stockholders to restrain proposed sale by foreign corporation of mining claims outside of jurisdiction; *Re* Rappleye,

43 App. Div. 87, 59 N. Y. Supp. 338, denying mandamus to compel inspection by stockholder of books of foreign corporation; Hallenborg v. Greene, 66 App. Div. 597, 73 N. Y. Supp. 403, denying injunction to resident stockholder to prevent officers of foreign corporation from transferring property to rival corporation without consideration; Condon v. Mutual Reserve Fund Life Asso. 89 Md. 120, 44 L. R. A. 154, 73 Am. St. Rep. 169, 42 Atl. 944, and Taylor v. Mutual Reserve Fund Life Asso. 97 Va. 73, 45 L. R. A. 627, 33 S. E. 375, denying injunction to prevent foreign assessment insurance company from taking steps to cancel policy; Clark v. Mutual Reserve Fund Life Asso. 14 App. D. C. 181, 43 L. R. A. 398, footnote p. 390, denying power to enjoin illegal assessment on resident members of foreign insurance company; Schmit v. Metallic Condense Co. 27 Pa. Co. Ct. 615, sustaining power of state court to appoint receiver to preserve assets of foreign corporation where all stockholders, officers, and promoters, except one director, are citizens of such state; Kinney v. Mexican Plantation Co. 233 Pa. 233, 82 Atl. 93, holding that courts have no jurisdiction to entertain petition for mandamus to compel officers of foreign corporation to permit examination of books by stockholders; Minnick v. Hollopeter, 15 Luzerne Leg. Reg. 11; Happersett v. Eaton, 19 Pa. Dist. R. 642, 38 Pa. Co. Ct. 5; Lowman v. Green Mountain M. & M. Co. 59 Pittsb. L. J. 218,—holding that bill in equity cannot be maintained against foreign corporation, where matter complained of relates to internal affairs of corporation; Com. ex rel. Kinney v. Mexican Plantation Co. 19 Pa. Dist. R. 861, holding that court has no jurisdiction to compel foreign corporation to furnish to stockholder list of stockholders; McGrew v. Pittsburg & M. S. Gold M. & M. Co. 59 Pittsb. L. J. 325, 20 Pa. Dist. R. 827, holding that if foreign corporation has its principal office and its books are kept in this state courts of proper county have jurisdiction to compel corporation to permit inspection of books by stockholder; Pitts v. Pittsburg Metals Min. & Mill. Co. 39 Pittsb. L. J. N. S. 14, 17 Pa. Dist. R. 823, holding that equity has jurisdiction over foreign corporation having its principal office and officers in state, in action to compel transfer of stock on books; Bradbury v. Waukegan & W. Min. & Smelting Co. 113 Ill. App. 608, holding equity should not take jurisdiction of controversy relating to internal management of foreign corporation at suit of stockholder when no question of public concern is involved; Sprague v. Universal Voting Mach. Co. 134 Ill. App. 382, holding courts will not interfere with management of internal affairs of corporation and rule applies, though corporation has large amount of visible tangible property in state; State ex rel. Lake Shore Teleph. & Teleg. Co. v. De Groat, 109 Minn. 177, 134 Am. St. Rep. 764, 123 N. W. 417, denying mandamus to compel resident secretary of foreign holding corporation to call meeting of its stockholders in order to change articles of incorporation of foreign corporations in which it holds or controls stock; McCloskey v. Snowden, 212 Pa. 253, 108 Am. St. Rep. 867, 61 Atl. 796, holding court will not interfere in controversy between stockholders and promoters of foreign corporations in which stockholders seek to have returned profits made by promoters in fraudulent sale of property to corporation; Cheyney v. Equitable Life Assur. Soc. 34 Pa. Co. Ct. 672, 16 Pa. Dist. R. 765, holding only courts of state wherein corporation is chartered can exercise visitorial powers to see whether charter requirements have been observed, and direct investigation of records, files, assets and liabilities, and of conduct of officers; McKean v. New York Nat. Bldg. & L. Asso. 10 Pa. Dist. R. 198, holding stockholder is presumed a citizen of the same state as corporation so far as his relations with it are concerned and state of his actual domicil will not grant foreign attachment against corporation declared insolvent by courts of its own state; Schmitz v. Metallic Condense Co.

11 Pa. Dist. R. 444, holding receiver may be appointed for foreign corporation to obtain and preserve its assets in possession of members and officers, which they have fraudulently obtained and used; Westminster Nat. Bank v. New England Electrical Works, 73 N. H. 478, 3 L.R.A.(N.S.) 556, 111 Am. St. Rep. 637, 62 Atl. 971, holding foreign corporation legally made defendant in action upon contract, which it had apparent authority to make, cannot escape liability on ground that it is foreign corporation.

Cited in note (70 L.R.A. 540) on right of nonresidents to sue foreign corporations.

Distinguished in Gere v. Dorr, 114 Minn. 242, 130 N. W. 1022, holding that courts have jurisdiction in action in equity brought by resident stockholders, who were fraudulently induced to subscribe for stock in foreign corporation, to enjoin promoter from parting with stock fraudulently issued to him; Babcock v. Farwell, 245 Ill. 33, 91 N. E. 683, holding court will exercise jurisdiction over suit to require resident directors to restore to corporation money unlawfully diverted and retained from it; Arnold v. Russell Car & Snow Plow Co. 31 Pa. Co. Ct. 45, where corporation though organized in foreign state, did no business and had no office in such state and could not be served with process there; Flory Mfg. Co. v. Bangor Slate Co. 36 Pa. Co. Ct. 66, 18 Pa. Dist. R. 566, 11 North. Co. Rep. 331, holding receiver for insolvent foreign corporation may be appointed in interest of local creditors; Thompson v. Century Leather Enameling Co. 15 Pa. Dist. R. 439, where resident creditor of foreign corporation sought to collect by execution judgment fraudulent in part, with consent of majority stockholders and directors, out of property within jurisdiction of court, and all which corporation had.

Trespass for detention of property.

Cited in Sellers v. Shue, 20 Lanc. L. Rev. 104, sustaining right to maintain action in trespass for detention of personal property.

38 L. R. A. 640, *Ex parte* LACEY, 108 Cal. 326, 49 Am. St. Rep. 93, 41 Pac. 411.

Municipal power over nuisances.

Cited in California Reduction Co. v. Sanitary Reduction Works, 61 C. C. A. 98, 126 Fed. 36, affirming 94 Fed. 699, and holding ordinance authorizing contract for removal and cremation of garbage, within municipal power to abate nuisances; Dobbins v. Los Angeles, 139 Cal. 184, 96 Am. St. Rep. 95, 72 Pac. 970, sustaining ordinance prohibiting erection of gas works or storage of gas within certain limits; Odd Fellows' Cemetery Asso. v. San Francisco, 140 Cal. 231, 73 Pac. 987, holding ordinance prohibiting burials within city limits within municipal power to abate nuisances; Grumbach v. Leland, 154 Cal. 684, 98 Pac. 1059, holding it is within police power of city to limit conduct of liquor or other business coming within its regulatory scope or to exclude such business from specific districts; Re Jones, 4 Okla. Crim. Rep. 86, 31 L.R.A.(N.S.) 554, 140 Am. St. Rep. 655, 109 Pac. 570, holding that legislature may declare billiard and pool rooms and bowling alleys nuisances and forbid them; Re San Chung, 11 Cal. App. 520, 105 Pac. 609, on exercise of the police power; Re Newell, 2 Cal. App. 768, 84 Pac. 226, sustaining ordinance forbidding erection of tent or other movable structure within fire limits; Ex parte Murphy, 8 Cal. App. 445, 97 Pac. 199, holding public billiard hall and pool room is subject for regulation or absolute prohibition; Goytino v. McAleer, 4 Cal. App. 658, 88 Pac. 991, holding determination of police commissioners as to danger or menace to public interests involved in business conducting pool table is conclusive; Re Ackerman, 6 Cal. App. 10, 91 Pac. 429, sustaining ordinance providing for licensing of

dogs, impounding of those not licensed, and destruction of those impounded and unclaimed; Scranton v. Straff, 28 Pa. Super. Ct. 262, sustaining ordinance forbidding operation of merry-go-round within one thousand feet of public park.

Cited in footnotes to Crowley v. West, 47 L. R. A. 652, which holds void, ordinance prohibiting livery stables in business part of city, except those already in operation; Hill v. McBurney Oil & Fertilizer Co. 52 L. R. A. 399, which authorizes injunction against blowing of factory whistle at unreasonable hours in populous community.

Cited in notes (36 L. R. A. 606) on power of municipal corporation to define, prevent, and abate nuisances; (38 L. R. A. 161) on municipal power over buildings and other structures as nuisances; (38 L. R. A. 305) on municipal power over nuisances affecting safety, health, and personal comfort; (39 L. R. A. 520) on municipal power as to nuisances affecting public morals, decency, peace, and good order; (39 L. R. A. 551) on municipal control over smoke as public nuisance; (39 L. R. A. 649) on municipal power over nuisances affecting highways and waters; (41 L. R. A. 326) on injunction by municipalities against nuisance affecting public morals, peace, and good order, and health and safety; (107 Am. St. Rep. 202, 212, 232) on what are public nuisances.

Right to maintain nuisance.

Cited in note (53 L. R. A. 894) on prescriptive right to maintain public nuisances.

Powers of municipality.

Cited in Ex parte Pfahler, 150 Cal. 80, 11 L.R.A.(N.S.) 1097, 88 Pac. 270, 11 Ann. Cas. 911, holding electors of city may, by initiative amendment of charter, be given right to participate directly in exercise of legislative power granted by state to city; Home Teleph. & Teleg. Co. v. Los Angeles, 155 Fed. 566, holding power acquired by municipality under freeholders' charter bears some analogy to that conferred upon municipal corporations to pass local and police regulations, and suggesting that powers under such charter should be liberally interpreted.

38 L. R. A. 658, SUPREME LODGE, K. OF P. v. IMPROVED ORDER, K. OF P. 113 Mich. 133, 71 N. W. 470.

Use of similar name.

Cited in Lamb Knit-Goods Co. v. Lamb Glove & Mitten Co. 120 Mich. 164, 44 L. R. A. 844, 78 N. W. 1072, holding that Lamb Knit Goods Company may enjoin use of word "Lamb" in connection with business in which "Lamb stitch" used; Daughters of Issabella No. 1 v. National Order, D. I. 83 Conn. 684, 78 Atl. 333, Ann. Cas. 1912 A, 822, holding that corporation may be restrained from using distinctive words in name of existing corporation, though two names are not in all respects alike; Original La Tosca Social Club v. La Tosca Social Club, 23 App. D. C. 107, holding that members of voluntary association incorporating under its name obtain no exclusive right to its use as against other members subsequently incorporating; State Council, J. O. U. A. M. v. National Council, J. O. U. A. M. 71 N. J. Eq. 462, 64 Atl. 561, holding that state society incorporated under a certain name, which later voluntarily associates itself with a national society which adopts the same name, does not lose its exclusive right to the name within the state in case of subsequent withdrawal; Perham v. Richman, 158 Fed. 548, holding "Order of Railroad Telegraphers" not entitled to injunction against use of "Order of Railroad Telegraphers, Dispatchers, Agents

and Signalmen" adopted as name by seceding members; Great Hive, L. M. v. Supreme Hive, L. M. 135 Mich. 415, 97 N. W. 779 (dissenting opinion), on similar names which have been held to be distinguishing.

Cited in footnotes to Armington v. Palmer, 43 L. R. A. 95, which sustains private suit in equity to prevent wrongful assumption by corporation of name belonging to plaintiff; International Committee, Y. W. C. A. v. Young Women's Christian Asso. 56 L. R. A. 868, which sustains right of local Y. W. C. A. to enjoin deceptive use of similar name by organization subsequently incorporated; Peck Bros. & Co. v. Peck Bros. Co. 62 L. R. A. 81, which sustains injunction in favor of purchaser of name and good will of corporation against use of similar name by persons connected with branch of old corporation.

Distinguished in Creswill v. Grand Lodge, K. P. 133 Ga. 846, 134 Am. St. Rep. 231, 67 S. E. 188, 18 Ann. Cas. 453, holding "Grand Lodge Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia Jurisdiction of Georgia" to be infringement upon name "Grand Lodge Knights of Pythias of Georgia;" International Silver Co. v. Rogers Bros. Cutlery Co. 136 Fed. 1021, holding "Rogers Cutlery Company" entitled to injunction against use of "RoDgers" as trademark on cutlery by another firm.

38 L. R. A. 663, HOFFMAN v. CIRCUIT CT. JUDGE, 113 Mich. 109, 67 Am. St. Rep. 458, 71 N. W. 480.

Privilege from arrest or service of process.

Cited in Monroe v. St. Clair Circuit Judge, 125 Mich. 285, 52 L. R. A. 190, footnote p. 189, 84 N. W. 305, denying privilege from arrest to owner of libeled vessel going to court at request of purchaser under contract for sale free from liens; Greenleaf v. People's Bank, 133 N. C. 297, 63 L. R. A. 502, footnote p. 500, 98 Am. St. Rep. 709, 45 S. E. 638, which holds nonresident attorney not exempt from service of process when coming into state to transact business before courts in client's interest; Weale v. Clinton Circuit Judge, 158 Mich. 565, 123 N. W. 31, holding prisoner brought into state on criminal charge exempt from service of process until after he has had reasonable time to leave the state.

Cited in footnote to Greenleaf v. People's Bank, 63 L.R.A. 500, which holds nonresident attorney not exempt from service of process while coming into state to transact business before courts in interest of his client.

Cited in note (76 Am. St. Rep. 535) on exemption from service of civil process.

38 L. R. A. 665, KINNEY v. ONSTED, 113 Mich. 96, 67 Am. St. Rep. 455, 71 N. W. 482.

Injury to licensee.

Cited in Clark v. Michigan C. R. Co. 113 Mich. 27, 67 Am. St. Rep. 442, 71 N. W. 327, denying company's liability to licensee for injuries resulting from falling over semaphore wire; Minor v. Escanaba Lumber Co. 167 Mich. 438, 132 N. W. 1035, holding that use of hand-car by railroad employee for his own private purpose, makes user only license on track and railroad was not liable for failure to keep lookout for him; Hutchinson v. Cleveland-Cliffs Iron Co. 141 Mich. 349, 104 N. W. 698, holding mill owner not liable for injury to servant of contractor employed in certain part of the premises where injury occurred while in place where his duties did not require him to go; Means v. Southern California R. Co. 144 Cal. 481, 77 Pac. 1001, 1 Ann. Cas. 206, on nonliability of owner for injury to licensee caused by unsafe condition of premises.

Cited in note (14 L.R.A.(N.S.) 1120) on right of one coming upon prop-

erty on business with owner but temporarily turning aside for own purposes, to protection against defects.

Contributory negligence.

Cited in Winscott v. Chicago & A. R. Co. 151 Mo. App. 382, 131 S. W. 749, holding that person who is injured by breaking of railing on depot platform, against which he leaned, while waiting to meet passenger, was not guilty as matter of law, of contributory negligence: Pamler v. Byrd. 131 Ill. App. 501, holding person leaning against porch railing which he knows is defective without testing it guilty of contributory negligence; Chicago v. Powers, 117 Ill. App. 455, on liability of city for injury caused by leaning against railing on sidewalk.

— Proof.

Cited in Pittsburgh & C. Dock Co. v. Detroit Transp. Co. 122 Mich. 449, 81 N. W. 269, holding displacement of timber by mooring line of defendant's boats, causing machine to fall, not proof of machine owner's contributory negligence.

38 L. R. A. 666, RANDALL v. CHICAGO & G. T. R. CO. 113 Mich. 115, 71 N. W. 450.

Servant's implied power to bind master.

Followed in Hartigan v. Michigan C. R. Co. 113 Mich. 123, 71 N. W. 452, denying carrier's liability to trespasser ejected from train by brakeman without authority.

Cited in Maxson v. Michigan C. R. Co. 117 Mich. 224, 75 N. W. 459, denying implied authority of division superintendent of railroad to bind company by agreement to give life employment to servant in settlement of claim; Chicago, R. I. & P. R. Co. v. Brackman, 78 Ill. App. 150, denying company's liability for act of brakeman in ejecting boy stealing ride in freight car; Chicago, R. I. & P. R. Co. v. Moran, 129 Ill. App. 44, holding that brakemen have not as such, authority to eject passengers from trains; Verlinde v. Michigan C. R. Co. 165 Mich. 376, 130 N. W. 317, holding that act of brakeman in frightening boys off train in motion, in apparent exercise of authority, which he supposed he had, was act within scope of authority.

Passengers on freight trains.

Cited in Greenfield v. Detroit & M. R. Co. 133 Mich. 560, 95 N. W. 546, holding that railroad companies may prescribe rules and conditions for carrying passengers on freight trains or may prohibit such carriage.

38 L. R. A. 669, LANE v. EATON, 69 Minn. 141, 65 Am. St. Rep. 559, 71 N. W. 1031.

Uncertainty or lack of incorporation as affecting gift.

Cited in Kahle v. Evangelical Lutheran Joint Synod, 81 Minn. 10, 83 N. W. 460, sustaining gift contemplating incorporation of voluntary society, and directing trustees to convey when incorporation effected; Haynes v. Carr, 70 N. H. 482, 49 Atl. 638, sustaining devise to trustees to expend in their discretion for benefit of poor of state; Shanahan v. Kelly, 88 Minn. 209, 92 N. W. 948, holding bequest for Masses, void; Owatonna v. Rosebrock, 88 Minn. 323, 92 N. W. 1122, upholding bequest of sum to certain persons to use income in aiding and maintaining kindergarten in certain city; Snowden v. Crown Cork & Seal Co. 114 Md. 667, 80 Atl. 510, Ann. Cas. 1912 A, 679 (dissenting opinion), on validity of gift to unincorporated association; Watkins v. Bigelow, 93 Minn. 221, 100 N. W. 1104, holding the gift in question was on the construction of the will, an absolute one and not one in trust and was valid.

Cited in footnote to Re Winchester, 54 L.R.A. 281, which holds valid bequest possible to unincorporated educational society with existing organization.

38 L. R. A. 672, STATE v. CHICAGO, M. & ST. P. R. CO. 68 Minn. 381, 64 Am. St. Rep. 482, 71 N. W. 400.

Validity of statute regulating business of commission merchants.

Cited in State *ex rel.* Beek v. Wagener, 77 Minn. 494, 46 L. R. A. 445, 77 Am. St. Rep. 681, 80 N. W. 633, sustaining statute regulating business of commission merchants handling agricultural products; Webb v. Downes, 93 Minn. 459, 101 N. W. 966, holding statute providing that no sales can be made of personal property stored with warehouseman to satisfy his lien except by a person who has obtained a license within thirty days after passage of act unconstitutional; State v. Minneapolis & St. L. R. Co. 115 Minn. 125, 131 N. W. 1075, holding that common carrier may agree to store free for certain period goods shipped over its road, subject to stipulated charges thereafter.

Police power.

Cited in First Ave. Coal & Lumber Co. v. Johnson, 171 Ala. 473, 32 L.R.A. (N.S.) 524, 54 So. 598, on power of legislature to declare coal yard a nuisance.

Cited in note (78 Am. St. Rep. 237, 238, 241) on acts which legislature may declare criminal.

38 L. R. A. 675, STATE *ex rel.* MORIARITY v. McMAHON, 69 Minn. 265, 72 N. W. 79.

Habeas corpus.

Cited in State *ex rel.* Zaske v. Matter, 78 Minn. 379, 81 N. W. 9, holding habeas corpus not proper remedy to obtain discharge of one committed for non-support; State ex rel. Jackson v. McDonald, 112 Minn. 429, 128 N. W. 454, holding that judgment in criminal prosecution, in all things regular on its face, cannot be attacked in habeas corpus; State ex rel. Stark v. Riley, 109 Minn. 436, 124 N. W. 11, holding that irregularities in proceedings before committing magistrate, not ousting magistrate of jurisdiction, or rendering proceedings void, cannot be received upon habeas corpus; Ex parte Hollman, 79 S. C. 28, 21 L.R.A.(N.S.) 251, 60 S. E. 19, 14 Ann. Cas. 1105 (dissenting opinion), on the question of the constitutionality of a statute as not being properly before the court on habeas corpus proceedings.

Cited in note (87 Am. St. Rep. 169) on release of prisoner on habeas corpus after judgment and sentence.

Statutes requiring licenses.

Cited in footnotes to State *ex rel.* Beek v. Wagener, 46 L. R. A. 422, which sustains statute regulating business of commission merchants handling agricultural products; State v. Zeno, 48 L. R. A. 88, which sustains requirement of license for barber.

Errors affecting jurisdiction of court.

Cited in Franklin Union No. 4 v. People, 220 Ill. 367, 4 L.R.A.(N.S.) 1009, 110 Am. St. Rep. 248, 77 N. E. 176, holding the jurisdiction of a court of equity to grant an injunction does not depend upon the correctness of its decree; O'Brien v. People, 216 Ill. 364, 108 Am. St. Rep. 219, 75 N. E. 108, 3 Ann. Cas. 966, holding the jurisdiction of a court of equity did not depend upon the sufficiency of the bill praying for an injunction.

Municipal health regulations.

Cited in St. Paul v. St. Paul City R. Co. 114 Minn. 253, 36 L.R.A.(N.S.) 238,

130 N. W. 1108, Ann. Cas. 1912 B, 1136, holding that common council may require operators of street cars to take reasonable measures to protect passengers from dust raised by cars.

38 L. R. A. 677, STATE *ex rel.* LURIA v. WAGENER, 69 Minn. 206, 65 Am. St. Rep. 565, 72 N. W. 67.

Constitutionality of tax laws in favor of domestic business.

Cited in Adams v. Mississippi Lumber Co. 84 Miss. 28, 36 So. 68, holding an act purporting to impose a privilege tax on each land timber mill company, but excepting saw mill operators who do not ship timber out of the state is unconstitutional.

Class legislation.

Cited in Carr v. State, 175 Ind. 265, 32 L.R.A.(N.S.) 1200, 93 N. E. 1071 (dissenting opinion), on validity of statute exempting professional baseball players from operation of Sunday laws; Re Camp, 38 Wash. 396, 80 Pac. 547; North Pacific Loan & T. Co. v. Bennett, 49 Wash. 36, 94 Pac. 664,—holding an act providing that mortgaged premises occupied as a homestead by the mortgagors shall remain in their possession during the period of redemption is not unconstitutional as granting special privileges to any class of citizens.

Cited in footnote to Re Lemon, 65 L.R.A. 946, which upholds classification of restaurants for purpose of revenue tax into those where meals are cooked and served by proprietor or member of his family, and those where they are not.

— Peddler's license laws.

Cited in Rosenbloom v. State, 64 Neb. 350, 57 L. R. A. 926, footnote p. 922, 89 N. W. 1053, sustaining license tax on peddlers, although venders of own products exempt; State v. Wright, 53 Or. 349, 21 L.R.A.(N.S.) 349, 100 Pac. 296, holding void, statute requiring only peddlers of certain harmless articles to pay large license fee; State ex rel. Greenwood v. Nolan, 108 Minn. 173, 122 N. W. 255, holding that license ordinance which discriminates between resident and nonresident citizens, by expressly excluding from its operation bona fide residents of city is unconstitutional; State ex rel. Mudeking v. Parr, 109 Minn. 149, 134 Am. St. Rep. 759, 123 N. W. 408, holding that chapter 248, Laws of 1909, entitled "An act to tax occupation of and to license hawkers, peddlers and transient merchants and defining said occupations" is void as class legislation; Re Camp, 38 Wash. 396, 80 Pac. 547, holding an ordinance prohibiting any person from peddling fruits, vegetables, butter, eggs, etc., within fire limits of city, excepting farmers disposing of their own products is unconstitutional as class legislation; State v. Whitcom, 122 Wis. 120, 99 N. W. 468, holding an act requiring peddlers to take out a license which exempts certain classes of persons from such duty is unconstitutional as class legislation; State v. Jensen, 93 Minn. 91, 100 N. W. 644, holding an ordinance requiring peddlers to take out a yearly license is not invalid because it does not except from its operation persons who peddle the products of their own farm or garden.

Cited in note (129 Am. St. Rep. 253, 277) on constitutional limitations on power to impose license or occupation taxes.

Distinguished in Rosenbloom v. State, 64 Neb. 350, 57 L.R.A. 926, 89 N. W. 1053, holding an act imposing a tax on peddlers but exempting vendors of their own products, etc., was valid, the enactment being an exercise of the taxing power.

Police power over business.

Cited in footnote to State *ex rel.* Beek v. Wagener, 46 L. R. A. 442, which

sustains statute regulating business of commission merchants handling agricultural products.

Distinguished in State v. Johnson, 86 Minn. 124, 90 N. W. 1133, sustaining statute prohibiting issue of liquor license after vote of no license.

38 L. R. A. 679, BIGLEY v. WATSON, 98 Tenn. 353, 39 S. W. 525.

Decree limited to matters presented in pleadings.

Cited in Griffith v. Security Home Bldg. & L. Asso. 100 Tenn. 411, 45 S. W. 670, holding decree of sale unauthorized under mortgagor's bill seeking ascertainment of balance due.

Validity of consent decree.

Cited in Wilson v. Schaefer, 107 Tenn. 334, 64 S. W. 208, holding that consent decree for exchange of lands binds infant, when made by compromise with next friend under approval of court; Johnston v. Osment, 108 Tenn. 36, 65 S. W. 23, sustaining consent decree between owner of life estate and remainderman when court has jurisdiction of all parties, although beyond scope of pleadings; Crawford v. Woodward, 1 Tenn. Ch. App. 314, on validity of consent decree as to matters outside the pleadings but within the jurisdiction of the court.

Distinguished in Lindsay v. Allen, 112 Tenn. 654, 82 S. W. 171, holding that dismissal of action by consent of parties is no bar to subsequent suit.

Interest by curtesy in life estate.

Cited in Waller v. Martin, 106 Tenn. 343, 82 Am. St. Rep. 882, 61 S. W. 73, holding that surviving husband has no interest by curtesy in life estate of wife.

Rights of contingent remainderman.

Cited in Ryan v. Monaghan, 99 Tenn. 341, 42 S. W. 144, holding that devise to wife for life, then to heirs of son, and in default of heirs to testator's brothers', gives latter no interest till death of son without issue; Forrest v. Porch, 100 Tenn. 393, 45 S. W. 676, holding that devise to widow for life, then to testator's heirs at law, creates contingent remainder; Herrick v. Fowler, 108 Tenn. 418, 67 S. W. 861, holding that devise to husband with power to dispose of property between children, as he thinks best, gives children no beneficial interests until husband's death; Harrison v. Weatherby, 180 Ill. 446, 54 N. E. 237, holding that devise to daughter and remainder to unborn children vests fee in testator's heirs, subject to birth of remaindermen; Barr v. Denney, 79 Ohio St. 369, 87 N. E. 267, holding that devise to wife for life and upon her death estate to be sold and proceeds divided equally among heirs, creates a contingent remainder in such heirs.

Cited in footnote to Bowen v. Hackney, 67 L.R.A. 441, which holds that no estate vests in children until widow's death under will giving life estate to widow and providing that at her death that given to her for life shall be equally divided between all the children, the representatives of those having died to stand in place of ancestors.

Rule in Shelley's case.

Cited in note (29 L.R.A.(N.S.) 1169), on rule in Shelley's case.

Presumption as to capacity to bear children.

Cited in footnote to Ricards v. Safe Deposit & Trust Co. 63 L.R.A. 145, which holds that incapacity to bear children because of age cannot be proved by expert testimony.

Conclusiveness of partition judgment.

Cited in note (124 Am. St. Rep. 714) on conclusiveness of judgment in partition suit.

38 L. R. A. 684, McCORNICK v. WESTERN U. TELEG. CO. 25 C. C. A. 35, 49 U. S. App. 116, 79 Fed. 449.

Transfer of cases from territorial to Federal courts.

Cited in Hecht v. Metzler, 82 Fed. 342, holding that Utah enabling act authorized constitutional convention to provide for transfer of pending cases to state and Federal courts; Choctaw, O. & G. R. Co. v. Hendricks, 21 Okla. 137, 95 Pac. 970, holding that enabling act of Oklahoma authorizes removal of certain causes to Federal courts.

State and Federal ownership of waters.

Cited in Farm Invest. Co. v. Carpenter, 9 Wyo. 136, 50 L. R. A. 756, 87 Am. St. Rep. 918, 161 Pac. 258, sustaining declaration of state Constitution, ratified by Congress, that waters of natural streams are property of state.

Telegraph company's liability for fraudulent telegram.

Cited in Western U. Teleg. Co. v. Schriver, 129 Fed. 345, holding telegraph company not liable for fraudulent telegram sent to plaintiff's bank, stating that defendant's check would be honored; Western U. Teleg. Co. v. Schriver, 4 L.R.A.(N.S.) 681, 72 C. C. A. 596, 141 Fed. 540, holding telegraph company not liable to undisclosed principal of addressee for transmitting unauthorized message.

Liability of telegraph company.

Cited in Western U. Teleg. Co. v. Weniski, 84 Ark. 461, 106 S. W. 486, holding telegraph company liable for special damages for failure to deliver telegram only when it has notice of facts which would cause such damages.

Cited in note (4 L.R.A.(N.S.) 182) on duty of telegraph company to ascertain identity or authority of sender of message.

Distinguished in Whitehill v. Western U. Teleg. Co. 136 Fed. 500, holding that third party whose interest appears on the face of a telegram, may maintain action for negligence in its transmission.

38 L. R. A. 687, FIRST PRESBY. CHURCH v. MYERS, 5 Okla. 809, 50 Pac. 70.

Liability for pastor's salary.

Cited in footnote to Baxter v. McDonnell, 40 L. R. A. 670, which denies obligation of Roman Catholic bishop to pay salary of priest assigned by himself or his predecessor.

38 L. R. A. 694, WILLIAMSON v. JONES, 43 W. Va. 562, 64 Am. St. Rep. 891, 27 S. E. 410.

Cited in Pyle v. Henderson, 55 W. Va. 124, 46 S. E. 791, historically as affecting a subsequent lease.

Nature of property in minerals.

Cited in Wagner v. Mallory, 41 App. Div. 129, 58 N. Y. Supp. 526, holding oil in ground is component part of real estate; Kansas Natural Gas Co. v. Haskell, 172 Fed. 563, on gas and oil as being part of the land; Lanyon Zinc Co. v. Freeman, 68 Kan. 697, 75 Pac. 995, Ann. Cas. 403, holding executor not authorized to make oil and gas lease of land though under will he was authorized to lease the land which was agricultural.

Cited in footnotes to Kelley v. Ohio Oil Co. 39 L. R. A. 765, which sustains right to drill oil well on own land near line of other person whose oil drawn out; Carter v. County Court, 43 L. R. A. 725, which denies right to tax, as personalty, lessee's interest in oil wells while oil remains in place of earth; Murray v. Allard, 39 L. R. A. 249, which holds oil and natural gas minerals

within reservation in deed: Wilson v. Hughes, 39 L. R. A. 292, which holds oil lease of infant's land, a sale; Manufacturer's Gas & Oil Co. v. Indiana Natural Gas & Oil Co. 50 L. R. A. 768, which holds unlawful, pumping of natural gas to injury of other persons having wells supplied from same reservoir.

Cited in note (44 L. ed. U. S. 729) on property in petroleum oil or gas.

— Interest of lessee, tenant, or remainderman.

Cited in Steelsmith v. Gartlan, 45 W. Va. 36, 44 L. R. A. 113, 29 S. E. 978, holding that completion of unproductive oil or gas well vests no title in lessee under lease to operate wells for prospective rentals; Hall v. Vernon, 47 W. Va. 301, 49 L. R. A. 467, 81 Am. St. Rep. 791, 34 S. E. 764, holding that partition of oil and gas owned by co-owners separate from surface cannot be decreed; Cecil v. Clark, 49 W. Va. 470, 39 S. E. 202; Cecil v. Clark, 47 W. Va. 407, 81 Am. St. Rep. 802, 35 S. E. 11; Stewart v. Tennant, 52 W. Va. 574, 44 S. E. 223,— holding unauthorized extraction of coal by tenant in common is waste; Bond v. Godsey, 99 Va. 566, 39 S. E. 216, holding that tenant by curtesy has no right to work unopened mines; Barnsdall v. Boley, 119 Fed. 196, holding void, oil lease executed by tenant by curtesy; Eakin v. Hawkins, 52 W. Va. 128, 43 S. E. 211, holding that interest on fund during natural life is interest of life tenant in proceeds of royalty for oil; Haskell v. Sutton, 53 W. Va. 214, 44 S. E. 533, holding that lease of land for oil and gas purposes is grant of part of corpus of land; Smith v. Root, 66 W. Va. 635, 30 L.R.A.(N.S.) 179, 66 S. E. 1005, holding that equity has jurisdiction of suit brought by senior lessee in oil lease against lessor and junior lessee for purpose of enjoining removal of oil from leased premises; Sommers v. Bennett, 68 W. Va. 175, 69 S. E. 690, holding that taking of oil or gas by one cotenant gives right of action for waste under statute; Cherokee Constr. Co. v. Harris, 92 Ark. 265, 135 Am. St. Rep. 177, 122 S. W. 485, on life tenant as having right to work old mines but not to open new ones; Richmond Natural Gas. Co. v. Davenport, 37 Ind. App. 31, 76 N. E. 525, holding that tenant for life has no right to commence operations for mining oil and gas nor has he power to lease for such purpose; Ohio Oil Co. v. Daughetee, 240 Ill. 367, 36 L.R.A.(N.S.) 1111, 88 N. E. 813, holding same as to trustee holding fee for life tenant: Eakin v. Hawkins, 52 W. Va. 128, 43 S. E. 211, holding that life tenant of land has only life interest in oil taken therefrom; Talbott v. Southern Oil Co. 60 W. Va. 427, 55 S. E. 1009, holding that owner has right of action against lessee for permitting natural gas to escape from abandoned well; Dangerfield v. Caldwell, 81 C. C. A. 400, 151 Fed. 557, holding that the sinking of a gas or oil well by one tenant in common gives him no right to have that part set off to him upon partition; Pyle v. Henderson, 65 W. Va. 45, 63 S. E. 762, on tenant in common as having no right to take oil from the land: Reed v. Bachman, 61 W. Va. 463, 123 Am. St. Rep. 996, 57 S. E. 769, on cotenant being liable in equity for oil taken from the land; Harvey Coal & Coke Co. v. Dillon, 59 W. Va. 621, 6 L.R.A.(N.S.) 637, 53 S. E. 928, holding that a mining lease conveys a chattel interest.

Cited in footnotes to St. Paul v. Cragnas, 47 L. R. A. 540, which sustains right of lessee of undivided interest in mine to recover from other owners for exclusion from mine; Gannon v. Peterson, 55 L. R. A. 701, which denies right of owners of expectancy to injunction against owner of determinable fee mining coal; Swayne v. Lone Acre Oil Co. 69 L.R.A. 986, which denies right of one entitled to undivided life estate as surviving husband or wife to demand absolutely any part of production of oil wells subsequently opened by remaindermen.

Cited in notes (36 L.R.A.(N.S.) 1103) on mineral rights of life tenant; (36 L.R.A.(N.S.) 1108, 1109, on rights of life tenant as to oil and gas; (91 Am. St. Rep. 869, 879) on cotenants in mines.

Distinguished in McIntosh v. Ropp, 233 Pa. 514, 82 Atl. 949, holding that where life tenant of tract of land leases right to mine oil and gas therefrom and lease is ratified by one of two holders of title in remainder, action by non-ratifying remainderman for share of profits, lies.

Rights of cotenants.

Cited in Reed v. Bachman, 61 W. Va. 461, 123 Am. St. Rep. 996, 57 S. E. 769, holding that one tenant in common, purchasing at sale for debt for which all the tenants in common were liable, obtains no title as against his cotenants.

Estoppel.

Cited in Ralston v. Weston, 46 W. Va. 555, 76 Am. St. Rep. 834, 33 S. E. 326, holding that lot owner cannot destroy public's easement in street by setting up equitable estoppel; Smith v. Gott, 51 W. Va. 146, 41 S. E. 175, holding wife having equitable title to property to which husband has legal title, not estopped from setting up her title against husband's creditors; Hunt v. Reilly, 24 R. I. 71, 59 L. R. A. 208, footnote p. 206, 96 Am. St. Rep. 707, 52 Atl. 681, holding wife's failure to notify purchaser of rights after learning of forgery of her name to husband's deed does not estop her to claim dower; McNeeley v. South Penn Oil Co. 52 W. Va. 644, 62 L. R. A. 577, 44 S. E. 508, holding that married woman will not, by estoppel, lose her right to land owned jointly by herself and husband, simply by knowledge that he has exchanged it in own name; Pocohontas Light & Water Co. v. Browning, 53 W. Va. 439, 44 S. E. 267, holding that owner's neglect to cause removal of water-pipe line placed by mistake partly on such owner's land will not operate as estoppel; Hunt v. Reilly, 23 R. I. 474, 50 Atl. 833, holding married woman not estopped by laches to claim her dower in land which husband had conveyed, and in deed of which she did not join; Mylius v. Koontz, 69 W. Va. 625, 73 S. E. 319, holding that parties were estopped from preventing cutting of timber on certain land by reason of agreement between parties settling right to proceed with such cutting; Garrett v. South Penn Oil Co. 66 W. Va. 593, 66 S. E. 741, holding that parol admissions or declarations are not sufficient to divest legal title and interest in land; Waldron v. Harvey, 54 W. Va. 616, 102 Am. St. Rep. 959, 46 S. E. 603, holding that married woman cannot lose title to land by estoppel in pais; Shears v. Traders Bldg. Asso. 58 W. Va. 669, 52 S. E. 860, holding grantor in trust deed not estopped to set up irregularity in sale thereunder, though he was present at the sale and made no objections; Grauman, M. & C. Co. v. Krienitz, 142 Wis. 561, 126 N. W. 50, on estoppel against infant's right to set up infancy in avoidance of his contract, in cases of actual fraud; First Nat. Bank v. Chandler, 144 Ala. 310, 113 Am. St. Rep. 39, 39 So. 822; Haskell v. Sutton, 53 W. Va. 214, 44 S. E. 533; Pocahontas Light & Water Co. v. Browning, 53 W. Va. 439, 44 S. E. 267,—on estoppel as not resulting from failure to speak where no duty to speak existed from knowledge that the other party would be misled.

Cited in footnote to Grice v. Woodworth, 69 L.R.A. 584, which holds married woman estopped to set up invalidity of contract by her husband and herself to sell homestead for failure to comply with certain conditions after purchaser has paid purchase price, taken possession, and made valuable improvements.

Infant's liability for torts.

Cited in note (57 L. R. A. 686) on liability of infant for torts.

Liability of infant in contract.

Cited in Sackett v. Asher, — Ky. —, 22 L.R.A.(N.S.) 454, 122 S. W. 833,

holding infant estopped to set up his infancy at time of conveying to his father, as against purchaser from the latter, where he was present and stated that he was of age; Watson v. Ruderman, 79 Conn. 692, 66 Atl. 515, holding that infant may disaffirm contract upon becoming of age, in absence of fraud or other circumstance destroying such right; International Land Co. v. Marshall, 22 Okla. 708, 19 L.R.A.(N.S.) 1063, 98 Pac. 951, holding that infant guilty of fraud must return consideration before he can rescind his contract.

Constructive notice of lien or defect in title.

Cited in Hoback v. Miller, 44 W. Va. 640, 29 S. E. 1014, holding grantee of purchaser under decree void for want of jurisdiction, bound to know defect; First Nat. Bank v. Hyer, 46 W. Va. 17, 32 S. E. 1000, holding purchaser at judicial sale bound to know what property will be acquired; Southern Bldg. & L. Asso. v. Page, 46 W. Va. 305, 33 S. E. 336, holding record of title bond sufficient notice of lien; Calvert v. Ash, 47 W. Va. 486, 35 S. E. 887, holding that *caveat emptor* applies to purchase at judicial sale; Lindt v. Uihlein, 116 Iowa, 54, 89 N. W. 214, holding grantee presumed to have constructive notice of defect in title so as to bar his recovery for improvements and payment of taxes; Johnson v. Mutual L. Ins. Co. 113 Ky. 887, 69 S. W. 751, holding bona fide purchaser from husband not chargeable with notice of defect in deed to him of wife's separate estate, which had previously been conveyed by husband and wife to third party without consideration, who at once reconveyed to husband. Headley v. Hoopengarner, 60 W. Va. 642, 55 S. E. 744; Board of Education v. Berry, 62 W. Va. 437, 125 Am. St. Rep. 975, 59 S. E. 169,—holding purchaser at judicial sale charged with notice of everything affecting his title, which appears upon the record; Waldron v. Harvey, 54 W. Va. 620, 102 Am. St. Rep. 959, 46 S. E. 603, holding same as to subsequent purchaser.

Cited in footnote to Johnson v. Equitable Securities Co. 56 L. R. A. 933, which holds bona fide purchaser paying purchase money protected from unknown equities.

Allowance for permanent improvements.

Cited in Haymond v. Camden, 48 W. Va. 467, 37 S. E. 642, denying allowance for permanent improvements when claimant has notice of defective title; German Sav. & L. Soc. v. Tull, 69 C. C. A. 1, 136 Fed. 5, holding that tenant in common purchasing property can not recover for improvements thereon where he had knowledge of the invalidity of his title; Yock v. Mann, 57 W. Va. 194, 49 S. E. 1019, holding that one making permanent improvements, with notice of defect in his title, cannot recover therefor; Chesapeake & O. R. Co. v. Deepwater R. Co. 57 W. Va. 696, 50 S. E. 890, holding railroad not entitled to compensation for improvements made upon property on which it had entered pending condemnation proceedings.

Cited in note (81 Am. St. Rep. 166, 168, 178) on what are betterments, and allowance therefor.

Measure of damages for mesne profits.

Cited in Bodkin v. Arnold, 48 W. Va. 109, 35 S. E. 980, holding rental value and damages for waste, measure of damages in action for mesne profits; Bender v. Brooks, 103 Tex. 336, 127 S. W. 168, Ann. Cas. 1913 A, 559, holding that measure of damages recoverable by owner of land from one who, in good faith, takes oil from land is market value of oil taken less reasonable expense of producing it in tanks; Evans v. Kohn, 113 Minn. 48, 128 N. W. 1006, holding that where possession is fraudulently obtained and trees or soil severed and converted

by tenant, owner may recover value of things converted as enhanced by labor of wrongdoer; McNeely v. South Penn. Oil Co. 58 W. Va. 440, 52 S. E. 480, holding that in action for waste for taking oil from land by one under belief that he had title, the measure of recovery is the value of oil taken less cost of production; Stewart v. Tennant, 52 W. Va. 574, 44 S. E. 223, on the same point.

Cited in note (29 L.R.A.(N.S.) 232) on liability of cotenants to account for use and occupation of rents and profits.

Rules of equity.

Cited in Fisher v. Mylius, 62 W. Va. 26, 57 S. E. 276, on attorney's lien as an equitable right which must be governed by the rules of equity.

Liability of life tenant for waste.

Cited in footnote to Roby v. Newton, 68 L.R.A. 601, which denies remainderman's right to forfeiture of life tenant's interest because of waste unless there has been both permissive and voluntary waste.

38 L. R. A. 708, HOELZEL v. CRESCENT CITY R. CO. 49 La. Ann. 1302, 22 So. 330.

Negligence in crossing street car tracks.

Cited in Knoker v. Canal & C. R. Co. 52 La. Ann. 813, 27 So. 279, denying recovery for death of one killed while attempting to cross street car tracks at night in front of rapidly moving car; Cowden v. Shreveport Belt R. Co. 106 La. 237, 30 So. 747, holding that failure to stop, look, and listen before attempting to cross electric car line bars recovery.

Cited in footnotes to Atlantic City R. Co. v. Goodin, 45 L. R. A. 671, which holds passenger starting to cross intervening tracks after alighting not required to look and listen for trains; Tesch v. Milwaukee Electric R. & Light Co. 53 L. R. A. 618, which requires traveler to look and listen before crossing street car track at place reasonably certain to effect purpose; Kansas City-Leavenworth R. Co. v. Gallagher, 64 L. R. A. 344, which sustains right of one about to cross street car tracks to believe that car is running at lawful speed and is under control; Marden v. Portsmouth, K. & Y. Street Railway, 69 L.R.A. 300, which holds failure to look and listen before crossing street car track at public crossing not negligence per se.

Cited in note (15 L.R.A.(N.S.) 255) on duty to look and listen before crossing electric road.

Disapproved in Bremer v. St. Paul C. R. Co. 107 Minn. 333, 21 L.R.A.(N.S.) 894, 120 N. W. 382, holding that rule requiring pedestrian to "stop look and listen" is not applicable to street railway crossing in city street.

38 L. R. A. 716, HENSON v. BECKWITH, 20 R. I. 165, 78 Am. St. Rep. 847, 37 Atl. 702.

Landlord's liability for defects.

Cited in Railton v. Taylor, 20 R. I. 284, 39 L. R. A. 248, 38 Atl. 980, holding landlord not exempt from liability for damage resulting from negligence in use of heating apparatus under his control; McKee v. McCardell, 21 R. I. 364, 43 Atl. 847, holding declaration, in action against landlord for injuries received by falling into unguarded elevator well, alleging invitation, sufficient; McKee v. McCardell, 22 R. I. 73, 46 Atl. 181, holding landlord may show another's ownership in action for injuries sustained by falling into unguarded elevator well; Keeler v. Lederer Realty Corp. 26 R. I. 527, 59 Atl. 855, holding landlord liable for damage from decayed rainspout projecting over street which

fell and injured passerby; Davis v. Smith, 26 R. I. 135, 66 L.R.A. 483, 106 Am. St. Rep. 691, 58 Atl. 630, 3 Ann. Cas. 832, holding landlord agreeing to repair not liable in tort for injury to member of tenants family resulting from failure to repair; Burner v. Higman & S. Co. 127 Iowa, 589, 103 N. W. 802, on landlord as not being liable for injury unless he retains control, or leases the premises in such defective condition as to constitute a nuisance.

Cited in footnotes to Gardner v. Rhodes, 57 L. R. A. 749, which denies landlord's liability for injury from fall on ice permitted by tenant to accumulate on sidewalk; Barrett v. Lake Ontario Beach Improv. Co. 61 L. R. A. 829, which sustains owner's liability for insufficiency of railing of leased toboggan slide; Langenbaugh v. Anderson, 62 L. R. A. 948, which denies liability of lessor of lot for production of oil or gas therefrom, for injury to adjoining owner's property through escape of oil by lessee's negligence; Wixon v. Bruce, 68 L.R.A. 248, which sustains liability of tenants of lower floor of building for injuries to travelers due to formation of ice on sidewalk from conductor pipes.

Cited in notes (13 L.R.A.(N.S.) 442) on liability of owner of residence for injury to invited visitor; (17 L.R.A.(N.S.) 1163) on liability of owner for injury to tenant's guests or employees by defect in premises; (86 Am. St. Rep. 515) on liability of property owner for nuisance which he did not create.

38 L. R. A. 719, RICH v. STATE, 38 Tex. Crim. Rep. 199, 42 S. W. 291.

Meaning of "Bet."

Cited in Windsor v. State, 46 Tex. Crim. Rep. 143, 79 S. W. 312, on "bet" as being applied to contract of betting and also to the thing or sum wagered.

What constitutes completed transaction.

Cited in Scales v. State, 46 Tex. Crim. Rep. 304, 66 L.R.A. 734, 108 Am. St. Rep. 1014, 81 S. W. 947, holding that receiving offers for purchase or sale which are transmitted to another place for acceptance does not constitute sale or purchase.

38 L. R. A. 721, RYDER v. STATE, 100 Ga. 528, 62 Am. St. Rep. 334, 28 S. E. 246.

Right to continuance.

Distinguished in Lee v. State, 118 Ga. 764, 45 S. E. 628, holding continuance for absence of witnesses properly refused where two other witnesses were available who could testify on the same point.

Proof as to sanity.

Cited in State v. Quigley, 26 R. I. 270, 67 L.R.A. 327, footnote p. 322, 58 Atl. 905, 3 Ann. Cas. 920; State v. Clark, 34 Wash. 494, 101 Am. St. Rep. 1006, 76 Pac. 98,—holding that insanity as a defense must be proved by a preponderance of evidence.

Cited in footnote to Maas v. Oklahoma, 53 L. R. A. 814, which requires proof of accused's sanity beyond reasonable doubt, after evidence by him raising reasonable doubt as to sanity.

Cited in notes (39 L. R. A. 333) on expert opinions as to sanity or insanity; (39 L. R. A. 717) on opinions of subscribing witnesses as to sanity or insanity; (42 L.R.A. 766) on conclusiveness of testimony of experts; (76 Am. St. Rep. 93) on burden of proof of insanity as excuse or defense for crime.

Annotation in 38 L. R. A. 721, referred to particularly in *Re* Welch, 108 Wis. 394, 84 N. W. 550, holding admissibility of impressions of nonexpert witness as to mental competency within discretion of trial court.

Instruction as to weight of testimony.

Cited in Merritt v. State, 107 Ga. 681, 34 S. E. 361, holding it error to

instruct jury as to expert testimony "that where elements are undoubted, their testimony is entitled to great weight;" Bourquin v. Bourquin, 110 Ga. 444, 35 S. E. 710, holding charge that certain evidence is entitled to great consideration, error; *Re* Blake, 136 Cal. 311, 89 Am. St. Rep. 135, 68 Pac. 827, holding charge discrediting testimony of medical experts as to testator's sanity, error; Rouse v. State, 135 Ga. 227, 69 S. E. 180, holding that it is solely question for jury what weight shall be given to testimony of expert; Calvin v. State, 118 Ga. 75, 44 S. E. 848, holding it error to charge jury as to weight of particular evidence before it; Williams v. State, 123 Ga. 143, 51 S. E. 322, holding proper refusal to charge jurors specially as to weight to be given testimony of experts; Ball v. Skinner, 134 Iowa, 309, 111 N. W. 1022, on weight to be given to expert testimony as against that of nonexperts.

Estoppel to complain of erroneous instruction.

Cited in Howard v. State, 115 Ga. 253, 41 S. E. 654, denying right of accused subsequently to complain of erroneous instruction which he has requested court to give, relating to circumstances under which one may kill another; Gate City Cotton Mill v. Cherokee Mills, 128 Ga. 175, 57 S. E. 320, holding that party cannot complain of instruction pursuant to ruling obtained at his own request.

Qualification of jurors.

Cited in Jackson v. State, 103 Ga. 420, 30 So. 251, holding right to object to juror for cause not waived by consenting that *voir dire* be propounded to panel.

Opinion evidence by nonexpert.

Cited in Auld v. Cathro, 20 N. D. 483, 32 L.R.A.(N.S.) 84, 128 N. W. 1025, Ann. Cas. 1913A, 90, holding that question of qualification of nonexpert witnesses who are called to express opinion upon issue of insanity, is for court; Bothwell v. State, 71 Neb. 752, 99 N. W. 669, holding nonexpert testimony as to insanity admissible only where foundation has been laid by showing that witness has observed the appearance and actions of the party, to furnish basis of opinion, citing also annotation on this point.

Annotation cited in Duthey v. State, 131 Wis. 186, 10 L.R.A.(N.S.) 1039, 111 N. W. 222, as showing confusion existing on subject of admissibility of nonexpert opinions as to sanity.

Cited in notes (15 L.R.A.(N.S.) 584) on opinion evidence as to intemperance of particular person; (37 L.R.A.(N.S.) 598) on opinion evidence by nonexpert as to contractual or testamentary capacity.

38 L. R. A. 749, MERRITT v. GATE CITY NAT. BANK, 100 Ga. 147, 27 S. E. 979.

Computation of time.

Cited in Heard v. Phillips, 101 Ga. 692, 44 L. R. A. 370, 31 S. E. 216, holding Sundays included in computing time preceding term of court in which petitions must be filed to be returnable to that term; Johnston v. New Omaha Thomson-Houston Electric Light Co. 86 Neb. 169, 125 N. W. 153, holding that where statute requires an act to be done within a certain time "and when the last day is Sunday it shall be excluded" the act may then be done on the following Monday.

Cited in notes (49 L. R. A. 204, 230) on rule as to first and last days in computation of time; (78 Am. St. Rep. 379) on computation of time.

Delay in protesting note or presenting check.

Cited in footnote to Morris v. Union Nat. Bank, 50 L. R. A. 182, which denies

bank's liability for failure to protest in due season, note falling due on holiday under honest mistake as to proper time.

Cited in note (53 L. R. A. 432) on effect on drawer's liability, of delay in presenting check where drawee remains solvent.

38 L. R. A. 750, ECKMAN v. CHICAGO, B. & Q. R. CO. 169 Ill. 312, 48 N. E. 496.

Validity of railroad relief association contracts.

Cited in Beck v. Pennsylvania R. Co. 63 N. J. L. 240, 76 Am. St. Rep. 211, 43 Atl. 908; Petty v. Brunswick & W. R. Co. 109 Ga. 672, 35 S. E. 82; Johnson v. Charleston & S. R. Co. 55 S. C. 160, 44 L. R. A. 649, 32 S. E. 2,—sustaining contract by which acceptance of benefits from relief organization by injured employee releases company from liability; King v. Atlantic Coast Line R. Co. 157 N. C. 58, — L.R.A.(N.S.) —, 72 S. E. 801, holding that there is privity of contract between railroad company having relief department, and employee, paying member of that department; Atlantic Coast Line R. Co. v. Beazley, 54 Fla. 342, 45 So. 761, holding valid relief contract under which employee may receive benefits in lieu of right to damages for personal injury; Baltimore & O. R. Co. v. Ray, 36 Ind. App. 438, 73 N. E. 942, holding valid contract by which railroad employee becomes member of relief association which provides that right to relief thereunder shall be forfeited if action is brought for damages for personal injury; Barden v. Atlantic Coast Line R. Co. 152 N. C. 331, — L.R.A.(N.S.) —, 67 S. E. 971 (dissenting opinion), on validity of contract by which railroad employee agrees to accept relief under Relief Department supported by railroad in full of claims for injury; Harrison v. Alabama Midland R. Co. 144 Ala. 255, 40 So. 394, 6 Ann. Cas. 804, holding that establishing relief department for employees by railroad company is not an ultra vires act.

Cited in footnote to Pittsburg, C. C. & St. L. R. Co. v. Moore, 44 L. R. A. 638, which sustains contract allowing railroad employee option between action for damages or claim on relief fund.

Cited in notes (10 L.R.A. 200) on validity of provision of railroad relief department for forfeiture of benefits in case of suit against company; (11 L.R.A.(N.S.) 186, 189) on contracts requiring servant to elect between benefits of relief fund and his action for damages.

Distinguished in Chicago, B. & Q. R. Co. v. Hendricks, 125 Ill. App. 587, holding that regulation of benefit society which precludes personal representative from benefits unless releases of claim for damages against railroad are obtained from parties other than representative, is unreasonable and void.

Recovery on railroad benefit certificate.

Cited in Frank v. Newport Min. Co. 148 Mich. 640, 11 L.R.A.(N.S.) 188, 112 N. W. 504, holding that widow of deceased, electing to take under indemnity relief contract cannot maintain suit on such contract without executing release as provided therein.

Cited in footnote to Oyster v. Burlington Relief Department, 59 L. R. A. 292, which denies right to recover on certificate of railroad relief department, after recovering full statutory penalty for employee's death.

Ultra vires as defense or as affecting deed.

Cited in Hartford Deposit Co. v. Rector, 92 Ill. App. 180, holding *ultra vires* in execution of lease no defense to action for rent; Juergens v. Cobe, 99 Ill. App. 160, holding trust deed taken by loan association on encumbered property not void because association unauthorized to loan money upon encumbered property; National Home Bldg. & L. Asso. v. Home Sav. Bank, 181 Ill. 49, 64 L. R. A. 405, 72 Am. St. Rep. 245, 54 N. E. 619 (dissenting opinion), majority holding cor-

poration not estopped to raise defense of *ultra vires* to enforcement of contract against public policy: Mitchell v. Dakota Cent. Teleph. Co. 25 S. D. 416, 127 N. W. 582, holding that telephone company accepting franchise requiring payment to city of portion of receipts as compensation for use of streets is estopped to plead that such requirement is ultra vires.

Estoppel by acceptance of benefits.

Cited in People *ex rel.* Jackson v. Suburban R. Co. 178 Ill. 608, 49 L. R. A. 656, 53 N. E. 349, holding street railway company accepting benefits of ordinance permitting it to use streets estopped from action to prevent unjust discrimination in fares in violation of obligations under ordinance.

Distinguished in Pennsylvania Co. v. Chapman, 220 Ill. 433, 77 N. E. 248, holding that receiving part of benefit provided in relief contract is not a bar to action for personal injury where further relief under contract had been refused by company.

Surrender of prisoner brought from another state.

Cited in footnote to *Re* Little, 57 L. R. A. 295, which holds that prisoner transferred to other state for trial in Federal court may be turned over to state authorities.

38 L. R. A. 756, STATE v. McNASPY, 58 Kan. 691, 50 Pac. 895.

Rights of person extradited.

Disapproved in Knox v. State, 164 Ind. 230, 108 Am. St. Rep. 291, 73 N. E. 255, 3 Ann. Cas. 539, holding that person brought back to state by extradition proceedings, may be tried for offense other than that for which extradited without giving him an opportunity to return to state from which extradited.

Necessity of setting out instrument in indictment for frogery.

Cited in note (31 L.R.A.(N.S.) 219) on necessity of setting out instrument in indictment for forgery or uttering forgery.

38 L. R. A. 758, CLEVELAND NAT. BANK v. MORROW, 99 Tenn. 527, 63 Am. St. Rep. 853, 42 S. W. 200.

38 L. R. A. 760, STANFORD v. MAGILL, 6 N. D. 536, 72 N. W. 938.

Continuance of contractual relations.

Cited in Roehm v. Horst, 178 U. S. 17, 44 L. ed. 960, 20 Sup. Ct. Rep. 780, holding that parties to executory contract have right to maintain contractual relations till time of performance; Kuhlman v. Wieben, 129 Iowa, 190, 2 L.R.A. (N.S.) 668, 105 N. W. 445, holding that where vendor of land repudiates the contract prior to time of performance vendee may sue for the breach without tender of payment; Kelly v. Security Mut. L. Ins. Co. 186 N. Y. 19, 78 N. E. 584, 9 Ann. Cas. 661, holding that no action can be sustained on contract to pay money where the time for payment has not arrived, though promisor may have declared the contract void or forfeited.

Distinguished in Wells v. Hartford Manilla Co. 76 Conn. 36, 55 Atl. 599, holding that contract continues until time of performance unless mutually renounced, or renounced by one party and renunciation accepted by the other.

Disapproved in O'Neill v. Supreme Council A. L. H. 70 N. J. L. 415, 57 Atl. 463, 1 Ann. Cas. 422; Alger-Fowler Co. v. Tracy, 98 Minn. 435, 107 N. W. 1124,— holding that where executory contract is expressly renounced by one party the other may at once bring action for the breach.

Measure of damages for breach of contract.

Cited in Minneapolis Threshing Mach. Co. v. McDonald, 10 N. D. 413, 87 N. W.

993, holding difference between contract price and market value is measure of damages for refusal to accept; Olson v. Rydl, 25 S. D. 274, 126 N. W. 587, holding that in action for breach of contract to buy cattle, it was competent to consider net amount received by seller at sale on nearest available market, as as well as value at place of delivering, to determine seller's damages.

Cited in notes (52 L. R. A. 248, 251) on loss of profits of sale or purchase as damages; (94 Am. St. Rep. 123) on measure of damages on countermand of executory contract of sale.

Remedy for breach.

Cited in Reeves v. Bruening, 13 N. D. 166, 100 N. W. 241, on remedy for refusal to accept property under contract for sale.

Motion for direction of verdict.

Cited in First M. E. Church v. Fadden, 8 N. D. 166, 77 N. W. 615, and United States v. Bishop, 60 C. C. A. 125, 125 Fed. 183, holding failure of party moving for direction of verdict to ask that questions of fact be submitted to jury when motion overruled, regarded as submitting disputed question to court; Citizens' Nat. Bank v. Osborne-McMillan Elevator Co. 21 N. D. 342, 131 N. W. 266, holding that when both parties move for directed verdict at close of trial, they thereby waive right to have facts submitted to jury, in absence of any request therefor; Larson v. Calder, 16 N. D. 254, 113 N. W. 103; Duncan v. Great Northern R. Co. 17 N. D. 618, 19 L.R.A.(N.S.) 960, 118 N. W. 826; Segear v. Westcott, 83 Neb. 517, 120 N. W. 170,—holding that where both parties move for a directed verdict and do not request that any facts be submitted to the jury, they thereby waive the right to have any facts so submitted; Phenix Ins. Co. v. Kerr, 66 L.R.A. 571, 64 C. C. A. 251, 129 Fed. 724, holding that where both parties move for directed verdict the courts findings will be taken as true if there is any evidence to sustain them.

38 L. R. A. 773, RASMUSSEN v. BAKER, 7 Wyo. 117, 50 Pac. 819.

Followed without discussion in Irons v. Clark, 7 Wyo. 161, 50 Pac. 1103.

Language of official publications.

Cited in footnote to State *ex rel.* Goebel v. Chamberlain, 40 L. R. A. 843, which denies validity of publication of delinquent tax list in English in newspaper otherwise printed in German.

Reserved questions of law.

Cited in Foote v. Smith, 8 Wyo. 512, 58 Pac. 898, holding that lawful dismissal of action by plaintiff in lower court prevents consideration on appeal of questions reserved for decision of supreme court; State *ex rel.* Perkins v. Sheridan County, 7 Wyo. 164, 51 Pac. 204, holding it not duty of court to determine cause upon reserved questions of law; Jenkins v. Cheyenne, 12 Wyo. 80, 73 Pac. 758, holding question whether petition states facts sufficient to constitute a cause of action not proper to reserve for submission; Smith v. Healy, 12 Wyo. 222, 75 Pac. 430, holding insufficient to confer jurisdiction order certifying cause to the Supreme Court but not stating the questions to be passed upon.

Right of de jure officer to salary paid de facto officer.

Cited in Rasmussen v. Carbon County, 8 Wyo. 283, 45 L. R. A. 296, 56 Pac. 1098, holding *de jure* officer not entitled to salary paid to *de facto* officer because of former's failure to qualify.

38 L. R. A. 786, JAGGER v. PEOPLE'S STREET R. CO. 180 Pa. 436, 36 Atl. 867.

Negligence in getting off or on moving car.

Cited in Shade v. Union Traction Co. 20 Pa. Co. Ct. 294, 7 Pa. Dist. R. 36, denying liability to passenger injured by falling from lower step of platform while waiting for street car to stop; Hunterson v. Union Traction Co. 205 Pa. 571, 55 Atl. 543, holding it negligence *per se* to step off or on moving car; Jones v. Canal & C. R. Co. 109 La. 215, 33 So. 200, holding it not negligence, as matter of law, to alight from slowly moving street car, and referring particularly to annotation in 38 L. R. A. 786; Hunterson v. Union Traction Co. 205 Pa. 571, 55 Atl. 543, holding that getting on moving car is contributory negligence as a matter of law; Sligo v. Philadelphia Rapid Transit Co. 224 Pa. 142, 73 Atl. 211 (dissenting opinion), on duty to stop street cars at proper places for passengers to alight.

Cited in notes (22 L.R.A.(N.S.) 742) on negligence of passenger in getting on or off moving train; (30 L.R.A.(N.S.) 270, 275) on negligence in getting on or off moving street car.

— In riding on running board.

Cited in footnote to Third Ave. R. Co. v. Barton, 52 L. R. A. 471, which denies right of passenger on running board of street car to recover for injuries by contact with pillar near track, while passing around conductor, also on running board.

— In crossing car tracks.

Cited in footnote to Walker v. St. Paul City R. Co. 51 L. R. A. 632, which holds person attempting to cross street car track in dark, after signals for stopping car given, not negligence *per se*.

Newsboy as passenger.

Cited in footnote to Padgitt v. Moll, 52 L. R. A. 854, which holds newsboy jumping on and off moving car to sell papers, not a passenger.

Evidence as to custom.

Cited in Anderson v. Union Traction Co. 4 Lack. Legal News, 16, 7 Pa. Dist. R. 47, holding evidence that other conductors accepted similar tickets, inadmissible in action for damages for ejection of passenger.

Liability of street railway for injury to alighting passenger.

Cited in Enck v. Conestoga Traction Co. 24 Lanc. L. Rev. 261, holding that street railroad company was not liable to passenger for injury received by stepping on loose stone in gutter as she alighted from car near crossing.

38 L. R. A. 791, EDWARDS v. WARREN LINOLINE & GASOLINE WORKS, 168 Mass. 564, 47 N. E. 502.

What constitutes partnership.

Cited in Ashley v. Dowling, 203 Mass. 317, 133 Am. St. Rep. 296, 89 N. E. 434, holding that unincorporated voluntary association where members interests are represented by stock, is a partnership; Opinion of Justices, 196 Mass. 619, 85 N. E. 545, on formation of partnership associations.

Nature of limited partnerships.

Cited in Andrews Bros. Co. v. Youngstown Coke Co. 30 C. C. A. 303, 58 U. S. App. 444, 86 Fed. 595, holding "partnership association, limited," a corporation.

— Payment of subscriptions to.

Cited in footnote to Rouse, H. & Co. v. Detroit Cycle Co. 38 L. R. A. 794, which sustains right to pay subscriptions to capital stock of partnership association by giving note which is immediately converted into money.

— Liability of members.

Cited in footnote to Staver & A. Mfg. Co. v. Blake, 38 L. R. A. 798, which holds members of limited partnership not liable as general partners for technical irregularities in formation.

38 L. R. A. 794, ROUSE, H. & CO. v. DETROIT CYCLE CO. 111 Mich. 251, 69 N. W. 511.

Liability of members of limited partnership.

Cited in Hogan v. Hadzsits, 113 Mich. 574, 71 N. W. 1092, holding that statement in renewal articles of partnership that special partner contributed certain sum, consisting of interest in old firm, does not render him liable generally; Wood v. Sloman, 150 Mich. 193, 114 N. W. 317, holding that receiver in bankruptcy may maintain suit against members of limited partnership to enforce payment of unpaid stock.

Cited in footnote to Staver & A. Mfg. Co. v. Blake, 38 L. R. A. 798, which holds members of limited partnership not liable as general partners for technical irregularities in formation.

Rights and nature of partnership association.

Cited in Sanitas Nut Food Co. v. Force Food Co. 124 Fed. 302, sustaining right of limited partnership association to sue in Federal court for infringement of patent; Derk P. Yonkerman Co. v. Charles H. Fuller's Advertising Agency, 135 Fed. 614; Armstrong v. Stearns, 156 Mich. 604, 121 N. W. 312,— holding limited partnership governed by laws applicable to partnership; Wood v. Sloman, 150 Mich. 192, 114 N. W. 317, on the same point.

Cited in footnote to Edwards v. Warren Linoline & Gasoline Works, 38 L. R. A. 791, which holds partnership association organized under laws of Pennsylvania regarded in Massachusetts as partnership, instead of corporation.

Distinguished in Fred Macey Co. v. Macey, 68 C. C. A. 363, 135 Fed. 728, holding that limited partnership is not a corporation within meaning of rule governing Federal jurisdiction.

38 L. R. A. 798, STAVER & A. MFG. CO. v. BLAKE, 111 Mich. 282, 69 N. W. 508.

Liability of members of limited partnership.

Cited in Rouse, H. & Co. v. Detroit Cycle Co. 111 Mich. 257, 38 L. R. A. 797, 69 N. W. 511, holding that payment by notes renders subscribers' stock in limited partnership association paid up as against creditors, when notes converted into money; Hogan v. Hadzsits, 113 Mich. 574, 71 N. W. 1092, holding that statement in renewal articles of limited partnership that special partner contributed certain sum, consisting of interest in old partnership, does not render him liable generally.

Distinguished in Wood v. Sloman, 150 Mich. 187, 114 N. W. 317, holding valuation placed by members upon property contributed in payment for stock not conclusive as against creditors.

Rights and nature of partnership association.

Cited in Sanitas Nut Food Co. v. Force Food Co. 124 Fed. 302, sustaining right of limited partnership association to sue in Federal court for infringement of patent; Derk P. Yonkerman Co. v. Chas. H. Fuller Advertising Agency, 135 Fed. 614; Armstrong v. Stearns, 156 Mich. 604, 121 N. W. 312,—holding limited partnership to be governed by law applicable to corporations.

Cited in footnote to Edwards v. Warren Linoline & Gasoline Works, 38 L. R. A. 791, which holds partnership association organized under laws of Pennsylvania regarded in Massachusetts as partnership, instead of corporation.

Distinguished in Fred Macey Co. v. Macey, 68 C. C. A. 363, 135 Fed. 728, holding limited partnership not to be a corporation for purposes of Federal jurisdiction.

38 L. R. A. 804, GUARANTEE TRUST & S. D. CO. v. PHILADELPHIA, R. & N. E. R. CO. 69 Conn. 709, 38 Atl. 792.

Appeal from final judgment.

Cited in Standley v. Hendrie & B. Mfg. Co. 25 Colo. 380, 55 Pac. 723, holding that appeal lies from judgment authorizing receiver to issue certificates as prior liens.

38 L. R. A. 808, DALE v. COM. 101 Ky. 612, 42 S. W. 93.

38 L. R. A. 809, SCHMIDT v. LOUISVILLE & N. R. CO. 101 Ky. 441, 41 S. W. 1015.

Right of trustee to sue.

Cited in Columbia Ave. Sav. Fund, S. D. Title & T. Co. v. Dawson, 130 Fed. 168, holding that trustee under mortgage may maintain suit for the protection of his security.

Compelling operation of railroad.

Cited in Taylor v. Florida East Coast R. Co. 54 Fla. 647, 16 L.R.A.(N.S.) 314, 127 Am. St. Rep. 155, 45 So. 574, 14 Ann. Cas. 472, granting specific performance of agreement by railroad to maintain spur track and operate train thereon, when not detrimental to public welfare; Southern R. Co. v. Franklin & P. R. Co. 96 Va. 707, 44 L.R.A. 303, footnote p. 297, 32 S. E. 485, authorizing mandatory injunction to compel continued operation of leased railroad.

Construing instruments together.

Cited in Phillips v. Southern Division C. & O. R. Co. 110 Ky. 45, 60 S. W. 941, construing as one instrument, lease of unfinished railroad and mortgage on road to lessee to secure payment of bonds issued to lessee; Louisville & N. R. Co. v. Schmidt, 112 Ky. 721, 66 S. W. 629, construing as one instrument, lease of unfinished railroad, mortgage to lessee to secure payment of bonds, and mortgage by lessee on earnings to trustee for bondholders; Schmidt v. Louisville & N. R. Co. 139 Ky. 86, 129 S. W. 332, to the point that papers executed simultaneously, concerning same subject matter must be read together as one contract; Grand Trunk Western R. Co. v. Chicago & E. I. R. Co. 73 C. C. A. 43, 141 Fed. 802, on construction of contracts as to whether or not they constitute leases.

Third person's right of action on contract.

Cited in footnotes to Ferris v. American Brewing Co. 52 L. R. A. 305, which sustains right of action of one for whose benefit stipulation in lease against sale on premises of other person's beer was made; Electric Appliance Co. v. United States Fidelity & G. Co. 53 L. R. A. 609, which denies right of one furnishing materials to contractor, to sue on bond by latter to city, conditioned on turning over building free of claims for materials; Boston Ins. Co. v. Chicago, R. I. & P. R. Co. 59 L. R. A. 796, which denies right of action against railroad company carrying mail under contract with government, by sender of registered mail destroyed through negligence of its employees; Tweeddale v. Tweeddale, 61 L. R. A. 509, which sustains right of third person to enforce contract made for his benefit; Voorhees, M. & Co. v. Porter, 65 L.R.A. 736, which sustains right of creditors of vendor of goods to sue purchaser on agreement with vendor to pay such creditors out of the purchase money.

Specific performance.

Cited in Flege v. Covington & C. Elev. R. & Transfer & Bridge Co. 122 Ky. 354, 121 Am. St. Rep. 463, 91 S. W. 738, granting decree for specific performance of covenant to erect and maintain stone wall along granted premises.

Distinguished in Edelen v. W. B. Samuels & Co. 126 Ky. 307, 103 S. W. 360, denying specific performance of contract in which the public had no interest, where remedy of law was adequate and specific performance impracticable.

Mandatory injunctions.

Cited in footnote to Allen v. Stowell, 68 L.R.A. 223, which sustains right to mandatory injunction to compel removal of dams wrongfully diverting water onto plaintiff's property so as to destroy trees and cut gulches.

Representation of bondholders by mortgage trustee.

Cited in note (16 L.R.A.(N.S.) 1008) on representation of bondholders by mortgage trustee.

38 L. R. A. 823, FARMERS' BANK v. SHIPPEY, 182 Pa. 24, 37 Atl. 844.

Negotiability of note.

Cited in footnote to Commercial Bank v. Cheshire Provident Inst. 41 L. R. A. 175, which holds negotiable, unrestricted guaranty of payment indorsed on note.

38 L. R. A. 826, DELAWARE & H. CANAL CO. v. HUGHES, 183 Pa. 66, 63 Am. St. Rep. 743, 38 Atl. 568.

Separate estates in surface and substratum.

Cited in Hosack v. Crill, 18 Pa. Super. Ct. 98, holding that conveyance of underlying coal, grantor retaining surface, works severance of title; Byers v. Byers, 183 Pa. 517, 39 L. R. A. 538, footnote p. 537, 41 N. W. 361, 63 Am. St. Rep. 765, 38 Atl. 1027, holding that parol partition of surface does not extend *per se* to coal beneath; Robbins v. Penn Gas Coal Co. 28 Pa. Co. Ct. 59, holding conveyance of land, except stratum of coal, no bar to subsequent partition of stratum; Rockwell v. Warren County, 228 Pa. 433, 139 Am. St. Rep. 1006, 77 Atl. 665, holding that separate ownership of minerals constitute interest in land, and may be separately taxed; French v. Lansing, 73 Misc. 83, 132 N. Y. Supp. 523, holding that possession of surface cannot give title to minerals where there has been severance between ownership of soil and of minerals; St. Vincent's Roman Catholic Congregation v. Kingston Coal Co. 13 Luzerne, Leg. Reg. Rep. 122, holding that where owner of land conveys minerals under it, it creates a severance and adverse possession of one estate will not affect the other; Rockell v. Keefer, 39 Pa. Super. Ct. 473, holding that where minerals under the land are owned separately, they may be separately assessed for taxes; Edsall v. Lehigh Valley Coal Co. 32 Pa. Co. Ct. 547, 13 Luzerne Leg. Reg. Rep. 155, holding that, where owner of land sells minerals thereunder with right to remove all of them and deed is recorded one who subsequently purchases the surface is charged with notice that the right to support has been lost; McBurney v. Glenmary Coal & Coke Co. 121 Tenn. 290, 118 S. W. 694, on effect of deed which severs minerals under the land from the land itself.

Title to minerals by adverse possession.

Cited in Pierce v. Barney, 209 Pa. 136, 58 Atl. 152, holding that one who removes coal under land through opening upon adjoining premises cannot thereby obtain any title by adverse possession.

Cited in note (140 Am. St. Rep. 956, 961) on what constitutes adverse possession by surface owner of severed mineral estate.

Nature of grant of right to mine coal.

Cited in note (4 L.R.A.(N.S.) 29) as to when agreement or instrument conferring right to mine coal is to be regarded as absolute sale or conveyance of coal in place, as distinguished from lease or conditional sale.

38 L. R. A. 829, WAMPLER v. STATE, 148 Ind. 557, 47 N. E. 1068.

Mandamus to enforce public duty.

Cited in Manor v. State, 149 Ind. 313, 49 N. E. 160, holding that town trustee may compel auditor to issue warrant for town funds; State *ex rel.* Cutter v. Kamman, 151 Ind. 410, 51 N. E. 483, holding that any person interested may maintain action in mandamus to compel road supervisor to repair highway; State *ex rel.* Morgan v. Real Estate Bldg. & L. Asso. 151 Ind. 505, 51 N. E. 1061, holding mandamus proper remedy to compel loan association to exhibit books to assessors; State *ex rel.* Colscott v. King, 154 Ind. 629, 57 N. E. 535, holding that mandamus will lie to enforce taxpayer's right to examine records of county auditor; State *ex rel.* Horne v. Beil, 157 Ind. 27, 60 N. E. 672, holding that mandamus will lie to compel school trustees to enforce order requiring vaccination of school children.

Cited in note (125 Am. St. Rep. 520) on duties, performance of which may be compelled by mandamus.

— Sufficiency of petition and writ.

Cited in Applegate v. State, 158 Ind. 123, 63 N. E. 16, holding that petition for mandamus to compel bank to exhibit books to assessor must show that taxpayer failed to make return for taxation of his money on deposit; Hart v. State, 161 Ind. 192, 67 N. E. 996, holding that writ of mandamus to show cause why state treasurer should not be compelled to pay certificate must show facts sufficient in law to entitle one to writ; Welch v. State, 164 Ind. 106, 72 N. E. 1043, holding that where alternative writ is issued it must be taken as constituting the complaint.

Right to mandamus.

Cited in Couch v. State, 169 Ind. 271, 124 Am. St. Rep. 221, 82 N. E. 457, on mandamus not being granted where applicant has other adequate remedy.

Allowance of illegal claim as crime.

Cited in State v. Robertson, 23 Ind. App. 427, 55 N. E. 491, holding allowance of illegal claim not crime under statute imposing penalty for failure to perform duty prescribed by law.

Casting deciding vote.

Cited in State *ex rel.* Morris v. McFarland, 149 Ind. 274, 39 L. R. A. 284, 49 N. E. 5, holding auditor's right to give casting vote on tie by township trustees not limited to vote by ballot.

Directory provisions of statute.

Cited in Landes v. State, 160 Ind. 486, 67 N. E. 189, holding requirement of act as to enrolment, attestation, and approval by mayor of ordinance, directory only; Gallup v. Schmidt, 154 Ind. 204, 56 N. E. 443, holding statute requiring treasurer to report delinquency of executors in payment of taxes, directory as to time; Kunkle v. Coleman, 174 Ind. 322, 92 N. E. 61, holding that local option statutes will be regarded as mandatory where they do, and directory where they do not, affect merits; Featherngill v. State, 33 Ind. App. 686, 72 N. E. 181, holding that statute providing time at which truant officer shall be appointed is directory only, and appointment may be made subsequently; State ex rel. White v. Scott, 171 Ind. 357, 86 N. E. 409, holding same as to county superintendent

of schools; Hendershot v. State, 162 Ind. 73, 69 N. E. 679, holding same as to election of secretary of the Board of Health; Louisville & N. R. Co. v. Gillin, 166 Ind. 321, 76 N. E. 1058, holding that statute requiring clerk to record award of appraisers is directory only.

38 L. R. A. 834, TERRY v. RICHMOND, 94 Va. 537, 27 S. E. 429.

Public corporation's liability for negligence or damages.

Cited in Powell v. Wytheville, 95 Va. 75, 27 S. E. 805, holding city liable for filling depression without providing outlet for drainage; Maia v. Eastern State Hospital, 97 Va. 511, 47 L. R. A. 578, 34 S. E. 617, denying liability of hospital corporation for negligently causing death of patient by caving-in of excavation; Jones v. Williamsburg, 97 Va. 724, 47 L. R. A. 299, 34 S. E. 883, denying city's liability for injury to person struck by bicycle rider by reason of failure to enforce ordinance prohibiting riding on walks.

Cited in footnote to Duncan v. Lynchburg, 48 L. R. A. 331, which denies city's liability for nuisance by pollution of water in unauthorized operation of rock quarry outside city limits.

Actions by and against government.

Cited in Eastern State Hospital v. Graves (Eastern State Hospital v. Winston) 105 Va. 154, 3 L.R.A.(N.S.) 748, 52 S. E. 837, 8 Ann. Cas. 701, holding that statute of limitations does not run against claim of state hospital for the insane, for board and attendance furnished patients.

38 L. R. A. 837, TRADEMEN'S NAT. BANK v. LOONEY, 99 Tenn. 278, 63 Am. St. Rep. 830, 42 S. W. 149.

Equities in note indorsed by trustee.

Cited in Ford v. Brown, 114 Tenn. 475, 1 L.R.A.(N.S.) 192, 88 S. W. 1036, holding that "trustee" in note is notice to purchaser of existence of a trust, and puts him upon inquiry as to the powers of the trustee; Hazeltine v. Keenan, 54 W. Va. 603, 102 Am. St. Rep. 953, 46 S. E. 609, holding that where note is made payable to "L. H. K. Attorney" the word "attorney" is notice to transferee that others had an interest therein.

Cited in footnote to Grafton Nat. Bank v. Wing, 43 L. R. A. 831, which denies personal liability of executor indorsing paper in name of estate, describing himself as executor.

Cited in notes (1 L.R.A.(N.S.) 189; 82 Am. St. Rep. 514–516) on effect of note or check payable to "trustee;" (21 L.R.A.(N.S.) 1075) on liability of principal on indorsement of negotiable paper by agent.

Who are bona fide purchasers.

Cited in footnote to Lamson v. Beard, 45 L. R. A. 822, which holds broker taking from bank president drafts signed by him for individual debt not bona fide purchaser.

Cited in note (29 L.R.A.(N.S.) 366, 367) on circumstances sufficient to put purchaser of negotiable paper on inquiry.

Misrepresentations of others.

Cited in note (85 Am. St. Rep. 370, 374) on liability for misrepresentations indirectly made to complaining party.

Distinguished in Millard v. Smith, 119 Mo. App. 711, 95 S. W. 940, holding principal liable for false representations made by agent.

38 L. R. A. 843, BANK OF GILBY v. FARNSWORTH, 7 N. D. 6, 72 N. W. 901.

Effect of loss of negotiable instrument before presentment.

Cited in California Nat. Bank v. Weldon, 14 Cal. App. 775, 113 Pac. 334, hold-

ing that under Civ. Code, sections 3213, 3255, loss of check before presentment excuses presentment and notice of dishonor.

Duplicate instrument.

Cited in Grand Lodge A. O. U. W. v. McFadden, 213 Mo. 287, 111 S. W. 1172, Affirming 114 Mo. App. 203, 89 S. W. 68, on judicial definition of "duplicate."

38 L. R. A. 847, NEASHAM v. McNAIR, 103 Iowa, 695, 64 Am. St. Rep. 202, 72 N. W. 773.

What are family expenses.

Cited in Houghteling v. Walker, 100 Fed. 254, holding rent of house leased by husband and occupied by himself and wife, family expense; Gilman v. Matthews, 20 Colo. App. 176, 77 Pac. 366, holding wearing apparel purchased and used by husband to be "family expenses;" Phillips v. Phillips, 151 Ala. 530, 125 Am. St. Rep. 40, 44 So. 391, 15 Ann. Cas. 157, holding gold ring and watch and claim to be wearing apparel; Birch v. Birch, 112 Mo. App. 164, 86 S. W. 1106, on definition of "family."

Cited in note (21 L.R.A.(N.S.) 277) on what constitute "family expenses" within statute rendering wife or her property liable.

Distinguished in Vose v. Myott, 141 Iowa, 508, 21 L.R.A.(N.S.) 278, 120 N. W. 58, holding that family expenses do not include board of husband while absent and intending a separation from his wife.

38 L. R. A. 849, CHICAGO v. WARD, 169 Ill. 392, 61 Am. St. Rep. 185, 48 N. E. 927.

Cited in Ward v. Field Museum, 241 Ill. 498, 89 N. E. 731, Reversing 3 Ill. C. C. 228, historically as being a case arising from the same facts and involving much of the same controversy.

Right to follow accretions.

Cited in note (51 L. R. A. 425) on right to follow accretions across division line previously submerged by action of water.

Title to islands.

Cited in note (58 L. R. A. 677) on title to islands.

Reclamation.

Cited in Fowler v. Wood, 73 Kan. 524, 6 L.R.A.(N.S.) 169, 117 Am. St. Rep. 534, 85 Pac. 763, holding that land which has been submerged or washed away may be reclaimed if it again appear, if the boundaries can be established; Wood v. McAlpine, 85 Kan. 666, 118 Pac. 1060; Lincoln Park Comrs. v. Fahrney, 250 Ill. 266, 95 N. E. 194,—holding that shore owner does not lose title to submerged land in case of an avulsion.

Restrictions as applicable to submerged lands.

Cited in Bliss v. Ward, 198 Ill. 109, 64 N. E. 705, holding that extension of park over submerged lands subjects them to park restrictions as to buildings.

Restrictions as applicable to submerged lands.

Cited in Chicago City R. Co. v. Montgomery, Ward & Co. 76 Ill. App. 541, dissolving injunction against erection of trolley road on street alleged to be part of park trust property; Manson v. South Bound R. Co. 64 S. C. 121, 41 S. E. 832, denying injunction to nonabutting owners against condemnation of park for railroad purposes; Allen v. Detroit, 167 Mich. 473, 36 L.R.A.(N.S.) 894, 133 N. W. 317, holding that building restrictions cannot be violated by city without first determining necessity for taking property rights created thereby, and compensation due parties in interest, by eminent domain; South Park Comrs.

v. Montgomery Ward & Co. 248 Ill. 302, 93 N. E. 910, 21 Ann. Cas. 127, on right to erect buildings upon land dedicated for park in violation of terms of dedication; Riverside v. MacLain, 210 Ill. 324, 66 L.R.A. 295, 102 Am. St. Rep. 164, 71 N. E. 408, holding that city has no power to use part of a tract dedicated as a public park, for a public highway; Louisville & N. R. Co. v. Cincinnati, 76 Ohio St. 506, 81 N. E. 983, holding that the legislature has no power to provide for the use of land dedicated to the public for other purposes; Chicago v. Noonan, 121 Ill. App. 188, holding that where land is platted and part dedicated as public street, the city may enter thereon and remove sidewalks for purpose of sewer improvement.

Cited in footnotes to Summers v. Beeler, 48 L. R. A. 54, which holds restriction in deed as to building line not available to prior grantee of other lot; Ewertsen v. Gerstenberg, 51 L. R. A. 310, which denies injunction against encroachment by building on space reserved for courtyard by common plat of lots.

Cited in notes (25 L.R.A.(N.S.) 984) on what use of squares, parks, or commons is consistent with purpose of dedication; (27 L.R.A.(N.S.) 941) on power of legislature to control use to which property taken for park or square may be put.

Distinguished in Chicago Yacht Club v. Marks, 97 Ill. App. 409, denying injunction against erection of club house on lake front, which is no part of trust property subject to restrictions against erection of buildings.

Title to Fort Dearborn addition.

Cited in Williams v. Chicago, 247 Ill. 242, 93 N. E. 165, holding that fee of streets and public grounds in Fort Dearborn addition to Chicago must be held to be in city.

38 L. R. A. 860, *Re* BEARD, 7 Wyo. 104, 75 Am. St. Rep. 882, 50 Pac. 226.

Assessment after insolvency.

Cited in Hill v. Graham, 11 Colo. App. 542, 53 Pac. 1060, holding assessment on stockholder in insolvent bank after his assignment for benefit of creditors, provable as claim against assigned estate.

38 L. R. A. 863, McLENNAN v. McLENNAN, 31 Or. 480, 65 Am. St. Rep. 835, 50 Pac. 802.

Remarriage before expiration of statutory period.

Cited in *Re* Wood, 137 Cal. 141, 69 Pac. 900 (dissenting opinion), majority holding marriage of divorced person, valid where contracted, valid in state before expiration of year to appeal; Eaton v. Eaton, 66 Neb. 682, 60 L. R. A. 608, footnote p. 605, 92 N. W. 995, which holds absolutely void, marriage by divorced person during time given to commence proceedings for reversal; Wallace v. McDaniel, 59 Or. 381, 117 Pac. 314, holding that under statute prohibiting marriage of parties to divorce until time to appeal has expired, wife against whom default decree was obtained might waive right of appeal and marry before expiration of such period: Lanham v. Lanham, 136 Wis. 368, 17 L.R.A. (N.S.) 807, 128 Am. St. Rep. 1085, 117 N. W. 787, holding void remarriage within period by divorced person in another state.

Cited in footnote to Durland v. Durland, 63 L. R. A. 959, which sustains power of legislature to forbid divorced persons remarrying within six months after date of decree.

Distinguished in State v. Yoder, 113 Minn. 509, — L.R.A.(N.S.) —, 130 N. W. 10, holding that remarriage of divorced persons within six months from date of decree, though prohibited by statute, is valid until dissolved by judicial decree.

Conflict of laws as to marriage.

Cited in Sturgis v. Sturgis, 51 Or. 16, 15 L.R.A.(N.S.) 1037, 131 Am. St. Rep. 724, 93 Pac. 696, holding marriage of spendthrift in another state valid though such marriage within the state without consent of guardian is voidable.

Cited in notes (57 L.R.A. 170) on conflict of laws as to validity of marriage; (79 Am. St. Rep. 366; 17 L.R.A.(N.S.) 801) on law governing validity of marriage.

L. R. A. CASES AS AUTHORITIES.

CASES IN 39 L. R. A.

39 L. R. A. 33, HUGHES v. MONROE COUNTY, 147 N. Y. 49, 41 N. E. 407.
Municipal liability for personal injuries.

Approved in Markey v. Queens County, 154 N. Y. 684, 39 L. R. A. 54, 49 N. E. 71, holding county not liable for negligent exercise of duty of maintaining bridges; Colwell v. Waterbury, 74 Com. 575, 57 L. R. A. 221, 51 Atl. 530, holding city not liable to employee injured through defect in stone-crushing machine used to prepare material for constructing and repairing highways; Doty v. Port Jervis, 23 Misc. 314, 52 N. Y. Supp. 57, holding village not liable for death of person killed by special police officer; Reynolds v. Board of Education, 33 App. Div. 93, 53 N. Y. Supp. 75, holding board of education not liable for wrongful act of truant officer not within scope of his authority, whether he was incompetent or not; Rhall v. Board of Education, 40 App. Div. 416, 57 N. Y. Supp. 977, holding board of education not liable for injuries resulting from negligence of attendance officer in arresting child as truant, without instruction; Brown v. New York, 32 Misc. 574, 66 N. Y. Supp. 382, holding city not liable for injury to student sustained because of defective condition of floor of playground; Peaty v. New York, 33 Misc. 235, 67 N. Y. Supp. 276, holding city not liable for death of lineman of fire department, killed by breaking off, below ground, of pole which he had climbed to remove wires; McAndrews v. Hamilton County, 105 Tenn. 405, 58 S. W. 483, holding county not liable to one injured by runaway mule left carelessly tied by employee of county house of correction and referring particularly to annotation in 39 L. R. A. 33; Maia v. Eastern State Hospital, 97 Va. 511, 47 L. R. A. 579, 34 S. E. 617, holding state hospital not liable for injury to inmate occasioned by negligence or misconduct of persons in charge of hospital.

Cited in Corbett v. St. Vincent's Industrial School, 177 N. Y. 22, 68 N. E. 997, Affirming 79 App. Div. 342, 79 N. Y. Supp. 369, holding industrial school to which children are committed not liable for injury sustained by inmate while operating mangle; Colwell v. Waterbury, 74 Conn. 575, 57 L.R.A. 218, 51 Atl. 530, holding that crushing stone is part of governmental duty of city in maintaining streets and city is not liable for personal injuries incurred in such work; Bell v. Cincinnati, 80 Ohio St. 24, 23 L.R.A.(N.S.) 916, 88 N. E. 128, holding guard of workhouse gang injured by explosion in stone quarry cannot recover from city therefor; Moest v. Buffalo, 116 App. Div. 662, 101 N. Y. Supp. 996, holding

county not liable for injuries received in elevator in county hall through negligence of operator.

Cited in footnote to Peterson v. Wilmington, 56 L. R. A. 959, which denies city's liability for injury to fireman from negligence in permitting apparatus to get out of repair.

Cited in notes (21 L.R.A.(N.S.) 211) on liability of county for injuries to adjoining property by construction or maintenance of bridge; (23 L.R.A.(N.S.) 910) on liability of county or municipality for injury to one employed in or about a jail, prison, etc.; (12 Eng. Rul. Cas. 716) on liabilities of counties and municipalities for injury due to defect in highway.

Discharge of sewage.

Approved in Lefrois v. Monroe County, 162 N. Y. 567, 50 L. R. A. 208, footnote p. 206, 57 N. E. 185, Reversing 24 App. Div. 425, 48 N. Y. Supp. 519, holding county not liable for pollution of stream and air by sewage from penitentiary and almshouse, conducted to reservoirs and spread upon land owned by it.

Cited in Metz v. Asheville, 150 N. C. 752, 22 L.R.A.(N.S.) 944, 64 S. E. 881, holding city liable for death from disease communicated from stream into which it discharged its sewage from free public sewer system.

Cited in footnote to Pearce v. Gibson County, 55 L. R. A. 477, which denies right of county to discharge water closets of courthouse on adjoining owner's land.

Municipal liability to one contracting disease.

Approved in Hughes v. Auburn, 161 N. Y. 106, 46 L. R. A. 640, 55 N. E. 389, holding city not liable for disease suffered by individual in consequence of neglect of city authorities to observe sanitary precautions in maintenance of sewer system; Nicholson v. Detroit, 129 Mich. 256, 56 L. R. A. 605, 88 N. W. 695, holding city not liable for death of employee from smallpox contracted in tearing down smallpox hospital, of danger from which he received no warning.

Municipal liability for forcible quarantine.

Approved in Tilford v. New York, 1 App. Div. 201, 37 N. Y. Supp. 185, holding city not liable for unauthorized acts of its officers in forcibly quarantining family.

Municipal liability for negligence or inefficency of fire department.

Approved in Workman v. New York City, 179 U. S. 577, 45 L. ed. 326, 21 Sup. Ct. Rep. 212 (dissenting opinion), majority holding city liable by maritime law for negligence of its servants in charge of fire-boat which collided with another vessel while hastening to put out fire.

Cited in Springfield F. & M. Ins. Co. v. Keeseville, 148 N. Y. 58, 30 L. R. A. 665, 51 Am. St. Rep. 667, 42 N. E. 405, holding village not liable for damages caused by fire in consequence of its negligent failure to maintain sufficient water supply; Oakes Mfg. Co. v. New York, 141 App. Div. 132, 125 N. Y. Supp. 1030, holding that city is not liable for negligence for nonuser or misuser in maintenance of water supply system so far as furnishing of water itself is concerned.

Industrial school as charitable corporation.

Approved in Corbett v. St. Vincent's Industrial School, 79 App. Div. 342, 79 N. Y. Supp. 369, holding fact that industrial school received compensation from counties from which its inmates were sent, and sold its surplus products, does not change it from charitable to private business corporation.

Liability of political division of state.

Cited in Rochester & L. O. Water Co. v. Rochester, 176 N. Y. 61, 68 N. E. 117, dissenting opinion by Bartlett, J., who holds political division of state may be treated as private person in business matters, but as to delegated sovereign power it is judged by same legal standard as state; Bucher v. Northumberland County,

209 Pa. 623, 59 Atl. 69, holding in absence of statute county not liable for injury from defective sidewalk on court house grounds; Southeast v. New York, 96 App. Div. 602, 89 N. Y. Supp. 630, on liability of municipality to another for damages from negligent construction of reservoir.

Proximate cause of accident.

Cited in footnote to Walrod v. Webster County, 47 L. R. A. 480, which holds defects in railing of bridge, proximate cause of accident from breaking of rail by team frightened by lightning flash.

Effect of payment by inmates on character of charitable institution.

Cited in note (29 L.R.A.(N.S.) 193) on requiring payment from inmates as affecting right of charitable institution to public aid or exemption from taxation.

39 L. R. A. 46, MARKEY v. QUEENS COUNTY, 154 N. Y. 675, 49 N. E. 71.

Municipal liability for torts.

Approved in Reynolds v. Board of Education, 33 App. Div. 93, 53 N. Y. Supp. 75, holding board of education not liable for wrongful act of truant officer not within scope of his authority, whether he was incompetent or not; Napier v. Brooklyn, 41 App. Div. 276, 58 N. Y. Supp. 506, holding county not liable in civil action for conversion, where park commissioner takes possession of buildings and personal property; Hall v. Oyster Bay, 61 App. Div. 512, 70 N. Y. Supp. 710, holding town not liable to one to whom it has leased oyster ground, for damage sustained by construction of public bridge across land by town; Lefrois v. Monroe County, 162 N. Y. 567, 50 L. R. A. 208, 57 N. E. 185, holding county not liable for pollution of stream and atmosphere by sewage conducted from public buildings and spread upon land owned by county; People *ex rel.* Martin v. Westchester County, 57 App. Div. 139, 67 N. Y. Supp. 981, holding county Law of 1892 imposes no liability upon county for malfeasance of its officers; McAndrews v. Hamilton County, 105 Tenn. 405, 58 S. W. 483, holding county not liable to one injured by runaway mule left carelessly tied by employee of county house of correction, and referring particularly to annotation in 39 L. R. A. 46.

Cited in Smyth v. New York, 203 N. Y. 114, 96 N. E. 409, holding that contractor is liable to person whose property was injured by negligence of subcontractor in construction of rapid transit subway, although city was not liable; Metz v. Asheville, 150 N. C. 752, 22 L.R.A.(N.S.) 944, 64 S. E. 881, holding city not liable for death from disease from river into which it discharges its sewage from free public sewer; Moest v. Buffalo, 116 App. Div. 662, 101 N. Y. Supp. 996, holding county not liable for death occasioned by negligent operation of elevator in city and county hall occupied by county officers and courts.

Distinguished in Southeast v. New York, 96 App. Div. 602, 89 N. Y. Supp. 630, holding city liable to another municipal corporation for damages from negligent construction of reservoir dam used in its water supply system.

Recovery of money deposited as bail.

Cited in Sutherland v. St. Lawrence County, 42 Misc. 46, 85 N. Y. Supp. 696, permitting recovery of money received by county officer in lieu of bail, which he was not authorized to take.

Removal of bridge commissioners.

Approved in People *ex rel.* Baird v. Nixon, 32 App. Div. 516, 53 N. Y. Supp. 230, holding mayor of New York has power to remove commissioners of East river bridge.

Liability of city or county for unauthorized acts.

Cited in Acme Road Machinery Co. v. Bridgewater, 185 N. Y. 5, 77 N. E. 879,

holding town not liable for road machine whose purchase was contracted for by commissioner of highways, where statute provides different manner of purchase; People ex rel. Slosson v. Westchester County, 116 App. Div. 847, 102 N. Y. Supp. 402, on liability of county for legal services in prosecution of claims for substituted highways.

Actions by and against municipality in corporate capacity.

Cited in Albany v. Hooker, 204 N. Y. 11, 97 N. E. 403, holding that authority of counties to sue and be sued as quasi corporations has been restricted to matter pertaining to them in their corporate capacity as distinguished from their governmental capacity; Hempstead v. Lawrence, 138 App. Div. 475, 122 N. Y. Supp. 1037, holding that under statute where there is an existing liability at law, or as existing right which town may enforce, method of its enforcement must be such as if it were natural person.

39 L. R. A. 58, JASPER COUNTY v. ALLMAN, 142 Ind. 573, 42 N. E. 206.

Liability of county for acts of officers or servants.

Approved in Schnurr v. Huntington County, 22 Ind. App. 190, 53 N. E. 425, holding county not liable for injury due to negligent use of explosives by contractor employed by county commissioners to construct sewer; Wood v. State, 155 Ind. 7, 55 N. E. 959, holding county not liable for acts of its county treasurer in receipt and disbursement of school fund; McAndrews v. Hamilton County, 105 Tenn. 405, 58 S. W. 483, holding county not liable to one injured by runaway mule left carelessly tied by employee of county house of correction, and referring particularly to annotation in 39 L. R. A. 58.

Cited in State ex rel. Hendricks v. Marion County, 170 Ind. 608, 82 N. E. 482, holding county not liable for acts or omissions of its officers in construction of highways belonging to state; Talbott v. St. Joseph County, 42 Ind. App. 199, 85 N. E. 376, holding county not liable for tortious act of its officer in construction of county bridge.

Maintenance of bridges.

Followed in Cowan v. Adams County, 142 Ind. 700, 42 N. E. 212; Montgomery County v. Coffenberry, 14 Ind. App. 701, 42 N. E. 491; Johnson County v. Reinier, 18 Ind. App. 120, 47 N. E. 642,— holding counties not liable in damages for negligence with reference to bridges; Johnson County v. Hemphill, 14 Ind. App. 220, 42 N. E. 760, holding county not liable for injury due to defective or unsafe condition of approach to bridge.

Approved in Spencer v. Hudson County, 66 N. J. L. 303, 49 Atl. 483, holding county not liable for nonrepair of bridge unless liability therefor is imposed by statute; Connersville v. Snider, 31 Ind. App. 219, 67 N. E. 555, holding city liable for negligence in omitting to keep bridges in repair; Warren County v. Mankey, 29 Ind. App. 58, 63 N. E. 864, holding bridges cannot be repaired out of gravel-road repair fund.

Cited in Huntington County v. Bonebrake, 146 Ind. 312, 45 N. E. 470, holding, on second appeal in action for injuries sustained from fall of bridge, appellant county precluded by law of case from contending it was not required to keep bridge in repair; Karr v. Putnam County, 170 Ind. 576, 85 N. E. 1, on duty of county in regard to public highway bridges owned by state.

Liability of municipality for acts or negligence of officers.

Approved in First Nat. Bank v. Adams School Twp. 17 Ind. App. 380, 46 N. E. 832, holding township not liable for unauthorized act of school trustee in purchasing books; Kentland v. Hagan, 17 Ind. App. 2, 46 N. E. 43, holding incorporated town may be liable for injuries occurring from defective streets or

sidewalks; Boswell v. Wakley, 149 Ind. 66, 48 N. E. 637, holding city or incorporated town liable for injury sustained on defective walk because of its negligence.

Cited in James v. Wellston Twp. 18 Okla. 69, 13 L.R.A.(N.S.) 1236, 90 Pac. 100, 11 Ann. Cas. 938, holding township not liable for injuries from defective highway; Pritchett v. Knox County, 42 Ind. App. 8, 85 N. E. 32, holding county not liable for annoyance to adjoining owner because of location of county jail.

Distinguished in Worthington v. Morgan, 17 Ind. App. 604, 47 N. E. 235, holding town may be liable in damages for injury due to defective condition of street.

Power of county commissioners.

Approved in State *ex rel.* Scott v. Hart, 144 Ind. 109, 33 L. R. A. 120, 43 N. E. 7, holding lease of rooms in courthouse to be used for private purposes cannot lawfully be made by county commissioners in absence of statutory authority; Deweese v. Hutton, 144 Ind. 116, 43 N. E. 13, holding failure of board of county commissioners to make estimate for repair of bridge as required by statute invalidates contract made therefor; Wrought Iron Bridge Co. v. Hendricks County, 19 Ind. App. 678, 48 N. E. 1050, holding person contracting with county to build bridge must inquire into statutory power of commissioners to make contract; Jay County v. Fertich, 18 Ind. App. 5, 46 N. E. 699, holding power of county commissioners to allow accounts chargeable against county, not otherwise provided for, limited to just claims against county; Myers v. Gibson, 147 Ind. 454, 46 N. E. 914, holding board of county commissioners without power to submit disputed claim against county to arbitration.

Cited in State ex rel. Workman v. Goldhait, 172 Ind. 217, 87 N. E. 133, on manner of exercise of powers conferred by statute on county commissioners; Gordon v. Corning, 174 Ind. 341, 92 N. E. 59, holding that legislature may clothe boards of commissioners with whatever jurisdiction it desires them to have.

Compensation of commissioner.

Approved in McCollom v. Shaw, 21 Ind. App. 70, 51 N. E. 488, holding member of board of county commissioners not entitled to compensation for services rendered alone, or jointly with other commissioners, when not participating as member in lawful session of corporate body.

Res judicata.

Approved in Carroll County v. Pollard, 17 Ind. App. 479, 46 N. E. 1012, holding county commissioners not bound by adjudication of circuit court of county to which criminal case has been removed, as to compensation of attorneys appointed to assist in prosecution or defense.

Stare decisis.

Approved in State *ex rel.* Guilbert v. Lewis, 69 Ohio St. 208, 69 N. E. 132, holding doctrine of *stare decisis* not applicable to single decision clearly erroneous, under which no material property rights have been established.

Cited in Rocker v. Metzger, 171 Ind. 370, 86 N. E. 403; holding stare decisis applies where decision has become rule of property; Kinney v. Heuring, 44 Ind. App. 602, 87 N. E. 1053, holding that decisions of long standing in regard to descent of property from wife to husband becomes rules of property and should not be disturbed by courts; Herron v. Whitely Malleable Casting Co. 47 Ind. App. 338, 92 N. E. 555, holding that decisions of supreme court do not constitute the law but are merely evidence thereof.

Cited in note (73 Am. St. Rep. 102) on limitation on doctrine of stare decisis.

Estoppel of property owner to contest sewer assessment.

Approved in Spaulding v. Baxter, 25 Ind. App. 491, 58 N. E. 551, holding property owner who permitted construction of sewer without objection not estopped from contesting special assessment therefor, where council had directed expense to be paid out of general fund.

Proximate cause of accident.

Cited in footnote to Walrod v. Webster County, 47 L. R. A. 480, which holds defects in railing of bridge, proximate cause of accident from breaking of rail by team frightened by lightning flash.

39 L. R. A. 75, SCHUSSLER v. HENNEPIN COUNTY, 67 Minn. 412, 64 Am. St. Rep. 424, 70 N. W. 6.

Notice to officer as binding on public corporation.

Approved in Board of Education v. Robinson, 81 Minn. 309, 83 Am. St. Rep. 374, 84 N. W. 105, holding public corporation not bound by information obtained by officer when not acting in official capacity.

Liability of county for failure to repair ditch.

Distinguished in Gaare v. Clay County, 90 Minn. 532, 97 N. W. 422, holding county not liable for neglect of county commissioners to repair break in ditch constructed by state.

Liability of township for property taken for public use.

Approved in Noble Twp. v. Aasen, 8 N. D. 81, 76 N. W. 990, holding township liable for private property taken for public use by it, although manner of taking was unlawful.

Ratification of unauthorized acts of municipal officers.

Cited in Viebahn v. Crow Wing County, 96 Minn. 279, 3 L.R.A.(N.S.) 1128, 104 N. W. 1089, holding county liable where it did not repudiate act of commissioners in constructing bridge in violation of act of Congress and without authority.

Liability of county for damages from interference with flow of stream.

Distinguished in Shawnee County v. Jacobs, 79 Kan. 80, 21 L.R.A.(N.S.) 213, 99 Pac. 817, holding county not liable for overflow of adjacent lands caused by bridge.

39 L. R. A. 82, SMITH v. ALLEN, 18 Wash. 1, 63 Am. St. Rep. 864, 50 Pac. 783.

Equitable lien.

Approved in Hill Estate Co. v. Whittlesey, 21 Wash, 147, 57 Pac. 345, holding one who loaned money to church vestrymen, who without authority executed mortgage on church property to secure loan, not entitled to equitable lien.

Vendor's lien.

Cited in Fowlkes v. Lee, 84 Miss. 519, 68 L.R.A. 933, 36 So. 1036, 2 Ann. Cas. 466 (dissenting opinion), on right to vendor's lien where deed recites absolute payment.

Cited in footnote to Doty v. Deposit Bldg. & L. Asso. 43 L. R. A. 551, which holds vendor's lien enforceable against realty for entire amount remaining unpaid on sale for gross amount, of realty and personalty.

Distinguished in Balfour v. Parkinson, 84 Fed. 859, holding that where it is agreed vendor shall have lien upon real estate, as security for deferred payment, to be evidenced by mortgage which is executed before conveyance of title, the conveyance and mortgage are in law one transaction.

Change of venue.

Distinguished in Critler v. Jacobson, 66 Wash. 323, 119 Pac. 819, holding that upon application for change of venue on ground that action is not commenced in county of defendant's residence under statute, plaintiff may controvert defendant's allegation as to residence.

39 L. R. A. 84, DUCKETT v. NATIONAL MECHANICS' BANK, 86 Md. 400, 63 Am. St. Rep. 513, 38 Atl. 983.

Notice to bank.

Approved in Lindsay v. Continental Nat. Bank, 82 Mo. App. 309, holding bank chargeable with notice that account is trust fund, where it is kept as agency account and depositor stated money was not his own.

Cited in Batchelder v. Central Nat. Bank, 188 Mass. 26, 73 N. E. 1024, holding mere knowledge by bank that trust funds stand to credit of depositor's personal account does not charge bank with knowledge that depositor is acting dishonestly; State v. Omaha Nat. Bank, 66 Neb. 891, 93 N. W. 319, on facts constituting constructive notice.

Cited in note (1 L.R.A.(N.S.) 190) on word "trustee" as affecting negotiability or as notice of beneficiaries' rights.

Liability for breach of trust.

Approved in Duckett v. National Bank, 88 Md. 21, 41 Atl. 161, holding all persons who knowingly aid in committing a breach of trust responsible for the wrong; American Bonding Co. v. National Mechanics Bank, 97 Md. 604, 99 Am. St. Rep. 466, 55 Atl. 395, holding bank crediting interest on public funds to personal account of officer depositing them is liable to latter's surety; Barroll v. Forman, 88 Md. 199, 40 Atl. 883, holding purchaser of land from trustee liable to cotrustee for purchase price, when he transferred notes indorsed in blank for deferred payments, which trustee misappropriated.

Cited in Thomas C. Basshor Co. v. Carrington, 104 Md. 630, 65 Atl. 360, holding president and building committee, charged with duty of erecting building liable for expenditure of funds for payment of president's personal debt.

Cited in note (52 L. R. A. 793) on liability of bank or other depositary or of drawee for taking deposit of agent, fiduciary, or other representative to pay his own debt.

— Parties to action.

Cited in Gaither v. Bauernschmidt, 108 Md. 7, 69 Atl. 425, on proper parties defendant in action for breach of trust.

Jurisdiction over actions involving trust estates.

Cited in Safe Deposit & T. Co. v. Cahn, 102 Md. 539, 62 Atl. 819, holding equity has jurisdiction of action by substituted trustee against participator, with knowledge, in malversations of former trustee.

Statute of limitations.

Cited in Blackett v. Ziegler, 147 Iowa, 173, 125 N. W. 874, holding that transferee of trust property becomes trustee by construction of law, so that statute of limitations begins to run from time of transfer or as soon as cestui que trust has knowledge thereof.

Cited in note (104 Am. St. Rep. 746, 766) on who may plead statute of limitations.

Distinguished in Beecher v. Foster, 51 W. Va. 615, 42 S. E. 647, holding constructive trust subject to statute of limitations.

Nonresident directors of parties.

Approved in Fisher v. Parr, 92 Md. 274, 48 Atl. 621, holding in action to hold directors of corporation personally liable for negligence in performance of their duties, nonresident directors need not be joined as parties.

Payment of check.

Approved in Nehawka Bank v. Ingersoll, 2 Neb. (Unof.) 624, 89 N. W. 618, holding bank cannot refuse to honor check of depositor on ground that latter's title to money deposited is defective.

— Trust deposits.

Cited in First Dentor Nat. Bank v. Kenney, 116 Md. 34, 81 Atl. 227, holding that check drawn to order of payee "attorney" does not necessarily impress check with any trust; McMahon v. German-American Nat. Bank, 111 Minn. 316, 29 L.R.A.(N.S.) 71, 127 N. W. 7, holding that where certificate of deposit is made payable to order of minor or guardian, and bank pays person not named in certificate burden rests on bank to show that person receiving money was legally appointed guardian; Interstate Nat. Bank v. Claxton, 97 Tex. 578, 65 L.R.A. 826, 104 Am. St. Rep. 885, 80 S. W. 604, holding bank incurs no liability in paying out money on checks of depositor, though he holds in fiduciary capacity if it does not participate in any breach of trust by depositor; American Nat. Bank v. Fidelity & D. Co. 129 Ga. 130, 58 S. E. 867, 12 Ann. Cas. 666, holding bank liable on checks paid out on signature of trustee but having no countersignature of judge as provided by order of court appointing receiver of which bank had notice; Lowndes v. City Nat. Bank, 82 Conn. 19, 22 L.R.A.(N.S.) 413, 72 Atl. 150, on right of bank to presume that proper use of proceeds of check regularly drawn and presented is intended; State v. Omaha Nat. Bank, 66 Neb. 900, 93 N. W. 319, on liability of bank for paying trustee's checks.

39 L. R. A. 90, TOPEKA WATER CO. v. WHITING, 58 Kan. 639, 50 Pac. 877.

Liability for frightening horse.

Followed in Denison & S. R. Co. v. Powell, 35 Tex. Civ. App. 459, 80 S. W. 1054, holding evidence sufficient to go to jury on question of negligence of defendant's servants in ringing gong after discovery of fright in plaintiff's horse.

Approved in Chicago, R. I. & P. R. Co. v. Parks, 59 Kan. 715, 54 Pac. 1052, holding railroad company liable to one injured when his horse took fright at sound of locomotive whistle unnecessarily and negligently blown.

Cited in Cunningham v. Clay Twp. 69 Kan. 375, 76 Pac. 907, holding evidence that other teams of ordinarily gentle disposition had been frightened by same obstruction in highway admissible in action by plaintiff for the damages from frightening of horse by obstruction in street; Powell v. Nevada, C. & O. R. Co. 28 Nev. 346, 82 Pac. 96, holding it for the jury whether railroad company blew whistle in its shops so as to be unnecessarily alarming and of menace to right to drive ordinarily gentle horse on highway; O'Donnell v. O'Neill, 130 Mo. App. 364, 109 S. W. 815, holding driver of automobile not liable where on discovery of fright of horse, he backs machine away and stops, the noise of the machine not being unusual.

Cited in footnote to Lynn v. Hooper, 47 L. R. A. 752, which sustains liability for frightening of horse by hay cap.

Contributory negligence as question for jury.

Approved in Mischke v. Seattle, 26 Wash. 625, 67 Pac. 357, holding contributory

negligence of one injured by falling over open trapdoor in sidewalk while holding umbrella in front of him on rainy day, question for jury.

Municipal water supply.

Cited in note (61 L. R. A. 60) on establishment and regulation of municipal water supply.

39 L. R. A. 93, MAYSVILLE v. WOOD, 102 Ky. 263, 80 Am. St. Rep. 355, 43 S. W. 403.

Power of city to take property in trust for education of orphans.

Cited in footnote to Clayton v. Hallett, 59 L. R. A. 407, which sustains city's power to take property in trust for education of poor white male orphans.

39 L. R. A. 95, LUTHER v. CLAY, 100 Ga. 236, 28 S. E. 46.

Estoppel to question propriety of ruling or judgment.

Approved in American Grocery Co. v. Kennedy, 100 Ga. 466, 28 S. E. 241, holding party cannot question regularity of judgment made at his request and induced by his action; Vaughn v. Strickland, 108 Ga. 661, 34 S. E. 192, holding party who, by his own objection and by acquiescence in objection of his adversary, obtains adjudication that neither magistrate of district is competent to try case, estopped from denying that state of facts existed entitling justice from another district to preside; Waldrop v. Wolff, 114 Ga. 620, 40 S. E. 830, holding party invoking rule resulting in nonsuit cannot question its propriety; Howard v. State, 115 Ga. 253, 41 S. E. 654, holding accused cannot complain of erroneous instructions which were given at his request.

Cited in Griffin v. Collins, 122 Ga. 107, 49 S. E. 827, holding where person on own application is appointed guardian and gives bond, he cannot thereafter in suit on bond deny validity of appointment; Gate City Cotton Mills v. Cherokee Mills, 128 Ga. 175, 57 S. E. 320, holding party who obtains ruling in action for failure to deliver under contract as to place of delivery estopped to question court's charge as to measure of damages on theory of delivery at such place; Haber-Blum-Bloch Hat Co. v. Friesleben, 5 Ga. App. 124, 62 S. E. 712, holding party who assumes position in legal proceeding and obtains ruling by court thereon in which other party acquiesces to his prejudice, cannot thereafter assume contrary position because his interests have changed; Mance v. State, 5 Ga. App. 230, 62 S. E. 1053, holding state cannot urge any transaction which it might have urged under former prosecution, where after a former trial and acquittal and within statute of limitation second accusation is made to which special plea is filed of previous acquittal, which state takes issue and verdict is rendered against plea.

Estoppel to deny deed.

Cited in footnote to Marden v. Dorthy, 46 L. R. A. 694, which holds genuine signature to deed obtained by artifice does not estop apparent grantor from denying its validity.

Effect of record satisfaction of mortgage.

Cited in Brown v. Koffler, 133 Mo. App. 501, 113 S. W. 711, holding direct proceeding to impeach statutory entry of satisfaction of mortgage not required, it being only prima facie.

39 L. R. A. 100, CARTER v. PRODUCERS' OIL CO. 182 Pa. 551, 38 Atl. 571.

Election of purchaser of stock to membership.

Cited in Carter v. Producers' Oil Co. 200 Pa. 580, 50 Atl. 167, holding limited

partnership association cannot elect purchaser of stock a member in regard to part of shares held by him, and refuse him election as to rest.

By-law restricting transfer of stock.

Cited in footnote to Spurgeon v. Santa Ana Valley Irrig. Co. 39 L. R. A. 701, which holds purchaser at sale of delinquent stock for assessments not affected by by-law restricting transfers.

Regularity of proceedings of association.

Approved in Ostrom v. Greene, 161 N. Y. 362, 55 N. E. 919, holding regularity of proceedings of unincorporated association without constitution or by-laws should be determined by law of corporations and copartnerships and by common parliamentary rules.

Partnership association as corporation and citizen.

Cited in Great Southern Fire Proof Hotel Co. v. Jones, 177 U. S. 457, 44 L. ed. 845, 20 Sup. Ct. Rep. 690, holding limited partnership association not citizen of the state within jurisdictional requirement of diverse citizenship.

Cited in footnote to Edwards v. Warren Linoline & Gasoline Works, 38 L. R. A. 791, which holds partnership association of Pennsylvania regarded in Massachusetts as association or partnership, instead of corporation.

Distinguished in Andrew Bros. Co. v. Youngstown Coke Co. 30 C. C. A. 299, 58 U. S. App. 444, 86 Fed. 591, holding limited partnership association a corporation within jurisdictional requirement of diverse citizenship.

39 L. R. A. 107, BENTON v. JOHNCOX, 17 Wash. 277, 61 Am. St. Rep. 912, 49 Pac. 495.

Followed without discussion in Gose v. Blalock, 21 Wash. 76, 57 Pac. 342.

Rights of riparian owner and appropriators.

Approved in Griffith v. Holman, 23 Wash. 356, 54 L. R. A. 182, 83 Am. St. Rep. 821, 63 Pac. 239, holding right of fishing in fresh-water non-navigable streams is in riparian owners; New Whatcom v. Fairhaven Land Co. 24 Wash. 500, 54 L. R. A. 195, 64 Pac. 735, holding riparian rights of grantee of government prior to adoption of state Constitution determined by rule of common law so far as not repugnant to existing laws; Prescott Irrig. Co. v. Flathers, 20 Wash. 456, 55 Pac. 635, holding irrigation company not required to condemn rights of riparian owners below head of ditch on stream; Jones v. Conn, 39 Or. 36, 54 L. R. A. 633, 87 Am. St. Rep. 634, 64 Pac. 855, holding water cannot be taken from stream to irrigate riparian land in such quantities as to materially injure lower proprietors on stream; Crawford Co. v. Hathaway (Crawford Co. v. Hall) 67 Neb. 341, 60 L. R. A. 897, footnote p. 889, 108 Am. St. Rep. 647, 93 N. W. 781, holding fact that irrigation is essential to successful agriculture does not render common-law rule defining rights of riparian proprietors inapplicable.

Cited in Avery v. Johnson, 59 Wash. 335, 109 Pac. 1028, holding that where first appropriator of water has perfected his title, and proceeded with reasonable diligence in extending his cultivated area, he is entitled to quantity of water needed to irrigate his land as against subsequent appropriators; Methow Cattle Co. v. Williams, 64 Wash. 460, 117 Pac. 239, to the point that right to use of water of stream passing through land passes with conveyance of land as part and parcel of land itself; Still v. Palouse Irrig. & Power Co. 64 Wash. 608, 117 Pac. 466, holding that lower riparian owner is entitled to natural flow of stream at regular flood seasons beneficially flooding his lands; Nesalhous v. Walker, 45 Wash. 624, 88 Pac. 1032, holding riparian owners of same quantity

and character who acquire rights to land from government before appropriation of water are entitled to equal distribution of water for irrigation after necessary use for domestic purpose by each; Nielson v. Sponer, 46 Wash. 16, 123 Am. St. Rep. 960, 89 Pac. 155, holding lower riparian owner has right to use water for domestic purposes flowing in defined stream through his premises, though the waters originate in land of upper owner, and upper owner cannot by irrigation divert all the water in absence of prior legal appropriation; Judson v. Tide Water Lumber Co. 51 Wash. 169, 98 Pac. 377, holding riparian owner of lands on navigable, tidal river has right to prevent obstruction of flow or diversion of its waters; Weidensteiner v. Mally, 55 Wash. 81, 104 Pac. 143, holding appropriator of water for irrigation purposes not effective as against one who has made a prior appropriation thereof; Morris v. Bean, 146 Fed. 433, holding where an appropriation of water on public lands has been made, subsequent settler takes subject to appropriation thus made; Sander v. Wilson, 34 Wash. 664, 76 Pac. 280, on rights of first appropriator where lands are not public lands; State ex rel. Kettle Falls Power & Irrig. Co. v. Superior Ct. 46 Wash. 507, 90 Pac. 650, on right to condemn riparian rights for irrigation purposes.

Cited in footnote to Salt Lake City v. Salt Lake City Water & Electrical Power Co. 61 L. R. A. 648, which denies prior appropriator's right to complain of noninjurious use by upper proprietor.

39 L. R. A. 112, SIDDALL v. JANSEN, 168 Ill. 43, 48 N. E. 191.

When appellate court authorized to recite facts.

Approved in Hogan v. Chicago, 168 Ill. 556, 48 N. E. 210, holding appellate court only authorized to recite facts found, when it differs from conclusion of trial court.

When case should be submitted to jury.

Approved in Dallemand v. Saalfeldt, 73 Ill. App. 153; Corbin v. Western Electric Co. 78 Ill. App. 525; Loehde v. Halsey, 88 Ill. App. 453; Brezinski v. Swift & Co. 91 Ill. App. 539; Norton Bros. v. Nadebok, 92 Ill. App. 545; O'Donnell v. Lake Shore & M. S. R. Co. 100 Ill. App. 429; Cooney v. United States Wringer Co. 101 Ill. App. 472,—holding case should be submitted to jury where evidence tends to prove material allegations of declaration; Barnes v. Western Wheel Works, 84 Ill. App. 653, and Gravadahl v. Chicago Ref. Co. 85 Ill. App. 345, holding evidence should be submitted to jury when it is such that reasonable men of fair intelligence might reach different conclusions.

Cited in Linnberg v. Rock Island, 136 Ill. App. 499, holding it for the jury whether city was negligent for maintaining "attractive nuisance" to child ten years old in allowing water to accumulate to form pond in depressed vacant lot whereon a portion of a sidewalk floated, forming a raft.

Meaning of "evidence tending to prove."

Approved in Offutt v. World's Columbian Exposition, 175 Ill. 475, 51 N. E. 651, holding phrase "evidence tending to prove," used in peremptory instruction, means evidence upon which jury may reasonably decide in favor of party producing it.

Liability for injury to or death of child.

Approved in Edgington v. Burlington, C. R. & N. R. Co. 116 Iowa, 421, 57 L. R. A. 566, 90 N. W. 95, holding railroad company liable to infant of tender years for injury received on turntable maintained in unfenced lot, so near street as to attract children, in absence of reasonable care to keep it fastened; Union Stock Yard & Transit Co. v. Butler, 92 Ill. App. 170, holding stockyard com-

pany not liable to infant injured upon its tracks on ground that attractiveness of premises enticed him into danger, where child entered on invitation of his brother; Cowley v. Chicago & A. R. Co. 87 Ill. App. 127, holding railroad company not required to guard track against infant children; Donk Bros. Coal & Coke Co. v. Leavitt, 109 Ill. App. 388, holding owner of premises on which there is unguarded cistern liable in damages for death of child drowned therein.

Cited in Grauslis v. Kellyville Coal Co. 127 Ill. App. 312, holding defendant did not maintain an "attractive nuisance" whereby he was liable for injury to child from pulley operating cable cars from mine to surface of earth, the complaint not showing how child came on premises.

Cited in footnotes to Kopplekom v. Colorado Cement Pipe Co. 54 L. R. A. 284, which holds owner of uninclosed city lot liable for injury to young child by toppling over of large cement pipe used by children as plaything; Ryan v. Towar, 55 L. R. A. 310, which denies landowner's duty to make premises safe for attempting to rescue trespassing child caught in waterwheel in unused building; Uttermohlen v. Bogg's Run Min. & Mfg. Co. 55 L. R. A. 911, which denies liability of mine owner for injury to trespassing child by cable and pulleys hauling coal cars; Brinkley Car Works Mfg. Co. v. Cooper, 57 L. R. A. 724, which denies liability for injury to six-year-old boy from carelessly walking into pool of hot water: Paolino v. McKendall, 60 L. R. A. 133, which denies duty of occupier of land burning rubbish to guard young children accustomed to play there, from fire.

Cited in notes (4 L.R.A.(N.S.) 805) on master's liability for injury to child invited into places of danger by employee: (19 L.R.A.(N.S.) 1142) on attractive nuisance; (24 L.R.A.(N.S.) 498) on duty and liability of owner of premises to child visitor of employee.

Distinguished in Heimann v. Kinnare, 190 Ill. 164, 52 L. R. A. 655, 83 Am. St. Rep. 123, 60 N. E. 215, holding boy thirteen years old, who jumps onto ice rotten and partly covered with water and is drowned because of its giving way guilty of negligence precluding recovery: Putney v. Keith, 98 Ill. App. 291, holding daughter of owner of house not liable for leaving dish of hot water on floor, into which child invited to house fell and was scalded; Norman v. Bartholomew, 104 Ill. App. 673, holding employer not liable for injury in mangle of infant son of employee brought into mangle room of laundry by parent to prevent him from quarreling with another boy; Casey v. Adams, 137 Ill. App. 408, where there was no invitation express or implied to trespass upon the dangerous premises.

Disapproved in Delaware, L. & W. R. Co. v. Reich, 61 N. J. L. 638, 41 L. R. A. 833, 68 Am. St. Rep. 727, 40 Atl. 682, holding railroad company not liable for injury sustained by child on unguarded turntable located on private property of company.

Liability for injury from improperly guarded elevator.

Distinguished in Kappes v. Brown Shoe Co. 116 Mo. App. 173, 90 S. W. 1158, holding, in absence of statute, employer who provides ample stairways is not liable for injury to employee from improperly guarded freight elevator gate, where employee attempts to use elevator as means of egress from upper floor.

Negligence as question for jury.

Approved in Dallemand v. Saalfeldt, 73 Ill. App. 158, holding question whether death of employee killed on elevator while engaged in line of his duty was due to employer's negligence, for jury, where latter failed to comply with city ordinance as to elevators.

Cited in Shortridge v. Scarritt Estate Co. 145 Mo. App. 302, 130 S. W. 126, holding it for the jury whether defendant was negligent in leaving holes in door of elevator shaft whereby a child could insert its head; Stollery v. Cicero & P. Street R. Co. 243 Ill. 293, 90 N. E. 709, holding question of defendants' negligence in leaving dangerous unguarded coal conveyor on premises near which children congregated for jury.

Averment of duty.

Approved in Jensen v. Wetherell, 79 Ill. App. 35, holding averment of duty resting on defendant in action for personal injuries superfluous where facts alleged in declaration show legal liability, and is useless where they do not.

Duty of court in giving requested instructions.

Cited in Nicholls v. Colwell, 113 Ill. App. 224, holding trial court in determining the propriety of a peremptory instruction, is not authorized nor required to weigh the evidence or determine where preponderance thereof lies.

Effect of violation of statute in action for personal injury.

Cited in United States Brewing Co. v. Stoltenberg, 113 Ill. App. 441, holding the violation of an ordinance, having the force and effect of a statute, prohibiting fast driving, constitutes prima facie case of negligence if the violation caused or contributed to an injury received.

Cited in note (5 L.R.A.(N.S.) 267) on violation of police ordinance as ground for private action.

39 L. R. A. 115, IAGO v. IAGO, 168 Ill. 339, 61 Am. St. Rep. 120, 48 N. E. 30.

Cross-bill to annul marriage of insane defendant.

Approved in Pyott v. Pyott, 191 Ill. 288, 61 N. E. 88, holding, in suit by wife against insane husband for separate maintenance, husband's guardian may maintain cross-bill to annul the marriage.

Counsel fees to defend bill to review decree of divorce.

Approved in Elzas v. Elzas, 183 Ill. 163, 55 N. E. 669, holding bill to review decree of divorce is "case for divorce" within statute authorizing court to require payment to wife of counsel fees.

Insanity as affecting judgments.

Cited in notes (35 L.R.A.(N.S.) 1095, 1096) on insanity as affecting judgments; (130 Am. St. Rep. 853, 856) on judgments for or against insane persons.

39 L. R. A. 116, DIXON v. PEOPLE, 168 Ill. 179, 48 N. E. 108.

Compensation of expert witness.

Followed in North Chicago Street R. Co. v. Zeiger, 182 Ill. 14, 74 Am. St. Rep. 157, 54 N. E. 1006, Affirming 78 Ill. App. 470, holding physician subpœnaed and interrogated as expert witness can be punished as for contempt if he refuses to testify without receiving compensation other than ordinary witness fees.

Approved in Chicago & N. W. R. Co. v. Friend, 86 Ill. App. 159, holding expert witness cannot claim extra compensation on ground that his time is more valuable than that of ordinary men; Piatt County v. Knott, 99 Ill. App. 422, holding county not liable for services of physician employed by coroner to examine dead body to enable him to give expert testimony at inquest.

Cited in Burnett v. Freeman, 125 Mo. App. 685, 103 S. W. 121, holding physician called to testify in personal injury case can be compelled to testify as expert without compensation other than ordinary witness fee; Main v. Sherman County, 74 Neb. 156, 103 N. W. 1038, holding in absence of special contract one testifying as expert entitled only to fee allowed by statute.

Annotation cited in Ramschael's Estate, 24 Pa. Super. Ct. 265, holding special contract to pay more than regular witness fees in ordinary cases is void where law has fixed amount to be paid witnesses.

Cited in note (25 L.R.A.(N.S.) 1040, 1041, 1042) on compensation of expert witnesses.

Compensation of physician for extra services.

Distinguished in Lewis v. Blye, 79 Ill. App. 259, holding physician entitled to payment for extra services performed at request of party to suit.

Right of witness for accused to claim fees from county.

Cited in Philler v. Waukesha County, 139 Wis. 216, 25 L.R.A.(N.S.) 1044, 131 Am. St. Rep. 1055, 120 N. W. 829, 17 Ann. Cas. 712, holding county cannot be held liable for compensation for preparation as expert in criminal case as in behalf of accused under contract with accused's attorneys.

Cited in footnote to Henderson v. Evans, 40 L. R. A. 426, which denies right of witnesses for accused to claim fees from county.

39 L. R. A. 126, STATE v. HENLEY, 98 Tenn. 665, 41 S. W. 352, 1104.

Legislative power to abolish courts.

Cited in McCully v. State, 102 Tenn. 550, 46 L. R. A. 578, 53 S. W. 134 (dissenting opinion), majority holding power to abolish existing courts and to increase and diminish the number is included in the legislative power to ordain and establish them.

When court will pass upon validity of statute.

Approved in Gribble v. Wilson, 101 Tenn. 616, 49 S. W. 736, holding court will only pass upon validity of statute when question is raised and fully presented to court; Leeper v. State, 103 Tenn. 511, 48 L. R. A. 169, 53 S. W. 962, holding that one who insists upon unconstitutionality of statute must point out specific constitutional provision which it either expressly or impliedly violates.

Grounds for annulling statute.

Approved in Dayton Coal & I. Co. v. Barton, 103 Tenn. 614, 53 S. W. 970, holding legislation not subject to annulment by courts on supposed ground of opposition to natural equity or to the inherent rights of freemen; Illinois C. R. Co. v. Wells, 104 Tenn. 710, 59 S. W. 1041, holding court cannot consider whether statute tends to encourage litigation and thereby violates sound public policy; Crafts v. Ray, 22 R. I. 187, 49 L. R. A. 608, 46 Atl. 1043, holding law relating to taxation cannot be held unconstitutional upon general or uncertain expressions, but only upon plain restrictions of constitution.

Cited in Grainger County v. State, 111 Tenn. 291, 80 S. W. 750, holding limitation on power of legislature in matter of redistricting counties ought not to be imposed by doubtful construction.

Class legislation.

Approved in Breyer v. State, 102 Tenn. 106, 50 S. W. 769, holding statute prohibiting barbering on Sunday under heavier penalty than is imposed for an offense under general statute against Sunday violation not unconstitutional as class legislation; State *ex rel.* Astor v. Schlitz Brewing Co. 104 Tenn. 732, 78 Am. St. Rep. 941, 59 S. W. 1033, holding class legislation in which classification is natural and reasonable is valid, but where classification is arbitrary and capricious it is invalid.

Restriction of right of contract.

Approved in Harbison v. Knoxville Iron Co. 103 Tenn. 434, 56 L. R. A. 319, 76 Am. St. Rep. 682, 53 S. W. 955, and Dayton Coal & I. Co. v. Barton, 103 Tenn.

614, 53 S. W. 970, holding statute requiring employer to pay in cash on demand, evidences of indebtedness issued to employees, valid restriction to right of contract.

Services rendered by members of posse comitatus.

Cited in footnote to Sears v. Gallatin County, 40 L. R. A. 405, which denies county's liability for services rendered by members of *posse comitatus*.

Costs of trial or appeal.

Approved in Spellings v. State, 99 Tenn. 204, 41 S. W. 444, holding pardon may release convict from fines and imprisonment, but does not extend to costs; Gribble v. Wilson, 101 Tenn. 618, 49 S. W. 736, holding act providing that losing party shall pay additional costs of special jury violates right to trial by impartial and disinterested jury.

Cited in footnote to Knee v. Baltimore City Pass. R. Co. 42 L. R. A. 363, which sustains order staying all further proceedings in action till costs of appeal are paid.

Title of amending or repealing statutes.

Cited in Memphis Street R. Co. v. State, 110 Tenn. 616, 75 S. W. 730, holding act is not amended by reference to chapter and volume of a purported code, not enacted into a code by law and having no general title recognized by law; Memphis & State Line R. Co. v. Union R. Co. 116 Tenn. 513, 95 S. W. 1019; Turner v. State, 111 Tenn. 606, 69 S. W. 774,—holding constitutional requirement that laws repealing, former laws shall contain recital of substance in caption of law repealed, does not apply to implied repeals.

Constitutional rights in trial for crime.

Cited in State v. Sexton, 121 Tenn. 43, 114 S. W. 494, holding violation of game laws being misdemeanor was not within guaranty of trial by indictment.

39 L. R. A. 148, HOCKING v. VIRGINIA F. & M. INS. CO. 99 Tenn. 729, 63 Am. St. Rep. 862, 42 S. W. 451.

Breach of condition as avoiding policy as to mortgagee.

Approved in American Cent. Ins. Co. v. Birds Bldg. & L. Asso. 81 Ill. App. 262, holding that loss on insurance policy made payable to mortgagee as his interest may appear does not prevent breach of conditions of policy from making it void as to him.

Cited in notes (18 L.R.A.(N.S.) 201) on effect of breach of insurance policy by mortgagor on rights of mortgagee; (135 Am. St. Rep. 747) on fire insurance as security for a mortgagee or other lien holder.

Liability of insurer on intentional burning of property.

Cited in note (17 L.R.A.(N.S.) 191) on liability of insurer in case of intentional destruction of property by insured.

39 L. R. A. 148, ILLINOIS C. R. CO. v. O'KEEFE, 168 Ill. 115, 61 Am. St. Rep. 68, 48 N. E. 294.

Who is a passenger.

Approved in Chicago & E. I. R. Co. v. Jennings, 89 Ill. App. 349, holding relation of passenger begins when person intending to take a train goes upon premises where carrier customarily receives passengers; Chicago & N. W. R. Co. v. Weeks, 99 Ill. App. 525, holding one does not become passenger until he has put himself in charge of carrier and has been expressly or impliedly received as such; Chicago & E. I. R. Co. v. Jennings, 190 Ill. 486, 54 L. R. A. 831, 60 N. E. 818, holding duty of railroad company to one as passenger has not

arisen when he is crossing its tracks on public highway before reaching passenger platform, although ticket purchased; Farley v. Cincinnati, H. & D. R. Co. 47 C. C. A. 159, 108 Fed. 17, holding person must be expressly or impliedly received as passenger by carrier before latter obliged to exercise high degree of care and caution for his safety due from carrier to passenger.

Cited in Devine v. Chicago City R. Co. 162 Ill. App. 246, holding that to establish relation of passenger, person claiming to be passenger must have put himself into care of carrier, and carrier must have impliedly, at least have accepted him as passenger; Radley v. Columbia R. Co. 44 Or. 337, 75 Pac. 212, 1 Ann. Cas. 447, holding one not a passenger who goes to station immediately before freight train starts and is told to go some distance to train, and who boards engine at invitation of engineer as train moves, having purchased no ticket nor paid fare; Alabama City, G. & A. R. Co. v. Bates, 149 Ala. 490, 43 So. 98, holding erroneous instruction that a passenger is one who is boarding a car, or attempting to board a car or at station for purpose of being carried, as omitting element of acceptance on part of carrier: Fremont, E. & M. Valley R. Co. v. Hagblad, 72 Neb. 786, 4 L.R.A.(N.S.) 259, 101 N. W. 1033, 9 Ann. Cas. 1096, holding person intending to take passage on train who goes into station within reasonable time prior to time of departure of train, in proper manner and by purchase of ticket or otherwise indicates intention to take passage, is passenger: Chicago, R. I. & P. R. Co. v. Moran, 117 Ill. App. 44, holding boy who boards railroad train for purpose of selling newspapers, in accordance with custom permitting such sale, but without contemplating continuance on train while in motion, not a passenger: Illinois C. R. Co. v. McMillion, 129 Ill. App. 33, holding person who comes upon platform at which freight train has arrived and in response to his inquiry is properly refused permission to ride on such train, does not become passenger; Metropolitan West Side Elev. R. Co. v. Sutherland, 139 Ill. App. 88, holding one who boards car of elevated street railway under mistaken belief that she is boarding car of another company, without at time having intention of being carried by such first company, is not passenger; Strong v. North Chicago Street R. Co. 116 Ill. App. 251, holding relation of carrier and passenger did not exist as to boy who boards street car and stands on step outside of gate which was placed to prevent entrance to car; Steiskal v. Marshall Field & Co. 142 Ill. App. 158, holding it question for the jury whether person seeking employment from large mercantile establishment was properly on premises and was a passenger in elevator of defendant; Hickey v. Chicago City R. Co. 148 Ill. App. 220, holding person a passenger who transfers from one line to another and on account of overcrowding of latter assumes position of danger, although conductor refuses to accept transfer and orders passenger from place of danger but does not stop car for such purpose.

Cited in footnotes to Southern R. Co. v. Smith, 40 L. R. A. 746, which holds person with mileage ticket, trying to cross main track to board train on siding, not a passenger; Keator v. Scranton Traction Co. 44 L. R. A. 546, which holds woman with transfer ticket, injured by breaking of trolley pole while she is approaching car, a passenger; Young v. New York, N. H. & H. R. Co. 41 L. R. A. 193, which holds person with ticket, crossing track from station to platform, a passenger.

Cited in note (104 Am. St. Rep. 584) on who are passengers on street railways.

Validity of stipulation in pass limiting carrier's liability.

Cited in note (37 L.R.A.(N.S.) 235, 239) on validity of stipulation in pass limiting carrier's liability.

39 L. R. A. 152, POTTS v. BREEN, 167 Ill. 67, 59 Am. St. Rep. 262, 47 N. E. 81.

Compulsory vaccination.

Followed in Lawbaugh v. Board of Education, 177 Ill. 574, 52 N. E. 850, holding rule of state board of health compelling vaccination of children as prerequisite to their attending public schools is unreasonable where smallpox not prevalent nor its appearance apprehended.

Approved in Blue v. Beach, 155 Ind. 139, 50 L. R. A. 72, footnote p. 64, 80 Am. St. Rep. 195, 56 N. E. 89, holding power of board of health to prevent spread of contagious diseases includes power to exclude unvaccinated children from public schools when there is danger of epidemic of smallpox; Mathews v. Kalamazoo Bd. of Education, 127 Mich. 536, 54 L. R. A. 736, footnote p. 736, 86 N. W. 1036, holding school-district board authorized to determine qualifications for admission to school and make suitable regulations, without power to make vaccination a condition, where there is no smallpox in town; Morris v. Columbus, 102 Ga. 800, 42 L. R. A. 179, 66 Am. St. Rep. 243, footnote p. 175, 30 S. E. 850, holding legislature may authorize municipal corporation to require all persons within its limits to submit to vaccination whenever epidemic of smallpox exists or may be reasonably apprehended.

Cited in Osborn v. Russell, 64 Kan. 510, 68 Pac. 60, denying right of board of education to require vaccination in absence of epidemic; Com. v. Pear, 183 Mass. 245, 66 N. E. 719, upholding requirement of board of health, during epidemic of smallpox, that inhabitants be vaccinated; People ex rel. Jenkins v. Board of Education, 234 Ill. 425, 17 L.R.A.(N.S.) 712, 84 N. E. 1046, 14 Ann. Cas. 943, holding general police powers authorizing city to make regulations for the promotion of health do not include passage of ordinance make vaccination condition precedent to right to education; Com. v. Pear, 183 Mass. 245, 67 L.R.A. 939, 66 N. E. 719, holding order compelling vaccination lawful exercise of police power by board of health.

Cited in footnotes to State ex rel. Freeman v. Zimmerman, 58 L.R.A. 78, which sustains regulation, in cases of emergency, for vaccination as condition of admission to school; Com. v. Pear, 67 L.R.A. 935, which sustains power of legislature to authorize health authorities of municipality to require under penalty all citizens to be vaccinated when considered necessary for the public health; Re Viemeister, 70 L.R.A. 796, which upholds statute requiring vaccination as proper requisite to attendance at public schools.

Cited in notes (17 L.R.A.(N.S.) 712) on compulsory vaccination; (65 Am. St. Rep. 338) on nonvaccination as cause for which children may be excluded from public schools; (80 Am. St. Rep. 230) on powers as to vaccination which may be delegated to boards of health.

Disapproved in Hutchins v. Durham, 137 N. C. 71, 49 S. E. 46, 2 Ann. Cas. 340, holding it unnecessary that there be epidemic of smallpox to authorize order for vaccination as prerequisite to attendance at school; State ex rel. O'Bannon v. Cole, 220 Mo. 709, 22 L.R.A.(N.S.) 989, 119 S. W. 424, holding school board could make order for vaccination as condition precedent to attendance at school where there was a present or threatened epidemic of smallpox.

Implication of power to compel vaccination.

Approved in Morris v. Columbus, 102 Ga. 802, 42 L. R. A. 180, 66 Am. St. Rep. 243, 30 S. E. 850, holding power of municipality to compel vaccination will not be implied, but must be expressly conferred by legislative enactment.

Reasonableness of school regulation.

Approved in Board of Education v. Bolton, 85 Ill. App. 95, holding rule of

board of education prohibiting children just arriving at school age from entering school, except during the first month of the fall and spring terms, unreasonable.

Tuberculin test.

Approved in Pierce v. Dillingham, 203 Ill. 155, 62 L. R. A. 893, 67 N. E. 846, Affirming 96 Ill. App. 315, holding application of tuberculin test to imported cattle not justifiable if it does not appear that the test will detect presence of tuberculosis.

39 L. R. A. 156, LEIFERMAN v. OSTEN, 167 Ill. 93, 47 N. E. 203.

Defective plumbing as breach of implied covenant for quiet enjoyment.

Cited in footnote to York v. Steward, 43 L. R. A. 125, which holds flow of water from upper to lower rooms from defective plumbing which lessor refuses to remedy, breach of implied covenant for quiet enjoyment.

Duty of landlord over premises plurally tenanted.

Cited in Merchant's Loan & T. Co. v. Boucher, 115 Ill. App. 108, holding landlord of apartment house must exercise reasonable care in the construction of railing in stairway in common use by tenants and under control of landlord, and exercise reasonable care in its maintenance in reasonably safe condition.

Procedure on appeal in forcible detainer.

Cited in Hawthorne v. Cartier Lumber Co. 121 Ill. App. 496, on duty of defendant in appealing from judgment in forcible detainer.

Effect on jurisdiction of failure to complete record on appeal.

Cited in Cumming v. Sisson, 134 Ill. App. 130, holding affidavit, writ and, bond in attachment suit instituted before justice become part of record on appeal though filed after term at which judgment is rendered on appeal.

39 L. R. A. 159, NIBLACK v. PARK NAT. BANK, 169 Ill. 517, 61 Am. St. Rep. 203, 48 N. E. 438.

Necessity of presentation of check.

Approved in Petrue v. Wakem, 99 Ill. App. 468, holding bank not liable on check until it is presented for payment.

Right of bank to appropriate deposit.

Approved in Wyman v. Ft. Dearborn Nat. Bank, 181 Ill. 284, 48 L. R. A. 566, 72 Am. St. Rep. 259, 54 N. E. 946, Affirming 80 Ill. App. 155, holding payee of check drawn by one bank upon another acquires no rights as against drawee bank, where latter, before notice of check, appropriated funds on deposit by crediting amount on debt due from other bank; Bank of Commerce v. Franklin, 90 Ill. App. 94, holding bank has right to charge up overdue note against maker's deposit account and is entitled to hold deposit against check afterward presented; or it may refuse payment of check presented by maker and appropriate deposit.

Cited in note (111 Am. St. Rep. 422) on bankers' liens not founded on contract.

Check as assignment of fund.

Approved in Wyman v. Ft. Dearborn Nat. Bank, 181 Ill. 283, 48 L. R. A. 566, 72 Am. St. Rep. 259, 54 N. E. 946, holding check operates as absolute assignment of fund on which it is drawn, from time it is delivered; Rickert v. Suddard, 184 Ill. 152, 56 N. E. 344, holding member of loan association who receives check in settlement upon withdrawal entitled to payment as against receivers who appropriated the fund.

Cited in Callaham v. Bank of Anderson, 69 S. C. 383, 48 S. E. 293, 2 Ann. Cas. 203 (dissenting opinion), on liability of bank to depositor for refusal to pay check.

Cited in footnote to Love v. Ardmore Stock Exchange, 67 L.R.A. 617, which holds check on open bank account not an assignment of the fund or superior to subsequent attachment levied on such fund before presentation of check for payment.

Cited in note (2 L.R.A.(N.S.) 84) on bank draft or check as assignment of funds drawn upon.

When interest commences to run.

Approved in Laycock v. Parker, 103 Wis. 188, 79 N. W. 327, holding interest commences to run after demand of payment sufficiently specific to inform debtor of claim made and amount he ought to pay.

Revocation of bank's authority to pay check by depositor's death.

Cited in footnote to Raesser v. National Exch. Bank, 56 L. R. A. 174, which holds bank's authority to pay check working assignment *pro tanto* of fund not revoked by depositor's death.

Liability of bank for refusal to honor checks.

Cited in note (80 Am. St. Rep. 870) on liability of bank for refusing to honor checks.

39 L. R. A. 161, BALTIMORE CITY PASS. R. CO. v. NUGENT, 86 Md. 349, 38 Atl. 779.

Restriction of case to issue pleaded.

Cited in State ex rel. Joyce v. Flanigan, 111 Md. 492, 74 Atl. 818, holding where declaration counts on negligence in not anticipating the presence of gas and failure to give servant warning, evidence as to gas emanating from soil in excavation work inadmissible: Merchants' & Miners' Transp. Co. v. State, 108 Md. 567, 70 Atl. 413, holding recovery cannot be had for negligence in failing to rescue employe dragged into water where declaration alleged negligence in allowing employe to become entangled in hawser, dragged into water and drowned.

Amplification of issue in charge.

Approved in Western Maryland R. Co. v. State, 95 Md. 654, 53 Atl. 969, holding where declaration counts on negligence in respect to car axle, issue should not be amplified in charge by requiring railroad company to show it used due care in all subsidiary arrangements necessary to safety of passenger.

Nonactionable injury.

Cited in United Electric Light & P. Co. v. State, 100 Md. 651, 60 Atl. 248, holding no action will lie for death of person caused by no negligence or fault of another; United States Exp. Co. v. Everest, 72 Kan. 524, 83 Pac. 817, on necessity of negligence to give right of action.

Presumption of negligence.

Approved in Chaperon v. Portland Electric Co. 41 Or. 46, 67 Pac. 928, holding fact of injury from broken and hanging electric wire raises presumption of company's negligence.

Testimony of injured person as to physical condition.

Approved in Sellman v. Wheeler, 95 Md. 753, 54 Atl. 512, holding plaintiff in action to recover for personal injuries may describe his physical condition.

Election of jury trial.

Approved in Condon v. Gore, 89 Md. 231, 42 Atl. 900, holding request to

clerk to mark case for jury trial, written on cover of declaration, sufficient election of jury trial.

Incorporation in declaration of agreement sued on.

Distinguished in Smith v. Hallwood Cash-Register Co. 97 Md. 357, 55 Atl. 525, holding incorporation in declaration of agreement sued on is a filing of same within meaning of practice act.

Degree of care required of common carrier.

Cited in Philadelphia, B. & W. R. Co. v. Allen, 102 Md. 113, 62 Atl. 245; Western Maryland R. Co. v. Shivers, 101 Md. 393, 61 Atl. 618,—holding carrier of persons is bound to use utmost care and diligence which human foresight can employ; Memphis Street R. Co. v. Kartright, 110 Tenn. 281, 100 Am. St. Rep. 807, 75 S. W. 719, holding street car company must use highest degree of care and skill in maintaining and keeping in repair its lines.

Cited in note (4 L.R.A.(N.S.) 124, 126) on measure of diligence required toward passenger on street railway.

Submission of case to jury.

Cited in Scarpelli v. Washington Water Power Co. 63 Wash. 25, 114 Pac. 870, holding that where plaintiff's prima facie case is so fully explained and controverted as to leave no substantial conflict, case should be taken from jury.

39 L. R. A. 165, HOLKER v. HENNESSEY, 141 Mo. 527, 64 Am. St. Rep. 524. 42 S. W. 1090.

Fund liable to garnishment.

Followed in Holker v. Hennessey, 143 Mo. 89, 65 Am. St. Rep. 642, 44 S. W. 794, holding money deposited with person to indemnify him against liability as surety on bail bonds not subject to garnishment.

Cited in footnotes to McAlmond v. Bevington, 53 L. R. A. 597, which holds money deposited with justice by third person as bail not subject to garnishment for prisoner's debt; Allen v. Gerard, 49 L. R. A. 351, which denies liability to garnishment of balance in hands of clerk of court of proceeds of sale of perishable property attached; Dale v. Brumbly, 64 L. R. A. 112, which holds fund deposited with clerk of court not rendered subject of attachment by order of court that it be paid to person found entitled thereto.

Right of sheriff to take photograph and description of prisoner.

Approved in State *ex rel.* Bruns v. Clausmeier, 154 Ind. 602, 50 L. R. A. 75, footnote p. 73, 77 Am. St. Rep. 511, 57 N. E. 541, holding sheriff may lawfully take photograph and measurements, weight, name, residence, and occupation of accused person, if necessary to prevent his escape or facilitate his recapture in case he should do so.

Taking of property from prisoner.

Cited in People use of Tamplin v. Beach, 49 Colo. 520, 37 L.R.A.(N.S.) 875, 113 Pac. 513, to the point that articles found upon person arrested for crime may be held for evidence upon trial of accused.

Issues in garnishment proceedings.

Cited in Bambrick v. Bambrick Bros. Constr. Co. 152 Mo. App. 74, 132 S. W. 322, holding that issues raised by denial and reply are sole issue to be tried in garnishment proceedings, under section 2431, revised statutes.

39 L. R. A. 170, STATE *ex rel.* GELSTHORPE v. FURNELL, 20 Mont. 299, 51 Pac. 267.

Basis of tax.

Approved in Knowlton v. Moore, 178 U. S. 55, 44 L. ed. 975, 20 Sup. Ct. Rep.

747, holding taxes upon legacies and distributive shares, imposed by war revenue act of June, 1898, is based upon transmission or receipt of such legacies and not upon right of state to regulate devolution of property upon death; Dixon v. Ricketts, 26 Utah, 218, 72 Pac. 947 and State v. Clark, 30 Wash. 446, 71 Pac. 20, holding inheritance tax not a property tax, but imposed on right of succession.

Cited in Re Stixrud, 58 Wash. 350, 33 L.R.A. 637, 109 Pac. 343, Ann. Cas. 1912A, 850, to the point that inheritance tax is an import or excise on right to pass estate and privilege of devisee to take; Re Touhy, 35 Mont. 436, 90 Pac. 170, holding inheritance tax is a duty exacted by the state upon the right and privilege of taking legacies gifts, inheritances and successions passing by will, by intestate laws, or gift inter vivos.

Cited in notes (9 L.R.A.(N.S.) 122) on nature of right to take by will or inheritance; (33 L.R.A.(N.S.) 608) on nature of inheritance tax; (127 Am. St. Rep. 1037, 1051) on nature basis and extent of inheritance taxation.

Disapproved in Re McKennan, 25 S. D. 377, 33 L.R.A.(N.S.) 613, 126 N. W. 611, holding that inheritance tax is tax upon transmission of property, and has nothing to do with right to regulate succession of property.

Legislative power of classification.

Cited in Re Colbert, 44 Mont. 267, 119 Pac. 791, holding that upon conferring upon nonresident foreigners right to take by inheritance legislature may impose any condition it chooses.

Cited in note (60 L. R. A. 341) on legislative power of classification in relation to corporate taxation.

Exemption from tax.

Approved in Hinds v. Wilcox, 22 Mont. 12, 55 Pac. 355, holding widow to whom real estate worth more than $500 is devised not subject to inheritance tax thereon under Montana statute; Stellwagen v. Wayne Probate Judge, 130 Mich. 168, 89 N. W. 728, holding statutory exemption from taxation of inheritances applies to entire estate, and not to individual share; Black v. State, 113 Wis. 220, 90 Am. St. Rep. 853, 89 N. W. 522, holding exemption of all estates under $10,000 in value from inheritance tax not unreasonable.

Cited in Westefeldt's Succession, 122 La. 842, 48 So. 281, on exemption of property below amount prescribed by statute.

Cited in footnotes to *Re* Cope, 45 L. R. A. 316, which holds void, succession tax exempting $5,000 in each estate; Drew v. Tifft, 47 L. R. A. 525, which requires uniformity and equal application in exemption from inheritance tax; Billings v. People, 59 L. R. A. 807, which sustains transfer tax on lineal descendants to whom life estate given with remainder to lineal descendants, but exempting lineal descendants taking fee.

Tax on vested remainders.

Cited in footnote to *Re* Pell, 57 L. R. A. 540, which holds void, tax on all remainders vesting prior to certain date, but not coming into possession till after passage of act.

Validity of tax.

Approved in Magoun v. Illinois Trust & Sav. Bank, 170 U. S. 288, 42 L. ed. 1041, 18 Sup. Ct. Rep. 594, holding legacy and inheritance taxes constitutional; Dixon v. Ricketts, 26 Utah, 225, 72 Pac. 947, upholding constitutionality of inheritance tax; Booth v. Com. (Rodman v. Com.) 130 Ky. 102, 33 L.R.A.(N.S.) 604, 113 S. W. 61; Re Macky, 46 Colo. 82, 23 L.R.A.(N.S.) 1212, 102 Pac. 1075, holding inheritance tax constitutional.

Cited in Atty. Gen. v. Stone, 209 Mass. 191, 95 N. E. 395, holding that statute requiring beneficiary under will to pay inheritance tax is valid; Knowlton v. Moore, 9 Pa. Dist. R. 308, upholding constitutionality of act of Congress known as the War Revenue Act.

Cited in footnotes to State *ex rel.* Garth v. Switzler, 40 L. R. A. 280, which holds succession tax at different rates on legacies of different amounts invalid; Ferry v. Campbell, 50 L. R. A. 92, which holds succession tax void for want of notice of proceedings to fix amount of tax.

Cited in notes (8 L.R.A.(N.S.) 1182, 127 Am. St. Rep. 1054) on retrospective succession tax; (33 L.R.A.(N.S.) 594, 595, 597, 598; 127 Am. St. Rep. 1048, 1051; 23 Eng. Rul. Cas. 106) on validity of inheritance taxes.

Distinguished in Herriott v. Potter, 115 Iowa, 653, 89 N. W. 91, holding land not subject to inheritance tax where intestate died before tax law became effective by amendment.

Inheritance tax after probate proceedings begun.

Cited in Montgomery v. Gilbertson, 134 Iowa, 295, 10 L.R.A.(N.S.) 988, 111 N. W. 964, holding statute effective if estate is subject to control by probate court.

39 L. R. A. 177, CLAYTON v. HEBB, 25 C. C. A. 641, 42 U. S. App. 477, 80 Fed. 558.

Liability for pilot fees.

Cited in footnote to Newton v. The Carrie L. Tyler, 54 L. R. A. 236, which holds vessel in charge of tug with licensed pilot on board, subject to statute as to payment of pilot's fees.

Cited in note (49 L. ed. U. S. 225) on effect on state pilotage laws of congressional prohibition against discrimination.

39 L. R. A. 192, BERGIN v. SOUTHERN NEW ENGLAND TELEPH. CO. 70 Conn. 54, 38 Atl. 888.

Review of question of negligence, harmless error.

Approved in Post v. Hartford Street R. Co. 72 Conn. 366, 44 Atl. 547, holding question whether defendant railway company was guilty of negligence not reviewable unless trial court failed to apply correct standard of duty, or violated some rule of law in reaching its conclusion.

Cited in Metcalf v. Central Vermont R. Co. 78 Conn. 617, 63 Atl. 633, holding affirmative finding by court that bell was out of order and did not sound as train approached crossing whereby plaintiff's intestate was killed, not prejudicial where court finds elsewhere that defendant failed to disprove allegations in complaint to same effect.

Contributory negligence.

Approved in Roberts v. Missouri & K. Teleph. Co. 166 Mo. 381, 66 S. W. 155, holding lineman engaged in inspecting cross-arms cannot recover for injuries sustained by fall, where, without testing a cross-arm, he rested his weight upon it and it gave way; Anderson v. Inland Teleph. & Teleg. Co. 19 Wash. 582, 41 L. R. A. 412, footnote p. 410, 53 Pac. 657, holding telephone company's lineman, injured by contact with span wire charged with electricity by trolley wire, an insulator of which was broken, cannot recover where he failed to test insulator with apparatus at hand.

Cited in note (50 L. ed. U. S. 566) on what acts of employee amount to contributory negligence precluding recovery from employer for injuries caused by electric shock.

Assumption of risk.

Cited in Krimmel v. Edison Illuminating Co. 130 Mich. 619, 90 N. W. 336, holding lineman assumes risk of fall of pole which he failed to inspect before climbing; Barto v. Iowa Teleph. Co. 126 Iowa, 245, 106 Am. St. Rep. 347, 101 N. W. 876, holding telephone lineman who is not an inspector, and who is not directed to look for defects and is not furnished with apparatus to test live wires, did not assume risk of contact with telephone wire which had become highly charged by contact with defectively insulated electric light wire; Gilmore v. American Tube & Stamping Co. 79 Conn. 502, 66 Atl. 4, holding duty of inspection of lacing of belts not imposed on operator of drop press where condition of lacing was not observable to him and could only be observed by special inspection and duty of watching condition was imposed on another.

Distinguished in Gentzkow v. Portland R. Co. 54 Or. 125, 135 Am. St. Rep. 821, 102 Pac. 614, holding in absence of warning of danger telephone lineman does not assume risk of injury from contact with heavily charged service were of street railway which by failure of latter to inspect comes in contact with pole lineman is compelled to climb.

Right of lineman to assume wires safely insulated.

Approved in Jackson & Suburban Street R. Co. v. Simmons, 107 Tenn. 405, 64 S. W. 705, holding lineman has no right to assume wires safely insulated, but must exercise active diligence for his own safety.

Liability of electric light company.

Cited in footnotes to Boyd v. Portland General Electric Co. 52 L. R. A. 509, which holds want of sufficient assistance to promptly replace wires broken by severe storm not excuse, as matter of law, for delay; Boyd v. Portland General Electric Co. 57 L. R. A. 619, which holds electric light company liable for injury by wire broken during storm; Thomas v. Maysville Gas Co. 53 L. R. A. 147, which requires corporation sending electricity into street railway company's wires to see to their insulation; Hebert v. Lake Charles Ice, Light & Waterworks Co. 64 L. R. A. 101, which holds electric light company liable for death of person in street by uninsulated wire, which burned and fell because of fall of telephone wire negligently strung above it; Burns v. Delaware & A. Teleg. & Teleph. Co. 67 L.R.A. 956 which sustains liability of telephone company for injuries to employees while stringing wires due to failure to prevent wires from coming in contact with trolley wire or to supply them with devices to prevent communication of serious shock.

Cited in note (100 Am. St. Rep. 527) on duties and liabilities of electric corporations.

Liability of city as to abandoned telephone wire.

Cited in footnote to Mooney v. Luzerne, 40 L. R. A. 811, which holds city liable for negligence as to abandoned telephone wire crossing dangerous electric wire, though other parties also liable.

Burden of proof as to negligence.

Approved in Lawler v. Hartford Street R. Co. 72 Conn. 85, 43 Atl. 545, holding that after default in action for personal injuries, burden is on defendant to show accident not caused as alleged, or that plaintiff is chargeable with contributory negligence.

39 L. R. A. 197, DAHNKE v. PEOPLE, 168 Ill. 102, 48 N. E. 137.

Right of sheriff to employ janitor.

Approved in McDonough County v. Thomas, 84 Ill. App. 413, and Edgar County

v. Middleton, 86 Ill. App. 504, holding sheriff, as custodian of courthouse, has right to employ janitor.

Right of legislature to prescribe qualifications of attorney.

Approved in *Re* Day, 181 Ill. 93, 50 L. R. A. 526, 54 N. E. 646, holding legislature without power to prescribe amount of learning which may qualify an attorney to practise.

Particular provision as exception to general provision.

Approved in People *ex rel.* Akin v. Kipley, 171 Ill. 84, 41 L. R. A. 789, 49 N. E. 229, and Dodge v. Chicago, 201 Ill. 70, 66 N. E. 367, holding particular provision in statute must be treated as exception to general provision.

Cited in School Comrs. v. Charlotte, 158 N. C. 198, 73 S. E. 905, holding that when general intent is expressed in statute which also expresses particular intent incompatible with former particular intent is to be regarded as an exception; Deneen v. Unverzagt, 225 Ill. 383, 80 N. E. 321, 8 Ann. Cas. 396, holding act relating to particular subject will prevail over a contrary general statute; Eckels v. Maher, 137 Ill. App. 52, on particular enactments as controlling general enactments contained in the same statute.

Power to punish for contempt.

Approved in Swedish-American Teleph. Co. v. Fidelity & C. Co. 208 Ill. 573, 70 N. E. 768, holding circuit court has power in suit at law, to punish for contempt one who refuses to comply with its proper orders.

Cited in People v. Cohen, 163 Ill. App. 118, to the point that power to punish for contempt is inherent in court of justice, independent of statute; Hake v. People, 230 Ill. 194, 82 N. E. 561, on distinction between civil and criminal contempts.

Cited in note (117 Am. St. Rep. 951) on courts, tribunals and persons authorized to punish contempts.

Power of county board over court rooms.

Cited in Re Court Room, 148 Wis. 121, — L.R.A.(N.S.) —, 134 N. W. 490, holding that county board is not vested with discretion as to selection of court rooms beyond control of courts.

Inherent powers of courts.

Cited in Stein v. Meyers, 253 Ill. 215, 97 N. E. 295 (dissenting opinion), on inherent power of courts to make rules necessary for conduct of its business.

Nature of office of sheriff.

Cited in People ex rel. Davis v. Nellis, 249 Ill. 23, 94 N. E. 165, on nature of office of sheriff and his powers.

Power of legislature to transfer functions of one public office to another.

Cited in Trapp v. Cook Constr. Co. 24 Okla. 856, 105 Pac. 667, holding that legislature has no power to confer upon board of public affairs, powers and duties vested in board of regents of state college, by constitution.

39 L. R. A. 202, GIBSON v. SAFETY HOMESTEAD & L. ASSO. 170 Ill. 44, 48 N. E. 580.

Validity of preferred stock.

Cited in footnote to Sumrall v. Columbia Finance & T. Co. 44 L. R. A. 659, which holds void, issuance of preferred stock by loan association.

Preference of stockholders.

Approved in Bingham v. Marion Trust Co. 27 Ind. App. 259, 61 N. E. 29;

Teller v. Wilcoxen, 110 Iowa, 567, 81 N. W. 772; Coltrane v. Baltimore Bldg. & L. Asso. 110 Fed. 289,— holding owners of full-paid stock not entitled to preference as creditors; Forwood v. Eubank, 106 Ky. 296, 50 S. W. 255, and Coltrane v. Baltimore Bldg. & L. Asso. 110 Fed. 279, holding holder of preferred stock in insolvent loan association not entitled to preference, although stockholder had given notice of withdrawal; Walker v. Terry, 138 Ala. 432, 35 So. 466, holding stockholder of insolvent association does not become creditor by filing his certificate of stock for withdrawal; Christopher Columbus Bldg. & L. Asso. v. Kriete, 192 Ill. 137, 61 N. E. 510, holding holders of matured stock not entitled to priority where they have not received warrants of the association or check for amount; Leahy v. National Bldg. & L. Asso. 100 Wis. 573, 69 Am. St. Rep. 945, 76 N. W. 625, holding owner of prepaid stock having definite maturity value not entitled to preference over other stockholders, although his certificate states he shall have no claim or interest in the affairs of the association.

Cited in People v. Metropolitan Mut. Sav. & L. Asso. 103 App. Div. 163, 92 N. Y. Supp. 689, holding there should be no preference, in absence of provision thereon in articles of association, in case of insolvency in favor of holder of installment stock in building and loan association.

Distinguished in Rogers v. Ogden Bldg. & Sav. Asso. 30 Utah, 199, 83 Pac. 754, holding where stock is issued in separate and consecutive series, the company agreeing to purchase each issue at maturity, and in accordance with long custom did so purchase and began payments in installments with acquiescence of subsequent stockholders, such stockholder is creditor for amount due him as against subsequent holders.

Estoppel of stockholder.

Cited in Manship v. New South Bldg. & L. Asso. 110 Fed. 854, holding stockholder in and borrowing from loan association estopped to deny character of association, its power to contract, or his liability to it; Gunby v. Armstrong, 66 C. C. A. 627, 133 Fed. 433, holding recognition by stockholder of company as bona fide building association with power to issue stock, the use by him of its money, coupled with payment of all interest and stock dues as required by by-laws and contract, estops him to question validity of stock.

Effect of withdrawal from association or company.

Approved in Rickert v. Suddard, 80 Ill. App. 211, holding notice of withdrawal from insolvent loan association does not entitle member to priority of payment over fellow shareholders; Musial v. Kosciuszko Bldg. & L. Asso. 80 Ill. App. 467, holding nonborrowing member of loan association who has given notice of withdrawal cannot obtain judgment against association, where there is no money in treasury legally applicable to payment of his claim; Bingham v. Marion Trust Co. 27 Ind. App. 265, 61 N. E. 29, holding partial withdrawals made by shareholder from insolvent association should be treated as an advancement and be retained from his distributive share.

Cited in Aldrich v. Gray, 77 C. C. A. 597, 147 Fed. 456, 8 Ann. Cas. 832, holding withdrawal after insolvency in fact ineffective against other members; Colin v. Wellford, 102 Va. 585, 102 Am. St. Rep. 859, 46 S. E. 780, holding withdrawal by stockholder while company is actually though not notoriously insolvent, although no proceedings to wind up have been instituted, does not give him right to satisfaction as creditor before other members; Harrison v. Fleischman, 70 N. J. Eq. 305, 61 Atl. 1025, holding withdrawing member not converted into creditor until compliance by him with terms of contract thereto.

Cited in footnotes to Southern Bldg. & L. Asso. v. Price, 42 L. R. A. 206, which holds withdrawal immediately due when loan association goes into re-

ceiver's hands; Andrews v. Roanoke Bldg. Asso. & Invest. Co. 49 L. R. A. 659, which holds relation to loan association not severed by withdrawal so as to preclude member suing for receiver.

39 L. R. A. 204, MORAN v. MORAN, 104 Iowa, 216, 65 Am. St. Rep. 443, 73 N. W. 617.

Request for masses.

Approved in Sherman v. Baker, 20 R. I. 449, 40 L. R. A. 720, 40 Atl. 11, holding gift by will of certain sum to priest to say masses for testator, being an outright gift to take effect at once, is valid.

Cited in Re Lennon, 152 Cal. 331, 125 Am. St. Rep. 58, 92 Pac. 870, 14 Ann. Cas. 1024, holding bequest for masses is not a charitable use within inhibition of statute in that regard.

Cited in notes (40 L.R.A. 717) on validity of bequests for masses; (65 Am. St. Rep. 119, 121) on bequests for masses.

Validity of charitable bequest.

Approved in Harrington v. Pier, 105 Wis. 513, 50 L. R. A. 319, 76 Am. St. Rep. 922, 82 N. W. 345, holding bequest of three fourths of net estate to trustees to expend in temperance work in specified city is valid bequest for charitable use; Grant v. Saunders, 121 Iowa, 87, 100 Am. St. Rep. 310, 95 N. W. 411, holding charitable bequest not invalid because its beneficiaries are not limited to certain locality.

Cited in Lewis v. Gaillard, 61 Fla. 844, 56 So. 281, holding that where income only of estate is given by will to state institution of learning, devise does not lapse by technical abolishment of institution, if in fact, institution be promptly re-established, though under another name; Methodist Episcopal Church, South v. May, 201 Mo. 371, 99 S. W. 1093, holding void for indefiniteness devise to "the Methodist E. Church South and missionary cause."

Cited in footnote to Thompson v. Brown, 62 L. R. A. 398, which upholds devise of fund for distribution by executor "to poor in his discretion."

Cited in notes (14 L.R.A.(N.S.) 97, 109, 125, 129) on enforcement of general bequest for charity or religion; (63 Am. St. Rep. 266) on what are charitable uses or trusts; (64 Am. St. Rep. 758, 761) on certainty and unity required in charitable trusts.

Extrinsic evidence to explain ambiguous provision in will.

Approved in Jordan v. Hinkle, 111 Iowa, 45, 82 N. W. 426, holding extrinsic evidence admissible to make ambiguous provision in will intelligible.

Cited in Gilmore v. Jenkins, 129 Iowa, 692, 106 N. W. 193, 6 Ann. Cas. 1008, holding extrinsic evidence inadmissible to correct a mistake or make a new will: Russell v. Jones, 68 C. C. A. 487, 135 Fed. 942, on engrafting of parol trust or devise.

Cited in note (28 L.R.A.(N.S.) 418) on admissibility of extrinsic evidence to show nominal will not intended as such.

Constructive trust.

Approved in Newis v. Topfer, 121 Iowa, 440, 96 N. W. 905, holding constructive trust arises where helpless invalid makes conveyance to one standing in confidential relation to her, on supposition she was providing for her children.

Cited in Tebbs v. Jarvis, 139 Iowa, 430, 116 N. W. 708, holding equity will compel the performance of promise to devise property, which intestate obtained under false promise so to do: First State Bank v. Sibley County Bank, 96 Minn. 460, 105 N. W. 485, on admission of parol to show agreement under which note and mortgage were given.

Validity of devise in trust.

Cited in Filkins v. Severn, 127 Iowa, 739, 104 N. W. 346, holding devise in trust designating no beneficiary therefor, is void.

39 L. R. A. 210, GLAZER v. HUBBARD, 102 Ky. 68, 80 Am. St. Rep. 340, 42 S. W. 1114.

Liability of judge to private action.

Approved in Blincoe v. Head, 103 Ky. 110, 44 S. W. 374, holding judge who issues order of attachment without jurisdiction liable to party injured thereby.

Cited in footnotes to Calhoun v. Little, 43 L. R. A. 630, which denies personal liability of inferior judicial officer for unofficial sentence imposed under illegal ordinance which judge held valid; Webb v. Fisher, 60 L. R. A. 791, which holds judge not subject to private action for corruptly entering decree disbarring attorney; Lowe v. Conroy, 66 L.R.A. 907, which holds health officer individually liable for destruction of private property by mistake in attempt to preserve public health; Rush v. Buckley, 70 L.R.A. 464, which holds magistrate not liable to civil action for erroneously deciding that he has jurisdiction over particular offense of which complaint is made to him and issuing warrant for arrest of accused.

Liability of village president for procuring arrest.

Cited in footnote to Tillman v. Beard, 46 L. R. A. 215, which denies liability of village president for procuring arrest for violating void ordinance.

39 L. R. A. 211, HETTERMAN BROS. v. POWERS, 102 Ky. 133, 80 Am. St. Rep. 348, 43 S. W. 180.

Labor union label.

Cited in People v. Dantuma, 252 Ill. 566, 39 L.R.A.(N.S.) 1190, 96 N. E. 1087, Ann. Cas. 1912 D, 370, holding that legislature may provide for registration of union label, and make unauthorized use thereof misdemeanor.

Cited in footnotes to Schmalz v. Woolley, 43 L.R.A. 86, which sustains right of labor unions to trademark used on goods not owned by them; Perkins v. Heert, 43 L.R.A. 858, which sustains statute authorizing labor union to adopt distinguishing label.

Cited in note (39 L.R.A.(N.S.) 1193, 1196, 1197, 1199), on law as to union labels.

Combination to maintain insurance rates.

Cited in Ætna Ins. Co. v. Com. 106 Ky. 892, 45 L.R.A. 362, 51 S. W. 624, holding it not indictable offense by common law to combine for purpose of maintaining rates of insurance.

39 L. R. A. 214, JERNIGAN v. MADISONVILLE, 102 Ky. 313, 43 S. W. 448.

Recovery of license money.

Cited in Providence v. Shackelford, 106 Ky. 382, 50 S. W. 542, denying recovery of sum paid for liquor license in excess of $500, claimed on ground that city had been illegally placed in class authorized to charge $1,000.

Classification based on city census.

Cited in Griffin v. Powell, 143 Ky. 281, 136 S. W. 626, holding that legislature is not required by constitution to have before it any census from which to ascertain population, in transferring cities from one class to another: O'Bryan v. Owensboro, 113 Ky. 685, 68 S. W. 858, holding that the population of a city for purposes of classification may be found by census taken under ordinance.

— Power to make change of.

Cited in Gilbert v. Paducah, 115 Ky. 171, 72 S. W. 816, on the partial invalidity of a statute for the change of city classification by judicial act on the mere ascertainment of population, but holding legislature might effect new classification by general enabling act.

Delegation of legislative powers.

Cited in James v. United States Fidelity & G. Co. 133 Ky. 305, 117 S. W. 406, holding that power of legislature to determine method to be employed in arriving at taxable value of property cannot be delegated.

39 L. R. A. 215, CROCKER v. COTTING, 170 Mass. 68, 64 Am. St. Rep. 278, 48 N. E. 1023.

Later case involving same passage-way in 181 Mass. 148, 63 N. E. 402.

Right of tenant in common to partition.

Approved in O'Brien v. Mahoney, 179 Mass. 204, 88 Am. St. Rep. 371, 60 N. E. 493, holding tenant in common can enforce partition as matter of right.

Merger of right of way in fee.

Approved in Tuttle v. Kilroa, 177 Mass. 150, 58 N. E. 682, holding right of way not merged in fee by unity of title unless owner in fee had full and unlimited right of disposition and power of control over land embraced in way.

Cited in note (1 Brit. Rul. Cas. 482, 484) on effect upon easement of unity of seisin.

Partition as affecting rights of third parties.

Cited in Finch v. Smith, 146 Ala. 651, 41 So. 819, 9 Ann. Cas. 1026, holding that partition proceedings in land subject to a lease, go only to that interest left in the parties to the partition.

Effect of easement on right to partition.

Cited in Thompson v. de Snyder, 14 N. M. 408, 94 Pac. 1014, holding that under Compiled Laws, section 3179, suit for partition may be maintained, notwithstanding land in question is subject to easement.

39 L. R. A. 218, PEOPLE v. THIELMAN, 115 Mich. 66, 72 N. W. 1102.

39 L. R. A. 220, *Re* MILLER, 179 Pa. 645, 36 Atl. 139.

Report of later appeal in 187 Pa. 577, 43 W. N. C. 82, 41 Atl. 277.

Grant of issue to test validity of will.

Approved in Seiler's Estate, 14 Pa. Super. Ct. 509, holding issue *devisavit vel non* should not be awarded if testimony is such that verdict against proponents of the will ought not to be sustained, as against manifest weight of evidence; *Re* Yorke, 185 Pa. 62, 6 Pa. Dist. R. 322, 39 Atl. 1119, holding there must be conflict of testimony upon material fact in dispute to warrant granting of issue to test validity of will on ground of want of testamentary capacity or undue influence; *Re* Callery, 29 Pittsb. L. J. N. S. 8, granting issue as to testamentary capacity of testator shown to be confirmed morphine user; Frawley's Estate, 7 Pa. Dist. R. 77, refusing to award issue *devisavit vel non* unless dispute is substantial and verdict against validity of will would be allowed to stand.

Distinguished in Birbeck Estate, 11 Kulp. 210, refusing to award issue *devisavit vel non* on question of undue influence, sought to be inferred from mere solicitations.

Presumption of undue influence.

Approved in Dickson's Estate, 20 Pa. Co. Ct. 161, holding presumption of undue

influence against trusted adviser, largely a beneficiary under will, does not arise when adviser is testator's only son and a member of his family.

Burden of showing undue influence.

Approved in Friend's Estate, 198 Pa. 366, 47 Atl. 1106, holding contestant has burden of showing undue influence on part of trusted son preferred in will, in absence of evidence indicating want of testamentary capacity.

Undue influence.

Cited in Goodloe v. Goodloe, 47 Tex. Civ. App. 499, 105 S. W. 533, holding will to have been executed under undue influence where testator relied on and was easily influenced by sons who procured the drafting and execution of a will cutting out the other heirs excepting for a pittance.

Cited in footnote to Kennedy v. Dickey, 68 L.R.A. 317, which holds will not annulled for undue influence by honest and moderate intercession or persuasion unaccompanied with fraud, deceit, threats, or putting in fear.

Declarations of beneficiary as to undue influence.

Cited in note (38 L.R.A.(N.S.) 737) on admissibility of declarations of beneficiary to show undue influence.

What is testamentary capacity.

Cited in note (27 L.R.A.(N.S.) 5) on what is testamentary capacity.

39 L. R. A. 230, McLOUTH v. HUNT, 154 N. Y. 179, 48 N. E. 548.

Income or capital.

Approved in Mercer v. Buchanan, 132 Fed. 506, 35 Pittsb. L. J.(N.S.) 124, holding that the declaration of a dividend on a sale of part of plant is not income but part of capital though declared to be dividend.

Cited in People ex rel. Pullman Co. v. Glynn, 130 App. Div. 334, 114 N. Y. Supp. 460, holding question whether stock, script or bond dividends distributed pro rata among stockholders are dividends representing profits or an adjustment of capital account was a question for jury under the circumstances; Re Stevens, 46 Misc. 638, 95 N. Y. Supp. 297, holding that money spent on good will and betterment of corporation should on sale of corporation be considered as part of capital though purchased out of surplus earnings; Devenney v. Devenney, 74 Ohio St. 102, 77 N. E. 688, holding that increase in value of estate held by trustee from natural causes is treated as capital and not income in absence of express contrary intent in will.

Relative rights of life tenants and remaindermen.

Approved in Lowry v. Farmers' Loan & T. Co. 30 Misc. 335, 63 N. Y. Supp. 429, holding stock dividend of 50 per cent should be added to trust fund, instead of going as income to life beneficiary; *Re* Elting, 33 Misc. 679, 68 N. Y. Supp. 1118, holding dividends on railroad stock held in trust and arising from sale of corporate realty after lease of its line are properly treated as capital as between life tenant and remainderman; Lang v. Lang, 56 N. J. Eq. 606, 40 Atl. 278, holding dividend paid out of surplus of corporation after testator's death is income rather than principal, as between life tenant and remainderman, if surplus as existing at time of testator's death not diminished, although dividend paid in part from profits earned before that time; Graham's Estate, 198 Pa. 220, 47 Atl. 1108, Affirming 30 Pittsb. L. J. N. S. 373, holding profit arising from sale, at an advance of bonds in which trust fund invested is principal, and not income; Chester v. Buffalo Car Mfg. Co. 70 App. Div. 452, 75 N. Y. Supp. 428, holding that if company pays money or issues stock as distribution of profits, it will ordinarily go to life tenant; but if it issued stock as capital and appropriates its surplus as increase of

capital stock of the concern, such issue inures to benefit of remainderman; Lowry v. Farmers' Loan & T. Co. 172 N. Y. 141, 64 N. E. 796, holding life tenant instead of remainderman entitled to stock dividend; *Re* Roberts, 40 Misc. 515, 82 N. Y. Supp. 805, holding fund derived from sale of dividend shares represents income and profits and belongs to *cestui que trust.*

Cited in Pabst's Will, 146 Wis. 341, 131 N. W. 739, holding that under will creating trust in corporate stock and providing certain person shall have income, term "income" covers distributions made by capitalizing surplus created by income; American Secur. & T. Co. v. Payne, 33 App. D. C. 187, holding life tenant entitled to all the dividends on the bonds after deduction of expenses and that trustee has no right to deduct from the income on bonds a sum equal to premium paid; Holbrook v. Holbrook, 74 N. H. 204, 12 L.R.A.(N.S.) 774, 66 Atl. 124, holding that surplus earnings declared in a special dividend are income and not capital as between tenant and remainderman; Richmond v. Richmond, 123 App. Div. 124, 108 N. Y. Supp. 298, holding that a cash dividend payable out of accumulated surplus and undivided profits is income belonging to life tenant and not remainderman; Robertson v. de Brulatour, 188 N. Y. 310, 80 N. E. 938, affirming 111 App. Div. 890, 98 N. Y. Supp. 15, holding same where corporation declared distribution of cash surplus; Thayer v. Burr, 134 App. Div. 893, 119 N. Y. Supp. 755, holding that a distribution of bonds secured by surplus assets goes to life tenant under a will giving him dividends of stock with transfer of stock to remainderman at death of life tenant; Re Fisk, 45 Misc. 305, 92 N. Y. Supp. 394, holding that dividends payable in bonds declared out of past surplus earnings represent earnings and go to life beneficiary; Re Stevens, 47 Misc. 563, 95 N. Y. Supp. 1084, holding that undivided profits and surplus received on a sale of shares of stock are income payable to life tenant where it appeared that no part thereof represented a premium on the stock or any part of its market value and was not a part of its working capital.

Cited in footnotes to Quinn v. Safe Deposit & T. Co. 53 L.R.A. 169, which holds life tenant entitled to stock dividends made from sinking fund largely accumulated during testator's life; Smith v. Dana, 69 L.R.A. 76, which holds life tenants entitled to cash dividends on corporate stock although derived from sale of permanent property in which profits had been invested.

Cited in notes (118 Am. St. Rep. 164, 165, 168; 12 L.R.A.(N.S.) 797; 35 L.R.A. (N.S.) 573) on right as between life tenant and remainderman in dividends or distributions by corporations.

Distinguished in De Koven v. Alsop, 205 Ill. 312, 63 L. R. A. 590, footnote p. 587, 68 N. E. 930, affirming 107 Ill. App. 208, holding remainderman entitled, as against life tenant, to stock dividends declared after stockholder's death.

—Depreciation of estate or wearing away of premium.

Approved in *Re* Hoyt, 160 N. Y. 615, 48 L. R. A. 129, footnote p. 126, 55 N. E. 282, holding premium on bonds paid on investing trust funds cannot be charged to life beneficiary, where testator obviously intended to devote to her use entire income of fund; *Re* Hoyt, 27 App. Div. 288, 50 N. Y. Supp. 623, holding that whether depreciation of government bonds by reason of approaching maturity should be borne by life tenant or remaindermen depends entirely upon intent of testator; *Re* New York Life Ins. & T. Co. 24 Misc. 73, 53 N. Y. Supp. 382, holding life tenant under will providing for investment of money in United States bonds should not be charged with premium paid on purchase of such bonds; *Re* Johnson, 57 App. Div. 502, 67 N. Y. Supp. 1004, holding trustees cannot retain from income of United States bonds sum representing lessening premium, where testator intended entire earning of trust fund should be available as income; *Re*

Chapman, 32 Misc. 192, 66 N. Y. Supp. 235, holding widow entitled to income of estate for life not chargeable with sum arbitrarily fixed as representing depreciation in value of freight boat forming part of estate.

Cited in New York Life Ins. & T. Co. v. Baker, 165 N. Y. 493, 53 L. R. A. 546, footnote p. 544, 59 N. E. 257, holding that it is duty of trustee who had power to change investments, to reserve from the income, granted for life with remainder over, a sinking fund to offset premium on bonds purchased; Ballantine v. Young, 74 N. J. Eq. 575, 70 Atl. 668, holding that deductions from interest received on bonds, sufficient to offset premium paid for them should be made by trustees who were directed to pay income of fund to person for life with remainder over; Jordan v. O'Brien, 33 App. D. C. 189, holding that deductions from interest received on bonds sufficient to offset premium paid for them should not be made by trustees, who were directed to pay income of fund to person for life with remainder over; Connecticut Trust Co.'s Appeal, 80 Conn. 545, 69 Atl. 360, holding that income of bonds held in trust should not be partially applied to meet depreciation of premiums, but the whole amount should be paid to life tenant where no intent of testator appears that application be made to principal of bonds; Lynde v. Lynde, 113 App. Div. 414, 99 N. Y. Supp. 283, holding that under a direction to invest sum in United States bonds for benefit of daughters remainder to their children, the income to be paid to daughters through trustees, the daughters took entire amount of income notwithstanding the fact that fund was impaired by wearing away of premiums on bond; Re Stevens, 187 N. Y. 475, 12 L.R.A.(N.S.) 816, 80 N. E. 358, 10 Ann. Cas. 511, Modifying 111 App. Div. 780, 98 N. Y. Supp. 28, which affirms 46 Misc. 638, 95 N. Y. Supp. 297, charging the interest from bonds with wearing away of premium in absence of clear intent of testator to the contrary.

Cited in note (25 Eng. Rul. Cas. 51) on relative rights of life tenant and remaindermen to chattel which will be consumed in the use.

Distinguished in New York Life Ins. & T. Co. v. Baker, 38 App. Div. 420, 56 N. Y. Supp. 618, holding that where trustee invests in bonds, paying a premium therefor, he must make such deduction from interest as will make principal whole when bonds mature.

Wearing away of premiums as burden on corpus of estate.

Cited in Re Hunt, 121 App. Div. 104, 105 N. Y. Supp. 696, holding trustees of estate not chargeable with depreciation of bonds due to approaching maturity where testator directed that the "good investments remain."

Construction of will.

Approved in Chester v. Buffalo Car Mfg. Co. 70 App. Div. 453, 75 N. Y. Supp. 428, holding that in construing will, meaning and intent of testator must be ascertained from language employed in creating trust, from relations of parties, and surrounding facts and circumstances; Isham v. New York Asso. 177 N. Y. 222, 69 N. E. 367, holding executors without right to appeal in suit to construe will, from determination in which parties directly interested had acquiesced.

Right of purchaser of stock to dividends.

Cited in footnote to Clark v. Campbell, 54 L. R. A. 508, which holds purchaser of stock by writing providing for delivery on payment by certain date not entitled to dividends till payment.

Remainders after life estate in personalty.

Cited in State ex rel. Tozer v. Probate Ct. 102 Minn. 292, 113 N. W. 888, on the validity of a limitation of a remainder after a life estate in personal property.

39 L. R. A. 237, PEOPLE *ex rel.* DELAWARE, L. & W. R. CO. v. CLAPP, 152 N. Y. 490, 46 N. E. 842.

Basis of valuation for taxation.

Approved in People *ex rel.* New York C. & H. R. R. Co. v. Hilts, 27 Misc. 293, 58 N. Y. Supp. 434, holding outside limit of railroad assessment is sum for which property assessed could be reproduced; People *ex rel.* New York C. & H. R. R. Co. v. Feitner, 38 Misc. 206, 77 N. Y. Supp. 218, holding assessors may properly base their finding of value of leased line upon rental paid, where all tangible property of road is within their jurisdiction; People *ex rel.* Manhattan R. Co. v. Barker, 28 Misc. 21, 59 N. Y. Supp. 926, holding easement in property of abutting owners, acquired by elevated railroad company, constitutes part of its real estate and should be valued as such in ascertaining its capital subject to taxation; People *ex rel.* Buffalo Natural Gas Fuel Co. v. State Tax Comrs. 55 App. Div. 190, 67 N. Y. Supp. 51, holding requirement in writ of certiorari to review assessment, that assessors return manner and method of making same and basis adopted, is unauthorized since they are already directed by statute.

Cited in People *ex rel.* Manhattan R. Co. v. Barker, 165 N. Y. 325, 59 N. E. 151, dissenting opinion by O'Brien, J., to point that real estate of railroad must be valued for purpose of taxation at not to exceed what it would cost to reproduce it in condition at date of assessment; People ex rel. Hudson & M. R. Co. v. State Tax Comrs. 143 App. Div. 40, 127 N. Y. Supp. 918; People ex rel. New York, O. & W. R. Co. v. Shaw, 143 App. Div. 812, 128 N. Y. Supp. 177,—holding that reproduction act is for tax purposes, maximum valuation to be put upon part of continuous railroad situated in given tax district; People ex rel. Hudson & M. R. Co. v. State, 69 Misc. 13, 125 N. Y. Supp. 895, holding that cost of production is not controlling measure of assessment of property not producing income, its actual value and not its cost being true basis for taxation; People ex rel. Bankers' Safe-Deposit Co. v. O'Donnel, 54 Misc. 7, 105 N. Y. Supp. 457, basing valuation for taxation on cost of reproducing property assessed; People ex rel. Buffalo, R. & P. R. Co. v. Carmichael, 64 Misc. 275, 118 N. Y. Supp. 354, holding an assessment itemizing tracks, stations and other buildings, setting figures opposite items, sufficient as an assessment of the railroad property as a whole at the amount totaled from the items.

Cited in note (22 Eng. Rul. Cas. 730) on method of valuation of railroad property for purpose of rating or taxation.

Taxation of corporate franchises.

Approved in People *ex rel.* Brooklyn City R. Co. v. Neff, 19 App. Div. 592, 46 N. Y. Supp. 385, holding franchises of street railroad cannot be assessed for taxation.

Cited in Buffalo Gas Co. v. Volz, 31 Misc. 163, 64 N. Y. Supp. 534, as holding franchises to use public ways for maintenance therein of railroads, gas mains, and the like, not subject to taxation; People *ex rel.* Metropolitan Street R. Co. v. State Tax Comrs. 174 N. Y. 440, 63 L. R. A. 892, 67 N. E. 69, holding special franchises assessable by state officials in connection with franchise.

Cited in note (57 L. R. A. 101) on taxation of corporate franchises in United States.

Taxation of capital stock.

Cited in note (58 L. R. A. 599) on taxation of capital stock of corporations in United States.

39 L. R. A. 240, BOMEISLER v. FORSTER, 154 N. Y. 229, 48 N. E. 534.

Enjoining collection of tax.

Approved in Jackson v. New York, 62 App. Div. 50, 70 N. Y. Supp. 877, enjoin-

ing city from enforcing tax upon property where a tax upon the same property has been levied in adjoining city and paid.

Relief by injunction.

Cited in Alderman v. Tillamook County, 50 Or. 52, 91 Pac. 298, holding that a county after failing to establish a claim against an estate will be enjoined from proceedings for removal of executor merely to harass and facilitate establishment of claims against person thereafter appointed.

Cited in footnote to Kaufmann v. Liggett, 67 L.R.A. 353, which sustains right to injunction against proceedings at law to obtain possession of leased property where lessee has an equitable right to a continuance of possession.

Cited in note (1 L.R.A.(N.S.) 1148) on injunction to protect personal right.

Specific performance of agreement to sell personalty.

Approved in Scruggs v. Cotterill, 67 App. Div. 588, 73 N. Y. Supp. 882, holding equity will decree, as against executors, specific performance of contract between stockholders giving each to the other first option to purchase stock in case of death of holder.

Cited in Schmidt v. Pritchard, 135 Iowa, 248, 112 N. W. 801, holding that equity will decree performance of agreement to sell stock where purchaser has been ready to receive and the stock is no where else obtainable and the title thereto controls the corporation; Butler v. Wright, 186 N. Y. 262, 78 N. E. 1002, Reversing 103 App. Div. 469, 93 N. Y. Supp. 113, on grounds for decree of specific performance of agreement to sell personalty; Bernier v. Griscom-Spencer Co. 161 Fed. 442, holding that specific performance may be had of an agreement to sell sheep where market is fluctuating, and species may not be found therein they having a peculiar value.

Presumption that reversal was upon law.

Approved in Petrie v. Hamilton College, 158 N. Y. 463, 53 N. E. 216; Shotwell v. Dixon, 163 N. Y. 47, 57 N. E. 178; National Harrow Co. v. E. Bement & Sons, 163 N. Y. 507, 57 N. E. 764; Spence v. Ham, 163 N. Y. 223, 51 L. R. A. 240, 57 N. E. 412; Van Beuren v. Wotherspoon, 164 N. Y. 377, 57 N. E. 633,—holding it will be presumed that the appellate division reversed upon the law, and not upon a question of fact, unless court so states in its order or judgment.

Cited in McClure v. Laycraft, 183 N. Y. 40, 75 N. E. 961, 35 N. Y. Civ. Pro. Rep. 162, 5 Ann. Cas. 45, holding that silence as to grounds of reversal raises a presumption of reversal upon law.

Presumption as to facts found.

Approved in Dannhauser v. Wallenstein, 169 N. Y. 205, 62 N. E. 160, holding it will be presumed that all facts warranted by evidence and necessary to support judgment were impliedly found by the court where decision of special term is in short form.

Scope of appellate review.

Approved in *Re* Keefe, 164 N. Y. 354, 58 N. E. 117, holding that where appellate division reverses on law, court of appeals may examine record to ascertain if any findings of fact are unsupported by evidence, thereby disclosing legal error; Brokaw v. Duffy, 165 N. Y. 404, 59 N. E. 196, dissenting opinion by O'Brien, J., who holds that where reversal was upon the law, in the absence of some valid exception, court can only inquire whether upon facts found by trial court, legal conclusion followed.

Cited in National Harrow Co. v. E. Bement & Sons, 163 N. Y. 522, 57 N. E. 764 (dissenting opinion), majority holding court of appeals may examine question whether there is any evidence to support findings of fact.

39 L. R. A. 245, BROADFOOT v. FAYETTEVILLE, 121 N. C. 418, 61 Am. St. Rep. 668, 28 S. E. 515.

Power of legislature to discriminate.

Approved in State v. Call, 121 N. C. 647, 28 S. E. 517, holding statute making it indictable offense to practise medicine after specified date without license from state board of examiners not a discrimination forbidden by state Constitution, nor denial of equal protection of laws; Hancock v. Norfolk & W. R. Co. 124 N. C. 226, 32 S. E. 679, holding statute prescribing liability of railroad companies for death of employees due to negligence of fellow servants not unconstitutional as conferring exclusive privileges; Jones v. Duncan, 127 N. C. 119, 37 S. E. 135, holding legislature may discriminate between resident and nonresident owners of stock by imposing higher penalty on former for permitting animals to run at large.

Cited in McGuire v. Chicago, B. & I. R. Co. 131 Iowa, 351, 33 L.R.A.(N.S.) 713, 108 N. W. 902, upholding statute abrogating fellow servant doctrine as applicable to railroads only; Daniels v. Homer, 139 N. C. 251, 3 L.R.A.(N.S.) 1011, 51 S. E. 992 (dissenting opinion), on discrimination in favor of nonresident owners as being warranted.

Cited in note (90 Am. St. Rep. 220) on summary proceedings to impound and sell animals of nonresidents.

Local legislation.

Approved in Guy v. Cumberland County, 122 N. C. 474, 29 S. E. 771, holding state in exercise of police power may pass local statutes prohibiting liquor traffic so long as law bears alike on all within designated locality; State v. Gallop, 126 N. C. 984, 35 S. E. 180, holding statute bearing alike on all persons in specified locality not invalid because act forbidden is not made a crime elsewhere in state; State v. Sharp, 125 N. C. 632, 74 Am. St. Rep. 663, 34 S. E. 264, holding act requiring all citizens of county to work on public roads, except citizens of specified town, valid.

Cited in State v. Wolf, 145 N. C. 445, 59 S. E. 40, 13 Ann. Cas. 189, holding act creating Indian school district and compelling attendance of certain Indians not invalid for not applying to state at large; State v. Blake, 157 N. C. 610, 72 S. E. 1080, holding that public acts, passed by legislature in exercise of police power which apply only to certain localities, are valid.

Recovery of liquor license tax.

Cited in Bailey v. Raleigh, 130 N. C. 216, 58 L. R. A. 181, 41 S. E. 281, holding legislature cannot require city to refund liquor license tax for privilege of selling liquor outside of, but adjoining, city limits, where statute authorized tax when collected.

39 L. R. A. 246, RAILTON v. TAYLOR, 20 R. I. 279, 38 Atl. 980.

Stipulation against liability for loss as applying to negligence.

Cited in Gulf Compress Co. v. Harrington, 90 Ark. 259, 23 L.R.A.(N.S.) 1207, 119 S. W. 249, holding stipulation against liability for loss from fire in warehouse receipt not to apply to loss from fire caused by negligence of warehouseman; Wagner v. Boston Elev. R. Co. 188 Mass. 442, 74 N. E. 919, holding that a contract between company and sub-contractor stipulating against liability of company for injury to workmen of contractor does not exempt company from liability to workman injured through negligence.

Cited in note (136 Am. St. Rep. 248) on stipulations against liability for negligence.

General expressions following specific stipulations.

Cited in Richmond v. New York, N. H. & H. R. R. Co. 26 R. I. 226, 58 Atl. 767, holding that stipulation against liability for fire generally includes fires started by engines on main track where it follows a contract to build a spur track for plaintiff, the general exemption not referring to the special mention of spur track.

Landlord's liability to tenant of defective premises.

Cited in Capen v. Hall, 21 R. I. 366, 43 Atl. 847, holding as between landlord and tenant that where latter has full control of premises, rule of *caveat emptor* applies; Whitehead v. Comstock, 25 R. I. 425, 56 Atl. 446, denying duty of landlord to keep water pipes in repair as arising from mere relation of landlord and tenant.

Cited in footnotes to Moore v. Parker, 53 L. R. A. 778, which holds landlord liable for failure to inform tenant of known defection of dangerous condition; McGinley v. Alliance Trust Co. 56 L. R. A. 334, which holds lessor of apartment house retaining control of stairways liable for injury to tenants from lack of repair of stair railing; Thompson v. Clemens, 60 L. R. A. 581, which denies landlord's liability for injury to member of tenant's family from failure to keep agreement to make repairs; Davis v. Smith, 66 L.R.A. 478, which holds landlord not liable for damages to tenant or member of his family through sickness due to breach of covenant to repair.

Distinguished in Davis v. Smith, 26 R. I. 135, 66 L.R.A. 483, 106 Am. St. Rep. 691, 58 Atl. 630, 3 Ann. Cas. 832, where landlord retained no control.

Implied obligation of lessee to repair.

Cited in footnote to Kuhn v. Sol Heavenrich Co. 60 L. R. A. 585, which denies implied contract obligation of one leasing building in sections to keep in repair part remaining in his possession.

Demurrer as searching record.

Approved in Murphy v. Bates, 21 R. I. 90, 41 Atl. 1011; Hale v. Conant, 111 Fed. 891, holding demurrer to plea reaches back to defect in declaration; Hull v. Sprague, 23 R. I. 189, 49 Atl. 697, holding demurrer to plaintiff's surrejoinder reaches back to defect in declaration; Stillman v. Dresser, 22 R. I. 391, 48 Atl. 1, holding that if declaration be faulty, demurrer interposed by either party opens whole record for judgment of court upon first substantial defect in pleadings, at whatever stage it may arise.

39 L. R. A. 249, MURRAY v. ALLARD, 100 Tenn. 100, 66 Am. St. Rep. 740, 43 S. W. 355.

Right to drill oil well near boundary.

Cited in footnote to Kelley v. Ohio Oil Co. 39 L. R. A. 765, which sustains right to drill oil well on own land near line of other person whose oil drawn out.

Conveyance of surface of land.

Approved in Williams v. South Penn Oil Co. Co. 52 W. Va. 188, 60 L. R. A. 799, 43 S. E. 214, holding deed of surface conveys that portion of land which may be used for agricultural purposes.

Severance of surface from mineral strata.

Cited in McBurney v. Glenmary Coal & Coke Co. 121 Tenn. 292, 118 S. W. 694, on the creation of different estates in same land by sale of different mineral strata and retention of the surface.

Minerals.

Approved in Nephi Plaster & Mfg. Co. v. Juab County, 33 Utah, 120, 14

L.R.A.(N.S.) 1045, 93 Pac. 53, holding that gypsum is a mineral under tax law.

Cited in McCombs v. Stephenson, 154 Ala. 114, 44 So. 867, holding "shale" to pass in a conveyance of "all coals, ores and other minerals and metals in under and upon" the land and "all timber, water and stone" necessary to development.

— Petroleum and gas.

Approved in Weaver v. Richards, 156 Mich. 324, 120 N. W. 818, holding that the reservation in deed of "all mineral" includes gas and petroleum.

Cited in Mound City Brick & Gas Co. v. Goodspeed Gas & Oil Co. 83 Kan. 140, 109 Pac. 1002, holding that statute, providing for taxation of strata of minerals in land, title to which has been vested in person other than owner of surface, applies to oil and gas; People ex rel. Carrell v. Bell, 237 Ill. 337, 19 L.R.A.(N.S.) 748, 86 N. E. 593, 15 Ann. Cas. 511, holding that petroleum is a mineral and therefore an oil lease is a mining right within taxing statute; Sult v. A. Hochstetter Oil Co. 63 W. Va. 325, 61 S. E. 307, holding that a reservation in deed to "all minerals in and under" covers petroleum and gas where not limited or qualified by any other clause.

Cited in note (44 L. ed. U. S. 729) on property in petroleum oil or gas.

Distinguished in McKinney v. Central Kentucky Natural Gas Co. 134 Ky. 247, 120 S. W. 314, holding that a conveyance of "all minerals" does not include natural gas where from deed and other evidence it appears that intention was not to include it.

— Property rights in.

Cited in Kansas Natural Gas Co. v. Haskell, 172 Fed. 563, on the rules of property rights in gas and oil in and under land.

Unsevered minerals as part of land.

Cited in Lanyon Zinc Co. v. Freeman, 68 Kan. 696, 75 Pac. 995, 1 Ann. Cas. 403, holding gas and petroleum to be part of the "value and quality" of land in and on which it exists so long as it remains there.

Reservations and exceptions in deed.

Cited in Moore v. Griffin, 72 Kan. 167, 4 L.R.A.(N.S.) 479, 83 Pac. 395, holding that a clause in deed "reserving to grantors all the rights, benefits and privileges secured under a gas lease" executed by them is an exception in deed and not a reservation, and leaves to grantor the title to oil and gas.

Cited in note (4 L.R.A.(N.S.) 478) on effect, upon remote grantee, of reservation or exception of mineral rights.

Adverse possession of mining rights.

Cited in J. R. Crowe Coal & Min. Co. v. Atkinson, 85 Kan. 361, 116 Pac. 499, Ann. Cas. 1912 D, 1196, holding that possession of surface is not adverse as to mining rights previously severed by reservation in conveyance in same chain of title.

Cited in note (140 Am. St. Rep. 952, 954) on what constitutes adverse possession by surface owner of severed mineral estate.

39 L. R. A. 254, FOWLER v. BELL, 90 Tex. 150, 59 Am. St. Rep. 788, 37 S. W. 1058.

Enforcement of contract made or to be performed in another state.

Approved in Shannon v. Georgia State Bldg. & L. Asso. 78 Miss. 966, 57 L. R. A. 802, 84 Am. St. Rep. 657, 30 So. 51, holding contract for usurious interest upon loan secured by mortgage on real estate will not be enforced although debt is

made payable in another state, where such provision is simply device to evade laws of state where debt is sought to be enforced; Sanger v. Jesse French Piano & Organ Co. 21 Tex. Civ. App. 526, 52 S. W. 621, holding contract of conditional sale, made in state where such contracts are not required to be recorded in order to be valid against third parties, not enforceable against third person without notice in state to which property is removed, but in which it is not registered as required by law.

Cited in note (11 L. R. A. (N.S.) 1008) on governing law of sales or mortgages of personalty as affected by fraud against creditors.

Preference of creditor by insolvent corporation.

Approved in Rogers v. Southern Pine Lumber Co. 21 Tex. Civ. App. 59, 51 S. W. 26, holding trust deed executed by insolvent corporation and preferring some creditors to others not merely invalid as to creditors, but void as to all other persons against whom it is sought to be enforced.

Cited in footnote to Corey v. Wadsworth, 44 L. R. A. 766, which sustains preference to stockholder, director, and president of insolvent corporation.

Enforcement of trust deed executed by insolvent corporation.

Approved in College Park Electric Belt Line v. Ide, 15 Tex. Civ. App. 280, 40 S. W. 64, holding creditor cannot enforce lien of trust deed executed by insolvent corporation, except in proper proceeding for that purpose to which all creditors are made parties.

Payment of claim to one not entitled.

Cited in Texas Anchor Fence Co. v. San Antonio, 30 Tex. Civ. App. 564, 71 S. W. 301, holding payment of claim against city to city officer, who purchased it in violation of law, no defense in action by one entitled to receive amount.

39 L. R. A. 258, SHERMAN v. LANGHAM, 92 Tex. 13, 40 S. W. 140, 42 S. W. 961.

Judgment as contract.

Cited in footnotes to Evans-Snider-Buel Co. v. McFadden, 58 L. R. A. 900, which holds judgments not contracts within prohibition against impairing obligations; Livingston v. Livingston, 61 L. R. A. 800, which holds that unchangeable provision for alimony in divorce decree cannot be impaired by subsequent statute empowering courts to modify same.

Power of county to pay bonds from tax levy.

Distinguished in Cass County v. Wilbarger County, 25 Tex. Civ. App. 58, 60 S. W. 988, upholding power of county to use part of tax levy for "county purposes" in payment of bonded indebtedness made payable by statute out of such tax.

Notice of injuries.

Cited in Parsons v. Fort Worth, 26 Tex. Civ. App. 275, 63 S. W. 889, holding notice required by charter to be given before instituting suit against city for injuries to person or property, due to enforcement of health ordinances, condition precedent to recovery.

Mandamus to review discretionary action.

Cited in State ex rel. Holley v. Boerlin, 30 Nev. 477, 98 Pac. 402, holding that mandamus will not lie to control or review the exercise of judgment or discretion of county commissioners in a hearing for reduction of taxes.

Cited in note (98 Am. St. Rep. 884) on mandamus as proper remedy against public officers.

— To compel payment of judgment against city.

Cited in San Antonio v. Routledge, 46 Tex. Civ. App. 218, 102 S. W. 756, holding that mandamus will lie to compel payment of judgments by city under

statute making provision therefor by tax levy mandatory, leaving nothing to official discretion.

Cited in note (9 L.R.A.(N.S.) 1004) on right to go behind judgment against county or municipality on mandamus to enforce.

39 L. R. A. 262, EDWARDS v. STATE, 38 Tex. Crim. Rep. 386, 43 S. W. 112.

Sanity of person with uncontrollable appetite for liquor.

Cited in footnote to *Re* Buchanan, 50 L. R. A. 378, which holds sane, for purpose of trial for crime, person rendered dangerous at frequent intervals by uncontrollable appetite for liquor.

Separation of instructions on effect of alcoholics and drugs.

Cited in Burton v. State, 46 Tex. Crim. Rep. 496, 81 S. W. 742, holding defendant entitled to a distinct charge on intoxicating liquors as a mitigation of punishment not connected with charge as to use of drugs where charge given under statute making no mention of drugs; Otto v. State, 47 Tex. Crim. Rep. 131, 122 Am. St. Rep. 682, 80 S. W. 525, holding defendant entitled to an instruction on use of narcotics as a defense though an instruction on intoxication by use of ardent spirits is also given; Moss v. State, 57 Tex. Crim. Rep. 623, 136 Am. St. Rep. 1001, 124 S. W. 647; Phillips v. State, 50 Tex. Crim. Rep. 484, 98 S. W. 868, holding accused entitled to a distinct charge on use of narcotics where statute making use of intoxicants a mitigation only did not apply to narcotics.

39 L. R. A. 266, HELENA v. DWYER, 64 Ark. 424, 62 Am. St. Rep. 206, 42 S. W. 1071.

Validity of ordinance prohibiting colored netting over fruit.

Cited in footnote to Frost v. Chicago, 49 L. R. A. 657, which holds void, ordinance prohibiting colored netting over package of fruit, etc.

Regulations as to articles of food.

Cited in footnotes to Dorsey v. State, 40 L. R. A. 201, which holds statute against mixing any articles of food too general to be enforced; State v. Layton, 62 L. R. A. 164, which sustains statutory prohibition against manufacture or sale of baking powder containing alum; Arbuckle v. Blackburn, 65 L.R.A. 864, which upholds statute prohibiting the coloring, coating, or polishing of article intended for food whereby damage or inferiority is concealed.

Cited in note (78 Am. St. Rep. 273) on acts which legislature may declare criminal.

Judicial interference with unreasonable exercise of police power.

Cited in Williams v. State, 85 Ark. 470, 26 L.R.A.(N.S.) 485, 122 Am. St. Rep. 47, 108 S. W. 838, upholding power of courts to test an act as to whether it is within reasonable scope of police power; State v. Nelson, 10 Idaho, 529, 67 L.R.A. 811, 109 Am. St. Rep. 226, 79 Pac. 79, 3 Ann. Cas. 322, upholding power of court to declare ordinance prohibiting allowance of females in drinking places, unreasonable and void.

39 L. R. A. 269, WILLIAMS v. STATE, 100 Ga. 511, 28 S. E. 624.

Followed without discussion in Rogers v. State, 4 Ga. App. 691, 62 S. E. 96

Evidence as affected by manner in which procured.

Approved in Sanders v. State, 113 Ga. 269, 38 S. E. 841, holding that generally courts will not concern themselves with manner in which evidence is procured, if evidence is otherwise admissible; Barrett v. Fish, 72 Vt. 20, 51 L. R. A. 757, 82 Am. St. Rep. 914, 47 Atl. 174, holding court of law will take no notice how let-

ters or other papers offered in evidence were obtained in determining their admissibility; Duren v. Thomasville, 125 Ga. 2, 53 S. E. 814, holding evidence admissible in criminal case though discovered by marshal in an unlawful search against protests of accused.

Cited in Imboden v. People, 40 Colo. 180, 90 Pac. 608, holding that court when correspondence is introduced in evidence in criminal case will take no notice of the fact that it may have been obtained illegally nor will it form a collateral issue to try the question; State v. Madison, 23 S. D. 591, 122 N. W. 647; Silva v. State, 6 Okla. Crim. Rep. 98, 116 Pac. 199,—holding that evidence obtained by means of search warrant, illegally issued, is admissible in prosecution for violation of liquor prohibition law; Jackson v. State, 118 Ga. 781, 45 S. E. 604, holding evidence obtained without a search warrant is not inadmissible because of that fact; Smith v. State, 3 Ga. App. 330, 59 S. E. 934, admitting evidence obtained under a lawful arrest of person wrongfully selling intoxicants such evidence not being necessarily incriminating; Jenkins v. State, 4 Ga. App. 864, 62 S. E. 574, on the admissibility of evidence as affected by manner obtained; Warren v. State, 6 Ga. App. 18, 64 S. E. 111, holding evidence that a pistol was taken from a person to whom accused had voluntarily given it at time accused was illegally arrested and person searched admissible against him; Cohn v. State, 120 Tenn. 66, 17 L.R.A.(N.S.) 453, 109 S. W. 1149, 15 Ann. Cas. 1201, holding evidence obtained through a peek hole by wrongful removal of bricks from wall admissible in action for wrongful sale of intoxicants.

Cited in note (136 Am. St. Rep. 136, 139, 155, 162) on admissibility of evidence wrongfully obtained.

Admissibility in evidence against accused of things taken from him.

Approved in Dozier v. State, 107 Ga. 710, 33 S. E. 418, holding testimony of officer that on search he found a pistol concealed in defendant's pocket admissible on trial for carrying concealed weapons; Adams v. New York, 192 U. S. 596, 48 L. ed. 580, 24 Sup. Ct. Rep. 372, Affirming 176 N. Y. 351, 63 L. R. A. 406, 68 N. E. 636, Which Affirms 85 App. Div. 399, 83 N. Y. Supp. 481, holding papers illegally seized under search warrant admissible on trial of indictment against person in whose possession they were found.

Cited in Byrd v. State, 10 Ga. App. 214, 73 S. E. 34, holding that evidence of manner of discovery of property is admissible against person charged with larceny, where accused, though illegally arrested, consented to be searched which disclosed stolen property on his person; Springer v. State, 121 Ga. 157, 48 S. E. 907, holding evidence of presence of concealed weapon on person of accused not inadmissible because discovered by wrongful search; Lawrence v. State, 103 Md. 37, 63 Atl. 96, holding evidence taken from satchel of accused by officers making arrest admissible against accused though the taking be unlawful; Younger v. State, 80 Neb. 207, 114 N. W. 170, holding that shoes of accused taken from him by force are admissible against him; State v. Royce, 38 Wash. 117, 80 Pac. 268, 3 Ann. Cas. 351, holding pawn ticket taken from person of accused after arrest, but before charge entered against him admissible against him.

Cited in notes (59 L.R.A. 467, 470) on admissibility in evidence against accused of documents or other things taken from him; (34 L.R.A.(N.S.) 61) on same point.

Distinguished in Hughes v. State, 2 Ga. App. 34, 58 S. E. 390; Jackson v. State, 7 Ga. App. 416, 66 S. C. 982; Hammock v. State, 1 Ga. App. 127, 58 S. E. 66,—holding evidence obtained on unlawful search of person inadmissible

against accused where he is made thereby to produce evidence incriminating himself.

Admissibility of incriminating evidence which one not in custody is compelled to furnish.

Cited in note (94 Am. St. Rep. 345) on compelling accused to perform acts and submit person to inspection and examination.

Distinguished in Evans v. State, 106 Ga. 522, 71 Am. St. Rep. 276, 32 S. E. 659, holding where person not in legal custody is compelled to furnish incriminating evidence against himself the evidence is not admissible.

Social club as tippling house.

Approved in Mohrman v. State, 105 Ga. 711, 43 L. R. A. 399, 70 Am. St. Rep. 74, 32 S. E. 143, holding fact that sale of liquors is mere incident of maintenance of social club makes place none the less a tippling house within statute making penal keeping open of such houses on Sabbath.

Cited in Shultis v. Rice, 114 Mo. App. 270, 89 S. W. 357, holding one who kept open a saloon without a dramshop license on Sunday guilty of keeping open a "tippling shop" against law.

Liability for official excesses or abuses.

Cited in Brown v. King, 41 Tex. Civ. App. 593, 93 S. W. 1017, holding sheriff not liable for act of deputies in shooting a person supposed to have a pistol on his person without either having seen it or having been properly informed that he had one.

39 L. R. A. 275, RALEIGH & G. R. CO. v. SWANSON, 102 Ga. 754, 28 S. E. 601.

Invalidity of contracts prohibited by statute.

Cited in Menominee River Boom Co. v. Augustus Spies Lumber & Cedar Co. 147 Wis. 571, 132 N. W. 1118, holding that contract prohibited by statute is usually void, even though no penalty is imposed upon contracting parties.

Contracts in violation of established tariff rates.

Cited in Smith v. Great Northern R. Co. 15 N. D. 197, 107 N. W. 56, holding that first class freight charges must be paid on goods classified as first class freight on tariff sheets though shipped as third class freight; Georgia R. Co. v. Creety, 5 Ga. App. 425, 63 S. E. 528, holding that carrier can collect tariff rate from shipper though an agreement was entered into whereby carrier agreed to carry for reduced rate.

Unlawful contract as basis of an action.

Cited in Anderson v. Holbrook, 128 Ga. 239, 11 L.R.A.(N.S.) 580, 57 S. E. 500, holding that a broker cannot recover for advances made on account of his principal where used for gambling purposes if gambler was party to the transaction.

39 L. R. A. 278, BISHOP v. STATE, 149 Ind. 223, 63 Am. St. Rep. 279, 48 N. E. 1038.

Abandonment of public office.

Approved in Relender v. State, 149 Ind. 288, 49 N. E. 30, holding title to public office may be terminated by abandonment.

Cited in notes (86 Am. St. Rep. 578, 579, 583, 584, 585, 588, 589) on loss of one office by accepting another; (16 L.R.A.(N.S.) 1061) on right to repudiate or withdraw resignation.

Negativing constitutional exception in plea of forfeiture of office.

Cited in State *ex rel.* Bishop v. Crowe, 150 Ind. 462, 50 N. E. 471, as holding

that allegation that person holding another office has forfeited it by becoming postmaster must negative constitutional exception in favor of postmaster whose annual compensation does not exceed $90.

Negativing exceptions in plea.

Cited in Steinkuehler v. Wempner, 169 Ind. 161, 15 L.R.A.(N.S.) 677, 81 N. W. 482, stating rule as to negativing exceptions contained in statute in an indictment thereunder.

Adoption of constitutional amendment.

Approved in Campbell v. Indianapolis, 155 Ind. 209, 57 N. E. 920, holding words of Constitution depending upon ratification by people should be interpreted in a sense most obvious to the common understanding at time of its adoption.

Cited in *Re* Denny, 156 Ind. 153, 51 L. R. A. 740, 59 N. E. 359 (dissenting opinion), majority holding constitutional amendment not ratified by majority of electors where persons voting in favor of it, though more than those voting against it, are less than half of those who vote for governor or President.

Construction of statutes.

Cited in Townsend v. Meneley, 37 Ind. App. 132, 74 N. E. 274, holding that the word "acknowledged" should be given its ordinary meaning in construing statute, such word having no fixed legal meaning; Starr v. Delaware County, 40 Ind. App. 10, 79 N. E. 390, on methods of ascertaining poorly expressed intention in enactments.

— By history of legislation.

Cited in State v. Book, 167 Ind. 566, 79 N. E. 493, resorting to prior acts of Congress in force at time of an amendatory act in order to interpret the amendment.

39 L. R. A. 282, STATE *ex rel.* MORRIS v. McFARLAND, 149 Ind. 266, 49 N. E. 5.

Manner of filling vacancies in office.

Cited in State ex rel. Walker v. Wagner, 178 Ind. 146, 82 N. E. 466, 15 Ann. Cas. 1063, holding that where statute does not say how vacancies in city council shall be filled, vacancies may be filled by ballot viva voca vote or motion or resolution declaring appointment.

39 L. R. A. 285, STATE *ex rel.* HOWE v. DES MOINES, 103 Iowa, 76, 64 Am. St. Rep. 457, 72 N. W. 639.

Right of local self-government.

Approved in State *ex rel.* White v. Barker, 116 Iowa, 105, 57 L. R. A. 250, 93 Am. St. Rep. 222, 89 N. W. 204, holding power of choosing managers of municipal water supply system cannot be vested by legislature in judges of court created by Constitution.

Cited in Vallelly v. Park Comrs. 16 N. D. 33, 15 L.R.A.(N.S.) 71, 111 N. W. 615, holding unconstitutional, a statute conferring general power of taxation on board to be appointed by city council without assent of people: Wulf v. Kansas City, 77 Kan. 368, 94 Pac. 207, holding that legislature may properly provide for appointment of park board by city mayor, to establish parks and levy assessments therefor and for the maintenance thereof; Grout v. Illingworth, 131 Iowa, 284, 108 N. W. 528, on the absence of right in an appointive municipal board to levy taxes on property within municipality: Crane v. Waldron, 133 Mich. 87, 94 N. W. 593 (dissenting opinion), on the inviolability of the right of local self-government.

Cited in notes (48 L.R.A. 483) on power of legislature to impose burden on municipalities and to control their local administration and property; (15

L.R.A.(N.S.) 70) on boards or bodies to which power of taxation delegable.

Distinguished in Denver v. Londoner, 33 Colo. 119, 80 Pac. 117, holding that city charter providing for recommendation of ordinance and apportionment of assessment for public improvement by board of public works which may or may not be passed and acted upon by city council is not invalid as depriving city of local control; Soliah v. Cormack, 17 N. D. 400, 117 N. W. 125, where the power of assessment conferred on local appointive body was for "local improvement" only.

39 L. R. A. 291, BROWN SHOE CO. v. HUNT, 103 Iowa, 586, 64 Am. St. Rep. 198, 72 N. W. 765.

Innkeeper's lien on third person's property brought to inn by guest.

Cited in Hodge v. Muscatine County, 121 Iowa, 490, 67 L.R.A. 628, 104 Am. St. Rep. 304, 96 N. W. 968, on innkeeper's lien on samples of third person brought to hotel by guest.

Cited in footnote to McClain v. Williams, 49 L. R. A. 610, which denies innkeeper's lien on third person's property brought to inn by guest.

Cited in notes (24 L.R.A.(N.S.) 958) on innkeeper's lien on third person's property in possession of guest; (107 Am. St. Rep. 869, 877, 878, 879) on innkeepers' liens.

Distinguished in Wertheimer-Swarts Shoe Co. v. Hotel Stevens Co. 38 Wash. 414, 107 Am. St. Rep. 864, 80 Pac. 563, 3 Ann. Cas. 625, where the statute giving the lien did not expressly provide that it covered property of third person brought to hotel by guest.

Lien on third person's property.

Cited in Hodge v. Muscatine County, 121 Iowa, 490, 96 N. W. 968, holding neither owner of property nor person conducting cigarette business entitled to notice and hearing before assessment of mulct tax; Hodge v. Muscatine County, 196 U. S. 281, 49 L. ed. 481, 25 Sup. Ct. Rep. 237, holding landlord's building subject to lien for unpaid tax on tenant's business.

39 L. R. A. 292, WILSON v. HUGHES, 43 W. Va. 826, 28 S. E. 781.

Oil as realty.

Approved in Wagner v. Mallory, 41 App. Div. 129, 58 N. Y. Supp. 526, and Carter v. Tyler County Court, 45 W. Va. 810, 43 L. R. A. 726, 32 S. E. 216, holding oil in ground a component part of real estate; Lawson v. Kirchner, 50 W. Va. 347, 40 S. E. 344, holding court empowered to sell, but not to lease, infant's real estate may lease such land for oil and gas purposes; Southern Oil Co. v. Colquitt, 28 Tex. Civ. App. 296, 69 S. W. 169, holding lease conveying all oil produced on land except one tenth reserved to grantor is conveyance of land.

Cited in Lanyon Zinc Co. v. Freeman, 68 Kan. 696, 75 Pac. 995, 1 Ann. Cas. 403, holding oil to be part of the land while remaining unsevered in place; Lee v. Smith, 54 W. Va. 99, 46 S. E. 352, holding deed of fee passes oil in place; Backer v. Penn Lubricating Co. 89 C. C. A. 419, 162 Fed. 632; Rymer v. South Penn Oil Co. 54 W. Va. 536, 46 S. E. 559,—on oil in place as part of the realty; Preston v. White, 57 W. Va. 281, 50 S. E. 236, holding that the ownership of oil and gas in place is a property right which will support an action in partition; Kansas Natural Gas Co. v. Haskell, 172 Fed. 563, on rules as to property rights in oils in place.

Cited in notes (44 L. ed. U. S. 730) on property in petroleum oil or gas; (140 Am. St. Rep. 952) on nature of surface and mineral estates when severed.

Oil as a mineral.

Cited in People ex rel. Carrell v. Bell, 237 Ill. 337, 19 L.R.A.(N.S.) 748, 86 N. E. 593, 15 Ann. Cas. 511, holding that an oil lease is a "mining right."

Mineral lease as conveyance of mineral covered.

Cited in Harvey Coal & Coke Co. v. Dillon, 59 W. Va. 621, 6 L.R.A.(N.S.) 637, 53 S. E. 928, holding that a lease of coal in land is not a conveyance of the body of the coal, it merely giving right of removal and leaving fee to coal in place in lessor.

Lease, sale, or mortgage by guardian.

Approved in South Penn Oil Co. v. McIntire, 44 W. Va. 305, 28 S. E. 922, holding committee of insane person can lease land of ward for oil or gas purposes only in manner prescribed by statute under decree of court; Haskell v. Sutton, 53 W. Va. 213, 44 S. E. 533, holding guardian cannot lease land of ward for oil purposes.

Cited in footnotes to Frazier v. Jeakins, 57 L. R. A. 575, which holds guardian's sale to her husband void; Warren v. Union Bank, 43 L. R. A. 256, which holds void, mortgage of infant's property under order of court for sole purpose of paying unauthorized debt incurred by guardian.

Power of chancery to order sale of infant's land on ex parte petition.

Cited in footnote to Richards v. East Tennessee, V. & G. R. Co. 45 L. R. A. 712, which sustains power of court of chancery to order sale of entire interest of minors in land on *ex parte* petition in term time.

Allowance for infant's maintenance out of trust fund.

Cited in footnote to Pitts v. Rhode Island State Hospital Trust Co. 48 L. R. A. 783, which authorizes allowance necessary for infant's maintenance out of trust fund provided for his education.

Rights of life tenant in oil producing land.

Approved in Barnsdall v. Boley, 119 Fed. 196, holding life tenant of realty without authority to contract with anyone to explore and drill oil wells upon the property; Higgins Oil & Fuel Co. v. Snow, 51 C. C. A. 275, 113 Fed. 441, holding surviving wife, if not entitled to share absolutely in oil produced on property, entitled to have net yield impounded and receive interest thereon for life; Eakin v. Hawkins, 52 W. Va. 128, 43 S. E. 211, holding life tenant only entitled to interest for life on proceeds of royalty oil acquired from said land; Stewart v. Tennant, 52 W. Va. 575, 44 S. E. 223, holding holder of dower interest in land from which oil is taken is entitled to interest on one third of proceeds of oil.

Cited in Ammons v. Ammons, 50 W. Va. 394, 40 S. E. 490, holding life tenant entitled to interest on royalty due under oil lease, while residue or corpus belongs to remaindermen.

Cited in footnote to Swayne v. Lone Acre Oil Co. 69 L.R.A. 986, which denies right of one entitled to undivided life estate as surviving husband or wife to demand absolutely any part of production of oil wells subsequently opened by remaindermen.

Cited in note (36 L.R.A.(N.S.) 1108, 1109) on rights of life tenant as to oil and gas.

Drilling well as vesting interest in oil in lessees.

Cited in footnote to Parish Fork Oil Co. v. Bridgewater Gas Co. 59 L. R. A. 566, which holds vested interest in oil not vested in lessees by mere drilling of well and discovery of oil.

Right to drill oil well near boundary line.

Cited in footnote to Kelley v. Ohio Oil Co. 39 L. R. A. 765, which sustains right to drill oil well on own land near line of other person whose oil drawn out.

Right of owners of expectancy to enjoin mining of coal.

Cited in footnote to Gannon v. Peterson, 55 L. R. A. 701, which denies right of owners of expectancy to injunction against owner of determinable fee mining coal.

Right of life tenant in royalties from sale of minerals.

Distinguished in Headley v. Hoopengarner, 60 W. Va. 645, 55 S. E. 744, holding that the purchaser of oil rights cannot have decree in summary proceedings in sale of the rights which belonged to infants, opened up where sale was regular and definite as to payment of royalties to proper person.

39 L. R. A. 299, NATIONAL HARROW CO. v. HENCH, 27 C. C. A. 349, 55 U. S. App. 53, 83 Fed. 36.

Subsequent action by assignee against assignor of patent for infringement in 84 Fed. 227.

Validity of agreement in restraint of trade.

Approved in United States v. Addyston Pipe & Steel Co. 46 L. R. A. 136, 29 C. C. A. 160, 54 U. S. App. 723, 85 Fed. 291, holding agreement to sell business invalid if part of plan to establish monopoly; United States v. Coal Dealers' Asso. 85 Fed. 264, holding agreement between combination and wholesale dealers, whereby latter agree not to sell coal at trade rates to one not having established yard, nor to sell at less than card rates to consumers, in restraint of trade; Gibbs v. McNeeley, 60 L. R. A. 155, 55 C. C. A. 73, 118 Fed. 123, holding illegality of combination in restraint of interstate commerce not relieved by fact that it was induced by keen competition or has fixed, reasonable prices; John D. Park & Sons Co. v. National Wholesale Druggists' Asso. 175 N. Y. 43, 62 L. R. A. 650, footnote p. 632, 96 Am. St. Rep. 578, 67 N. E. 136, dissenting opinion by Martin, J., who holds fact that commodities are proprietary articles or patent medicines does not justify combination for purpose of restraining competition and trade.

Agreement fixing price as conspiracy.

Cited in footnotes to Com. v. Grinstead, 56 L. R. A. 709, which holds agreement not to resell goods at less than specified price not within statute for suppression of conspiracies; John D. Park & Sons Co. v. National Wholesale Druggists' Asso. 62 L.R.A. 632, which holds valid plan for sale of proprietary medicines by manufacturers at fixed prices with rebate only to concerns which may be relied on to maintain selling price; Slaughter v. Thacker Coal & Coke Co. 65 L.R.A. 343, which holds void contract by different coal mining companies giving exclusive right to sell entire output at uniform prices to corporation organized as their regular sales agent.

Rights of patentees to combine in restraint of trade.

Followed in Indiana Mfg. Co. v. J. I. Case Threshing Mach. Co. 148 Fed. 29, holding that a combination created by purchase of all patents pertaining to wind stackers and fixing an arbitrary price on wind stackers with no particular reference to specific patents is in restraint of trade.

Cited in State v. Creamery Package Mfg. Co. 110 Minn. 436, 136 Am. St. Rep. 514, 126 N. W. 126, holding that the fact that the primary purpose of a combination was to receive a monopoly of the sale of patented goods does not justify the combination where it also monopolizes unpatented goods; Bobbs-Merrill Co. v. Straus, 139 Fed. 192, holding that a combination to control the book market and fix arbitrary prices on books is illegal though the books are copyrighted; Blount Mfg. Co. v. Yale & T. Mfg. Co. 166 Fed. 557, holding that an agreement between the owners of two independent patents, not to compete in same field is in restraint of trade.

Cited in notes (46 L. ed. U. S. 1059) on restraint of trade in patented articles; (20 Eng. Rul. Cas. 9) on patent for invention as a monopoly.

Acquisition of patent to establish monopoly as defense to suit for infringement.

Distinguished in National Folding-Box & Paper Co. v. Robertson, 99 Fed. 987, holding plea that patent was procured by complainant in pursuance of scheme to establish monopoly not a defense in suit to restrain infringement; Otis Elevator Co. v. Geiger, 107 Fed. 133, holding in suit for infringement of patent, it is no defense that complainant acquired title to patent to restrain manufacture, control sales, and enhance prices.

39 L. R. A. 300, HARDMAN v. MONTANA UNION R. CO. 27 C. C. A. 407, 48 U. S. App. 570, 83 Fed. 88.

Liability of carrier for theft of freight it refused to accept.

Cited in footnote to Seasongood v. Tennessee & O. River Transp. Co. 49 L. R. A. 270, which holds carrier refusing to accept freight tendered, liable for its theft.

Negligence as question for jury.

Approved in Judd v. New York & T. S. S. Co. 54 C. C. A. 244, 117 Fed. 212, holding question whether carrier was negligent in placing wool in shed near wharf, where it was destroyed by fire, for jury.

39 L. R. A. 302, STATE v. PICKETT, 103 Iowa, 714, 73 N. W. 346.

Waiver of objections to jurors.

Followed in State v. Carpenter, 124 Iowa, 9, 99 N. W. 775, holding it waiver of the right to challenge juror where defendant did not ask him regarding nature or quality of his opinion or call for anything touching his qualifications.

Approved in State v. Minor, 106 Iowa, 649, 77 N. W. 330, holding failure to object to method of drawing jurors before jury is accepted waives right to object; State v. Burke, 107 Iowa, 660, 78 N. W. 677, holding right to object to juror waived if no examination as to competency was made before his acceptance; State v. Bussamus, 108 Iowa, 13, 78 N. W. 700, holding failure to challenge juror for known disqualification is waiver of objection; State v. McIntosh, 109 Iowa, 212, 80 N. W. 349, holding acceptance of jury waives all exceptions thereto, except as to legal qualifications; Goldthorp v. Goldthorp, 115 Iowa, 438, 88 N. W. 944, holding failure to challenge juror and examine him in support of the challenge waives right, although fact of incompetency not known until after trial; Dickerson v. North Jersey Street R. Co. 68 N. J. L. 47, 52 Atl. 214, holding inability of juror to understand English language must be availed of by challenge.

Cited in State v. Greenland, 125 Iowa, 145, 100 N. W. 341, holding that failure to specially interrogate juror as to his ability to read or write operates as a waiver of his inability to come up to these qualifications; State v. Matheson, 130 Iowa, 452, 114 Am. St. Rep. 427, 103 N. W. 137, 8 Ann. Cas. 430, holding that any discrepancy in name of juror called and waived on jury list must be ascertained on preliminary examination of juror or be considered waived; Com. v. Penrose, 27 Pa. Super. Ct. 112, holding alienage of juror no grounds for new trial where not objected to on trial and it appears that he is county resident of good habits and intelligent.

Cited in footnote to Queenan v. Oklahoma, 61 L. R. A. 324, which holds right to challenge juror for disqualification may be waived.

39 L. R. A. 305, BURT v. STATE, 38 Tex. Crim. Rep. 397, 40 S. W. 1000, 43 S. W. 344.

Instruction as to insanity.

Followed without special discussion in Hamlin v. State, 39 Tex. Crim. Rep. 607, 47 S. W. 656.

Scientific books and treatises as evidence.

Cited in Missouri, K. & T. R. Co. v. Graves, 57 Tex. Civ. App. 407, 122 S. W. 458, holding inadmissible, statement by doctor of opinion of medical authority.

Cited in note (40 L. R. A. 570) on scientific books and treatises as evidence.

Distinguished in Rice v. State, 49 Tex. Crim. Rep. 578, 94 S. W. 1024, where experts testified on knowledge of medicine gained from books after an examination of stomach of person poisoned, no books being offered in evidence.

Admissibility of acts and declarations evincive of mental state.

Cited in Reinhard v. State, 52 Tex. Crim. Rep. 62, 106 S. W. 128, holding it competent for state to show actions of deceased while in custody of officer before commission of murder to overcome defense of insanity; Lane v. State, 59 Tex. Crim. Rep. 603, 129 S. W. 353, holding that demeanor and appearance of accused during trial can be proven as circumstance to indicate his sanity or insanity.

Evidence as to feigned insanity.

Cited in Tubb v. State, 55 Tex. Crim. Rep. 621, 117 S. W. 858, holding that testimony from an expert that persons suffering from certain kind of insanity always deny that they are insane when hearing themselves being called insane is admissible to show that accused is feigning insanity.

Necessity of warning to render acts and declarations of accused admissible.

Approved in Barth v. State, 39 Tex. Crim. Rep. 386, 73 Am. St. Rep. 935, 46 S. W. 228, holding acts and declarations of accused of a criminative character not admissible in absence of proper warning.

Conclusiveness of expert testimony.

Cited in note (48 L. R. A. 767) on conclusiveness of testimony of experts.

Expert opinion upon hypothetical statement.

Followed without discussion in Campos v. State, 50 Tex. Crim. Rep. 292, 97 S. W. 100.

Approved in Morrison v. State, 40 Tex. Crim. Rep. 494, 51 S. W. 358, holding medical expert may express opinion upon hypothetical statement reasonably consistent with the evidence; Cannon v. State, 41 Tex. Crim. Rep. 485, 56 S. W. 351, holding witness cannot give his opinion upon hypothetical questions as to insanity, unless he is introduced as an expert; Fretwell v. State, 43 Tex. Crim. Rep. 508, 67 S. W. 1021, holding fact that hypothetical case submitted to witness did not embrace all material facts not ground for reversal if accused had right of cross-examination; Chicago v. Didier, 131 Ill. App. 421, holding that what caused the conditions described is the answer required on statement of hypothetical and not what might have caused them.

Cited in Parrish v. State, 139 Ala. 43, 36 So. 1012, on the admissibility of expert opinion based on hypothetical question and also citing annotation on that point.

Nonexpert opinion on sanity.

Cited in Bothwell v. State, 71 Neb. 753, 99 N. W. 669, holding it error to

permit nonexpert witnesses to give their opinion as to mental condition of accused without first stating facts and circumstances upon which it is based.

Basis for opinion on insanity.

Cited in Spivey v. State, 45 Tex. Crim. Rep. 497, 77 S. W. 444, holding it competent to show by defense what accused said to physician testifying, with respect to reasons why he killed deceased for purpose of producing facts as basis for physician's opinion of insanity; Davis v. State, 54 Tex. Crim. Rep. 243, 114 S. W. 366, holding that expert can give his opinion based on testimony without a hypothetical statement where there is no conflict in the testimony and he has heard it all, and the question calling for opinion is so given that jury thoroughly understand on what his opinion is based: State v. Roselair, 57 Or. 14, 109 Pac. 865, holding that medical expert who has personally examined another to determine his responsibility for commission of crime may express his opinion as to mental condition at time of offense.

Measure of proof of insanity in criminal cases.

Cited in note (39 L. R. A. 739) on measure of proof of insanity in criminal cases.

Distinguished in Dent v. State, 46 Tex. Crim. Rep. 175, 79 S. W. 525, where the insanity sought as a defense arose as a part of the difficulty or was brought about by the encounter causing death.

Proof of animus.

Approved in Hamblin v. State, 41 Tex. Crim. Rep. 141, 50 S. W. 1019, holding statement made by accused to deceased that she had found the latter's hiding place, admissible to show the feeling accused had towards deceased.

Hypothetical statement on part of evidence.

Followed in Betts v. State, 48 Tex. Crim. Rep. 526, 89 S. W. 413, holding that the hypothetical statement is not objectionable for not stating all the facts testified to by witnesses on the issue involved.

Cited in Braham v. State, 143 Ala. 45, 38 So. 919, holding hypothetical statement not open to general objection for failure to contain all facts testified to involved in issue covered thereby; Owen v. State, 52 Tex. Crim. Rep. 70, 105 S. W. 513, overruling objection to hypothetical statement for failure to contain testimony as to the effect of one grain dose of morphine given to deceased to alleviate her suffering shortly after assault; Cordes v. State, 54 Tex. Crim. Rep. 211, 112 S. W. 943, holding hypothetical statement not objectionable where it practically if not literally covers all the testimony on the issue involved.

Testimony as to tone of voice.

Cited in Campos v. State, 50 Tex. Crim. Rep. 104, 95 S. W. 1042, holding it competent for witness to state whether accused and his victim talked in an angry tone of voice or not.

Statement of ground of objection in bill of exceptions.

Cited in Douglas v. State, 58 Tex. Crim. Rep. 125, 137 Am. St. Rep. 930, 124 S. W. 933, holding that as court's explanation to defendant's bill of exceptions stated that court did not certify to truth of grounds of objection, but only that they were urged, same could not be considered on appeal, as explanation controlled bill.

39 L. R. A. 340, *Re* KLEMP, 119 Cal. 41, 63 Am. St. Rep. 69, 50 Pac. 1062.

Exemption from execution.

Approved in Spence v. Smith, 121 Cal. 538, 66 Am. St. Rep. 62, 53 Pac. 653, holding threshing outfit an implement of husbandry exempt from execution.

Cited in Laporte v. Libby, 114 La. 573, 38 So. 457, holding that a steam threshing machine is a "farming utensil."

Cited in footnotes to Terry v. McDaniel, 46 L. R. A. 559, which holds barber's chair and looking-glass exempt; Williams v. Vincent, 68 L.R.A. 634, which holds bowling alley not exempt from execution as tools or implements of trade.

Cited in note (123 Am. St. Rep. 142) on exemption of tools and implements.

39 L. R. A. 342, RODE v. SIEBE, 119 Cal. 518, 51 Pac. 869.

Statute changing compensation of officer as special legislation.

Cited in Vail v. San Diego County, 126 Cal. 38, 58 Pac. 392, holding statute changing compensation of officers from daily wage for work performed to fixed salary, but which does not disturb existing fixed salaries, not unconstitutional as special legislation.

Collection of unsecured personal property tax.

Cited in Pacific Postal Teleg. Cable Co. v. Dalton, 119 Cal. 605, 51 Pac. 1072, on validity of law providing special manner of collecting personal property tax unsecured by realty.

Distinguished in Lake County v. Schroder, 47 Or. 142, 81 Pac. 942, where the statute fails to provide for refunding to taxpayer any excess collected over for the payment by him of any deficiency.

Special legislation.

Cited in Ruperich v. Baehr, 142 Cal. 195, 75 Pac. 782, holding statute providing that transcript of judgment be filed with state controller or county auditor of state or county from which money is owing judgment creditor whereon warrant shall issue to creditor, is class legislation based on a proper intrinsic difference warranting classification and is not special; Title & Document Restoration Co. v. Kerrigan, 150 Cal. 323, 8 L.R.A.(N.S.) 693, 119 Am. St. Rep. 199, 88 Pac. 356, holding that a special method of procedure to quiet title to realty when records have been destroyed by fire, flood or earthquake is warranted; Summerfield v. Dow, 5 Cal. App. 681, 91 Pac. 156, upholding a classification of officers for purpose of basing salary on population of officer's district.

39 L. R. A. 345, SEARLE v. LEAD, 10 S. D. 312, 73 N. W. 101.

Appeal from taxation of costs in 10 S. D. 405, 73 N. W. 913.

Compensation for injury by change of grade.

Approved in Whittaker v. Deadwood, 12 S. D. 612, 82 N. W. 202, holding city liable for damage to property by change of grade, whether grade legally established or not.

Cited in Less v. Butte, 28 Mont. 33, 61 L. R. A. 603, 98 Am. St. Rep. 545, 72 Pac. 140, upholding recovery for injuries to abutting property by first grade of street; Edwards v. Thrash, 26 Okla. 482, 138 Am. St. Rep. 975, 109 Pac. 832, holding that injunction will not ordinarily lie to prevent municipality from making change of grade of street until abutting owner is compensated for damages which will arise therefrom; Dickerson v. Okolona, 98 Ark. 210, 36 L.R.A. (N.S.) 1203, 135 S. W. 863, holding that under constitution owner of property abutting on street is entitled to compensation for damage done in lowering grade of street; Sallden v. Little Falls, 102 Minn. 361, 13 L.R.A.(N.S.) 792, 120 Am. St. Rep. 635, 113 N. W. 884, holding same; Kimball v. Salt Lake City, 32 Utah, 258, 10 L.R.A.(N.S.) 485, 125 Am. St. Rep. 859, 90 Pac. 395, holding same where grade established but not acted upon and property was improved prior to change; Chicago, M. & St. P. R. Co. v. Brink, 16 S. D. 651, 94 N. W. 422,

as calling attention to peculiar difference in local constitution respecting compensation for taking or damaging private property for public use.

Cited in footnotes to Henderson v. McClain, 39 L. R. A. 349, which requires payment by city to owner of abutting lot left 8 or 10 feet above street by change of grade; Less v. Butte, 61 L. R. A. 601, which requires compensation for injury to abutting property by original establishment of street grade.

Cited in notes (7 L.R.A.(N.S.) 109) on damage to abutting owner by first grading and improvement of street; (109 Am. St. Rep. 911) on change of grade as "damage" to property within provision that property shall not be taken or damaged for public use without compensation.

Injunction to prevent use of street for telephone poles.

Approved in Donovan v. Allert, 11 N. D. 298, 58 L. R. A. 781, 95 Am. St. Rep. 720, 91 N. W. 441, holding injunction proper remedy to prevent use of street for telephone poles until constitutional provision in regard to compensation for property taken or damaged for public use has been complied with.

Constitutional provision as self-executing.

Cited in footnote to State v. Kyle, 56 L. R. A. 115, which holds self-operating, constitutional amendment for criminal prosecution by indictment or information only.

Distinguished in State v. Bradford, 12 S. D. 217, 80 N. W. 143, holding constitutional amendment providing for state control of liquor traffic not self-executing, and that prior license law remains in force until new system is put in operation by appropriate legislation.

Payment of damages as condition precedent to condemnation.

Cited in Griswold v. Minneapolis, St. P. & S. Ste. M. R. Co. 12 N. D. 444, 102 Am. St. Rep. 572, 97 N. W. 538, to the point that private property cannot first be appropriated to public use, and paid for at end of suit for damages, but payment must precede suit for damages.

Injunction against improper exercise of right of eminent domain.

Cited in Hyde v. Minnesota, D. & P. R. Co. 24 S. D. 393, 123 N. W. 849, holding that equity will prevent wrong threatened by persons who propose to make improper use of right of eminent domain.

39 L. R. A. 349, HENDERSON v. McCLAIN, 102 Ky. 402, 43 S. W. 700.

Recovery by abutting owner for damage to property.

Cited in Ashland & C. Street R. Co. v. Faulkner, 106 Ky. 345, 43 L. R. A. 561, 45 S. W. 235 (dissenting opinion), majority holding laying street car track on turnpike about 7 feet from building does not entitle abutting owner to compensation, although teams prevented from standing in front of his place of business; Louisville R. Co. v. Foster, 108 Ky. 747, 50 L. R. A. 814, 57 S. W. 480, holding owner of property abutting on street near street railway turntable may recover for substantial injury not incidental to usual operation of line, nor borne by other owners generally; Bramlette v. Louisville & N. W. R. Co. 113 Ky. 304, 68 S. W. 145, holding landowner may recover damages from railroad company for erection and negligent maintenance of live-stock pens near her residence; Paducah v. Allen, 111 Ky. 366, 98 Am. St. Rep. 422, 63 S. W. 981, holding city liable to property owner for location of pesthouse in close proximity to his premises; Barfield v. Gleason, 111 Ky. 518, 63 S. W. 964, denying recovery by property owner of cost of excavation on change of grade, assessed against his property; Layman v. Beeler, 113 Ky. 225, 67 S. W. 995, holding property owner may recover from county which has impaired value of his lands by changing grade of road.

Cited in footnote to Louisville R. Co. v. Foster, 50 L. R. A. 813, which denies

abutter's right to recover for noises, smells, and disturbances, from operation of street railway and turntable in street.

Damages incident to first grade of street.

Cited in Sallden v. Little Falls, 102 Minn. 361, 13 L.R.A.(N.S.) 792, 120 Am. St. Rep. 635, 113 N. W. 884, holding that city is liable for damage to abutting property incidental to first grade of street.

Distinguished in Owensboro v. Hope, 128 Ky. 530, 15 L.R.A.(N.S.) 998, 108 S. W. 873, holding that city is not liable in absence of negligence for damage incidental to first grade of street.

Constitutional liability for mere damage to property in the absence of a taking.

Cited in Louisville v. Leezer, 143 Ky. 245, 136 S. W. 223, holding that municipality is liable in damages to property owner injured by overflow of water caused by inadequate sewers; Hay v. Lexington, 114 Ky. 668, 71 S. W. 867, on liability for damage or injury to property by regrading of street under the constitution regardless of negligence; Pickerill v. Louisville, 125 Ky. 227, 100 S. W. 873, holding that constitutional provision that all corporations and individuals vested with privilege of eminent domain must pay for damaging as well as a taking does not infer that railroad company without that right can force surface water back onto dominant estate without compensation; Broadway Coal Min. Co. v. Smith, 136 Ky. 739, 26 L.R.A.(N.S.) 570, 125 S. W. 157, holding that benefits from improvement cannot be set off against damages recoverable for property damaged or destroyed by a taking as provided by constitution.

Cited in notes (12 L.R.A.(N.S.) 698) on liability of municipality for injury to lateral support in making street improvements; (36 L.R.A.(N.S.) 1195, 1196) on liability of municipality for injury to abutting property from changing street grade under constitutional provision against "damaging" private property for public use without compensation; (109 Am. St. Rep. 906, 907) on what constitutes "damage" to property within provision that property shall not be taken or damaged for public use without compensation.

Distinguished in Johnson v. St. Louis, 96 C. C. A. 617, 172 Fed. 34, 18 Ann. Cas. 949, holding property owner not entitled to compensation for crumbling of building wall caused by building of a sewer by city in a lawful manner the constitutional provision not applying to all damage.

39 L. R. A. 351, HINDRY v. HOLT, 24 Colo. 464, 65 Am. St. Rep. 235, 51 Pac. 1002.

Abatement of cause of action for injury negligently inflicted.

Approved in Letson v. Brown, 11 Colo. App. 19, 52 Pac. 287, holding cause of action for injury negligently inflicted, as well as for one wilfully inflicted, abates upon death of person inflicting it.

Attachment of fund in court.

Cited in footnote to Dale v. Brumbly, 64 L. R. A. 112, which holds fund deposited with clerk of court not rendered subject of attachment by order of court that it be paid to person found entitled thereto.

Heir or heirs.

Cited in Hopper v. Denver & R. G. R. Co. 84 C. C. A. 21, 155 Fed. 274, construing the words "heir or heirs" in statute to mean lineal descendants, or child or children.

Statutory right of action for death.

Cited in note (70 Am. St. Rep. 670, 672, 673) on right of action for death of human being as based on statute.

39 L. R. A. 353, PORTER v. RITCH, 70 Conn. 235, 39 Atl. 169.

Action by trustee in trust deed from plaintiff to compel beneficiaries to interplead as to their claims thereunder in Union Trust Co. v. Stamford Trust Co. 72 Conn. 95, 43 Atl. 555.

Appointment of temporary guardian without notice.

Approved in Bumpus v. French, 179 Mass. 134, 60 N. E. 414, holding appointment of temporary guardian of insane person valid without notice.

Commitment to insane hospital without notice.

Cited in footnotes to *Re* Lambert, 55 L.R.A. 856, which holds void, statute authorizing commitment to insane hospital without notice to alleged insane person; Re Boyett, 67 L.R.A. 972, which holds void statute empowering court in its discretion without notice or opportunity to be heard to commit one acquitted of murder because of insanity to asylum for treatment from which he cannot be released without an act of legislature.

Cited in note (26 L.R.A.(N.S.) 234) on necessity and sufficiency of notice of lunacy proceeding to alleged lunatic.

Distinguished in Re Allen, 82 Vt. 371, 26 L.R.A.(N.S.) 238, 73 Atl. 1078, holding restraining insane person without legal process unconstitutional where restraint is permanent.

Sufficiency of allegations as to agency.

Cited in Clark v. Wooster, 79 Conn. 131, 64 Atl. 10, holding where complaint in suit for breach of warranty alleges warranty was made by two persons it is error to allow evidence that it was in fact made by one acting for himself and as agent of the other.

Hypothetical question embracing evidence not yet given.

Cited in McDonald v. Rhode Island Co. 26 R. I. 468, 59 Atl. 391, holding it bad practice but not error to allow hypothetical question on assumed state of facts which it is understood will be afterwards made to appear.

Construction of term "action."

Cited in Wynn v. Tallapoosa County Bank, 168 Ala. 491, 53 So. 228, to the point that term "action" means "a demand for," or a presentation of one's rights in court of justice.

39 L. R. A. 362, TAYLOR v. BRANHAM, 35 Fla. 297, 48 Am. St. Rep. 249, 17 So. 552.

Existence of corporation in state of its creation.

Cited in Duke v. Taylor, 37 Fla. 72, 31 L. R. A. 487, 53 Am. St. Rep. 232, 19 So. 172, holding corporation dwells in state of its creation and cannot migrate to another sovereignty.

Foreign corporation as partnership.

Cited in notes (6 L.R.A.(N.S.) 1007) on personal liability at common law of officers or stockholders to other party to ultra vires or unlawful corporate transaction; (49 Am. St. Rep. 790) on validity of contracts of foreign corporations.

Distinguished in Bond v. Stoughton, 26 Pa. Super. Ct. 487, where foreign corporation had its organization entirely without the state.

Disapproved in Stephenson v. Dodson, 11 North. Co. Rep. 54, holding that

members of foreign corporation having office and doing business here are not liable as partners upon bonds issued under corporate seal.

Aiding judgment by entire record.

Approved in Elizabethport Cordage Co. v. Whitlock, 37 Fla. 222, 20 So. 255, holding judgment may be construed and aided by entire record.

Cited in State v. Seaboard Air Line R. Co. 56 Fla. 681, 47 So. 986, holding order of railroad commissioners penalizing railroad for violation of its rules may be construed by entire record in the case.

Refusal to permit plea to be filed.

Approved in McCallum v. Driggs, 35 Fla. 288, 17 So. 407, holding erroneous refusal to permit plea to be filed not reversible error where defendant was permitted under another plea to introduce any evidence admissible under rejected plea.

39 L. R. A. 365, STATE v. DUCKWORTH, 5 Idaho, 642, 95 Am. St. Rep. 199, 51 Pac. 456.

Quarantine against diseased animals.

Cited in State v. Butterfield Livestock Co. 17 Idaho, 446, 26 L.R.A.(N.S.) 1225, 134 Am. St. Rep. 263, 106 Pac. 455, holding tax of five cents a head as a grazing fee for all sheep brought into state from another state unconstitutional although funds go into general stock inspection fund where no provision of act provides for sheep inspection.

Cited in notes (26 L.R.A.(N.S.) 280) on legislation for protection of health of live stock as interference with interstate commerce; (97 Am. St. Rep. 246) on state quarantine of animals.

Distinguished in State v. Rasmussen, 7 Idaho, 5, 52 L. R. A. 80, 97 Am. St. Rep. 234, 59 Pac. 933, upholding constitutionality of act establishing quarantine against deceased sheep; State v. Asbell, 74 Kan. 400, 121 Am. St. Rep. 345, 86 Pac. 457, holding it no restriction on interstate commerce to provide for penalizing the bringing into state of any cattle without first having state inspector pass on them.

Corporate taxation.

Cited in note (60 L. R. A. 649) on corporate taxation and the commerce clause.

39 L. R. A. 369, SANITARY DISTRICT v. COOK, 169 Ill. 184, 61 Am. St. Rep. 161, 48 N. E. 461.

Raising questions of law by exceptions to referee's report.

Approved in Western Union Cold Storage Co. v. Bankers' Nat. Bank, 176 Ill. 264, 52 N. E. 30, Affirming 73 Ill. App. 414, holding submission of propositions of law may be dispensed with in cases tried before referee, and the parties may raise questions of law by exceptions to the report.

Removal of fixtures.

Approved in Gauggel v. Ainley, 83 Ill. App. 586, holding tenant's right to remove trade fixtures is lost by acceptance of new lease in which there is no reservation of right of removal; Baker v. McClurg, 198 Ill. 36, 59 L. R. A. 134, footnote p. 131, 92 Am. St. Rep. 261, 64 N. E. 701, Affirming 96 Ill. App. 174, holding tenant's right to remove trade fixtures not lost by release of one of lessees from liability under the lease, and its continuance in force as to the other; Smyth v. Stoddard, 105 Ill. App. 518, holding trade fixture not removed by tenant on or before expiration of his lease becomes part of realty; Hertzberg v. Witte, 22 Tex. Civ. App. 321, 54 S. W. 921, holding lessee who erects buildings under agreement that he may remove them does not forfeit the right by acceptance of new lease from purchaser

who bought with knowledge of and subject to agreement; Dreiske v. People's Lumber Co. 107 Ill. App. 290, holding tenant loses right to remove trade fixtures by remaining in possession without landlord's consent after termination of lease.

Cited in McCarthy v. Trumacher, 108 Iowa, 286, 78 N. W. 1104, holding acceptance of new lease does not deprive tenant of right to remove fixtures declared to be chattel property by the old lease; Galena Iron Works Co. v. McDonald, 160 Ill. App. 215, holding that if lessee has failed to comply with lease and abandoned premises he cannot remove trade fixtures.

Cited in footnotes to Wright v. DuBignon, 57 L.R.A. 669, which denies right of tenant to remove fixtures annexed by him to freehold; Radey v. McCurdy, 67 L.R.A. 359, which holds insertion in renewal lease of provision entitling tenant to remove trade fixtures not necessary to enable him to remove such fixtures before termination of extended period; Bergh v. Herring-Hall-Marvin Safe Co. 70 L.R.A. 756, which holds boilers, engines, shafting, and heating apparatus placed in building by tenant to carry on business therein and capable of easy removal without injury to building removable as trade fixtures.

Cited in notes (64 L.R.A. 663) on tenant's duty to leave premises in good condition; (1 L.R.A.(N.S.) 1196, 1200) on effect of renewing tenancy without reserving right to remove fixtures.

Distinguished in Ogden v. Garrison, 82 Neb. 307, 17 L.R.A.(N.S.) 1138, 117 N. W. 714, holding hen house, granaries and machinery shop so attached as to be removed without injury to freehold may be removed although tenant occupies under new lease which contains no provision therefor where lease was merely a continuation of his tenancy.

39 L. R. A. 373, PEOPLE *ex rel.* McILHANY v. CHICAGO LIVE-STOCK EXCHANGE, 170 Ill. 556, 62 Am. St. Rep. 404, 48 N. E. 1062.

Restraint of competition.

Approved in Brown v. Jacobs' Pharmacy Co. 115 Ga. 440, 57 L. R. A. 553, 90 Am. St. Rep. 126, 41 S. E. 553, holding combination to compel dealer to sell at fixed price and, upon his refusal so to do, to prevent sales to him, contrary to public policy and void; Adams v. Brenan, 177 Ill. 200, 42 L. R. A. 720, 69 Am. St. Rep. 222, 52 N. E. 314, holding provision that none but union labor shall be employed cannot be lawfully made in contract by public corporation; Inter-Ocean Pub. Co. v. Associated Press, 184 Ill. 452, 48 L. R. A. 574, 75 Am. St. Rep. 184, 56 N. E. 822, holding by-law of press association forbidding members to receive news from rival concerns void as creating monopoly.

Cited in Dickinson v. Board of Trade, 114 Ill. App. 305, holding city board of trade a private corporation such as may impose and enforce a regulation of commission charge amongst its members; National League, C. M. v. Hornung, 72 Misc. 185, 129 N. Y. Supp. 437, holding that membership corporation law gives no power to corporation to set up tribunal before which any person not member may litigate disputed account with member.

Distinguished in Fire Underwriters v. Johnson, 133 Ky. 807, 24 L.R.A.(N.S.) 158, 119 S. W. 153, holding rule of fire underwriters providing that no member should take agency of a company having already one agency in city is a reasonable restraint of trade; Allen v. Chicago Undertaker's Asso. 137 Ill. App. 67, holding a by-law of a voluntary association not organized for pecuniary profit is not invalid for imposing penalty upon personal solicitation of business by its members.

Dissolution of educational institution for sale of diplomas.

Cited in footnote to State *ex rel.* Sheets v. Mt. Hope College Co. 52 L. R. A. 365,

which authorizes dissolution of educational institution for sale of diplomas without regard to merit.

39 L. R. A. 378, ROSE v. WOLLENBERG, 31 Or. 269, 65 Am. St. Rep. 826, 44 Pac. 382.

Report of later appeal in 36 Or. 154, 59 Pac. 190.

Contract within statute of frauds.

Cited in Peterson v. Creason, 47 Or. 71, 81 Pac. 574, holding agreement by mortgagee to indemnify purchaser of land against judgment liens in consideration of his purchasing the land could be proved by parol and was not within statute of frauds.

39 L. R. A. 384, HAGGERTY v. WAGNER, 148 Ind. 625, 48 N. E. 366.

Sale of undivided interest followed by partition as barring dower.

Cited in footnote to Gaffney v. Jefferies, 53 L. R. A. 918, which holds dower rights not barred by husband's sale of undivided interest, followed by partition by tenants in common.

Cited in note (82 Am. St. Rep. 866, 867) on effect of partition on dower.

Distinguished in Staser v. Gaar S. & Co. 168 Ind. 133, 79 N. E. 404, on transfer from 38 Ind. App. 698, 78 N. E. 987, where question was as to superiority of wife's dower rights to right of judgment creditors of husband in funds from partition sale of property of which he was a joint owner, there being no question as to validity of the sale.

Inchoate dower right as entitling wife to share in proceeds of land condemned.

Approved in Flynn v. Flynn, 171 Mass. 315, 42 L. R. A. 100, 68 Am. St. Rep. 427, 50 N. E. 650, holding inchoate right of dower not such interest in land taken by right of eminent domain that wife can have any portion of money received.

Wife as necessary party.

Followed in Wagner v. Carskadon, 28 Ind. App. 575, 60 N. E. 731, holding wife not made party to proceeding in partition of real estate, in which husband has interest which is devested by judicial sale, does not, if she survives him, retain any interest or title therein.

Approved in Sarver v. Clarkson, 156 Ind. 319, 59 N. E. 933, holding wife not necessary party to suit against husband to foreclose vendor's lien.

Rights of husband or wife after judicial sale of other's land.

Approved in Turner v. Heinberg, 30 Ind. App. 618, 65 N. E. 294, holding husband has no such estate in his wife's lands as entitles him, after her death, to redeem them from judicial sale; Woman's Club Corp. v. Reed, 111 Ky. 812, 64 S. W. 739, holding wife's inchoate right of dower not devested by judicial sale of husband's land, but such right can only be sold with her consent.

Municipal power over nuisances.

Cited in note (38 L. R. A. 332) on municipal power over nuisances affecting safety, health, and personal comfort.

Construction of statutes on same subject.

Cited in Starr v. Delaware County, 40 Ind. App. 10, 79 N. E. 390, holding "services" of sheriff includes admission and discharge of prisoner, so that provision in statute for compensation for services destroys provision in same act providing fee for discharge and admission of prisoners where state has abolished fee system.

39 L. R. A. 399, THOMAS v. CHICAGO, M. & ST. P. R. CO. 103 Iowa, 649, 72 N. W. 783.

Report of later appeal in 114 Iowa, 171, 86 N. W. 259.

License to cross railroad track.

Approved in Wagner v. Chicago & N. W. R. Co. 122 Iowa, 366, 98 N. W. 141, holding mere user of tracks by public not sufficient to make out license.

Cited in Booth v. Union Terminal R. Co. 126 Iowa, 11, 101 N. W. 147, holding workman crossing track was licensee and not a trespasser where railroad tracks ran between two packing houses and he was killed while crossing tracks where railroad knew employees of packing houses always crossed tracks to and from work; Calwell v. Minneapolis & St. L. R. Co. 138 Iowa, 35, 115 N. W. 605, holding one not trespasser in using well defined foot path, with knowledge of railroad, across tracks; Tarashonsky v. Illinois C. R. Co. 139 Iowa, 713, 117 N. W. 1074, holding boy using beaten path much used by pedestrians in crossing tracks with consent of railroad employees a licensee although he was a trespasser previous to reaching the pathway; Union P. R. Co. v. Connolly, 77 Neb. 263, 109 N. W. 368, holding a crossing used by four or five hundred people every day at all hours amounts to a crossing suffered by consent of the railroad company.

Cited in footnotes to Atchison, T. & S. F. R. Co. v. Potter, 56 L.R.A. 575, as to what constitutes license to cross railroad track at place other than public crossing; Matthews v. Seaboard Air Line Ry. 65 L.R.A. 286, which holds that public use of path along railroad, with knowledge, acquiescence and consent of railroad, gives public no prescriptive right to travel there; Williamson v. Southern R. Co. 70 L.R.A. 1007, which holds that invitation to use railroad right of way as footpath does not arise from merely permitting such use where sign is conspicuously posted warning persons not to do so.

Duty of railroad company to those on track.

Approved in Thomas v. Chicago, M. & St. P. R. Co. 114 Iowa, 173, 86 N. W. 259, holding employees of railroad company owe no duty to trespassing children until they see them on track and in place of danger; Edgington v. Burlington, C. R. & N. R. Co. 116 Iowa, 438, 90 N. W. 95, 57 L. R. A. 572, holding extreme theory of law of trespass not applicable where pedestrians have long and openly used path across railroad track; Oliver v. Iowa C. R. Co. 122 Iowa, 220, 97 N. W. 1072, holding exercise of reasonable care requires railroad company to keep lookout for those rightfully on track at public crossing; Oliver v. Iowa C. R. Co. 122 Iowa, 221, 97 N. W. 1072, denying recovery to one injured while unnecessarily standing in dangerous position at railroad crossing, although company negligently failed to keep a lookout.

Cited in Bourrett v. Chicago & N. W. R. Co. 152 Iowa, 592, 36 L.R.A.(N.S.) 967, 132 N. W. 973 (dissenting opinion), on duty of railroad to keep lookout for protection of persons who cross tracks at crossing or place where public generally is licensed to cross; Croft v. Chicago, R. I. & P. R. Co. 132 Iowa, 694, 108 N. W. 1053, holding duty of railroad to wife of station agent, who with knowledge of superintendent helped him, was to abstain from affirmative acts of negligence toward her while in station; Croft v. Chicago, R. I. & P. R. Co. 134 Iowa, 428, 109 N. W. 723, holding wife of station agent known by company to be in the habit of assisting him might rely on usual mode of operating trains with usual care; Christiansen v. Illinois C. R. Co. 140 Iowa, 351, 118 N. W. 387, holding railroad bound to know that a stockman traveling in stock car whose duty it was to care for his stock might be on or about the tracks while train was in yards; Rutherford v. Iowa C. R. Co. 142 Iowa, 754, 121 N. W. 703, hold-

ing one who owns lands adjoining railroad and goes on tracks to hunt for strayed cattle a bare licensee to whom railroad owes only duty of a trespasser.

Cited in note (8 L.R.A.(N.S.) 1080) on duty of railroad to keep lookout for trespassers on track.

Distinguished in McConkey v. Oregon R. & Nav. Co. 35 Wash. 58, 76 Pac. 526, holding railroad owed no duty to one walking on trestle by custom to see that wide interval between cross ties was closed or guarded.

Last clear chance.

Cited in Exum v. Atlantic Coast Line R. Co. 154 N. C. 420, 33 L.R.A.(N.S.) 175, 70 S. E. 845, (dissenting opinion), on liability of railroad for killing of employee while walking along track to work.

Cited in note (55 L. R. A. 438) on doctrine of last clear chance.

Proximate cause of injury.

Cited in footnote to Schreiner v. Great Northern R. Co. 58 L. R. A. 76, which holds failure to build fence not proximate cause of injury to one pushed on track by cow.

39 L. R. A. 403, DAVIS v. DAVIS, 102 Ky. 440, 43 S. W. 168.

Desertion as ground for divorce.

Cited in notes (119 Am. St. Rep. 638; 138 Am. St. Rep. 159) on what constitutes desertion as ground for divorce.

39 L. R. A. 403, HUTSELL v. DEPOSIT BANK, 102 Ky. 410, 43 S. W. 469.

Lien for rent.

Cited in Meyer Bros. v. Gaertner (Louisville Trust Co. v. Gaertner), 106 Ky. 494, 45 L. R. A. 516, 50 S. W. 971 (dissenting opinion), majority holding statutory lien on goods of assignee to extent of one year's rent cannot be avoided by his assignee for creditors by transfer of the lease.

Rights of assignee as to remedies available to original lienor.

Distinguished in Re Bennett, 82 C. C. A. 531, 153 Fed. 679, holding that the priority of the lien given by statute, is not lost by an assignment of the note given for materials actually furnished.

39 L. R. A. 405, RABIDON v. CHICAGO & W. M. R. CO. 115 Mich. 390, 73 N. W. 386.

Duty of railroad to fence.

Approved in Cornell v. Manistee & N. R. Co. 117 Mich. 241, 75 N. W. 472, holding railroad may leave unfenced a portion of its track used as piling and loading ground for timber; Bledsoe v. Grand Trunk R. Co. 126 Mich. 316, 85 N. W. 738, holding railroad not required to fence, as against trespassing boy, platform on its private property where it operated lever to lower apron to a slip.

Cited in Burtram v. Michigan C. R. Co. 148 Mich. 167, 111 N. W. 749; Katzinski v. Grand Trunk R. Co. 141 Mich. 76, 104 N. W. 409,—holding that the law does not require a railroad company to fence its railroad yards; Burnham v. Chicago, B. & Q. R. Co. 83 Neb. 187, 119 N. W. 235, holding that the railroad was not required to fence tracks where the trainmen, and the shippers would be endangered along a side track in daily use.

Cited in notes (7 L.R.A.(N.S.) 206) on depot grounds within meaning of fence laws; (16 L.R.A.(N.S.) 1105) on duty of railroad to fence against children.

Distinguished in Stewart v. Grand Rapids & I. R. Co. 147 Mich. 50, 110 N. W. 126, holding railroad liable for failure to maintain cattle guard and wing

fence at end of that part of its track which it keeps fenced, though the side-track extended beyond this point.

Yard limits of railroad.

Cited in Harvey v. Southern P. Co. 46 Or. 514, 80 Pac. 1061, holding space between water tank and depot is within railroad yards where tank is inside switches used to switch cars onto main line and whole space is used by cars in process of loading and unloading freight and passengers; Wilmot v. Oregon R. Co. 48 Or. 499, 7 L.R.A.(N.S.) 211, 120 Am. St. Rep. 840, 87 Pac. 528, 11 Ann. Cas. 18, holding that where the grounds have been appropriated, surveyed and set apart by the railroad company, it affords strong, if not conclusive evidence, that their boundaries and extent are necessary, and they should not be curtailed or extended unless in a very clear case.

39 L. R. A. 410, SMITH v. DETROIT LOAN & BLDG. ASSO. 115 Mich. 340, 69 Am. St. Rep. 575, 73 N. W. 395.

Owner's liability for forcible entry.

Approved in Rush v. Aiken Mfg. Co. 58 S. C. 151, 79 Am. St. Rep. 836, 36 S. E. 497, holding landlord not liable as trespasser *ab initio* because of use of force in making entry after possessory right of tenant has terminated.

Cited in Cockerline v. Fisher, 140 Mich. 100, 103 N. W. 522, holding that the landlord had a right of re-entry upon a default in the rent, and this was not forfeited by artifice practiced in instituting a civil suit to induce the tenant and his wife to leave the place in order that the landlord might gain peaceable possession of the premises; Laetz v. Tierney, 153 Mich. 281, 116 N. W. 1075, holding that re-entry by the landlord under a lease and a chattel mortgage for rent, which provided that in case of default, there might be a re-entry and a sale of the stock, was not wrongful though made in the absence of the tenant, who had gone for legal advice.

Cited in footnotes to Vinson v. Flynn, 39 L. R. A. 415, which holds landlord forcibly taking possession after lease expires not subject to civil action by tenant; Stillwell v. Duncan, 39 L. R. A. 863, which denies owner's liability in trespass for re-entering and taking possession of land wrongfully entered on by other person.

Cited in note (11 L.R.A.(N.S.) 469) on liability of landlord forcibly dispossessing tenant holding over.

Right to maintain forcible entry and detainer.

Cited in Smith v. Nelson, 165 Mich. 444, 130 N. W. 1119, to the point that provision of statute under which breach of contract by failure to pay rent is forgiven upon tender of rent due, is merely restriction upon remedy by summary proceedings.

Cited in footnote to Page v. Dwight, 39 L. R. A. 418, which denies right to maintain forcible entry after forcible ejection from possession lawfully obtained by one having present right of possession.

Cited in note (127 Am. St. Rep. 98, 99) on effect of re-entry clauses in leases.

Termination of tenancy by notice to quit for default in rent.

Cited in Williams v. Michigan, C. R. Co. 133 Mich. 453, 103 Am. St. Rep. 458, 95 N. W. 708, holding that since the tenant is a trespasser after the expiration of the time limited by the notice for the payment of the rent, an agreement between the lessee and the subtenant after such time imposes no liabilities upon the latter; Wray-Austin Machinery Co. v. Flower, 140 Mich. 460, 103 N. W. 873, holding a term under a lease is terminated by expiration of time limited in notice to lessee to quit for nonpayment of rent.

39 L. R. A. 415, VINSON v. FLYNN, 64 Ark. 453, 43 S. W. 146.

Re-entry by owner.

Cited in footnotes to Smith v. Detroit Loan & Bldg. Asso. 39 L. R. A. 410, which sustains landlord's right of peaceable re-entry after default and notice that lease terminated; Stillwell v. Duncan, 39 L. R. A. 863, which denies owner's liability in trespass for re-entering and taking possession of land wrongfully entered on by other person.

Cited in notes (11 L.R.A.(N.S.) 468) on liability of landlord forcibly dispossessing tenant holding over; (127 Am. St. Rep. 97) on effect of re-entry clauses in leases.

Right to maintain forcible entry and detainer.

Cited in footnote to Page v. Dwight, 39 L. R. A. 418, which denies right to maintain forcible entry after forcible ejection from possession lawfully obtained by one having present right of possession.

Cited in note (8 L.R.A.(N.S.) 427) on forcible entry and detainer against one forcibly dispossessing peaceable possessor in asserting lawful right to possession.

Suit for malicious prosecution.

Approved in Berger v. Saul, 113 Ga. 870, 39 S. E. 326, holding action before court without jurisdiction of subject-matter cannot be made basis of action for malicious prosecution.

Cited in McIntosh v. Bullard, 95 Ark. 230, 129 S. W. 85, holding that an action for malicious prosecution will not lie where the arrest was made under legal authority.

Cited in footnotes to McCormick Harvesting Mach. Co. v. William, 56 L.R.A. 338, which authorizes suit for malicious prosecution of civil action without restraint of person or seizure of property; Abbott v. Thorne, 65 L.R.A. 826, which denies right of action for malicious prosecution of civil action in which there was no arrest or attachment of property and no special injuries inflicted.

Cited in note (2 L.R.A.(N.S.) 1103) on lack of jurisdiction of court in which malicious prosecution begun as affecting right of action therefor.

39 L. R. A. 418, PAGE v. DWIGHT, 170 Mass. 29, 48 N. E. 850.

Re-entry by landlord or owner.

Cited in Schwinn v. Perkins, 79 N. J. L. 521, 32 L.R.A.(N.S.) 55, 78 Atl. 19, 21 Ann. Cas. 1223, holding that where rightful owner gains possession of lands by forcible entry, he may be deprived of it by statutory proceeding, in favor of one in actual peaceable possession, although not rightfully entitled thereto.

Cited in footnotes to Smith v. Detroit Loan & Bldg. Asso. 39 L. R. A. 410, which sustains landlord's right of peaceable re-entry after default and notice that lease terminated; Vinson v. Flynn, 39 L. R. A. 415, which holds landlord forcibly taking possession after lease expires not subject to civil action by tenant; Stillwell v. Duncan, 39 L. R. A. 863, which denies owner's liability in trespass for re-entering and taking possession of land wrongfully entered on by other person.

Cited in note (8 L.R.A.(N.S.) 430) on forcible entry and detainer against one forcibly dispossessing peaceable possessor in asserting lawful right to possession.

Issue as to title in action on summary process.

Cited in New England Mut. L. Ins. Co. v. Wing, 191 Mass. 195, 77 N. E. 376, holding that in a suit under summary process, by the purchaser at a mortgagee's

sale, the legal title may be put in issue, and the burden then is upon the plaintiff to establish its right to the possession of the land demanded.

39 L. R. A. 423, WIEHL v. ROBERTSON, 97 Tenn. 458, 37 S. W. 274.

Validity of mortgage in assumed name or name of fictitious person.

Cited in Reeve v. North Carolina Land & Timber Co. 72 C. C. A. 287, 141 Fed. 833, holding that a sheriff's deed to one who was dead, is ineffectual to pass title; Chapman v. Tyson, 39 Wash. 528, 81 Pac. 1066, holding land purchased by father falsely representing his son's name to be his own and later deeded by him using son's name passes title to grantee and cannot be attacked as a forgery.

Cited in footnote to Blackman v. Henderson, 56 L. R. A. 902, which holds mortgage in name of fictitious person valid as between landowner executing it, and mortgagee.

Cited in note (84 Am. St. Rep. 238) on validity of conveyance to fictitious person.

Check or bill issued or indorsed to impostor.

Cited in note (50 L. R. A. 83) as to who must bear loss where check or bill issued or indorsed to impostor.

39 L. R. A. 431, FAUCHER v. WILSON, 68 N. H. 338, 38 Atl. 1002.

Liability of licensed carrier within city for goods carried outside.

Cited in footnote to Farley v. Lavary, 47 L. R. A. 383, which holds licensed carrier within city, hauling for all persons requiring services, liable as carrier for goods carried outside of city.

Private carrier.

Approved in Thompson v. New York Storage Co. 97 Mo. App. 136, 70 S. W. 938, holding one engaged in storing and moving goods for hire, private carrier not bound to serve everyone without discrimination.

Common carriers.

Cited in State ex rel. Winnett v. Union Stock Yards Co. 81 Neb. 77, 115 N. W. 627, holding that a stock yards company having thirty-five miles of railroad track over which it carries freight in carload lots for itself and for adjacent industries, at specified rates, is a common carrier within the meaning of the state constitution and statutes.

Cited in note (21 L.R.A.(N.S.) 190) on cartman, etc., as common carrier.

39 L. R. A. 433, MATTHEWS v. AMERICAN CENT. INS. CO. 154 N. Y. 449, 61 Am. St. Rep. 627, 48 N. E. 751.

Liberal construction of policy.

Approved in Maisel v. Fire Asso. 59 App. Div. 463, 69 N. Y. Supp. 181; Buffalo Elevating Co. v. Prussian Nat. Ins. Co. 64 App. Div. 191, 71 N. Y. Supp. 918; Michael v. Prussian Nat. Ins. Co. 171 N. Y. 35, 63 N. E 810,— holding provisions in policy should be construed most favorably to insured; Porter v. Traders' Ins. Co. 164 N. Y. 510, 52 L. R. A. 429, 58 N. E. 641, holding condition in policy that, after loss, insured submit to examination under oath should be construed liberally in his favor.

Cited in Heilbrunn v. German Alliance Ins. Co. 140 App. Div. 564, 125 N. Y. Supp. 374 (dissenting opinion), on construction of insurance policies in cases where meaning is not clear; St. Paul F. & M. Ins. Co. v. Mittendorf, 24 Okla. 655, 28 L.R.A.(N.S.) 654, 104 Pac. 354, holding that the liability of the insurance company having become fixed by the happening of the event upon which the contract was to mature, conditions which prescribe methods and formalities

for ascertaining the extent of it, or for adjusting it, should be liberally construed; Montana Stables v. Union Assur. Soc. 53 Wash. 276, 101 Pac. 882, holding insurance policy on building and "addition attached thereto" covers building fronting on another street separated by an alley way where alley is excavated and two buildings are joined in one whole basement.

Time within which notice of loss or injury must be given.

Approved in Solomon v. Continental F. Ins. Co. 28 App. Div. 215, 50 N. Y. Supp. 922, holding requirement in policy that immediate notice of loss be given, contemplates only service of notice without unnecessary delay; Solomon v. Continental F. Ins. Co. 28 App. Div. 216, 50 N. Y. Supp. 922, holding failure to serve notice of loss until fifty-three days after the fire not unreasonable delay, as matter of law, where insured was unable to earlier obtain information as to policy; Solomon v. Continental F. Ins. Co. 160 N. Y. 601, 46 L. R. A. 687, 73 Am. St. Rep. 707, 55 N. E. 279, holding "immediate notice" of loss by fire is notice given within reasonable time, considering situation of policy holder, and it is sufficient if he exercises due diligence under circumstances of case; Walden v. Jamestown, 178 N. Y. 217, 70 N. E. 466, holding service of notice of injuries within three days sufficient compliance with charter requirement that service be made within forty-eight hours, where plaintiff's injuries rendered strict compliance impossible; Comstock v. Fraternal Acci. Asso. 116 Wis. 390, 93 N. W. 22, holding it sufficient if notice of accident by which insured was rendered unconscious was given company as soon as he was able.

Complying with unreasonable time limit as to notice of loss.

Approved in Osterhoudt v. Southern P. Co. 47 App. Div. 151, 62 N. Y. Supp. 134, holding unreasonableness of time specified by carrier within which notice of claim for loss shall be given does not relieve shipper from complying with requirement to the extent he reasonably can.

Stipulation limiting time for suit on policy.

Cited in note (47 L. R. A. 710) as to when stipulation limiting time for suits on insurance policy begins to run.

Scope of appointing power.

Approved in Harvier v. New York & H. R. R. Co. 26 Misc. 399, 56 N. Y. Supp. 204, holding power of board of public improvement to appoint employees includes power to do it effectively.

Personal or legal representatives.

Approved in Beil v. Supreme Lodge, K. of H. 80 App. Div. 614, 80 N. Y. Supp. 751, holding "personal representatives" entitled to waive prohibition as to testimony of physician concerning condition of deceased limited to executors and administrators; Sullivan v. Louisville & N. R. Co. 138 Ala. 662, 35 So. 694, holding "legal representatives" means executors or administrators.

Cited in Shook v. Fox, 126 App. Div. 574, 110 N. Y. Supp. 951 (dissenting opinion), as to who is a legal representative.

Waiver of time to sue.

Cited in Watertown Nat. Bank v. Bagley, 134 App. Div. 835, 119 N. Y. Supp. 592, holding agreement by holder of over-due notes of corporation not to sue directors thereon pending closing up of receivership where he had a right of action is a valid waiver of the statute of limitations.

39 L. R. A. 439, STANLY COUNTY v. SNUGGS, 121 N. C. 394, 28 S. E. 539.

Proof of reading of bill.

Approved in Rodman-Heath Cotton Mills v. Waxhaw, 130 N. C. 294, 41 S. E.

488, holding ratification of act by presiding officers of the two houses of the general assembly, declaring it to have been read three times in each house, conclusive evidence of such fact.

Failure to read bill or enter yeas and nays.

Approved in Charlotte v. Shepard, 122 N. C. 605, 29 S. E. 842, holding act authorizing city to create debt and issue bonds a nullity when not read on three several days and the yeas and nays recorded as required by Constitution; Wilkes County v. Call, 123 N. C. 310, 44 L. R. A. 253, 31 S. E. 481, holding bond issue void for want of legislative authority, where upon second reading of bill there was no call of the ayes and nays and no record of vote made in journal; Buncombe County v. Payne, 123 N. C. 487, 31 S. E. 711, holding bond issue void where constitutional requirement as to reading of bill and entry of yeas and nays on journal not conformed to; Wilkes County v. Coler, 180 U. S. 514, 45 L. ed. 648, 21 Sup. Ct. Rep. 458, same case in court below, 51 C. C. A. 400, 113 Fed. 726, and Stanly County v. Coler, 37 C. C. A. 486, 96 Fed. 286, Affirming on this point 89 Fed. 260, holding necessary entry of yeas and nays in journal on passage of bill authorizing issue of bonds in aid of railroad; Rodman-Heath Cotton Mills v. Waxhaw, 130 N. C. 294, 41 S. E. 488, holding no city or town can levy any tax or incur any debt for any purpose whatever, unless act authorizing it is passed after three several readings on different days, and the yeas and nays are entered on the journal; Rodman v. Washington, 122 N. C. 41, 30 S. E. 118, holding failure to enter on legislative journal yeas and nays on passage of a bill imposing special tax above constitutional limitation renders act void unless it is for necessary expenses; New Hanover County v. De Rosset, 129 N. C. 279, 40 S. E. 43, holding both yeas and nays, not merely the yeas, must be entered on journal, or entry made that there were no nays; Glenn v. Wray, 126 N. C. 732, 36 S. E. 167, holding bill, if amended in material matter, should be read over again three times in each house and the yea and nay vote on second and third readings should be entered on journal; Debnam v. Chitty, 131 N. C. 678, 43 S. E. 3, holding failure to note on legislative journal fact that no negative votes were given invalidates act.

Signing of bill as evidence of valid enactment.

Approved in Graves v. Moore County, 135 N. C. 52, 47 S. E. 134, holding state decisions prior to 1886 did not establish principle that ratification and signing of act by presiding officers was conclusive evidence it had been constitutionally passed.

Necessary municipal expense.

Approved in Mayo v. Washington, 122 N. C. 12, 40 L. R. A. 166, 29 S. E. 343, holding purchase of electric light plant by municipal corporation not "necessary expense" which may be created without compliance with constitutional provision requiring legislative authority and ratification of voters.

Extent of legislative power.

Cited in Motley v. Southern Finishing & Warehouse Co. 122 N. C. 349, 30 S. E. 3, as holding all legislative power is granted to and abides in the legislature, except as restricted or prohibited by Constitution.

Enjoining expenditure of money illegally levied.

Approved in Edgerton v. Goldsboro Water Co. 126 N. C. 98, 48 L. R. A. 446, 35 S. E. 243, holding municipality may be enjoined from wrongfully paying out money illegally levied and collected.

Aid to railroads.

Approved in Graves v. Moore County, 135 N. C. 54, 47 S. E. 134, holding

county commissioners without authority to issue bonds to aid in completion of railroad the construction of which has not been commenced; Stanly County v. Coler, 190 U. S. 442, 47 L. ed. 1131, 23 Sup. Ct. Rep. 811, holding purchasers of county bonds issued in aid of railroad construction not entitled to assume from recitals that the railroad was begun before date of its charter; Henderson County v. Travelers' Ins. Co. 63 C. C. A. 474, 128 Fed. 824, holding county bonds issued in aid of railroad and valid under decisions in force when issued cannot be invalidated by subsequent decisions.

Disapproved in Stanly County v. Coler, 51 C. C. A. 381, 113 Fed. 707, Reversing on Rehearing, 37 C. C. A. 489, 96 Fed. 290, and Affirming 89 Fed. 265, holding aid to railroads authorized by N. C. Code, § 1996, not limited to those commenced at its passage.

Conclusiveness of enrolled bill.

Cited in note (40 L.R.A.(N.S.) 11, 21) on conclusiveness of enrolled bill.

39 L. R. A. 444, MURPHY v. SAN LUIS OBISPO, 119 Cal. 624, 51 Pac. 1085.

Form of ballot at bond or referendum election.

Approved in San Luis Obispo v. Fitzgerald, 126 Cal. 281, 58 Pac. 699, holding statute prescribing form of ballot to be used at bond election is mandatory; Los Angeles v. Hance, 130 Cal. 281, 62 Pac. 484, holding voter at election for issuance of bonds has no alternative but to vote upon the proposition in manner prescribed by ordinance.

Cited in Jenkins v. Williams, 14 Cal. App. 97, 111 Pac. 116, holding that order of supervisors under Pol. Code, section 4088, specifying improvements to be made has all the force of ordinance and therefore, though ballot vote at election ratifying bonds contains but general statement of purpose of bonds to be issued, money must be used for purpose specified in order; Harvey v. Cook County, 221 Ill. 84, 77 N. E. 424, holding where statute provided that ballot should read "for" or "against the Torrens land system" and it was printed "for Torrens system—yes" and "against Torrens system—no" the election was void.

Distinguished in People v. Ontario, 148 Cal. 640, 84 Pac. 205, holding ballots required by statute to read "for annexation" or "against annexation" sufficiently comply therewith if they read "for annexation—yes" and "for annexation—no," there being no express direction as to the form.

Power to take away right to contract for payment in gold coin.

Cited in footnote to Dennis v. Moses, 40 L. R. A. 302, which denies power to take away right to contract for payment in gold coin.

Validity of acts pursuant to ordinance authorized by charter.

Cited in Harrison v. Horton, 5 Cal. App. 417, 90 Pac. 716, holding appointment of county attorney's assistant under ordinance which ordinance is authorized by charter is equivalent to direct appointment under charter.

Details of bond issue on which voters must pass.

Cited in Hollywood Union High School Dist. v. Keyes, 12 Cal. App. 175, 107 Pac. 129, holding that notice of election for the issuance of bonds of high school districts was insufficient which provided that the interest was payable at a certain per cent per annum and it could not be cured by the use of the word annually in the bonds; Carlson v. Helena, 39 Mont. 111, 102 Pac. 39, 17 Ann. Cas. 1233, holding notice of election to authorize issue of bonds at not over five per cent interest per annum authorizes issue payable at five per cent semi-annually.

39 L. R. A. 449, HOVEY v. ELLIOTT, 145 N. Y. 126, 39 N. E. 841.

Contempt of void order of court.

Cited in McMenry v. State, 91 Miss. 576, 16 L.R.A.(N.S.) 1069, 44 So. 831, holding refusal to obey order of court issued without authority is not contempt of court, altho court had jurisdiction generally of the call and also citing annotation on this point.

Striking out answer as punishment for contempt.

Approved in Devlin v. Hinman, 40 App. Div. 102, 57 N. Y. Supp. 663, holding court has power to strike out defendant's answer as penalty for failure to obey orders of restitution.

Cited in Sibley v. Sibley, 76 App. Div. 136, 78 N. Y. Supp. 743, holding answer of defendant in suit for separation and separate support cannot be striken out, and his evidence refused, for contempt where he was not seeking affirmative relief; Harney v. Harney, 110 App. Div. 21, 96 N. Y. Supp. 905, holding failure of defendant in divorce suit to pay alimony in accordance with an order to which he has consented, pendente lite, will subject him to an order of court staying trial until such order is complied with.

Cited in footnote to Bennett v. Bennett, 70 L.R.A. 864, which sustains power of court in divorce suit to punish refusal to pay alimony by striking defendant's answer from record or refusing to permit him to plead further.

Decree pro confesso after striking answer for contempt.

Affirmed in 167 U. S. 413, 42 L. ed. 219, 17 Sup. Ct. Rep. 841, holding decree *pro confesso* entered after striking answer as punishment for contempt void for want of due process of law.

Cited in footnote to Meacham v. Bear Valley Irrigation Co. 68 L.R.A. 600, which denies right to enter judgment in favor of plaintiff in action to recover land because of defendant's noncompliance with rule of court requiring defendant to deposit half of reporter's per diem before proceeding to trial.

Right to notice and opportunity to be heard.

Approved in *Re* Rosser, 41 C. C. A. 503, 101 Fed. 568, holding bankrupt entitled to notice of application to referee to require payment of sum of money to trustee and to opportunity to be heard thereon.

Distinguished in Central Trust Co. v. D'Arcy, 238 Mo. 683, 142 S. W. 294, holding that person to whom corporation conveyed its property to pay its debts is not necessary party to action against corporation by creditor.

Right of one charged with contempt in publications to show their truth.

Cited in footnote to McClatchy v. Superior Court, 39 L. R. A. 691, which holds unlawful, refusal to permit one charged with contempt in publications as to evidence to show their truth and disprove reporter's notes offered against him.

Taking jurisdiction after repeal of statute conferring it.

Cited in footnote to Norfolk & W. R. Co. v. Pinnacle Coal Co. 41 L. R. A. 414, which denies power of justice of peace to take jurisdiction after repeal of statute conferring jurisdiction in such class of actions.

Review of constitutionality of statute on habeas corpus.

Approved in *Re* Jarvis, 66 Kan. 331, 71 Pac. 576, holding defendant may, after time for appeal has expired, challenge on habeas corpus constitutionality of statute under which he was convicted of misdemeanor, and referring particularly to annotation in 39 L. R. A. 449; *Re* Gray, 64 Kan. 854, 68 Pac. 658, refusing to determine on habeas corpus constitutionality of city ordinance for violation of which accused is awaiting trial, and referring particularly to annotation in 39 L. R. A. 449.

Cited in Ex parte Hollman, 79 S. C. 11, 21 L.R.A.(N.S.) 245, 60 S. E. 19, 14

Ann. Cas. 1105, holding unconstitutionality of statute may be tested by habeas corpus to release one imprisoned under it.

Cited in footnote to People *ex rel.* Campbell v. District Court, 46 L. R. A. 855, which denies power of court of concurrent jurisdiction to review constitutionality of statute on habeas corpus.

Writ of prohibition to enjoin probate proceedings.

Cited in People *ex rel.* Patrick v. Fitzgerald, 73 App. Div. 345, 76 N. Y. Supp. 865, holding where subscribing witnesses to will have been indicted for perjury and refuse to testify, proponent not entitled to writ of prohibition enjoining probate proceedings of will or of prior will until testimony of witnesses is obtained.

Motion to reduce alimony by party in contempt.

Approved in Sibley v. Sibley, 66 App. Div. 553, 73 N. Y. Supp. 244, holding motion to reduce amount of alimony and council fees ordered paid will not be granted where moving party is in contempt.

Removal of offender.

Cited in *Re* Dana, 68 Fed. 903, holding libel committed in District of Columbia not an offense for which offender elsewhere in United States may be removed to District.

Right of party in contempt to proceed with trial.

Cited in footnote to Campbell v. Justices of Superior Court, 69 L.R.A. 311, which denies plaintiff's absolute right to proceed with trial of equity case while in contempt of court for refusal to obey order enforceable by mandamus.

39 L. R. A. 463, PEAY v. WESTERN U. TELEG. CO. 64 Ark. 538, 43 S. W. 965.

Recovery for mental anguish.

Approved in Hot Springs R. Co. v. Deloney, 65 Ark. 183, 67 Am. St. Rep. 913, 45 S. W. 351, holding one expelled from train while on his way to visit his sick brother cannot recover for mental anguish due to resulting delay; Texarkana & Ft. S. R. Co. v. Anderson, 67 Ark. 129, 53 S. W. 673, holding passenger carried past her destination cannot recover for mental suffering without showing some personal injury as basis of action; St. Louis, I. M. & S. R. Co. v. Lewis, 69 Ark. 85, 61 S. W. 163, holding passenger put off a short distance beyond her destination, because she failed to get off at right place, cannot recover damages for mental anguish; St. Louis, I. M. & S. R. Co. v. Bragg, 69 Ark. 405, 86 Am. St. Rep. 206, 64 S. W. 226, holding damages not recoverable for mental anguish and alleged impaired health by one put off train a few yards beyond stopping place and compelled to pass over cattle guard to get to crossing; Western U. Teleg. Co. v. Ferguson, 26 Ind. App. 215, 59 N. E. 416, recommending change of rule permitting recovery for mental anguish due to failure to deliver telegram; Western U. Teleg. Co. v. Ferguson, 157 Ind. 75, 54 L. R. A. 850, footnote p. 846, 60 N. E. 674, holding mental anguish will not support action against telegraph company for negligent failure to deliver telegram.

Cited in Western U. Teleg. Co. v. Cooper, 29 Tex. Civ. App. 594, 69 S. W. 427, to point that damages for mental anguish due to delay in sending message not recoverable in Arkansas; Southern Teleph. Co. v. King, 103 Ark. 164, 39 L.R.A. (N.S.) 405, 146 S. W. 489, holding that statute rendering telegraph company liable for mental suffering due to negligence in delivering telegram, does not apply in case of negligence of telephone companies; Western U. Teleg. Co. v. Chouteau, 28 Okla. 679, — L.R.A.(N.S.) —, 115 Pac. 879, Ann. Cas. 1912D, 824, holding that damages are not recoverable for mental distress alone, caused

by negligent delay in delivering telegram; Western U. Teleg. Co. v. Parsley, 57 Tex. Civ. App. 13, 121 S. W. 226, holding that law of state from which telegram is sent, determines whether or not complaining party is entitled to recover damages for mental anguish, though place of delivery and negligence in respect thereto were in another state; St. Louis, I. M. & S. R. Co. v. Buckner, 89 Ark. 63, 20 L.R.A.(N.S.) 461, 115 S. W. 923, holding in an action against a railroad for failure to keep its waiting room heated, it was error to admit testimony of the plaintiff as to mental anguish caused by fear of contracting consumption because of the cold and fever which she had contracted; St. Louis, I. M. & S. R. Co. v. Taylor, 84 Ark. 45, 13 L.R.A.(N.S.) 162, 104 S. W. 551, holding railroad company not liable for mental anguish caused by mere verbal abuse of its station agent toward passenger; Davis v. Richardson, 76 Ark. 352, 89 S. W. 318, holding that mental suffering was not an element of damage in an action for assault, where there was merely an indecent proposal to a female unaccompanied by any physical injury; Arkansas & L. R. Co. v. Stroude, 77 Ark. 113, 113 Am. St. Rep. 130, 91 S. W. 18, as having been followed by statute giving damages for mental anguish and holding statute applied to railroad operating telegraph line; Western U. Teleg. Co. v. Shenep, 83 Ark. 479, 12 L.R.A.(N.S.) 888, 119 Am. St. Rep. 45, 104 S. W. 154, holding statute changing rule of cited case, whereby a cause of action for mental anguish is given does not authorize a recovery in case of anxiety over business affairs; Western U. Teleg. Co. v. Burris, 102 C. C. A. 386, 179 Fed. 95, holding that since the recovery of damages for mental suffering is to be governed by the rules of general law, the Federal court will not follow state decisions and statutes, and will refuse to allow such damages.

Cited in footnotes to Cashion v. Western U. Teleg. Co. 45 L. R. A. 160, which authorizes damages for mental anguish for delay in delivering telegram announcing person's death; Western U. Teleg. Co. v. Crocker, 59 L. R. A. 398, which sustains recovery for mental anguish for failure to promptly deliver telegram announcing serious illness of grandchild; Cowan v. Western U. Teleg. Co. 64 L. R. A. 546, which holds that mental anguish will sustain action for breach of contract to promptly transmit telegram; Barnes v. Western U. Teleg. Co. 65 L.R.A. 667, which sustains right to damages for mental anguish from failure to deliver telegram, though unaccompanied by physical suffering; Green v. Western U. Teleg. Co. 67 L.R.A. 985, which sustains liability of telegraph company for mental anguish of 16 year old girl in being compelled to drive two miles in strange city after midnight with a strange driver due to its failure to deliver telegram; Hancock v. Western U. Teleg. Co. 69 L.R.A. 403, which denies right to damages for mere disappointment and regret from failure to telegraph company promptly to deliver a death message; Western U. Teleg. Co. v. Reid, 70 L.R.A. 289, which denies father's right to recover for mental anguish in witnessing suffering of child because of telegraph company's failure promptly to deliver telegram summoning physician.

Cited in notes (5 L.R.A.(N.S.) 753) on law governing liability of telegraph company; (30 L.R.A.(N.S.) 1138, 1151) on right of addressee of telegram to sue for and recover damages for mental suffering from delay in delivery.

Distinguished in Western U. Teleg. Co. v. Ford, 77 Ark. 536, 92 S. W. 528, holding that under the statute changing the rule announced in the leading case, damages for mental suffering could be recovered for negligence in the delivery of a telegram although the message was sent from a state where such damgaes were not recoverable; Western U. Teleg. Co. v. Rainer, 78 Ark. 549, 94 S. W. 700, holding that under the statute changing the rule in the leading case, dam-

ages for mental suffering were recoverable only in cases where the company had notice that mental suffering would result from a failure to deliver.

Validity of statute rendering telegraph company liable for delay in delivering message.

Cited in Ivy v. Western U. Teleg. Co. 165 Fed. 376, on the history of the right to recover for mental suffering resulting from negligence in the delivery of a telegram, holding valid a statute authorizing such recovery.

Cited in footnote to Simmons v. Western U. Teleg. Co. 57 L. R. A. 607, which sustains statute rendering telegraph companies liable for delay in delivering messages.

39 L. R. A. 467, ST. LOUIS, I. M. & S. R. CO. v. MATHEWS, 64 Ark. 398, 42 S. W. 902.

Right to contract.

Cited in Woodson v. State, 69 Ark. 535, 65 S. W. 465 (dissenting opinion), majority holding statute requiring all coal mined and paid for by weight to be weighed before it is screened does not unconstitutionally interfere with right of miner or operator to contract.

Master's right to discharge servant.

Cited in footnotes to Rhoades v. Chesapeake & O. R. Co. 55 L. R. A. 170, which denies master's right to discharge servant employed so long as work satisfactory, in compromise of claim for injuries; Sullivan v. Detroit, Y. & A. A. R. Co. 64 L. R. A. 673, which holds contract to give attorney assisting in formation of corporation permanent employment, fulfilled by giving employment for a year.

Distinguished in Newhall v. Journal Printing Co. 105 Minn. 46, 20 L.R.A. (N.S.) 902, 117 N. W. 228, holding damages may be recovered for violation of contract for unfixed period of time which stipulated for a thirty day notice to either party.

Mutuality of contract.

Cited in Price v. Western Loan & Sav. Co. 35 Utah, 387, 100 Pac. 677, holding contract to employ attorney by which he is not bound for any specified time lacks mutuality and he may be at any time discharged.

Cited in note (20 L.R.A.(N.S.) 899) on mutuality of contract of employment binding upon only one party for time designated.

Distinguished in Thomas-Huycke-Martin Co. v. Gray, 94 Ark. 12, 140 Am. St. Rep. 93, 125 S. W. 659, holding that contract whereby defendant at price fixed undertook to buy output of sawmill is not lacking in mutuality as not binding plaintiff to sell.

Enforcement of contract partially illegal.

Cited in Livingston v. Chicago & N. W. R. Co. 142 Iowa, 412, 120 N. W. 1040, holding that though a contract to maintain an open crossing was void, that part of the contract which made the railroad company liable for cattle injured because thereof, was valid and enforceable; Piper v. Boston & M. R. Co. 75 N. H. 439, 75 Atl. 1041, holding that joining upon single valid consideration agreement enforceable at law with one which is unenforceable does not prevent enforcement of former provided the two are separable.

39 L. R. A. 473, SHUEY v. ADAIR, 18 Wash. 188, 63 Am. St. Rep. 879, 51 Pac. 388.

Extrinsic evidence as to note.

Cited in Anderson v. Mitchell, 51 Wash. 266, 98 Pac. 751, holding that the

person having signed the note as maker, he could not as against a subsequent holder set up a collateral agreement with the original parties that he should assume no liabilities.

Cited in footnotes to Second Nat. Bank v. Midland Steel Co. 52 L. R. A. 307, which holds parol evidence admissible that note signed by individual name, followed by word "president," is corporate contract; Hoffman v. Habighorst, 53 L. R. A. 908, which holds parol evidence admissible that signers of note, unsigned by principal debtor, signed as sureties to payee's knowledge; Young v. Sehon, 62 L. R. A. 499, which holds parol evidence admissible as to relation between promisee in non-negotiable note and other indorser, towards one asserting liability against them on note.

Distinguished in Belt v. Washington Water Power Co. 24 Wash. 393, 64 Pac. 525, holding oral evidence admissible to show that someone not disclosed by the agreement was actually a party to it.

Right of action against alleged undisclosed principal.

Approved in Murphy v. Clarkson, 25 Wash. 589, 66 Pac. 51, holding action not maintainable against alleged undisclosed principal where party dealt with agent as owner, and neither mistake nor ratification is shown.

Drawer's liability on draft drawn for drawee's debt.

Cited in footnote to Citizens' Bank v. Millett, 44 L. R. A. 664, which holds drawer personally liable on draft drawn to payee's knowledge for payment of drawee's debt.

Contracts of agents.

Distinguished in Landers v. Foster, 34 Wash. 680, 76 Pac. 274, holding contract executed by one obligor acting for himself and for other obligors as trustee with consent of all parties is binding on those who did not join in the execution.

Parol evidence as to agency.

Cited in footnote to Usher v. Daniels, 69 L.R.A. 629, which holds parol evidence admissible that one signing memorandum for sale of goods acted as agent for the one seeking to enforce contract.

39 L. R. A. 479, GAGE HOTEL CO. v. UNION NAT. BANK, 171 Ill. 531, 63 Am. St. Rep. 270, 49 N. E. 420.

Effect of secret arrangement between depositor and bank.

Approved in Bank of Commerce v. Franklin, 90 Ill. App. 93, holding secret arrangement between depositor and bank cannot affect rights of third persons nor limit liability of bank.

Preventing application of funds in bank to payment of check.

Cited in Loan & Sav. Bank v. Farmers' & M. Bank, 74 S. C. 220, 114 Am. St. Rep. 991, 54 S. E. 364, on the right of the drawer to countermand the payment of check after it has passed into the hands of a bona fide holder.

Cited in note (39 L.R.A.(N.S.) 657) on action essential to terminate right to stop payment of check.

Check as assignment or appropriation of fund.

Approved in Harrington v. First Nat. Bank, 85 Ill. App. 216, holding check operates as assignment, not only of funds then in bank, but of funds which may thereafter be received; Wyman v. Ft. Dearborn Nat. Bank, 181 Ill. 282, 48 L. R. A. 566, 72 Am. St. Rep. 259, 54 N. E. 946, holding execution and delivery of check operates as assignment of fund on which it is drawn, but until notice of it drawee bank may credit deposit on overdue paper of drawer; Ft. Dearborn Nat. Bank v. Wyman, 80 Ill. App. 155, holding bank which, before notice of

issuance and delivery of check, appropriates fund in payment of debt due itself not liable to holder of check; Rickert v. Suddard, 184 Ill. 152, 56 N. E. 344, holding withdrawing stockholder in loan association may recover from receivers on check given her in settlement, where before presentation the fund on which it was drawn was appropriated by the receivers; Jackson Paper Mfg. Co. v. Commercial Nat. Bank, 199 Ill. 160, 59 L. R. A. 661, 93 Am. St. Rep. 113, 65 N. E. 136, holding that on presentation of check its amount is absolutely appropriated to holder; Martin v. Martin, 89 Ill. App. 151, holding delivery of check as mere gift not complete appropriation of fund on deposit which may be withdrawn by drawer without committing fraud upon payee.

Cited in notes (80 Am. St. Rep. 870; 2 L.R.A.(N.S.) 84) on bank draft or check as assignment of funds drawn upon.

Presentation of check as affecting liability of bank.

Approved in Citizens' Ins. Co. v. Stoddard, 99 Ill. App. 468, holding bank not liable on check until it is presented.

Contract of banker receiving deposit.

Approved in Brown v. Schintz, 98 Ill. App. 456, holding banker receiving deposit contracts to pay it out on presentation of depositor's checks, to person presenting them.

Cited in Rauch v. Ft. Dearborn Nat. Bank, 223 Ill. 515, 11 L.R.A.(N.S.) 549, 79 N. E. 273, on the attitude of the drawee bank as debtor to payee after paying money on forged indorsements; Paepcke-Leicht Lumber Co. v. Becker, 124 Ill. App. 315, holding presentation of check to bank after service on bank of garnishment is notice to bank of claim on fund such as binds bank to protect holder where check was given before service of garnishment; National Bank v. Young, 125 Ill. App. 142, holding payment by bank of depositor's money to sheriff pursuant to execution against depositor unauthorized in absence of check.

39 L. R. A. 482, FISHBURN v. CHICAGO, 171 Ill. 338, 63 Am. St. Rep. 236, 49 N. E. 532.

Validity of contract by municipality excluding competition.

Approved in Luoghry v. Pittsburgh, 29 Pittsb. L. J. N. S. 429, holding contract made by city under power conferred upon it, but in manner other than that described, is absolutely void and there can be no recovery upon a *quantum meruit;* Adams v. Brenan, 177 Ill. 202, 42 L. R. A. 721, 69 Am. St. Rep. 222, 52 N. E. 314, holding provision that none but union labor shall be employed cannot be lawfully made in contract by public corporation; Gage v. Chicago, 207 Ill. 58, 69 N. E. 588, holding paving ordinance not invalidated by provision that specified kind of asphaltum be used, or kind equal in quality; Marshall & B. Co. v. Nashville, 109 Tenn. 509, 71 S. W. 815, holding ordinance requiring city printing to bear union label void as tending to create monopoly; Fineran v. Central Bitulithic, 116 Ky. 505, 76 S. W. 415, 3 Ann. Cas. 741, holding ordinance calling for pavement of a kind which can only be furnished by one company is void where competitive bidding is required by statute.

Cited in Louisville Home Teleph. Co. v. Louisville, 130 Ky. 654, 113 S. W. 855 (dissenting opinion), on the validity of ordinance prescribing conditions preventing free competition; Oak Park v. Galt, 231 Ill. 366, 83 N. E. 209, holding ordinance requiring the use of a certain kind of paving and leaving to board to substitute one equally good is valid; Monaghan v. Indianapolis, 37 Ind. App. 290, 76 N. E. 424, holding that a contract calling for the use of a patented paving is invalid where the owner of the patent has an exclusive control of the same, and refuses to place same on the market; Siegel v. Chicago, 223 Ill. 433,

79 N. E. 280, 7 Ann. Cas. 104, holding that city cannot specify patented pavement under statute requiring competitive bids.

Cited in footnote to Diamond v. Mankato, 61 L. R. A. 448, which holds street improvement contract avoided by limiting asphaltum to two particular kinds, and inserting other conditions tending to restrict bidding.

Cited in note (5 L.R.A.(N.S.) 682) on validity of contract for material patented or held in monopoly, where public letting to lowest bidder required.

Distinguished in Loughry v. Pittsburgh, 29 Pittsb. L. J. N. S. 433, holding municipal contract for public improvement not invalidated because specifications required Trinidad lake asphalt; Dillingham v. Spartanburg, 75 S. C. 558, 8 L.R.A.(N.S.) 417, 117 Am. St. Rep. 917, 56 S. E. 381, 9 Ann. Cas. 829, holding that a contract for the use of patented paving was valid where competition is general as to providing it; Cleveland Trinidad Paving Co. v. McLord, 145 Mo. App. 147, 130 S. W. 371, holding that the designation of a certain specified patented article as a paving material does not render the contract void as abridging competition where the same is an article of common merchandise.

Disapproved in Holmes v. Detroit, 120 Mich. 230, 45 L. R. A. 123, 77 Am. St. Rep. 587, 79 N. W. 200, holding that fact that material to be used in construction of public work is under control of single dealer does not preclude the specification of that material in contract to be let on competitive bidding; Baltimore v. Flack, 104 Md. 139, 64 Atl. 702, holding that where the city called for bids upon three different specifications, they could accept the bids on the one set, though it be higher than that of the lowest bid on another specification, and required the use of a patented article which could be obtained by any one.

Validity of by-law creating monopoly.

Approved in Inter-Ocean Pub. Co. v. Associated Press, 184 Ill. 454, 48 L. R. A. 575, 75 Am. St. Rep. 184, 56 N. E. 822, holding by-law of press association which provides its members shall not furnish its special news to, or receive news from, any person or corporation antagonistic to such association is void as creating a monopoly.

Contracts in restraint of trade.

Cited in Knight & J. Co. v. Miller, 172 Ind. 47, 87 N. E. 823, 18 Ann. Cas. 114, holding a combination of manufacturers controlling the manufacture and sale of plumbing supplies, whereby persons not members of the combination were required to pay a greatly increased price for such supplies, was unlawful as in restraint of trade.

Cited in note (74 Am. St. Rep. 241, 268) on combinations constituting unlawful trusts.

Objection by property owner to contract for improvement.

Distinguished in Givins v. People, 194 Ill. 155, 88 Am. St. Rep. 143, 62 N. E. 534, holding property owner cannot withhold his objection to bid, and contract for public improvement until he has received the benefit, and then ask to be relieved from liability for payment.

Collateral attack on judgment confirming assessment.

Approved in Kunst v. People, 173 Ill. 81, 50 N. E. 168, holding judgment confirming assessment roll conclusive against collateral attack on ground that no village datum had been established.

39 L. R. A. 484, McGREGOR v. CONE, 104 Iowa, 465, 65 Am. St. Rep. 522, 73 N. W. 1041.

What is original package.

Approved in May v. New Orleans, 51 La. Ann. 1068, 25 So. 959, holding original

package is that in which goods are shipped and received, and not the smaller packages put up by manufacturer and packed within case delivered to carrier; Austin v. Tennessee, 179 U. S. 358, 45 L. ed. 232, 21 Sup. Ct. Rep. 132, Affirming 101 Tenn. 575, 50 L. R. A. 482, 70 Am. St. Rep. 703, 48 S. W. 305, holding basket in which pasteboard boxes of cigarettes are carried by express company is original package, and not boxes themselves; Cook v. Marshall County, 119 Iowa, 388, 93 N. W. 372, holding parcels of ten cigarettes put up to be sold in unbroken packages not original packages.

Cited in note (39 L.R.A.(N.S.) 1052–1055) on what constitutes original or unbroken package.

Protection of article sold in original package.

Approved in Rasch v. State, 89 Md. 761, 43 Atl. 931, holding article which is subject of commerce protected only so long as sold in original package.

Cited in State v. Eckenrode, 148 Iowa, 180, 127 N. W. 56, holding that where foreign company ships to agent here goods ordered by purchasers placing several packages in one box, and agent receives and opens box and delivers packages to customers in accordance with previous orders, transaction constitutes interstate commerce and is not subject to state pure food law; Re Agnew, 89 Neb. 310, 35 L.R.A.(N.S.) 839, 131 N. W. 817, Ann. Cas. 1912C, 676, holding that when property shipped in original packages enters body of property of state, original packages being broken, its interstate quality is lost, and state laws are effective regarding it.

Validity of ordinance requiring license for sale of cigarettes.

Cited in footnote to Gundling v. Chicago, 48 L. R. A. 230, which sustains ordinance requiring license for sale of cigarettes.

Corporate taxation.

Cited in note (60 L. R. A. 664) on corporate taxation and the commerce clause.

State regulation of interstate commerce.

Cited in Stubbs v. People, 40 Colo. 427, 11 L.R.A.(N.S.) 1076, 122 Am. St. Rep. 1068, 90 Pac. 1114, 13 Ann. Cas. 1025, holding state cannot prohibit importation of dock tailed horses, nor the use of them after importation.

Cited in note (78 Am. St. Rep. 251) on acts which legislature may declare criminal.

39 L. R. A. 488, COOK v. FOGARTY, 103 Iowa, 500, 72 N. W. 677.

Failure to turn to right.

Cited in footnotes to Perlstein v. American Exp. Co. 52 L. R. A. 959, which holds violation of statute for turning to right shown by collision with one driving close to sidewalk on right-hand side of highway; Winter v. Harris, 54 L. R. A. 643, which holds person on left of center of full width of road in fault, though on right of center of macadamized part; Neal v. Rendall, 63 L. R. A. 668, which holds that driving on wrong side of road may be found to be proximate cause of collision with vehicle traveling in opposite direction.

Negligence in leaving horse untied.

Cited in footnote to Belles v. Kellner, 57 L. R. A. 627, which denies presumption of negligence from leaving gentle horse untied in street, with driver only 5 to 8 feet away.

Reasonableness of ordinance as to bicycles.

Cited in footnote to Moore v. District of Columbia, 41 L. R. A. 208, which holds reasonableness of ordinance prohibiting riding bicycle with handle bars more than 4 inches below saddle, a question of fact.

Bicycle law.

Cited in Fielder v. Tipton, 149 Ala. 611, 8 L.R.A.(N.S.) 1269, 123 Am. St. Rep. 69, 42 So. 985, 13 Ann. Cas. 1012, holding riding bicycle on sidewalk raises presumption of negligence, although not prohibited by ordinance; Molway v. Chicago, 239 Ill. 493, 23 L.R.A.(N.S.) 546, 88 N. E. 485, 16 Ann. Cas. 424, holding city liable for injury to bicycle rider caused by riding into hole in pavement negligently permitted to remain there where drizzling rain prevented him seeing it.

Cited in note (47 L.R.A. 293–295) on bicycle law.

— Riding without light or other signal.

Distinguished in Christman v. Meierhoffer, 116 Mo. App. 53, 92 S. W. 141, holding that a person was not guilty of contributory negligence as a matter of law, in riding along a street in the dark without carrying a light, where he was injured by running into an obstruction in the street.

39 L. R. A. 491, MILLER v. HARE, 43 W. Va. 647, 28 S. E. 722.

Sufficiency of bill against general demurrer.

Approved in Le Sage v. Le Sage, 52 W. Va. 329, 43 S. E. 137, holding general demurrer to bill in equity properly overruled if bill as a whole states facts entitling plaintiff to relief.

Cited in Stover v. Stover, 60 W. Va. 288, 54 S. E. 350; Allen v. South Penn. Coal Co. 58 W. Va. 211, 52 S. E. 454,—holding that if the bill in equity shows any grounds for relief, it is error to sustain a general demurrer thereto; Trough v. Trough, 59 W. Va. 465, 4 L.R.A.(N.S.) 1187, 115 Am. St. Rep. 940, 53 S. E. 630, 8 Ann. Cas. 837, holding that a general demurrer to a bill alleging adultery as a ground for absolute divorce, and desertion as ground for separation, was properly overruled, where the allegations as to the former charge were insufficient.

General demurrer to bill subject to special demurrer.

Approved in Turner v. Stewart, 51 W. Va. 497, 41 S. E. 924, holding general demurrer properly overruled where bill contains improper matter which can be reached only by special demurrer.

Estoppel to maintain action for obstruction.

Cited in footnote to Nester v. Diamond Match Co. 52 L. R. A. 950, which holds one running logs down stream estopped to maintain action for obstruction by one whose booms and dams used.

Right of private individual to abate nuisance.

Cited in Viebahn v. Crow Wing County, 96 Minn. 287, 3 L.R.A.(N.S.) 1132, 104 N. W. 1089, holding that persons having an established line of steamboats operating upon a river, suffer such special injury, that they may maintain an action for the removal of a bridge constructed over the river so as to obstruct the stream.

Cited in footnotes to Griffith v. Holman, 54 L. R. A. 178, which denies private individual's right to abate public nuisance consisting of fence across navigable stream; State v. Stark, 54 L. R. A. 910, which denies right of private person to abate liquor nuisance without proccess of law; Reyburn v. Sawyer, 65 L.R.A. 931, which sustains right of owner of island to injunction against maintenance of fishing nets in adjoining waters so as to obstruct navigation.

Rights and liabilities of users of stream for logs.

Cited in notes (67 L.R.A. 839) on right to improve navigability of stream for booming and sorting logs; (28 L.R.A.(N.S.) 147) on relative rights and

duties of users of stream for logs and for navigation; (35 L.R.A.(N.S.) 827) on liability for injuries to riparian owners by running logs; (35 L.R.A.(N.S.) 834) on right of riparian owner to impound water for floating logs.

39 L. R. A. 499, SNYDER v. WHEELING ELECTRICAL CO. 43 W. Va. 661, 64 Am. St. Rep. 922, 28 S. E. 733.

Allegation of negligence.

Approved in Louisville & N. R. Co. v. Marbury Lumber Co. 125 Ala. 249, 50 L. R. A. 623, 28 So. 438, holding allegations of negligence on part of railroad company in setting fire from locomotive not insufficient for failure to state the facts which constitute negligence; White v. Nashville, C. & St. L. R. Co. 108 Tenn. 742, 70 S. W. 1030, holding declaration in action against carrier for injuries to passenger must allege facts showing or implying a duty owing to passenger by carrier; Chaperon v. Portland Electric Co. 41 Or. 42, 67 Pac. 928, holding declaration upon negligence sufficient which specifies particular act causing injury and avers that it was negligently done; Hannum v. Hill, 52 W. Va. 168, 43 S. E. 223, holding in action for negligence, declaration should show that the injury complained of resulted from defendant's violation of duty.

Cited in Bralley v. Norfolk & W. R. Co. 66 W. Va. 465, 66 S. E. 653, holding that declaration in negligence action need not set out in detail all specific acts, constituting negligence complained of; Salmons v. Norfolk & W. R. Co. 162 Fed. 726, holding following state decisions, that an allegation that the defendant company negligently ran a freight train into a work train, by reason of which the plaintiff's intestate was killed, was a sufficient allegation of negligence: Whitten v. Nevada Power, Light & Water Co. 132 Fed. 788, holding general allegation of death caused by charge of electricity, unaccompanied by any allegation of fact from which duty to deceased arose is insufficient; Hanley v. West Virginia, C. & P. R. Co. 59 W. Va. 424, 53 S. E. 625, holding allegation that explosion of boiler caused injury was sufficient without specific allegation as to what actually inflicted the injury and such averment is mere surplusage; Chesapeake & O. R. Co. v. Dandridge, 96 C. C. A. 178, 171 Fed. 75, holding allegation that defendant negligently ran locomotive into vehicle driven by plaintiff while on highway crossing causing the injury, is sufficiently particular; Pullen v. Butte, 38 Mont. 196, 21 L.R.A.(N.S.) 47, 99 Pac. 290, holding an allegation that the defendant placed a sidewalk in a dangerous, unsafe, and defective condition and allowed it to remain so, was insufficient as merely stating a conclusion of law; Bice v. Wheeling Electrical Co. 62 W. Va. 691, 59 S. E. 626, holding that an electrical company is bound to use the highest degree of care, which cannot be construed to be less than all possible care, so that an allegation that the defendant failed to use "all possible care" was sufficient.

Cited in note (59 L. R. A. 212, 213, 221) on sufficiency of general allegations of negligence.

Distinguished in Robbins v. Baltimore & O. R. Co. 62 W. Va. 537, 59 S. E. 512, holding allegation that the plaintiff's horse was killed because of the negligent operation of the defendant's engine, was sufficient; Stone v. Campbells Creek R. Co. 66 W. Va. 419, 66 S. E. 521, holding that failure to prove details in transaction, not vital to action does not constitute variance, where complaint for personal injury details facts or circumstances of negligence so long as essential facts are proven.

— Limited by specific allegations.

Cited in Wirstlin v. Chicago, M. & St. P. R. Co. 124 Iowa, 174, 99 N. W. 697, holding that where a general allegation of negligence is followed by a recita-

tion of specific acts of negligence relied upon, the plaintiff will be confined to those and the general allegation will be controlled by it.

Particularity and certainty in allegations.

Cited in Jacobs v. Williams, 67 W. Va. 380, 67 S. E. 1113, holding that in action for assault evidence of loss from interruption to particular calling under contract, is admissible under general allegation that injuries prevented him from transacting necessary business, in absence of demand for bill of particulars; Kidd v. Beckley, 64 W. Va. 84, 60 S. E. 1089, holding in suit by holder of note against irregular indorser an allegation that indorsement was made prior to delivery is unnecessary.

Presumption of negligence.

Approved in Boyd v. Portland Electric Co. 40 Or. 131, 57 L. R. A. 622, footnote p. 619, 66 Pac. 576, holding negligence on part of electric company presumed when injury results to traveler in public street from live wire which has broken and is hanging near ground; Chattanooga Electric R. Co. v. Mingle, 103 Tenn. 672, 76 Am. St. Rep. 703, 56 S. W. 23, holding mere fact that electric wire sags or falls affords sufficient evidence of negligence; Boyd v. Portland Gen. Electric Co. 41 Or. 345, 68 Pac. 810, holding doctrine of *res ipsa loquitur* applicable, although allegations of negligence in complaint are restrictive; Hebert v. Lake Charles Ice, Light & Waterworks Co. 111 La. 524, 100 Am. St. Rep. 505, 64 L. R. A. 104, footnote p. 101, 35 So. 731, holding burden of proof upon electrical company to show that fallen wire by which traveler was injured was not down in consequence of it own fault; Richmond R. & Electric Co. v. Hudgins, 100 Va. 413, 41 S. E. 736, holding rule of *res ipsa loquitur* applicable where horse was frightened by noise and smoke coming from under street car.

Cited in Veith v. Hope Salt & Coal Co. 51 W. Va. 99, 57 L. R. A. 412, 41 S. E. 187, holding presumption of negligence does not arise from mere fact of explosion of steam boiler; Runyan v. Kanawha Water & Light Co. 68 W. Va. 611, 35 L.R.A.(N.S.) 432, 71 S. E. 259, holding that if person, at place where he has right to be, is injured by contact with electric light wire, there is prima facie presumption that wire was not properly insulated which presumption if not rebutted will establish negligence; De Glopper v. Nashville R. & Light Co. 123 Tenn. 644, 33 L.R.A.(N.S.) 916, 134 S. W. 609, holding that mere fact of injury never raises presumption of negligence; Walter v. Baltimore Electric Co. 109 Md. 526, 22 L.R.A.(N.S.) 1182, 71 Atl. 953, holding injury to pedestrian by fallen wire of electric company is prima facie proof of company's negligence; Gould v. Winona Gas Co. 100 Minn. 267, 10 L.R.A.(N.S.) 895, 111 N. W. 254, holding escaping of gas even though caused by frost affecting pipes raises presumption of negligence, where it continued for six months; Shawnee Light & Power Co. v. Sears, 21 Okla. 18, 95 Pac. 449, holding that injury to a person upon a public street by improper insulation, or derangement of the guy wire on a pole, raised a presumption of negligence, and also citing annotation on this point; Royal Electric Co. v. Have, 32 Can. S. C. 466; Memphis Consol. Gas. & Electric Co. v. Letson, 68 C. C. A. 453, 135 Fed. 972,—holding death of a customer caused while turning on an electric light raises presumption of negligence; Trotter v. St. Louis & Suburban R. Co. 122 Mo. App. 416, 99 S. W. 508, as supporting the usual definition and limitations upon the doctrine res ipsa loquitur as stated.

Cited in footnotes to Gannon v. Laclede Gaslight Co. 43 L.R.A. 505, which holds electric company maintaining overhead wires in alley, prima facie liable for injury by live grounded wires; Hebert v. Lake Charles Ice, Light & Water works Company, 64 L.R.A. 101, which holds that electrical company has burden

of showing freedom from negligence where wire is detached from poles and lying in streets of town.

Cited in note (22 L.R.A.(N.S.) 1179) on applicability of res ipsa loquitur to injury on highway due to disordered electrical appliances.

Distinguished in Will v. Salmen Brick & Lumber Co. 126 La. 632, 52 So. 853, 21 Ann. Cas. 91, holding that no presumption of negligence arose from injury caused by breaking of belt operating blow-fan in mill, where it appeared belt was inspected day before accident and found in reasonably safe condition.

Liability of electric or gas company for negligent injury.

Approved in Barrickman v. Marion Oil Co. 45 W. Va. 638, 44 L. R. A. 95, 32 S. E. 327, holding oil company negligently supplying to consumer greater amount of natural gas than is required, whereby consumer's building is injured by fire, liable for such loss.

Cited in Metropolitan Street R. Co. v. Gilbert, 70 Kan. 265, 78 Pac. 807, 3 Ann. Cas. 256, holding street railway liable for injury received by falling of telephone wire upon ground in such way as to become charged by street car wire although car company's wire is in usual and rightful position; Thomas v. Wheeling Electrical Co. 54 W. Va. 400, 46 S. E. 217, holding that injury to a person from contact with a live wire at a place where the insulation ought to be good because liable to be touched by persons, renders the electrical company prima facie liable; Mannon v. Camden Interstate R. Co. 56 W. Va. 556, 49 S. E. 450, holding street railway company liable for injury to a boy, received in jumping from a moving car after being frightened by the breaking of the trolley wire through the negligence of the company.

Cited in footnotes to Brush Electric Light & Power Co. v. Lefevre, 49 L. R. A. 771, which denies liability for death by uninsulated electric light wire running above awning 16 feet above street; Thomas v. Maysville Gas Co. 53 L. R. A. 147, which requires corporation sending electricity into street railway company's wires to see to their insulation.

Cited in notes (22 L.R.A.(N.S.) 1170) on injuries from electric wires in highway; (1 Brit. Rul. Cas. 799, 807) on duty to protect traveler from electricity from wires on highway.

Excuse for delay to replace broken wires.

Cited in footnote to Boyd v. Portland General Electric Co. 52 L. R. A. 509, which holds want of sufficient assistance to promptly replace wires broken by severe storm not excuse, as matter of law, for delay.

39 L. R. A. 504, MUTUAL L. INS. CO. v. JARBOE, 102 Ky. 80, 80 Am. St. Rep. 343, 42 S. W. 1097.

Right to paid-up policy.

Approved in Manhattan L. Ins. Co. v. Patterson, 109 Ky. 627, 53 L. R. A. 379, footnote p. 378, 95 Am. St. Rep. 393, 60 S. W. 383, holding provision in policy for issuance of paid-up policy upon surrender of policy within six months after lapse for nonpayment of premium does not preclude insured from receiving such policy nearly five years after default; Washington L. Ins. Co. v. Miles, 112 Ky. 757, 66 S. W. 740, holding failure of insured to surrender policy and demand issuance of paid-up policy within time prescribed does not defeat right thereto.

Cited in Lenon v. Mutual L. Ins. Co. 80 Ark. 567, 8 L.R.A.(N.S.) 197, 98 S. W. 117, 10 Ann. Cas. 467, on time as not being of the essence of a contract by which a paid-up policy is to be given to original policy holder for nonpayment of premium; Mutual L. Ins. Co. v. O'Neil, 116 Ky. 746, 76 S. W. 839, de-

nying right to paid up policy where no demand was made until seven years after forfeiture and suit therefor was commenced after seventeen years; Washington L. Ins. Co. v. Lyne, 119 Ky. 167, 83 S. W. 122, holding insured entitled to a paid up policy where demand was made within five years after lapse of policy and suit brought within fifteen years under statute.

Cited in note (8 L.R.A.(N.S.) 193) on failure to apply for paid-up insurance within time stipulated.

Disapproved in Wells v. Vermont L. Ins. Co. 28 Ind. App. 623, 62 N. E. 501, holding surrender of policy within time limited after default in payment of premium, condition precedent to issuance of paid-up policy; Equitable Life Assur. Soc. v. Evans, 25 Tex. Civ. App. 567, 64 S. W. 74, holding surrender of original policy within time prescribed a condition precedent to paid-up insurance.

Invalid policy limitations.

Cited in Union Cent. L. Ins. Co. v. Spinks, 119 Ky. 274, 69 L.R.A. 268, 83 S. W. 615, 7 Ann. Cas. 913, holding void a policy provision calling for action on policy within one year after death of insured where by statute such actions could be brought any time within fifteen years.

Failure to pay premium note as affecting right to extended insurance.

Cited in footnote to Drury v. New York L. Ins. Co. 61 L. R. A. 714, which holds right to extended insurance for term earned by premiums paid not surrendered by failure to pay premium note.

Forfeiture of paid-up policy for nonpayment of loan.

Cited in New York L. Ins. Co. v. Curry, 115 Ky. 107, 61 L. R. A. 269, 72 S. W. 736, holding void, contract by which insurance company loaning money on security of paid-up policy may require surrender for its cash value on default in payment of loan or interest: Mutual Ben. L. Ins. Co. v. First Nat. Bank, 115 Ky. 777, 74 S. W. 1066 (dissenting opinion), on forfeiture of paid up policy for nonpayment of note; Mutual L. Ins. Co. v. Twyman, 122 Ky. 524, 121 Am. St. Rep. 471, 92 S. W. 335, denying right of insurance company to cancel paid up policy held to secure loan to policy holder for default on loan without going into equity for an adjustment of its rights.

39 L. R. A. 506, MILWARD v. SHIELDS, 19 Ky. L. Rep. 1076, 43 S. W. 184.

Funeral expenses.

Cited in footnote to O'Reilly v. Kelly, 50 L. R. A. 483, which holds flowers ordered by housekeeper of deceased, chargeable to estate as funeral expense.

Priority of lien over widow's exemptions.

Cited in Blake v. Durrell Bros. 103 Ky. 604, 45 S. W. 883, holding that widow is not entitled to exemptions from distribution and sale provided for by statute out of proceeds of property attached during husband's lifetime.

39 L. R. A. 508, TRACY v. BANKER, 170 Mass. 266, 49 N. E. 308.

Right of labor union to trademark or label.

Cited in People v. Dantuma, 252 Ill. 566, 39 L.R.A.(N.S.) 1196, 96 N. E. 1087, Ann. Cas. 1912D, 370, holding that legislature may provide for registration of union label and make unauthorized use thereof misdemeanor; Lawlor v. Merritt. 78 Conn. 634, 63 Atl. 639, holding statute making it unlawful to counterfeit a label announcing that goods labeled thereby were made by member of organization using label not to apply to label used by unincorporated union of hatmakers making no hats themselves.

Cited in footnotes to Schmalz v. Woolley, 43 L. R. A. 86, which sustains right

of labor unions to trademark used on goods not owned by them; Perkins v. Heert, 43 L. R. A. 858, which sustains statute authorizing labor union to adopt distinguishing label.

Cited in note (39 L.R.A.(N.S.) 1191, 1201) on law as to union labels.

Regulations as to labels.

Cited in Com. v. Anselvich, 186 Mass. 379, 104 Am. St. Rep. 590, 71 N. E. 790, upholding statute making possession by an agent or dealer of bottles marked with registered name of the manufacturer of a beverage, without the written consent of, or purchase from, owner prima facie evidence of unlawful traffic therein.

Laches as bar to recovery.

Cited in Kirby v. Union P. R. Co. 51 Colo. 529, 119 Pac. 1042, holding that doctrine of equitable estoppel and laches is never available to sustain crime, fraud, or active misconduct of any character; Hill v. Hall, 191 Mass. 268, 77 N. E. 831, holding delay of seven months in starting action to rescind contract of sale not fatal to recovery where no change in circumstance based thereon.

Jurisdiction of equity over trade unions.

Cited in note (68 Am. St. Rep. 869) on jurisdiction of equity over trade unions.

39 L. R. A. 510, FREEMAN v. BOURNE, 170 Mass. 289, 49 N. E. 435.

Misconduct justifying discharge of employee.

Cited in Child v. Boyd & C. Boot & Shoe Mfg. Co. 175 Mass. 496, 56 N. E. 608, holding that immoral conduct of traveling salesman or any misconduct indicating moral turpitude does not, without anything more, justify his discharge.

Power to fix term of office.

Cited in Robertson v. Coughlin, 196 Mass. 542, 82 N. E. 678, 13 Ann. Cas. 804, holding that delegation by city council to board of commissioners of power to appoint subordinate officer without specification of length of term confers power to fix any length of term that is reasonable.

39 L. R. A. 513, STATE *ex rel.* DOUGLAS COUNTY v. CORNELL, 53 Neb. 556, 68 Am. St. Rep. 629, 74 N. W. 59.

Public use or purpose.

Approved in Cummings v. Hyatt, 54 Neb. 42, 74 N. W. 411, holding that court will not declare act invalid as authorizing taking of private property for other than public use, unless legislature is clearly wrong; Minneapolis v. Janney, 86 Minn. 117, 90 N. W. 312, holding that court will not declare tax invalid on ground that it was not imposed for benefit of public, unless absence of public interest in contemplated purpose is clear and palpable.

Cited in Denver v. Hallett, 34 Colo. 405, 83 Pac. 1066, upholding right of city to issue bonds to buy a site and erect thereon an auditorium; Kentucky Live Stock Breeders' Asso. v. Hager, 120 Ky. 133, 85 S. W. 738, 9 Ann. Cas. 50, holding appropriation to establish a state fair to be for a public purpose; McGlone v. Womack, 129 Ky. 288, 17 L.R.A.(N.S.) 860, 111 S. W. 688, on what is taxation for a public purpose.

Cited in footnotes to Bush v. Orange County, 45 L. R. A. 556, which holds void, statute authorizing counties to raise by taxation money to pay drafted men or their heirs; Pritchard v. Magoun, 46 L. R. A. 381, which authorizes taxes to aid in building for highway and railway purposes, toll bridge owned by private corporation; Dodge v. Mission Twp. 54 L. R. A. 242, which holds promotion of

construction and operation of sugar mills a private purpose not authorizing taxation.

Statutory construction.

Approved in Poor v. Watson, 92 Mo. App. 97, holding that particular mention of certain things in one statute will withdraw such things from general words of another statute which would otherwise embrace them; State *ex rel.* Douglas County v. Cornell, 54 Neb. 74, 74 N. W. 432, holding that special provisions in statute in regard to a particular subject control general provisions.

Cited in Hubbard v. State, 72 Neb. 68, 100 N. W. 153, 9 Ann. Cas. 1034, holding that a special criminal code provision limiting time of application for new trial for newly discovered evidence to term of court in which conviction was controls over a different limit in a general provision of code of civil procedure.

Implied repeal of statute.

Approved in Goodson v. United States, 7 Okla. 140, 54 Pac. 423, holding express act conferring specific rights and powers not repealed by implication unless intent to effect such repeal is clearly expressed.

Number of votes requisite for adoption of question submitted.

Approved in Davis v. Brown, 46 W. Va. 721, 34 S. E. 839, holding question of relocating county seat carried if it receives three fifths of votes cast upon such question, though less than three fifths of entire vote.

Cited in *Re* Denny, 156 Ind. 122, 51 L. R. A. 729, footnote p. 722, 59 N. E. 359, holding constitutional amendment not ratified by majority of electors, where those voting in favor of it are less than half the number participating in the election.

Cited in footnotes to State *ex rel.* McClurg v. Powell, 48 L. R. A. 652, which requires majority of all electors voting at election for any purpose, to adopt constitutional amendment; Montgomery County Fiscal Court v. Trimble, 42 L. R. A. 738, which holds two thirds of those voting on question of creating county indebtedness sufficient.

Cited in note (22 L.R.A.(N.S.) 479, 483) on basis for computation of majority essential to adoption of proposition submitted at general election.

39 L. R. A. 517, FINSETH v. CITY & SUBURBAN R. CO. 32 Or. 1, 51 Pac. 84.

Duty of carriers as to safety at stations or platforms.

Cited in Powers v. Old Colony Street R. Co. 201 Mass. 70, 87 N. E. 192, holding that carrier must use due care for safety of those it invites to use a path from one car point to another though in such invitation the company is a trespasser.

Cited in notes (32 L.R.A.(N.S.) 882) on duty of street railway as to condition of approaches to cars; (33 L.R.A.(N.S.) 862) on degree of care toward passenger at station.

39 L. R. A. 520, STATE v. KARSTENDIEK, 49 La. Ann. 1621, 22 So. 845.

Municipal power over nuisances.

Cited in footnote to Laugel v. Bushnell, 58 L. R. A. 266, which sustains city's power to denounce conclusively as nuisances, those which are such *per se*, or as to which there may be honest differences of opinion.

Cited in notes (39 L. R. A. 551) on municipal control over smoke as public nuisance; (39 L. R. A. 649) on municipal power over nuisances affecting highways and waters; (41 L. R. A. 321) on injunctions by municipal corporations against nuisances affecting public morals, peace and good order, and health and safety;

(31 L.R.A.(N.S.) 549) on power of municipality to declare particular amusements nuisances per se.

Municipal power to pass ordinance.

Cited in Porter v. Vinzant, 49 Fla. 217, 111 Am. St. Rep. 93, 38 So. 607, holding that city has right under general powers to pass ordinance against cruelty to animals.

Power of city to impose penalty for offense recognized by state statute.

Cited in footnote to Ogden v. Madison, 55 L. R. A. 506, which sustains city's power to impose penalty for keeping house of ill fame, though misdemeanor under state statute.

Validity of ordinance.

Cited in footnotes to Dunn v. Com. 43 L. R. A. 701, which sustains ordinance prohibiting prostitutes being on streets during specified hours; *Ex parte* Patterson, 51 L. R. A. 654, which holds unauthorized, ordinance prohibiting tenpin alleys within fire limits or 100 yards from business place or dwelling house; Campbellsville v. Odewalt, 60 L. R. A. 723, which holds void, ordinance subjecting to fine, possessor of premises on which liquor furnished in violation of law, although without his knowledge or consent; Bland v. People, 65 L.R.A. 424, which holds prohibition of use of horses with docked tails within police power; Jourdan v. Evansville, 67 L.R.A. 613, which upholds provision empowering city to require licenses for sale of intoxicating liquors within four miles of corporate limits.

Jurisdiction to enjoin gambling.

Cited in footnote to People *ex rel.* L'Abbe v. District Court, 46 L. R. A. 850, which denies jurisdiction to enjoin gambling in absence of claim that property or civil right violated.

What is "house" within statute or ordinance.

Cited in footnotes to Greenville v. Kemmis, 50 L. R. A. 725, which holds rented room in hotel, occupant's "place" or "house" within ordinance against gambling; State v. Chauvet, 51 L. R. A. 630, which holds covered wagon moving from place to place a house within prohibition against houses of ill fame.

Sufficiency of title to act.

Cited in State v. Ames, 47 Wash. 331, 92 Pac. 137, holding title "An act to establish pilots and pilot regulations" broad enough to include a penal clause against violations of the act.

Cited in note (79 Am. St. Rep. 466) as to when title of statute embraces only one subject, and what may be included thereunder.

39 L. R. A. 529, PEPPERDAY v. CITIZENS' NAT. BANK, 183 Pa. 519, 63 Am. St. Rep. 769, 38 Atl. 1030.

Liability of bank on check taken as cash.

Distinguished in Saving Inst. v. Folk, 38 Pa. Super. Ct. 60, holding that bank can recover amount paid on worthless foreign check where not guilty of negligence in presentment for collection in the usual channels of trade.

Right of bank to recover amount paid on check by mistake.

Cited in footnote to National Bank of N. J. v. Berrall, 66 L.R.A. 599, which denies right of bank to recover back as money paid by mistake amount of check paid to bona fide holder presenting check without notice that payment had been stopped.

Cited in note (23 L.R.A.(N.S.) 1094) on right of bank to recover amount

paid on check or other paper drawn upon or payable at it, under mistaken belief as to sufficiency of funds to meet it.

39 L. R. A. 532, CLEMENTS v. PHILADELPHIA CO. 184 Pa. 28, 38 Atl. 1096.

Removal of abandoned pipe line.

Approved in Halstead v. American Natural Gas Co. 17 Pa. Super. Ct. 608, holding gas company liable for damages sustained by landowner due to removal of its pipes after abandonment of its line.

Cited in Versailles Fuel Co. v. Lynch, 36 Pittsb. L. J. N. S. 286, holding that natural gas company has right to withdraw pipe from land upon which it has been laid by right of eminent domain, but in so doing it cannot cause any substantial injury to owner.

Abandonment of public service.

Cited in Germania Ref. Co. v. Alum Rock Gas Co. 226 Pa. 436, 75 Atl. 715, holding that land owner in territory supplied with gas by gas company can not question act of company in withdrawing from the territory.

Maintenance of telegraph or telephone line.

Cited in Woods v. Greensboro Natural Gas Co. 204 Pa. 611, 54 Atl. 470, Affirming 32 Pittsb. L. J. N. S. 428, holding natural gas company without right to maintain telegraph or telephone line on its right of way.

39 L. R. A. 535, ALLAM v. PENNSYLVANIA R. CO. 183 Pa. 174, 38 Atl. 709.

Stipulation as to carrier's liability.

Approved in Jacobs v. Central R. Co. 19 Pa. Super. Ct. 19, holding that carrier may, in consideration of sale of excursion ticket at reduced rate, limit its liability for baggage to specified amount by notice printed on ticket.

Cited in Keller v. Pennsylvania R. Co. 27 Lanc. L. Rev. 203, to the point that carrier may by special contract limit its liability for loss or injury to goods except for loss resulting from its negligence; Eckert v. Pennsylvania R. Co. 211 Pa. 273, 107 Am. St. Rep. 571, 60 Atl. 781, on validity of limitations of liability for negligence; Leh v. Delaware, L. & W. R. Co. 30 Pa. Super. Ct. 490, on right of carrier to vary his common law liability by special contract.

Cited in footnotes to Tecumseh Mills v. Louisville & N. R. Co. 49 L. R. A. 559, which holds prohibition against carrier's limiting liability inapplicable to contract by domestic corporation in other state for transportation entirely outside of state; Ullman v. Chicago & N. W. R. Co. 56 L. R. A. 246, which sustains carrier's right to secure entire exemption from liability as insurer for loss not due to negligence or misfeasance; Mears v. New York, N. H. & H. R. Co. 56 L. R. A. 884, which authorizes carrier to stipulate for exemption from liability for wet; Central R. Co. v. Murphey, 53 L. R. A. 720, which holds negligent carrier liable for true value, notwithstanding arbitrary preadjustment in bill of lading assented to by shipper; Russell v. Erie R. Co. 67 L.R.A. 433, which sustains carrier's right to limit common law liability by special contract thereby exempting itself from liability for loss resulting otherwise than by negligence or misfeasance.

Carrier's contract for benefit of insurance received by shipper on lost goods.

Approved in Roos v. Philadelphia, W. & B. R. Co. 199 Pa. 380, 49 Atl. 344, Affirming 13 Pa. Super. Ct. 566, holding that carrier may contract for benefit of insurance received by shipper in payment of goods lost through carrier's negligence, and is entitled to deduct such amount from entire loss.

Failure to notify consignee of arrival of goods on holiday.

Cited in Pennsylvania R. Co. v. Naive, 112 Tenn. 260, 64 L.R.A. 448, 79 S. W. 124, holding carrier not negligent in failing to notify consignee of arrival of perishable goods on legal holiday on which business is suspended.

Sufficiency of delivery to relieve carrier from liability.

Cited in Southern R. Co. v. Barclay, 1 Ala. App. 352, 56 So. 26, holding that delivery of carload of horses by carrier was complete where shipper took charge of them when they were switched onto siding and commenced unloading them.

Cited in footnote to Normile v. Northern P. R. Co. 67 L.R.A. 271, which holds that carrier must place freight carried on platform cars in freight house if any at destination to relieve itself from liability for freight lost by theft.

Distinguished in Normile v. Northern P. R. Co. 36 Wash. 29, 67 L.R.A. 275, 77 Pac. 1087, holding carrier liable for loss of tools off flat car after arrival at destination where there was a freight house but no agent at such destination.

39 L. R. A. 537, BYERS v. BYERS, 183 Pa. 509, 63 Am. St. Rep. 765, 38 Atl. 1027.

Parol partition.

Approved in Merritt v. Whitlock, 200 Pa. 55, 49 Atl. 786, holding that husband and wife may make parol partition of land held jointly by them.

Cited in Slifer v. Slifer, 34 Pa. Co. Ct. 108, 16 Pa. Dist. R. 239, holding that a parol partition agreement cannot be shown in evidence where such agreement was not acted upon by the parties.

Cited in notes (91 Am. St. Rep. 884) on parol partition by cotenants in mines; (102 Am. St. Rep. 245) on parol partition agreements.

Partition of oil, gas, or mining rights.

Approved in Robbins v. Penn Gas Coal Co. 28 Pa. Co. Ct. 55, holding tenants in common granting title to undivided half of premises, but retaining coal and mining rights, may thereafter maintain partition as to such rights.

Cited in footnote to Hall v. Vernon, 49 L. R. A. 464, which holds division of proceeds only mode of division between owners of oil and gas not owning surface of land.

Cited in note (91 Am. St. Rep. 885) on partition of mining rights.

Separate ownership of oil, gas and mineral rights.

Cited in Rockwell v. Keefer, 39 Pa. Super. Ct. 474, holding that since gas, oil and minerals in same tract of land may be separately owned the mineral right in a tract of unseated land may be separately assessed for taxes.

39 L. R. A. 539, *Re* STULL, 183 Pa. 625, 63 Am. St. Rep. 776, 39 Atl. 16.

Validity of marriage in foreign jurisdiction.

Approved in Immendorf's Estate, 4 Lack. Legal News, 270, 21 Pa. Co. Ct. 270, 7 Pa. Dist. R. 452, holding that marriage in foreign jurisdiction, invalid under law of domicil, does not entitle reputed wife to claim exemption as lawful widow; United States *ex rel.* Devine v. Rodgers, 109 Fed. 888, holding that marriage of uncle and niece, valid where contracted, will not be recognized in state regarding such relation as incestuous.

Cited in Lando v. Lando, 112 Minn. 262, 30 L.R.A.(N.S.) 944, 127 N. W. 1125, holding that marriage regular where solemnized is valid everywhere; Schofield v. Schofield, 59 Pittsb. L. J. 569, 20 Pa. Dist. R. 807, holding that marriage between first cousins, domiciled here, solemnized in another state where such marriage was legal, will be recognized as valid here; United States ex rel. Devine v. International Nav. Co. 10 Pa. Dist. R. 482, holding absolutely void a marriage between uncle and niece though valid under lex loci contractus;

Lanham v. Lanham, 136 Wis. 368, 17 L.R.A.(N.S.) 807, 128 Am. St. Rep. 1085, 117 N. W. 787, holding marriage invalid where parties domiciled within state go without its limits to procure such marriage for purpose of evading local laws.

Cited in footnotes to Norman v. Norman, 42 L. R. A. 343, which holds marriage on high seas by parties leaving land to evade laws of residence, invalid; State use of Newman v. Kimbrough, 52 L. R. A. 668, which holds marriage in other state, between divorced man and his paramour, not entitled to recognition in state where divorce granted, to which he returns immediately after marriage.

Cited in notes (57 L.R.A. 169) on conflict of laws as to validity of marriage; (79 Am. St. Rep. 366) on same point.

Distinguished in Com. v. Isaacman, 34 Pa. Co. Ct. 104, 16 Pa. Dist. R. 19, holding that where first cousins went to New Jersey to be married in absence of knowledge as to local prohibition of such marriages such marriage is good here if good where contracted; Re Chace, 26 R. I. 355, 69 L.R.A. 494, 58 Atl. 978, 3 Ann. Cas. 1050, where marriage was contracted in foreign jurisdiction by ward without sanction of guardian but not against public policy of this state.

Effect of marriage between divorced person and paramour.

Cited in Kennedy v. Orem, 31 Pa. Co. Ct. 478, 15 Pa. Dist. R. 330, 36 Pittsb. L. J. N. S. 144, holding void a marriage between divorcee for adultery and the person with whom she committed the act and as such passing no property rights.

Effect of invalidity of marriage on rights of survivor in other's estate.

Distinguished in Ninehouser's Estate, 20 Pa. Dist. R. 971, 59 Pittsb. L. J. 466, holding that invalidity of marriage between first cousins in violation of statute cannot be set up after death of husband or wife to defeat right of survivor to distributive share in decedent's estate.

39 L. R. A. 545, BRITISH AMERICA ASSUR. CO. v. MILLER, 91 Tex. 414, 66 Am. St. Rep. 901, 44 S. W. 60.

Insurance on property while in specified place.

Cited in footnote to L'Anse v. Fire Asso. 43 L. R. A. 838, which holds insurance on fire engine, etc., while in engine-house does not cover property while being used in extinguishing fire.

Cited in note (22 L.R.A.(N.S.) 850) on temporary absence of insured property from location stated in policy.

Removal with consent.

Cited in footnote to Ohio Farmer's Ins. Co. v. Burget, 55 L. R. A. 825, which authorizes recovery of insured chattels destroyed at place to which removed with insurer's consent, notwithstanding previous removal without consent.

39 L. R. A. 548, CARSTENS v. LEIDIGH & H. LUMBER CO. 18 Wash. 450, 63 Am. St. Rep. 906, 51 Pac. 1051.

Presumption of correctness of finding in absence of exception.

Approved in Cole v. Price, 22 Wash. 25, 60 Pac. 153, holding that findings justifying appointment of receiver will be presumed to have been correctly made in absence of sufficient exception.

Necessity of exception to conclusions of law.

Cited in Woodhurst v. Cramer, 29 Wash. 43, 69 Pac. 501, holding reviewable, question whether judgment is warranted on facts found, although specific exception was not taken to the conclusions of law.

Service of process on foreign corporation.

Cited in Rich v. Chicago, B. & Q. R. Co. 34 Wash. 17, 74 Pac. 1008, holding

that a foreign corporation not doing business within the state cannot be served in personam under statute providing for service on agent, cashier or secretary of foreign corporation doing business within state.

Cited in footnotes to Connecticut Mut. L. Ins. Co. v. Spratley, 44 L. R. A. 442, which authorizes service on agent of foreign insurance company coming into state to examine conditions under which death occurred; Abbeville Electric Light & P. Co. v. Western Electrical Supply Co. 55 L. R. A. 146, which authorizes service on traveling salesman of foreign corporation sent to investigate controversy out of which cause of action arose; Buie v. Chicago, R. I. & P. R. Co. 55 L. R. A. 861, which authorizes service of railroad company by serving in other state officers of company organized to construct extension of system.

Foreign corporation as person.

Cited in footnote to Hammond Beef & Provision Co. v. Best, 42 L. R. A. 528, which holds foreign corporation a "person" protected against discharge of debtor by state insolvency proceedings.

Jurisdiction of foreign corporations.

Cited in note (85 Am. St. Rep. 911) on jurisdiction of foreign corporations.

39 L. R. A. 551, ST. LOUIS v. EDWARD HEITZEBERG PACKING & PROVISION CO. 141 Mo. 375, 64 Am. St. Rep. 516, 42 S. W. 954.

Followed without discussion in St. Louis v. Regina Flour Mill Co. 141 Mo. 389, 42 S. W. 1148.

Municipal power over nuisances.

Approved in State *ex rel.* Indianapolis v. Indianapolis Union R. Co. 160 Ind. 59, 60 L. R. A. 837, footnote p. 831, 66 N. E. 163, holding general charter authority to define nuisances does not empower municipal corporation to declare anything a nuisance *per se* that was not such at common law; St. Louis v. Galt, 179 Mo. 18, 63 L. R. A. 782, 77 S. W. 876, upholding power of municipality to require cutting of weeds on city lots.

Cited in footnotes to Wygant v. McLauchlan, 54 L. R. A. 637, which denies city's power to unreasonably prohibit all interments within city; Mercer County v. Harrodsburg, 56 L. R. A. 583, which authorizes city to enjoin replacing of hitching posts removed as nuisances; Laugel v. Bushnell, 58 L. R. A. 266, which sustains city's power to denounce conclusively as nuisances, those which are such *per se*, or as to which there may be honest differences of opinion.

Cited in notes (38 L. R. A. 305) on municipal power over nuisances affecting safety, health, and personal comfort; (39 L. R. A. 520) on municipal power as to nuisances affecting public morals, decency, peace, and good order; (39 L. R. A. 649) on municipal power over nuisances affecting highways and waters; (120 Am. St. Rep. 372, 377, 379, on power of municipality to declare what is a nuisance.

Municipal right to pass ordinance.

Cited in St. Louis v. King, 226 Mo. 346, 27 L.R.A.(N.S.) 612, 136 Am. St. Rep. 643, 126 S. W. 495, denying right of city to pass ordinance going farther than legislative enactment on same subject in absence of express or implied right under charter.

Power to declare emission of smoke a nuisance.

Cited in notes (20 L.R.A.(N.S.) 466) on gas plant as nuisance; (18 L.R.A. (N.S.) 156; 32 L.R.A.(N.S.) 554) on municipal control over smoke as public nuisance.

Distinguished in Moses v. United States, 16 App. D. C. 433, 50 L. R. A. 535, footnote p. 532, holding that Congress has power to declare emission of smoke

from chimneys a nuisance *per se*, and punish the act as an offense; Glucose Ref. Co. v. Chicago, 138 Fed. 212, holding valid, city ordinance making emission of dense smoke a nuisance without proof of effect of the emission where statutory provision was made therefor.

Dense smoke as a nuisance.

Cited in McGill v. Pintsch Compressing Co. 140 Iowa, 432, 20 L.R.A.(N.S.) 470, 118 N. W. 786, on emission of dense smoke as a nuisance per se; State v. Tower, 185 Mo. 92, 68 L.R.A. 406, 84 S. W. 10, holding ordinance against emission of black smoke is invalid for providing justification of emission by showing inability to obtain device for arresting smoke.

Cited in footnotes to St. Paul v. Haugbro, 66 L.R.A. 441, which upholds ordinance prohibiting emission of dense smoke within city limits; State v. Tower, 68 L.R.A. 402, which holds judicial province not invaded by legislative declaration that emission of dense smoke into open air in specified cities is a nuisance.

Cited in note (107 Am. St. Rep. 242) on dense smoke as nuisance.

Reasonableness or validity of ordinance.

Approved in Springfield v. Starke, 93 Mo. App. 77, holding that reasonableness of ordinance may be inquired into by court where it is sustainable only by reason of general grant of power, and not upon specific authority to enact it; Skinker v. Heman, 148 Mo. 356, 49 S. W. 1026, upholding ordinance requiring all sidewalks in specified district becoming out of repair, to be paved with stone, although district has 200 miles of sidewalk laid with brick which could be repaired at small expense; Carpenter v. Reliance Realty Co. 103 Mo. App. 496, 77 S. W. 1004, holding ordinance as to excavations, inconsistent with laws of state, invalid.

Cited in St. Louis Gunning Advertising Co. v. St. Louis, 235 Mo. 147, 137 S. W. 929, holding that ordinance regulating size and location of bill boards is valid police regulation; Tecker v. Seattle, R. & S. R. Co. 60 Wash. 573, 111 Pac. 791, Ann. Cas. 1912B, 842, holding that ordinance requiring street railway company to equip its cars with fenders, is not unreasonable.

Distinguished in Atlanta City v. France, 74 N. J. L. 391, 65 Atl. 894, where ordinance prohibited emission of "dense" smoke.

Cited as discredited in Bowers v. Indianapolis, 169 Ind. 110, 81 N. E. 1097, 13 Ann. Cas. 1198, holding valid an ordinance declaring the emission of dense smoke from any chimney within corporate limits a nuisance without reference to locality.

Certainty and definiteness of enactment.

Cited in Corrigan v. Kansas City, 211 Mo. 654, 111 S. W. 115 (dissenting opinion), on the invalidity of unregulated official discretion; Merchants' Exchange v. Knott, 212 Mo. 642, 111 S. W. 565, holding invalid a law applicable only when "in the opinion" of commissioners it "may be" considered "necessary."

Injunction against disturbing noises.

Cited in footnotes to Hill v. McBurney Oil & Fertilizer Co. 52 L. R. A. 399, which authorizes injunction against blowing of factory whistle at unreasonable hours in populous community; Froelicher v. Oswald Iron Works, 64 L. R. A. 228, which sustains right to injunction against construction of boilers and tanks and hammering of sheet iron in open air.

Compliance with decree abating nuisance.

Cited in footnote to Northwood v. Barber Asphalt Paving Co. 54 L. R. A. 454, which holds compliance with insufficient special directions for abatement of nuisance not excuse disobedience of general clause of decree.

Owner's liability for nuisance created by tenant.

Cited in footnote to Louisville & N. Terminal Co. v. Jacobs, 61 L. R. A. 188, which holds that construction of roundhouse for housing engines does not render owner liable for nuisance created by tenant's improper manner of using.

Liability for maintenance of nuisance.

Cited in note (25 Eng. Rul. Cas. 160) on liability for maintenance of nuisance.

39 L. R. A. 559, LEWIS v. AMERICAN SAV. & L. ASSO. 98 Wis. 203, 73 N. W. 793.

Followed on later appeal in 104 Wis. 61, 80 N. W. 1135.

Cited in Clarke v. Darr, 168 Ind. 113, 9 L.R.A.(N.S.) 467, 80 N. E. 19, stating history of other litigation growing out of insolvency of same corporation.

Ultra vires act or contract.

Approved in Clarke v. Olson, 9 N. D. 377, 83 N. W. 519, holding deposit by foreign loan association of securities required to enable it to do business in state not *ultra vires* act on ground that stockholders in such state thereby acquired preference; Tourtelot v. Whithed, 9 N. D. 479, 84 N. W. 8, holding contract of bank to exchange debt for milling stock, which has been fully performed, not *ultra vires;* Watts v. Equitable Mut. Life Asso. 111 Iowa, 95, 82 N. W. 441, holding that mutual insurance company which reinsured person without medical examination and on terms lower than those fixed by its articles of incorporation cannot defend suit on ground that contract was *ultra vires*, where insured complied with its terms; International Trust Co. v. Davis & F. Mfg. Co. 70 N. H. 120, 46 Atl. 1054, holding that creditors cannot attack mortgage given to secure bond issue on ground that its execution was *ultra vires*, when they are not prejudiced thereby.

Cited in Minneapolis F. & M. Mut. Ins. Co. v. Norman, 74 Ark. 193, 109 Am. St. Rep. 74, 85 S. W. 229, 4 Ann. Cas. 1045, holding that a mutual insurance company giving bond required of stock companies to do business within state and issuing policies like stock companies cannot plead ultra vires to such policies given under the bond; Cass County v. Mercantile Town Mut. Ins. Co. 188 Mo. 16, 86 S. W. 237, holding that mutual insurance company cannot plead ultra vires to defeat policy of reinsurance where fully performed by other company and where the mutual company is not expressly prohibited by law from reinsurance of property already insured; Groel v. United Electric Co. 69 N. J. Eq. 425, 60 Atl. 822, holding that where a corporation retains the fruits of illegal acts it cannot set up the defense that the acts constituting a doing of foreign business were ultra vires.

Cited in note (70 Am. St. Rep. 160) on ultra vires contracts of private corporation.

Preference of resident stockholders and creditors.

Approved in People v. Granite State Provident Asso. 41 App. Div. 264, 58 N. Y. Supp. 510, holding that resident stockholders and creditors of insolvent foreign corporation are entitled, to exclusion of nonresidents, to sole benefit of trust fund deposited with banking department as condition precedent to its right to do business; Maynard v. Granite State Provident Asso. 34 C. C. A. 445, 92 Fed. 441, holding statutory provision that upon revocation of authority of foreign corporation to do business, resident stockholders and creditors shall have first lien on assets, unconstitutional as depriving citizens of each state of privileges and immunities of citizens in several states.

Distinguished in MacMurray v. Sidwell, 155 Ind. 564, 80 Am. St. Rep. 255, 58

N. E. 722, holding that stockholders, residing in state in which foreign corporation had ceased to do business rather than make deposit required, have no preferential claim upon its assets within the state.

Effect of acceptance of license.

Approved in Travelers' Ins. Co. v. Fricke, 99 Wis. 375, 41 L. R. A. 562, 74 N. W. 372, holding that by acceptance of license and doing business under it, foreign corporation binds itself to comply with law governing issuance of license.

Revocation of license.

Cited in Travelers' Ins. Co. v. Fricke, 99 Wis. 372, 41 L. R. A. 561, 74 N. W. 372, holding that license of foreign insurance company for current year may be revoked by insurance commissioner for failure to pay full license fees for past years.

Suit by receiver appointed in another state.

Approved in Lewis v. Clark, 129 Fed. 572, holding Federal court sitting in one state may, as matter of comity, permit receiver appointed in another state to maintain suit to foreclose mortgage.

Deposit by foreign corporation as prerequisite to right to do business.

Cited in Morrill v. American Reserve Bond Co. 151 Fed. 310, holding a suit against state treasurer by creditors of a foreign insolvent corporation to realize on guaranty deposited with treasurer in order to enable it to do business, is not a suit against the state.

Cited in note (9 L.R.A.(N.S.) 462) on validity and effect of statute requiring deposit of securities by building and loan association as prerequisite to right to transact business.

39 L. R. A. 569, SECOND WARD SAV. BANK v. SCHRANCK, 97 Wis. 250, 73 N. W. 31, 37.

Proceeding to hold assignee liable for selling property under order of court in 100 Wis. 485, 76 N. W. 335.

Impairing obligation of contract.

Followed in Peninsular Lead & Color Works v. Union Oil & Paint Co. 100 Wis. 491, 42 L. R. A. 332, footnote p. 331, 69 Am. St. Rep. 934, 76 N. W. 359, holding statute providing that attachment will be dissolved by general assignment of defendant for creditors within ten days thereafter, unconstitutional as to contracts made when right of attachment was absolute; Eau Claire Nat. Bank v. Macauley, 101 Wis. 307, 77 N. W. 176, holding that statute providing that levy upon property of insolvent debtor by virtue of any process shall be dissolved if, within ten days, he makes general assignment impairs obligation of contract executed before such enactment.

Approved in Heath & M. Mfg. Co. v. Union Oil & Paint Co. 83 Fed. 777, holding that statute providing that attachment shall be dissolved by debtor's assignment within ten days, and which restricts judgment creditor to participation in distribution under assignment with release of deficiency, is invalid as to debt contracted before its passage; Brochon v. Wilson, 34 C. C. A. 33, 63 U. S. App. 523, 91 Fed. 619, holding executions issued from Federal as well as state courts to be within state statute passed after execution of contract on which judgment was obtained, providing that assignment for creditors shall effect a dissolution of execution levies made within ten days prior thereto; Same Case after amending answer, in 95 Fed. 83, holding fact that note was given after passage of statute making attachments within ten days before assignment to creditors void, to liquidate account for goods sold prior thereto, does not prevent statute being void as to such debt since it takes away a remedy

for its collection; Oshkosh Waterworks Co. v. Oshkosh, 109 Wis. 214, 95 Am. St. Rep. 870, 85 N. W. 376, holding that charter amendment that no action shall be maintained against city unless demand first presented to and disallowed by council does not impair obligation of contract; H. W. Wright Lumber Co. v. Hixon, 105 Wis. 159, 80 N. W. 1110, holding that lien of corporation upon shares of stock for debts due from owners continues to exist after repeal of statute conferring it, where it became a vested property right before repealing act passed; Craig v. Herzman, 9 N. D. 143, 81 N. W. 288, holding that statute authorizing sale of mortgaged premises and distribution of proceeds between mortgagee and lien holders does not impair rights of existing mortgagee who under former law had first lien on land, while mechanics' liens were first liens on building; Blonde v. Menominee Bay Shore Lumber Co. 106 Wis. 542, 82 N. W. 552, holding that legislature may dispense with certificate required on taking appeal, even as to judgment theretofore rendered.

Cited in McNaughton's Will, 138 Wis. 188, 118 N. W. 997, holding that the passing of a statute taking away the competency of a person as a witness in certain case is not an impairment of contract where the means of proof is not destroyed but merely rendered more difficult; Kiley v. Chicago, M. & St. P. R. Co. 138 Wis. 255, 119 N. W. 309 (dissenting opinion), on the invalidity of laws taking away rights forming the essential part of contracts.

Cited in footnotes to Jones v. German Ins. Co. 46 L. R. A. 860, which sustains statute shortening time of insurance company's immunity from suit, without extending period of limitations; Kirkman v. Bird, 58 L. R. A. 670, which sustains as to prior obligations, statute exempting wages for sixty days preceding levy; Miners' & Merchants' Bank v. Snyder, 68 L.R.A. 313, which holds corporate creditor's contract rights not impaired by statute requiring all creditors to unite in one suit against all stockholders for equitable distribution of liability fund among creditors.

Insolvent law.

Cited in Adams v. Hartzell, 18 N. D. 228, 119 N. W. 635, to the point that statute providing for voluntary assignments was an insolvent law.

Limited in Binder v. McDonald, 106 Wis. 340, 82 N. W. 156, holding whole of Wis. Stat. 1898, chap. 80, not to be regarded as an insolvent law.

Assignment as passing title to property in another state.

Cited in Segnitz v. Garden City Bkg. & T. Co. 107 Wis. 174, 50 L. R. A. 329, 81 Am. St. Rep. 830, 82 N. W. 327, holding that assignment for creditors will not carry title to personal property of assignor in another state.

Act of bankruptcy.

Cited in Wilson Bros. v. Nelson, 183 U. S. 200, 46 L. ed. 151, 22 Sup. Ct. Rep. 74 (dissenting opinion), majority holding that failure of debtor to file petition in bankruptcy five days before sale of his property under execution constitutes act of bankruptcy, although judgment was entered on irrevocable power of attorney without debtor's knowledge or consent.

39 L. R. A. 579, JOHN V. FARWELL CO. v. HILTON, 84 Fed. 293.

Replevin by seller of property from fraudulent purchaser.

Cited in notes (80 Am. St. Rep. 765; 1 L.R.A.(N.S.) 475) on replevin by seller of property from fraudulent purchaser.

— Necessity of return of purchase price.

Cited in Kingman-Moore Implement Co. v. Ellis, 125 Mo. App. 696, 103 S. W. 127, holding that vendor need not return purchase price of goods sold in an

action of replevin where defrauding vendee has sold part of goods purchased at a consideration greater than he parted with to his vendor.

39 L. R. A. 581, PEOPLE v. TRUCKEE LUMBER CO. 116 Cal. 397, 58 Am. St. Rep. 183, 48 Pac. 374.

Liability for pollution of stream.

Cited in footnote to Weston Paper Co. v. Pope, 56 L. R. A. 899, which sustains liability for pollution of stream by discharge from strawboard works, though business skilfully conducted.

Cited in note (33 L.R.A.(N.S.) 74, 76) on injury to fishing right as damages from pollution.

Right to lawful use of one's own property.

Cited in Bellevue v. Daly, 14 Idaho, 551, 15 L.R.A.(N.S.) 996, 125 Am. St. Rep. 179, 94 Pac. 1036, 14 Ann. Cas. 1136, holding that city cannot enjoin land owner through whose land its water supply ditch runs from allowing his cattle to feed along ditch and wade therein.

Protection of fish by state.

Cited in People v. Miles, 143 Cal. 641, 77 Pac. 666, holding use of set-net unlawful, although placed where there is neither current nor tide; Re Fishway, 131 App. Div. 412, 115 N. Y. Supp. 745, holding that legislature has right to protect and regulate easement of right of unobstructed passage of fish through streams of state; State v. Haskell, 84 Vt. 432, 34 L.R.A.(N.S.) 289, 79 Atl. 852, holding that statute making it offense to deposit sawdust or shavings in stream, is reasonable exercise of police power for protection of fish; State v. Hume, 52 Or. 6, 95 Pac. 808, holding that fish being feræ naturæ in navigable waters and state property laws passed for their preservation are not a violation of any private right.

Cited in footnotes to State v. Theriault, 43 L. R. A. 290, which sustains statute authorizing commissioners who have placed fish in stream, to prohibit fishing therein for three years; State *ex rel.* Remley v. Meek, 51 L. R. A. 414, which sustains state's power to require building of fishway in dam conveyed by it without such fishway.

Cited in notes (60 L.R.A. 486, 499, 501, 502, 508, 523) on right to fish; (1 L.R.A.(N.S.) 752; 34 L.R.A.(N.S.) 287) on statutory prohibition of pollution to protect fishery; (107 Am. St. Rep. 235, 236) on acts affecting fishing rights of public as nuisances.

Riparian owner's right to fish.

Cited in Ex parte Bailey, 155 Cal. 474, 31 L.R.A.(N.S.) 535, 132 Am. St. Rep. 95, 101 Pac. 441, holding that the right of the riparian owner to take fish from the water on or fronting on his own land is not exclusive but subject to rights of state.

Cited in note (131 Am. St. Rep. 751, 755, 763, 765) on law of fishing.

Prescriptive right to fish in private pond.

Cited in footnote to Albright v. Cortright, 48 L. R. A. 616, which denies right to fish in private pond by prescription or long usage by public.

Regulation of right to take shell fish.

Cited in footnotes to Com. v. Hilton, 45 L. R. A. 475, which sustains town regulation limiting to residents, right to dig clams for sale; Tyler v. State, 52 L. R. A. 100, which holds oysters taken from waters outside of state not within statutory prohibition of possession of.

Right of state to injunctive relief.

Approved in State v. Ohio Oil Co. 150 Ind. 38, 47 L. R. A. 634, 49 N. E. 809, holding right of state to maintain action for injunction against unlawful escape of natural gas from well not precluded by statutory remedies for penalties and for closing well.

Cited in Repass v. Com. 131 Ky. 817, 21 L.R.A.(N.S.) 839, 115 S. W. 1131, upholding right of equity to enjoin use of one's property so as to constitute a nuisance such as operation of betting pool room; Territory v. Long Bell Lumber Co. 22 Okla. 910, 99 Pac. 911, holding that suit in name of county attorney may be brought to enjoin monopoly of business.

Cited in footnote to State v. O'Leary, 52 L. R. A. 299, which denies state's right to injunction to suppress gambling house.

Injunction of acts constituting a crime if done.

Cited in People ex rel. Atty. Gen. v. Tool, 35 Colo. 237, 6 L.R.A.(N.S.) 826, 117 Am. St. Rep. 198, 86 Pac. 224, holding that it is the duty and right of state to enjoin acts which interfere with rights and privileges of its citizens though the acts if done constitute a crime.

Cited in notes (3 L.R.A.(N.S.) 624) on injunction against commission of crime when property right involved; (15 L.R.A.(N.S.) 748) on right of state to enjoin public nuisance which is also a crime.

Seizure of property to prevent crime.

Cited in footnote to Police Comrs. v. Wagner, 52 L. R. A. 775, which holds that police officers may be empowered to seize property to prevent crime.

Statutes for protection of game.

Cited in Harper v. Galloway, 58 Fla. 261, 26 L.R.A.(N.S.) 797, 51 So. 226, holding unconstitutional an act discriminating against residents of a state hunting in a county of which they are not residents.

Cited in notes (25 L.R.A.(N.S.) 649) on jurisdiction over sloughs, bays, or lakes connected with river forming interstate boundary; (26 L.R.A.(N.S.) 794) on what discrimination as to persons permissible in fish and game laws.

Judicial notice of location of rivers.

Cited in note (82 Am. St. Rep. 446) on judicial notice of location of rivers.

Effect of statute on common-law nuisances.

Cited in note (107 Am. St. Rep. 203) on effect of statute on common-law nuisances.

39 L. R. A. 594, KELLEY v. RHODES, 7 Wyo. 237, 75 Am. St. Rep. 904, 51 Pac. 593.

Taxation of bank stock.

Approved in Commercial Nat. Bank v. Chambers, 21 Utah, 341, 56 L.R.A. 350, 61 Pac. 560, holding state has right to fix particular situs as to bank stock for purposes of taxation, and its value for such purpose cannot be diminished by deducting the value of its real estate situated without the state; Chesebrough v. San Francisco, 153 Cal. 566, 96 Pac. 288, on the same point.

Cited in Canfield v. Los Angeles County, 157 Cal. 621, 108 Pac. 705, holding that state has right to fix situs of shares of stock in domestic corporation, though its property is situated out of state, and may assess such shares according to cash value without deduction on account of such outside property.

Taxation of grain in elevator.

Cited in footnote to Minneapolis & N. Elevator Co. v. Traill County, 50 L. R. A. 267, which sustains statute taxing grain in elevators, etc., in proprietor's name.

Taxation of property temporarily in state.

Approved in Griggsby Constr. Co. v. Freeman, 108 La. 441, 58 L. R. A. 352, footnote p. 349, 32 So. 399, holding contractor's outfit brought from another state to be used in construction of railroad bed, taxable; Waggoner v. Whaley, 21 Tex. Civ. App. 3, 50 S. W. 153, holding cattle brought into state to be fattened subject to local taxation, and not exempted by commerce clause of Federal Constitution; Kelley v. Rhoads, 9 Wyo. 354, 87 Am. St. Rep. 959, 63 Pac. 935, and Carton v. Uinta County, 10 Wyo. 431, 69 Pac. 1013, holding sheep maintained by grazing while in transit through state subject to taxation therein.

Cited in Eoff v. Kennefick-Hammond Co. 80 Ark. 140, 7 L.R.A.(N.S.) 706, 117 Am. St. Rep. 79, 96 S. W. 986, 10 Ann. Cas. 68, holding railroad construction property temporarily in state for construction purposes to be subject to local taxation and not in transit.

Cited in notes (7 L.R.A.(N.S.) 704, 705) on local situs within state of tangible personal property of nonresident for taxation; (15 L.R.A.(N.S.) 143) on taxation of property in different states is double.

Uniformity of taxation.

Cited in State ex rel. Foot v. Bazille, 97 Minn. 20, 6 L.R.A.(N.S.) 739, 106 N. W. 93, 7 Ann. Cas. 1056, upholding progressive inheritance tax leased on classification of estates; Nathan v. Spokane County, 35 Wash. 33, 65 L.R.A. 340, 102 Am. St. Rep. 888, 76 Pac. 521, holding statute providing special method of tax procedure for goods of itinerant vendor brought into county subsequent to March first not unconstitutional for providing different mode of assessment and not allowing notice before such assessment.

Assessment in another state as ground of exemption.

Approved in Hudson v. Miller, 10 Kan. App. 535, 63 Pac. 21, holding property legally taxable in state not exempt because returned for assessment for same year in another state.

Right to recover back assessments or taxes paid.

Cited in footnotes to McConville v. St. Paul, 43 L. R. A. 584, which authorizes property owner to recover back assessments which he has been compelled to pay city for improvement wholly abandoned without completion; St. Anthony & D. Elevator Co. v. Soucie, 50 L. R. A. 262, which sustains right to recover illegal taxes paid under protest to prevent tax collector's sale of personal property constructively in his possession; C. & J. Michel Brewing Co. v. State, 70 L.R.A. 911, which holds that requiring foreign corporation to pay license fee as condition precedent to sale of products within state or subject itself to penalties supposed to be prescribed by statute not such compulsion as will entitle it to recover amounts paid on statute being held unconstitutional.

Cited in note (94 Am. St. Rep. 429) on recovery back of voluntary payment.

Jurisdiction of supreme court.

Cited in State v. Bolln, 10 Wyo. 472, 70 Pac. 1, holding supreme court has no jurisdiction to weigh evidence or pass upon issues of fact, but only to decide questions of law; Smith v. Healy, 12 Wyo. 222, 75 Pac. 430, refusing to take jurisdiction of a reservation of difficult questions from district court where clerk failed to state what the questions were in the order.

Assessability of property brought into tax district after tax day.

Cited in note (38 L.R.A.(N.S.) 860) on assessability of property brought into tax district after tax day.

Stare decisis.

Cited in People ex rel. Atty. Gen. v. Cassiday, 50 Colo. 531, 117 Pac. 357, holding that where public rights are involved and former decision regarding them is to have direct permanent influence, it is duty of court to carefully reconsider question.

Cited in note (73 Am. St. Rep. 102) on limitations on doctrine of stare decisis.

39 L. R. A. 607, SMITH v. CLARKE HARDWARE CO. 100 Ga. 163, 28 S. E. 73.

Duty of vendor of explosive.

Approved in Waters Pierce Oil Co. v. Davis, 24 Tex. Civ. App. 512, 60 S. W. 453, holding it duty of oil company in selling gasoline of highly explosive and inflammable character, to warn purchaser of its dangerous qualities, and on failure to do so company is liable for resulting injury.

Cited in footnote to Ives v. Welden, 54 L. R. A. 854, which holds merchant's failure to label gasoline renders him liable for injury to member of purchaser's family by explosion.

Liability of manufacturer to one injured by defective machine.

Cited in footnote to McCaffrey v. Mossberg & G. Mfg. Co. 55 L. R. A. 822, which denies liability of manufacturer of drop press for injury to employee of purchaser from breaking of defective hook.

Cited in note (111 Am. St. Rep. 717) on manufacturer's liability to third persons.

Sale of hogs having infectious disease.

Cited in footnote to Skinn v. Reutter, 63 L. R. A. 743, which holds one selling hogs known to have dangerous and infectious disease liable for injury to life or property caused thereby.

Liability of vendor for injury from property after sale.

Cited in Upp v. Darner, 150 Iowa, 408, 32 L.R.A.(N.S.) 745, 130 N. W. 409, Ann. Cas. 1912 D, 574, holding that person who strings barbed wire some distance from his boundary line to prevent use of property as driveway, is not liable for injury to runaway horse, after he had sold property and delivered possession.

39 L. R. A. 609, CAPE MAY v. CAPE MAY, D. B. & S. P. R. CO. 60 N. J. L. 224, 37 Atl. 892.

Necessity of notice to one whose rights are affected.

Approved in Delaware & A. Teleph. Co. v. Pensauken Twp. 67 N. J. L. 93, 52 Atl. 482, holding poles of telephone company cannot be removed, under ordinance authorizing removal of poles erected without consent of public authorities, without giving the company opportunity to be heard; Newark & H. Traction Co. v. North Arlington, 67 N. J. L. 163, 50 Atl. 345, holding ordinance repealing grant to traction company of right to operate street railroad cannot be passed without notice to company.

Cited in United New Jersey R. & Canal Co. v. Jersey City, 72 N. J. L. 234, 61 Atl. 460, holding that municipal action directing removal of tracks in streets maintained under claim of legislative authority must be on notice to railroad company such action being judicial in its character; United Electric Co. v. Bayonne, 73 N. J. L. 412, 63 Atl. 996, holding invalid an ordinance preventing erection of poles and wires in street passed without notice to person claiming right under another ordinance.

Municipal power over nuisances.

Cited in notes (38 L. R. A. 305) on municipal power over nuisances affecting safety, health, and personal comfort; (38 L. R. A. 640) on municipal power over nuisances relating to trade or business; (39 L. R. A. 650) on municipal power over nuisances affecting highways and waters.

Injunction by municipality against nuisance.

Cited in note (44 L. R. A. 565) on injunctions by municipalities against nuisances by railroads and electrical companies.

Ordinance requiring street railway to sprinkle tracks.

Cited in footnote to State v. Canal & C. R. Co. 56 L. R. A. 287, which sustains ordinance requiring electric railway company to water tracks.

Grant of privileges in highway.

Cited in Essen v. Cape May, 72 N. J. L. 434, 60 Atl. 1131, setting aside a highway regulation because made by resolution instead of by ordinance as required by city charter.

39 L. R. A. 618, STATE v. NEW ORLEANS CITY & LAKE R. CO. 49 La. Ann. 1571, 22 So. 839.

Sprinkling streets.

Approved in State v. Canal & C. R. Co. 50 La. Ann. 1193, 56 L. R. A. 289, footnote p. 287, 24 So. 265, upholding ordinance requiring street railway to sprinkle its tracks.

Cited in footnote to Sears v. Boston, 43 L. R. A. 834, which sustains frontage assessments on abutting property for expense of sprinkling streets.

Cited in notes (36 L.R.A.(N.S.) 236) on power to compel street railway to sprinkle tracks; (104 Am. St. Rep. 652) on municipal regulations of street railways for protection of public.

Requirement that street railway pave or clean between tracks.

Cited in footnotes to Fielders v. North Jersey Street R. Co. 59 L. R. A. 455, which holds void, ordinance requiring street railway companies to pave and keep in repair space between tracks; Chicago v. Chicago Union Traction Co. 59 L. R. A. 666, which sustains requirement that street car companies shall clean surface of street between rails.

Use of street by telegraph or telephone company.

Cited in footnotes to Michigan Teleph. Co. v. Benton Harbor, 47 L. R. A. 104, which holds city's consent unnecessary to use of streets by telephone companies; Northwestern Teleph. Exch. Co. v. Minneapolis, 53 L. R. A. 175, which requires council's discretion in compelling telegraph company to put underground, wires placed overhead under ordinance, to be reasonably exercised.

39 L. R. A. 623, DRENNEN & CO. v. MERCANTILE TRUST & D. CO. 115 Ala. 592, 67 Am. St. Rep. 72, 23 So. 164.

Preference of railway employees over bondholders.

Followed in Hammerly v. Mercantile Trust & D. Co. 123 Ala. 599, 26 So. 646, holding railroad employee not entitled to preference over bondholders, where gross income not diverted from payment of current expenses to benefit of latter.

Approved in Pickering v. Townsend, 118 Ala. 361, 23 So. 703, holding employee of street railroad not entitled to preference over bondholders for services rendered within six months before appointment of receiver, unless there has been diversion of gross earnings to bondholders from employees, or unless services of latter have inured to benefit of former.

Cited in Le Hote v. Boyet, 85 Miss. 642, 38 So. 1, 3 Ann. Cas. 705, holding claims for labor necessary to continue and preserve property of corporation performed just before insolvency are entitled to preference over ordinary and secured creditors of the corporation.

Cited in note (2 L.R.A.(N.S.) 1058, 1059) on priority of labor claims against property in hands of receiver over recorded liens.

Priority of claims against property in hands of receiver.

Cited in George v. Pigford, 97 Miss. 338, 52 So. 796, holding that debt due from corporation for feed-stuff consumed in its business just before appointment of receiver is not preferential charge on its property.

Cited in notes (2 L.R.A.(N.S.) 1057, 1058) on priority of claims against property in hands of receiver over recorded liens; (71 Am. St. Rep. 382) on relation of receivers to pre-existing liens and remedies for their enforcements.

39 L. R. A. 636, ROGERS v. GALLOWAY FEMALE COLLEGE, 64 Ark. 627, 44 S. W. 454.

Recovery for services rendered at request of trustee or agent.

Cited in Rothwell v. Skinker, 84 Mo. App. 177, holding contractor employed by trustee or agent to grade private road for benefit of adjoining landowners may maintain suit against them to recover for his services.

Right of action against railroad by sender of mail destroyed.

Cited in footnote to Boston Ins. Co. v. Chicago, R. I. & P. R. Co. 59 L. R. A. 796, which denies right of action against railroad company carrying mail under contract with government, by sender of registered mail destroyed through negligence of its employees.

Construction of words of locality.

Cited in Counts v. Medley, 163 Mo. App. 551, 146 S. W. 465; Los Angeles v. Hannon, 159 Cal. 44, 112 Pac. 878, Ann. Cas. 1912B, 1065,—holding that word "at" when applied to place or location of an object is not treated as definitely locative, but denotes nearness or proximity; Lorraine Mfg. Co. v. Oshinsky, 182 Fed. 408, holding that word "at" when used both as to time and place may mean "near" or "about"; Harris v. Theus, 149 Ala. 140, 10 L.R.A.(N.S.) 210, 123 Am. St. Rep. 17, 43 So. 131, construing the word "at" with respect to certain city as to include locality immediately without the city limits; St. Louis S. W. R. Co. v. Stringer, 74 Ark. 427, 86 S. W. 280, holding that a contract releasing a party from liability for stock killed "at" spur track has no application to stock killed "near" such spur; St. Louis, M. & S. E. R. Co. v. Houck, 120 Mo. App. 643, 97 S. W. 963, holding a contract requiring railroad to be constructed through or into city not to be fulfilled by a construction within a quarter of a mile of city limits.

Estoppel.

Cited in Mason v. Dierks Lumber & Coal Co. 94 Ark. 110, 26 L.R.A.(N.S.) 577, 125 S. W. 656, holding that the heirs of a married man who representing himself to be single conveyed homestead, cannot maintain suit to cancel deed because not signed by wife; Lowe v. Walker, 77 Ark. 107, 91 S. W. 22, holding debtor procuring payment of his debt by another estopped to deny liability to such third person on the grounds that debt extinguished was void for usury; Fagan v. Stuttgart Normal Institute, 91 Ark. 148, 120 S. W. 404, holding corporation and stockholders estopped from attacking validity of judicial sale of its property to a director where such corporation and stockholders encouraged a third person to purchase from such director.

39 L. R. A. 644, GUSTAFSON v. RUSTEMEYER, 70 Conn. 125, 66 Am. St. Rep. 92, 39 Atl. 104.

Misrepresentations as to value or character of property.

Approved in Andrew D. Meloy & Co. v. Donnelly, 119 Fed. 458, holding complaint charging conspiracy to deceive by fraudulently misrepresenting value of property to prospective purchaser not demurrable on ground defendants merely expressed opinion as to value; Chilson v. Houston, 9 N. D. 503, 84 N. W. 354, holding false statements as to character of note and solvency of maker, made to one to whom it is transferred in exchange for land, constitute actionable deceit; Shelton v. Healy, 74 Conn. 271, 50 Atl. 742, holding representations as to value of stock, made by manager of company, not expression of opinion but statement of fact.

Duty of purchaser to inform vendor of whole truth.

Cited in footnote to Stackpole v. Hancock, 45 L. R. A. 814, which requires purchaser undertaking to inform vendor of valuable mine on land to disclose whole truth.

Right to rely upon representations.

Approved in Wilson v. Nichols, 72 Conn. 178, 43 Atl. 1052, holding one not negligent in relying upon misrepresentations as to value of estate, of one who had, and assumed to have, special knowledge thereof.

Cited in footnote to H. W. Williams Transp. Line v. Darius Cole Transp. Co. 56 L. R. A. 939, which denies right to rely on false representations as to speed of steamboat, if warranty as to speed inserted in contract.

Remedy of one induced to enter into contract by deceit.

Approved in Wilson v. Nichols, 72 Conn. 180, 43 Atl. 1052, holding one induced to enter into contract by deceit may elect to retain what he received thereunder and may sue for damages at any time within period allowed by statute of limitations.

Cited in footnote to National Cash Register Co. v. Townsend, 70 L.R.A. 349, which holds false statement by one attempting to sell cash register that its use would save expense of bookkeeper and half of one clerk's time not wrong for rescission of contract.

Admissibility of misrepresentations as to property not owned by vendor.

Approved in Lovejoy v. Isbell, 73 Conn. 373, 47 Atl. 682, holding in action for deceit, false representations as to quantity and quality of land admissible, although made with reference to land not within boundaries of tract conveyed.

Questions on appeal.

Cited in Williston v. Haight, 76 Conn. 503, 57 Atl. 170, holding that supreme court need not consider on appeal questions not raised on trial.

Measure of damages for fraud.

Cited in Howe v. Martin, 23 Okla. 572, 102 Pac. 128, holding that the measure of damages for fraud in an exchange of property is the difference between actual value of the property received and the value of the property had it been as represented; Kendrick v. Ryus, 225 Mo. 159, 135 Am. St. Rep. 585, 123 S. W. 937, as containing discussion of two lines of authority on rules of damages recoverable for fraud.

Cited in footnote to Beare v. Wright, 69 L.R.A. 409, which holds measure of damages for fraudulent representations inducing exchange of land for corporate stock the difference in value between what was received or parted with and what would have been received or parted with if the representations had been true.

Cited in notes (8 L.R.A.(N.S.) 806, 807; 123 Am. St. Rep. 783) on measure of

damages for fraudulent representations including contract for sale or exchange of land.

39 L. R. A. 649, HAGERSTOWN v. WITMER, 86 Md. 293, 37 Atl. 965.

Right to kill dog.

Approved in Walker v. Towle, 156 Ind. 642, 53 L. R. A. 751, footnote p. 749, 59 N. E. 20, holding city empowered to enact ordinances for protection of life, health, and property, may authorize killing by officers of unmuzzled dogs found running at large.

Cited in footnote to Hodges v. Causey, 48 L. R. A. 95, which denies right to kill trespassing dog whose owner notified to keep him from premises.

Property right in dogs.

Cited in notes (40 L.R.A. 510) on property rights in dogs; (67 Am. St. Rep. 298) on same point.

Fee for privilege of keeping dog.

Cited in footnote to Gibson v. Harrison, 54 L. R. A. 268, which holds exaction of fee of $1.50 for privilege of keeping dog, authorized by statute.

Ordinance permitting refusal of building permits.

Cited in footnote to Bostock v. Sams, 59 L. R. A. 282, which holds unauthorized, ordinance permitting refusal of permits for erecting buildings not conforming in size, appearance, etc., to existing buildings.

Removal of shade trees without notice to owner.

Cited in footnote to Stretch v. Cassopolis, 51 L. R. A. 345, which denies right to remove shade trees from street without notice to abutter.

Cited in note (20 L.R.A.(N.S.) 809) on right of municipality to cut or trim trees within highway.

License tax on auction sales.

Cited in footnote to Stull v. De Mattos, 51 L. R. A. 892, which sustains license tax of $25 per day on sales of merchandise at auction.

Encroaching bay window or dwelling house as nuisance.

Cited in Valparaiso v. Bozarth, 153 Ind. 538, 47 L. R. A. 488, 55 N. E. 439, holding dwelling house encroaching upon street is *per se* a public nuisance, and referring particularly to annotation in 39 L. R. A. 814, 825.

Cited in footnote to State v. Kean, 48 L. R. A. 102, which holds indictable nuisance created by bay window extending over street.

Municipal power over nuisances.

Cited in footnotes to State v. Higgs, 48 L. R. A. 446, which holds void, ordinance against having sign suspended over sidewalk; Iler v. Ross, 57 L. R. A. 895, which denies city's right to grant monopoly by contract for removal of ashes, etc.; Philadelphia v. Brabender, 58 L. R. A. 220, which sustains ordinance against casting advertisements, etc., into vestibules of dwellings.

Cited in notes (38 L. R. A. 161) on municipal power over buildings and other structures as nuisances; (38 L. R. A. 640) on municipal power over nuisances relating to trade or business; (39 L. R. A. 520) on municipal power as to nuisances affecting public morals, decency, and good order; (39 L. R. A. 551) on municipal power over smoke as public nuisance; (39 L. R. A. 609) on municipal power over public nuisance on public streets and highways created by street railroads and other electrical companies.

Injunction by municipality against nuisance.

Cited in notes (41 L. R. A. 325) on injunctions by municipalities against nuisances affecting public morals, peace and good order, and health and safety; (40

L. R. A. 465) on injunctions by municipalities against nuisances in waters and water courses; (42 L. R. A. 814, 821, 825) on injunctions by municipalities against nuisances on highways and streets.

Prescriptive right to maintain public nuisances.

Cited in note (53 L. R. A. 900) on prescriptive right to maintain public nuisances.

Overhanging street nuisances.

Annotation cited in Perry v. Castner, 124 Iowa, 390, 66 L.R.A. 162, 100 N. W. 84, 2 Ann. Cas. 363, on things overhanging streets.

Cited in note (20 L.R.A.(N.S.) 146) on power of municipality to compel removal of awnings or signs encroaching on streets.

Prohibiting animals running at large.

Cited in notes (21 L.R.A.(N.S.) 700) on validity of statute permitting summary killing of domestic animals at large, other than dogs; (22 L.R.A.(N.S.) 1098) on civil liability of nonresident for damage by stock straying in district where running at large is forbidden.

What constitutes nuisance.

Cited in note (20 L.R.A.(N.S.) 466) on gas plant as nuisance.

Right of abutter to change conditions in surface of street.

Cited in note (16 L.R.A.(N.S.) 1040) on right of abutter to change conditions in surface of street or highway.

39 L. R. A. 670, STATE v. CLARKE, 69 Conn. 371, 61 Am. St. Rep. 45, 37 Atl. 975.

Municipal control over side walk space.

Cited in Paola v. Wentz, 79 Kan. 151, 131 Am. St. Rep. 290, 98 Pac. 775, holding that city may not remove trees growing in street merely for sake of enabling it to place sidewalk in position different from that prescribed in ordinance; Bedell v. Swarthmore, 10 Del. Co. Rep. 450, holding that borough has authority to lower sidewalk to conform to established grade, and if necessary may lower trees and change grade of carriage ways.

Annotation cited in Paola v. Wentz, 79 Kan. 151, 131 Am. St. Rep. 290, 98 Pac. 775, denying authority of city to justify destruction of shade trees by building sidewalk off of its established location.

Cited in footnote to Frostburg v. Wineland, 64 L.R.A. 627, which denies right to remove trees which have stood for forty years because they extend a short distance outside the curb on a proposed street improvement.

Revocability of awning permit.

Cited in footnote to Hibbard v. Chicago, 40 L. R. A. 621, which holds awning permit revocable.

Validity of narrow tire ordinance.

Cited in footnote to State v. Rohart, 54 L. R. A. 947, which holds void, ordinance excluding heavily loaded vehicle with narrow tires from parkway.

Municipal power over nuisances.

Cited in Udkin v. New Haven, 80 Conn. 294, 14 L.R.A.(N.S.) 870, 68 Atl. 253, holding that city under charter has limited power to abate a nuisance such as the causing of a collection of snow and ice on sidewalk; Macomb v. Jones, 158 Ill. App. 273, holding that ordinance regulating running of traction engines on streets was valid.

Cited in notes (38 L. R. A. 640) on municipal power over nuisances relating to trade or business; (39 L. R. A. 520) on municipal power as to nuisances affecting public morals, decency, peace and good order.

Bay window as nuisance.

Cited in footnote to State v. Kean, 48 L. R. A. 102, which holds indictable nuisance created by bay window extending over street.

Sufficiency of notice to repair walk.

Approved in State v. Richards, 74 Conn. 61, 49 Atl. 858, holding order to put sidewalks in good repair, free from defects, is too uncertain and insufficient.

Injunctive relief.

Cited in footnotes to Hill v. McBurney Oil & Fertilizer Co. 52 L. R. A. 399, which authorizes injunction against blowing of factory whistle at unreasonable hours in populous community; First Nat. Bank v. Tyson, 59 L. R. A. 399, which sustains right of injunction against pillars in street in front of adjoining lot, obstructing light and air from street.

Cited in note (42 L. R. A. 821) on injunctions by municipalities against nuisances on highways and streets.

39 L. R. A. 686, AINSWORTH v. BANK OF CALIFORNIA, 119 Cal. 470, 63 Am. St. Rep. 135, 51 Pac. 952.

Set off and counter claim.

Cited in Bell v. Bank of California, 153 Cal. 243, 94 Pac. 889, on compensation of cross demands in so far as they equal each other under code; Fishburne v. Merchants Bank, 42 Wash. 479, 85 Pac. 38, 7 Ann. Cas. 848, holding that a defendant bank sued by an administrator for balance on deposit in favor of deceased may set up as counter claim a note against deceased which matured after death and before commencement of action.

39 L. R. A. 689, *Re* CALLAGHAN, 119 Cal. 571, 51 Pac. 860.

Construction of will.

Approved in *Re* Lynch, 142 Cal. 375, 75 Pac. 1086, holding devise of real estate which testator did not own will not be construed to describe property which he did own.

Cited in Allison v. Allison, 101 Va. 571, 63 L. R. A. 934, 44 S. E. 904, holding child taking vested remainder after life estate of mother not pretermitted by his father's will.

Cited in footnotes to Carpenter v. Snow, 41 L.R.A. 820, which holds intention not to provide for child already born need not be shown by will itself; Re Newlin, 68 L.R.A. 464, which holds sufficient provision for unborn child to sustain will made by establishing remainder to be divided among children and a fee to be divided among or held in trust for them on arriving at maturity.

Cited in notes (6 L.R.A.(N.S.) 944) on correction of misdescription of land in will; (115 Am. St. Rep. 580, 589) on pretermitted heirs.

Right to appeal.

Cited in note (119 Am. St. Rep. 759) on right to appeal as a party interested or injured.

39 L. R. A. 691, McCLATCHY v. SUPERIOR COURT, 119 Cal. 413, 51 Pac. 696.

Contempt.

Cited in Ex parte Green, 46 Tex. Crim. Rep. 580, 66 L.R.A. 729, 108 Am. St. Rep. 1035, 81 S. W. 723, holding that a publication not written or published with reference to a case then pending cannot be in contempt of the court no matter how defamatory.

Adoption of statutes of contempt.

Cited in State *ex rel.* Flynn v. Fifth Judicial Dist. Court, 24 Mont. 35, 60 Pac.

493, to statement that statutes of contempt of court in Montana have been adopted from California.

Right to a hearing.

Cited in Younger v. Superior Ct. 136 Cal. 686, 69 Pac. 485, holding that a complaint cannot be arbitrarily stricken from the files by judge without giving persons interested an opportunity to be heard.

Right of bankrupt to be heard on motion that he turn over property.

Approved in Boyd v. Glucklich, 53 C. C. A. 454, 116 Fed. 134, holding referee in bankruptcy without power to direct bankrupt, after desultory examination, to turn over property to trustee, without right to be heard or produce witnesses, where failure to obey order would constitute contempt.

Superintending control of superior court.

Cited in note (51 L. R. A. 36, 78, 108) on superintending control and supervisory jurisdiction of superior over inferior or subordinate tribunal.

39 L. R. A. 697, WALSH v. HUNT, 120 Cal. 46, 52 Pac. 115.

Authority of agent.

Approved in Mitrovich v. Fresno Fruit Packing Co. 123 Cal. 384, 55 Pac. 1064, holding agent cannot, by silence, render limitations on his authority ineffective, nor can it be inferred from fact of agency that he possesses any power he may assume to exercise.

Cited in note (88 Am. St. Rep. 789) on liability of principal for unauthorized acts of agent.

Liability of maker to innocent holder of note fraudulently raised.

Cited in Merchants' Nat. Bank v. Baltimore, C. & R. S. B. Co. 102 Md. 585, 63 Atl. 108, on the forgery as proximate cause of inquiry due to raising amount of note and not negligence of maker in making forgery possible.

Cited in footnote to Bank of Herington v. Wangerin, 59 L. R. A. 717, which denies liability of maker to innocent holder of note fraudulently raised after delivery.

Alteration of instruments.

Cited in Union Oil Co. v. Mercantile Ref. Co. 8 Cal. App. 769, 97 Pac. 919, holding that a bond may be enforced as a joint obligation though altered before delivery to be a joint and several obligation by one of the sureties without knowledge or consent of obligee or other sureties when the obligee acting on bond without fault believed the change to be authorized; Ballou v. Bergvendsen 9 N. D. 290, 83 N. W. 10, as to alteration of instruments as affecting liability of maker.

Cited in note (86 Am. St. Rep. 83, 103, 107, 121) on unauthorized alteration of written instruments.

39 L. R. A. 701, SPURGEON v. SANTA ANA VALLEY IRRIG. CO. 120 Cal. 71, 52 Pac. 140.

Assessment of corporate stock.

Cited in Bottle Min. & Mill. Co. v. Kern, 9 Cal. App. 530, 99 Pac. 994, holding that an assessment can be had on fully paid up stock of corporation and collected by personal action in this state under existing statutes.

39 L. R. A. 705, STEARNS v. FRALEIGH, 39 Fla. 603, 23 So. 18.

Power conferred on beneficiary to appoint trustee.

Cited in footnote to May v. May, 41 L. R. A. 767, which sustains provision in

will creating trust empowering beneficiaries to remove trustee and appoint another without aid of court.

Husband as wife's trustee.

Cited in Kirkman v. Wadsworth, 137 N. C. 459, 49 S. E. 962, holding that husband can be validly clothed with all the powers and trusts in trust deed in favor of his wife the husband becoming trustee through inheritance from his father.

39 L. R. A. 709, WILCOX v. STATE, 101 Ga. 563, 28 S. E. 981.

Dogs as domestic animals.

Cited in May v. State, 120 Ga. 498, 48 S. E. 153, holding that cruelty to a dog is punishable under statute prohibiting cruelty to animals; Strong v. Georgia R. & Electric Co. 118 Ga. 521, 45 S. E. 366, on dogs as domestic animals.

Distinguished in Miller v. State, 5 Ga. App. 465, 63 S. E. 571, holding that sheep-killing dog may be killed by sheep owner, without subjecting him to punishment for cruelty to domestic animals.

Right of property in dogs.

Cited in Salley v. Manchester & A. R. Co. 54 S. C. 484, 71 Am. St. Rep. 810, 32 S. E. 526, holding that there is such property in dogs that railroad company is liable for killing them upon its tracks; Columbus R. Co. v. Woolfolk, 128 Ga. 633, 10 L.R.A.(N.S.) 1137, 119 Am. St. Rep. 404, 58 S. E. 152, holding that owner of dog may maintain suit against street car company for wilfully running over and killing it; Vaughn v. Nelson, 5 Ga. App. 110, 62 S. E. 708, holding that a dog is subject to sale for the debts of its owner; Klein v. St. Louis Transit Co. 117 Mo. App. 697, 93 S. W. 281, holding motorman on car ordinarily not bound to stop car to avoid injury to dog on track.

Cited in note (40 L. R. A. 504) on property rights in dogs.

39 L. R. A. 710, ALLEN v. PEARCE, 101 Ga. 316, 65 Am. St. Rep. 306, 28 S. E. 859.

39 L. R. A. 711, BASS v. METROPOLITAN WEST SIDE ELEV. R. CO. 27 C. C. A. 147, 53 U. S. App. 542, 82 Fed. 857.

Right of tenant to remove fixtures.

Approved in Palmer v. Young, 108 Ill. App. 257, enjoining lessee from committing waste by removing staircase, elevators, steam-plant, and wainscoting.

Cited in Toellner v. McGinnis, 55 Wash. 436, 24 L.R.A.(N.S.) 1088, 104 Pac. 641, holding that under lease for a term and covenant that tenant would erect improvement which should belong to lessor upon payment of a certain sum, tenant cannot recover for the improvement where he abandoned the lease.

Cited in footnotes to Wright v. Du Bignon, 57 L. R. A. 669, which denies right of tenant to remove fixtures annexed by him to freehold; Baker v. McClurg, 59 L. R. A. 131, which sustains tenant's right to remove as trade fixtures, ovens, engine, and boilers placed by him in bakery building with intent to remove; Radey v. McCurdy, 67 L.R.A. 359, which holds insertion in renewal lease of provision entitling tenant to remove trade fixtures not necessary to enable him to remove such fixtures before termination of extended period; Bergh v. Herring-Hall-Marvin Safe Co. 70 L.R.A. 756, which holds boilers, engines, shafting, and heating apparatus placed in building by tenant to carry on business therein and capable of easy removal without injury to building removable as trade fixtures.

Cited in note (81 Am. St. Rep. 182) on improvements on leased property.

Enjoining railroad from leasing building on its right of way.

Approved in Ragsdale v. Southern R. Co. 60 S. C. 391, 38 S. E. 609, holding owner of fee may enjoin railroad from maintaining upon its right of way in violation of its charter, building occupied by one conducting merchandise business.

Cited in Greene v. Aurora R. Co. 84 C. C. A. 589, 157 Fed. 86, holding that owner of lot abutting on street may maintain suit to enjoin railroad company from building a road along the street.

Right to mandatory injunction.

Cited in footnote to Allen v. Stowell, 68 L.R.A. 223, which sustains right to mandatory injunction to compel removal of dams wrongfully diverting water onto plaintiff's property so as to destroy trees and cut gulches.

39 L. R. A. 715, *Re* STETSON, 167 Mass. 55, 44 N. E. 1085.

39 L. R. A. 722, POSTAL TELEG. CABLE CO. v. EATON, 170 Ill. 513, 62 Am. St. Rep. 390, 49 N. E. 365.

Poles and wires as additional burden on fee.

Approved in Union Electric Teleph. & Teleg. Co. v. Applequist, 104 Ill. App. 522, holding laying of telephone wires and conduits in alley an added servitude for which owner is entitled to compensation; Donovan v. Allert, 11 N. D. 297, 58 L. R. A. 780, footnote p. 775, 95 Am. St. Rep. 720, 91 N. W. 441, holding use of street for telephone poles is new burden or servitude; Krueger v. Wisconsin Teleph. Co. 106 Wis. 108, 50 L. R. A. 304, footnote p. 298, 81 N. W. 1041, holding telephone poles and wires constitute an additional burden upon street for which compensation must be made.

Cited in Southwestern Teleg. & Teleph. Co. v. Smithdeal, 103 Tex. 133, 124 S. W. 627, holding that telephone line is additional burden on street; De Kalb County Teleph. Co. v. Dutton, 228 Ill. 182, 10 L.R.A.(N.S.) 1060, 81 N. E. 838, 10 Ann. Cas. 464, holding that telephone line is additional burden upon city street; Burrall v. American Teleph. & Teleg. Co. 224 Ill. 268, 8 L.R.A.(N.S.) 1093, 79 N. E. 705, holding that telephone line is additional burden upon highway; McCann v. Johnson County Teleph. Co. 69 Kan. 224, 66 L.R.A. 180, 76 Pac. 870, 2 Ann. Cas. 156 (dissenting opinion), on same point; Drainage Dist. No. 6 v. Knox, 237 Ill. 151, 86 N. E. 636, on imposing additional burden as being a "taking" of property.

Cited in footnotes to Palmer v. Larchmont Electric Co. 43 L. R. A. 672, which holds electric light poles not additional burden on fee in country highway; Coburn v. New Teleph. Co. 52 L. R. A. 672, which holds occupation of sidewalk with trench and pipes for conduit for telephone wires not additional burden; Bronson v. Albion Teleph. Co. 60 L. R. A. 426, which holds poles and wires permanently and exclusively occupying portion of street, an additional burden.

Cited in note (106 Am. St. Rep. 262, 263) on telegraph and telephone lines as additional servitudes in highways.

Disapproved in Frazier v. East Tennessee Teleph. Co. 115 Tenn. 419, 3 L.R.A. (N.S.) 324, 112 Am. St. Rep. 856, 90 S. W. 620, 5 Ann. Cas. 838, holding that telephone poles and wires are not an additional servitude.

Use of tracks of one railroad company by another as new servitude.

Disapproved in Stevens v. St. Louis Merchants Bridge Terminal R. Co. 152 Mo. 279, 53 S. W. 1066, holding use of depot grounds, tracks, and switches of one railroad company by another does not constitute new servitude entitling fee owner to additional compensation.

Right to maintain poles and wires as affected by wrongful use.

Cited in footnote to French v. Robb, 57 L. R. A. 956, which holds right to maintain, as against owner of soil, poles and wires rightfully placed in street to light it, not lost by wrongfully using for private lighting.

Possessory rights to sustain trespass or ejectment.

Approved in American Teleph. & Teleg. Co. v. Jones, 78 Ill. App. 375, holding owner of farm whose title extends to center of highway may maintain trespass *quare clausum fregit* against company erecting poles in highway, although tenants are in possession of cultivated portion of farm.

Cited in Glos v. Holmes, 228 Ill. 439, 81 N. E. 1064, holding that owner of fee has possession of land covered by rural highway subject to easement therein by the public.

Cited in footnote to Cahill v. Cahill, 60 L. R. A. 706, which holds possessory rights only will not sustain ejectment without showing legal title.

Cited in notes (101 Am. St. Rep. 103, 110, 117) on title and remedies of persons over whose land a highway runs; (116 Am. St. Rep. 586) on property or invasion of possession for which ejectment is maintainable.

Ejectment of railroad company from right of way.

Cited in Chicago, P. & St. L. R. Co. v. Vaughn, 206 Ill. 243, 69 N. E. 113, holding railroad company, after death of life tenant from whom it acquired right of way, should have reasonable time allowed to condemn property before it is ejected; Mapes v. Vandalia R. Co. 238 Ill. 144, 128 Am. St. Rep. 117, 87 N. E. 393, holding that one acquiring title to land after railroad has obtained possession of a strip for right of way, may maintain ejectment to recover land so held.

Distinguished in Spalding v. Macomb & W. I. R. Co. 225 Ill. 591, 80 N. E. 327, holding that court of equity has power to issue mandatory injunction for removal of railroad constructed in street unless compensation is made.

Right of landowner to dig ditch along highway.

Approved in Nelson v. Fehd, 203 Ill. 125, 67 N. E. 828, Affirming 104 Ill. App. 116, holding owner of fee of public highway may dig ditch thereon to drain his lands if he does not render road less safe or convenient.

Cited in note (34 L.R.A.(N.S.) 506) on right of fee owner to use highway ditch.

39 L. R. A. 725, FRANKLIN NAT. BANK v. WHITEHEAD, 149 Ind. 560, 63 Am. St. Rep. 302, 49 N. E. 592.

Right of common carrier to license as warehouseman.

Approved in State v. Southern P. Co. 52 La. Ann. 1827, 28 So. 372, holding railroad or common carrier not authorized to receive, as a purpose incident to its business, license as warehouseman.

Cited in People ex rel. Healy v. Illinois C. R. Co. 233 Ill. 389, 16 L.R.A. (N.S.) 609, 122 Am. St. Rep. 181, 84 N. E. 368, 13 Ann. Cas. 285, holding that railroad company has no power to maintain public warehouse.

Right of warehouseman to deal in grain.

Cited in footnote to Central Elevator Co. v. People, 43 L. R. A. 658, which denies right of licensed warehouseman to deal in and store grain in own licensed warehouse.

Parol proof of contract evidenced by warehouse receipt.

Cited in footnote to Anderson v. Portland Flouring Mills Co. 50 L. R. A. 235, which holds parol evidence of contract under which grain delivered competent, though negotiable warehouse receipts given therefor.

Warehousemen.

Cited in Re Rohrer, 186 Fed. 1000, holding that "warehouseman" is one who for business and for hire keeps and stores goods of another; American Can Co. v. Erie Preserving Co. 171 Fed. 547, holding that negotiable warehouse receipt can be issued only by one engaged in the business of warehousing.

Cited in note (136 Am. St. Rep. 216) on definition of warehouseman.

Special finding to sustain estoppel.

Approved in Abicht v. Searls, 154 Ind. 597, 57 N. E. 246, holding special finding to sustain estoppel must show misrepresentation or concealment of material facts, with knowledge, to one ignorant of the truth, with intent he should act upon it, and reliance thereon by such party to his injury.

Title to property under assignment.

Cited in Miller v. Swhier, 40 Ind. App. 468, 79 N. E. 1092, holding that under voluntary assignment title passes to trustee in trust for creditors; Marion Trust Co. v. Blish, 170 Ind. 694, 18 L.R.A.(N.S.) 352, 84 N. E. 814, holding that receiver of corporation sues only as representing the corporation and has only such rights as it had, except that he may sue to set aside contract fraudulent as to creditors.

Estoppel of receiver to set up invalidity of executed contract.

Approved in Robison v. Wolf, 27 Ind. App. 693, 62 N. E. 74, holding receiver not estopped from setting up invalidity of executed contract forbidden by statute or contrary to public policy.

Cited in Industrial Mut. Deposit Co. v. Taylor, 118 Ky. 856, 82 S. W. 574, holding that receiver may maintain suit to recover money paid by insolvent corporation to a creditor in preference to other creditors.

Power of secretary of health board to bind county for expense of drainage.

Approved in Martin v. Montgomery County, 27 Ind. App. 99, 60 N. E. 998, holding secretary of board of health, irrespective of any action of the board, cannot bind county for expense incurred in draining pond detrimental to health.

Powers of corporations.

Approved in Flint & W. Mfg. Co. v. Kerr-Murray Mfg. Co. 24 Ind. App. 358, 56 N. E. 858, holding corporation may guarantee performance of contract from which it will derive pecuniary benefit and cannot defend on ground that act was *ultra vires;* Burke v. Mead, 159 Ind. 261, 64 N. E. 880, holding manufacture and sale of electric apparatus and supplies not incidental power of electric light, heat, and power company; Moss v. Sugar Ridge Twp. 161 Ind. 425, 68 N. E. 896, holding contract made by municipal corporation, but prohibited by statute, cannot create implied liability against corporation.

Cited in Muncie Natural Gas Co. v. Muncie, 160 Ind. 104, 60 L. R. A. 828, 66 N. E. 436, upholding power of municipal corporation to stipulate as to maximum rates to be charged by gas company when allowing it to lay pipes in street; Cumberland Teleph. & Teleg. Co. v. Evansville, 127 Fed. 191, holding corporations can exercise only those powers expressly granted or necessarily implied; Consumers' Gas Trust Co. v. Quimby, 70 C. C. A. 220, 137 Fed. 898, holding that corporation organized under Indiana statutes to mine natural gas has no power to engage in manufacturing artificial gas; Breinig v. Sparrow, 39 Ind. App. 463, 80 N. E. 37, holding corporation bound by ultra vires act which is not illegal and pursuant to which the other party has expended money; Scott v. Bankers' Union, 73 Kan. 588, 85 Pac. 604, holding that one taking notes from corporation is charged with notice of the extent of its corporate powers.

Cited in note (111 Am. St. Rep. 310) on implied power of corporations to borrow money and give evidence of indebtedness and security therefor.

— Rights under illegal contracts.

Cited in Collier Shovel & Stamping Co. v. Washington, 38 Ind. App. 374, 76 N. E. 122, holding that city cannot sue upon bond given in contract which is against public policy; Chicago, I. & L. R. Co. v. Southern Indiana R. Co. 38 Ind. App. 241, 70 N. E. 843, holding that railroad cannot recover from another railroad for right to cross its track, where crossing was constructed under a contract which was illegal; McNay v. Lowell, 41 Ind. App. 638, 84 N. E. 778, holding that town officer selling supplies to the town contrary to statute cannot recover quantum meruit on implied liability for the goods delivered and retained by the town.

Taxation of assets in hands of receiver.

Cited in Marion County v. Marion Trust Co. 30 Ind. App. 142, 65 N. E. 589, holding assets of insolvent building and loan association in hands of receiver taxable.

Receipt of warehouseman's own property as pledge.

Cited in notes (16 L.R.A.(N.S.) 228; 30 L.R.A.(N.S.) 553) on issuance and delivery by warehouseman of receipt for own property as transfer of possession essential to valid pledge.

Right of creditor to contest claims against receiver.

Cited in note (71 Am. St. Rep. 358) on right of creditor to contest validity and priority of claims against property in hands of receiver.

Estoppel.

Cited in Lyons v. Benney, 230 Pa. 120, 34 L.R.A.(N.S.) 108, 79 Atl. 250, holding that one not officer as director of bank, who executes note in furtherance of scheme to deceive bank examiner, cannot set up agreement that he should not be held liable, in action by receiver of bank on note.

39 L. R. A. 734, HOLLENBECK v. HALL, 103 Iowa, 214, 64 Am. St. Rep. 175, 72 N. W. 518.

Libelous publication.

Report of decision in suit against writer of letter in Hollenbeck v. Ristine, 105 Iowa, 489, 67 Am. St. Rep. 306, 75 N. W. 355.

Same case on subsequent appeal in 114 Iowa, 363, 86 N. W. 377, holding letter written to employer by creditor, charging employee with cowardly slinking behind statute of limitations, not privileged.

Approved in Mosnat v. Snyder, 105 Iowa, 504, 75 N. W. 356, holding letter charging attorney with making outrageous charges against estate libelous *per se*.

Cited in Nichols v. Daily Reporter Co. 30 Utah, 80, 3 L.R.A.(N.S.) 342, 116 Am. St. Rep. 796, 83 Pac. 573, 8 Ann. Cas. 841, holding published statement concerning a candidate for office that he does not pay his debt not libellous per se; Sheibley v. Ashton, 130 Iowa, 198, 106 N. W. 618, holding that question whether publication is actionable per se is for the court, where not affected by colloquium or inducement pleaded.

Cited in note (4 L.R.A.(N.S.) 1099) on nonlibelous statements concerning servants.

39 L. R. A. 737, KELCH v. STATE, 55 Ohio St. 146, 60 Am. St. Rep. 680, 45 N. E. 6.

Followed without discussion in Cain v. State, 61 Ohio St. 655, 57 N. E. 1131.

Degree of proof required to establish insanity.

Followed in Cottell v. State, 55 Ohio St. 666, 48 N. E. 1111, as to degree of proof required to establish defense of insanity.

Approved in State v. Thiele, 119 Iowa, 662, 94 N. W. 256, holding erroneous, instruction that accused not entitled to acquittal if evidence proved him probably insane.

Cited in State v. Austin, 71 Ohio St. 320, 104 Am. St. Rep. 778, 73 N. E. 218; State v. Clark, 34 Wash. 494, 101 Am. St. Rep. 1006, 76 Pac. 98,—holding that insanity as a defense must be established by a preponderance of evidence.

"Satisfying" and "preponderating" proof.

Cited in Baltimore & O. S. R. Co. v. Walker, 41 Ind. App. 598, 84 N. E. 730, holding instruction using "satisfy" and "satisfied" in the sense of relieving from doubt, not error; C. C. & St. L. R. Co. v. Sivey, 6 Ohio C. C. N. S. 221, 27 Ohio C. C. 250, holding charge that, if defendant has not satisfied you that deceased was guilty of contributory negligence, verdict must be for plaintiff, error.

Distinguished in Cincinnati, H. & D. R. Co. v. Frye, 80 Ohio St. 301, 131 Am. St. Rep. 709, 88 N. E. 642, holding it error in civil case to instruct jury that they "must be satisfied by a preponderance of the evidence of the truth" of a fact in issue.

Burden of proof.

Cited in State v. Sappienza, 84 Ohio St. 71, 34 L.R.A.(N.S.) 1118, 95 N. E. 381, holding burden of proof on defendant, on trial for robbery, to establish defense of duress by preponderence of evidence; Stick v. State, 3 Ohio C. C. N. S. 615, 13–23 Ohio C. C. 395, holding charge, in prosecution for sale of liquor in local option township, that burden is on defendant to show illegality of election is erroneous.

Cited in note (76 Am. St. Rep. 93) on burden of proof as to insanity.

— As to value of land taken for public use.

Approved in Gibson v. Norwalk, 13 Ohio C. C. 438, upholding charge in proceeding to appropriate land for water works purposes, that burden of proof is on property owners to establish value of property by fair preponderance of evidence.

Cited in Gibson v. Norwalk, 13 Ohio C. C. 438, 7 Ohio C. D. 11, holding that charge, in appropriation proceedings, that burden is on owners to show value of land by fair preponderance of evidence is correct.

39 L. R. A. 748, CLARKSON v. HATTON, 143 Mo. 47, 65 Am. St. Rep. 635, 44 S. W. 761.

Validity of adoption.

Cited in Haworth v. Haworth, 123 Mo. App. 309, 100 S. W. 531, holding that deed of adoption is valid though not consented to by the child, its natural parents or its guardian; Hockaday v. Lynn, 200 Mo. 464, 8 L.R.A.(N.S.) 120, 118 Am. St. Rep. 672, 98 S. W. 585, 9 Ann. Cas. 775, on strict construction of statutes governing adoption.

Cited in note (18 L.R.A.(N.S.) 927) on constitutionality of statute permitting adoption of child without consent of parents.

Distinguished in Fugate v. Allen, 119 Mo. App. 191, 95 S. W. 980, holding deed of adoption ineffective where not assented to by mother who had been decreed the care and custody of the child in divorce from its father.

Adopted child as child or heir.

Cited in Burnes v. Burnes, 132 Fed. 490, on right of child adopted without his consent, to inherit from his foster parent under Missouri laws.

Cited in footnotes to Butterfield v. Sawyer, 52 L.R.A. 75, which holds adopted child within deed to woman for life, with remainder to her "child," if any, otherwise to her "heirs generally;" Van Derlyn v. Mack, 66 L.R.A. 437, which holds child adopted under statute providing that adopted child shall become and be heir at law of adopting parent not an heir by right of representation of relatives of latter.

Cited in notes (30 L.R.A.(N.S.) 918) as to whether terms "child," "children," "issue," etc., in statutes of distribution include adopted children; (118 Am. St. Rep. 687) on right of adopted children to inherit.

Revocation of will by marriage and adoption of child.

Cited in footnote to Glascott v. Bragg, 56 L. R. A. 258, which holds will in favor of third person revoked by marriage and adoption of child.

Surviving children as heirs.

Approved in Arnold v. Garth, 106 Fed. 25, holding on death of life tenant with remainder to her heirs, estate in remainder vests in fee in her surviving children as tenants in common.

Trial de novo.

Approved in Meredith v. Meredith, 79 Mo. App. 640, holding that in suit to annul marriage, appellate court will try case *de novo* both on law and evidence.

39 L. R. A. 751, JAYNES v. OMAHA STREET R. CO. 53 Neb. 631, 74 N. W. 67.

Motive power as determining whether use made of street additional burden.

Approved in Snyder v. Ft. Madison Street R. Co. 105 Iowa, 287, 41 L. R. A. 347, 75 N. W. 179, holding street railway operated by animal power not new or additional burden upon public easement in street; La Crosse City R. Co. v. Higbee, 107 Wis. 395, 51 L. R. A. 926, footnote p. 923, 83 N. W. 701, holding use of electricity as motive power by street railroad is not of itself sufficient to class it with ordinary railroad, as regards its being an added burden upon fee.

Cited in Zehren v. Milwaukee Electric R. & Light Co. 99 Wis. 89, 41 L. R. A. 578, 67 Am. St. Rep. 844, 74 N. W. 538, raising, but not deciding, question whether use of electricity as motive power makes railway additional burden.

Cited in note (106 Am. St. Rep. 245, 253) on motive power as test of whether railroad is additional burden.

Erection of poles as imposing new burden or servitude.

Approved in Donovan v. Allert, 11 N. D. 295, 58 L. R. A. 779, 95 Am. St. Rep. 720, 91 N. W. 441, holding use of street for telephone poles is new burden or servitude inconsistent with its use for travel; Krueger v. Wisconsin Teleph. Co. 106 Wis. 108, 50 L. R. A. 304, 81 N. W. 1041, holding telephone poles and wires constitute additional burden upon street, for which compensation must be made.

Cited in note (106 Am. St. Rep. 263) on telegraph and telephone lines as additional servitudes in highways.

Disapproved in Snyder v. Ft. Madison Street R. Co. 105 Iowa, 288, 41 L. R. A. 347, footnote p. 345, 75 N. W. 179, holding abutting owner cannot complain of erection in street of poles of electric railway.

Injury to trees.

Approved in Bronson v. Albion Teleph. Co. 67 Neb. 115, 60 L. R. A. 428, 93 N. W. 201, 2 Ann. Cas. 639, holding telephone company removing or injuring trees along street liable to abutting owner for resulting damage.

Injunctive relief.

Approved in Bronson v. Albion Teleph. Co. 67 Neb. 117, 60 L.R.A. 429, 93

N. W. 201, 2 Ann. Cas. 639, holding abutting owner cannot enjoin telephone company from mutilating trees along street, but his remedy is action at law for damages.

Cited in Gleason v. Loose-Wiles Cracker & Candy Co. 88 Neb. 88, 129 N. W. 173, holding that injunction will not issue to enjoin construction of sidewalk, at suit of abutting owner unless he shows special damage different from public.

Street railway as added servitude.

Cited in Peck v. Schenectady R. Co. 170 N. Y. 312, 63 N. E. 357 (dissenting opinion), majority holding construction and operation of street railroad upon existing street imposes added servitude.

Cited in footnote to Mordhurst v. Fort Wayne & S. W. Traction Co. 66 L.R.A. 106, which holds operation of interurban railway by electric power upon T rails through city street with authority to carry passengers, baggage, mail, and light express matter running no more than two cars in train not an additional servitude on street.

Cited in notes (25 L.R.A.(N.S.) 1266) on right of abutter to damages for special injuries where street railway not considered additional burden; (36 L.R.A.(N.S.) 682, 699, 748, 764) on abutter's right to compensation for railroads in streets.

Disapproved in Birmingham Traction Co. v. Birmingham R. & Electric Co. 119 Ala. 143, 43 L. R. A. 235, 24 So. 502, holding electric-motor street railway built upon street grade, doing no special injury to fee, does not impose new or additional servitude for which fee owner entitled to compensation.

Operation of railroad as "damaging" private property.

Cited in Austin v. Augusta Terminal R. Co. 108 Ga. 730, 47 L. R. A. 779, 34 S. E. 852 (dissenting opinion), majority holding private property not damaged within constitutional meaning by diminution in market value resulting from noise, smoke, and cinders, due to operation of railroad; Stehr v. Mason City & F. D. R. Co. 77 Neb. 644, 124 Am. St. Rep. 872, 110 N. W. 701, holding lot owner entitled to compensation for injury to his property from construction of railroad on property adjoining and in street in front of his premises, though not on his half of the street.

Cited in note (109 Am. St. Rep. 907) on what constitutes "damage" to property within provision that property shall not be taken or damaged for public use without compensation.

Compensation for street taken for right of way.

Distinguished in South Omaha v. Omaha Bridge & Terminal R. Co. 76 Neb. 720, 107 N. W. 988, holding city entitled to compensation under statute, where railroad condemned part of street for right of way.

Title of city to streets.

Cited in Slabaugh v. Omaha Electric Light & P. Co. 87 Neb. 807, 30 L.R.A. (N.S.) 1086, 128 N. W. 505, holding that title to streets and alleys in city of Omaha is held by city in trust for benefit of public.

39 L. R. A. 760, AMEY v. WINCHESTER, 68 N. H. 447, 73 Am. St. Rep. 614, 39 Atl. 487.

Deposit by guest of valuables for safekeeping.

Cited in footnote to Rains v. Maxwell House Co. 64 L. R. A. 471, which holds watch within statute providing that if guest fails to deposit jewels in safe provided by hotel keeper it shall be at his own risk.

Liability of innkeeper for loss of guest's property.

Cited in note (99 Am. St. Rep. 583) on liability of innkeepers for injury to or loss of, guest's property.

39 L. R. A. 762, STERNBERG v. WOLFF, 56 N. J. Eq. 389, 67 Am. St. Rep. 494, 39 Atl. 397.

Appointment of receiver.

Approved in State *ex rel.* Crow v. Crook, 123 Ala. 657, 27 So. 334, holding receiver may be appointed to take charge of solvent corporation until there is a recognized board of directors competent to conserve its interests.

Cited in Alabama Coal & Coke Co. v. Shackelford, 137 Ala. 231, 97 Am. St. Rep. 23, 34 So. 833, holding fact that directors of corporation are holding over in default of election of their successors is no ground for appointment of receiver; Wrightsman v. Rogers, 233 Mo. 426, 144 S. W. 479, holding that court of equity may appoint receiver of corporation and keep him in charge until such time in future as it finds full equity done; Ritchie v. People's Teleph. Co. 22 S. D. 609, 119 N. W. 990, holding that equity has power in proper case to appoint receiver of corporation pending suit against corporation by minority stockholder; Merrifield v. Burrows, 153 Ill. App. 528, holding that equity may in proper case enjoin holding of stockholders' meeting, until further order of court and appoint receiver; Jackson v. Hooper, 76 N. J. Eq. 602, 27 L.R.A.(N.S.) 664, 75 Atl. 568, holding that court of equity cannot take corporate property into its control as upon dissolution of partnership, where two men purchased entire stock of corporation under agreement to be partners and treat corporation as agency of firm; Gibbs v. Morgan, 9 Idaho, 113, 72 Pac. 733, holding that receiver pendente lite may be appointed for solvent corporation; Boothe v. Summit Coal Min. Co. 55 Wash. 178, 104 Pac. 207, holding that receiver may be appointed for solvent corporation where deadlock exists between holders of equal parts of corporate stock; Barna v. Kirozow, 71 N. J. Eq. 203, 63 Atl. 611, on appointment of receiver for corporation pending settlement between rival claimants as officers; State ex rel. Hadley v. People's United States Bank, 197 Mo. 594, 94 S. W. 953, on power of court to appoint receiver for solvent but mismanaged corporation.

Cited in note (72 Am. St. Rep. 58) as to when appointment of receiver is proper.

39 L. R. A. 765, KELLEY v. OHIO OIL CO. 57 Ohio St. 317, 63 Am. St. Rep. 721, 49 N. E. 399.

Right to use gas pump though production of adjoining oil wells diminished.

Cited in footnote to Jones v. Forest Oil Co. 48 L. R. A. 748, which authorizes use of gas pump to increase production of oil well, though production of adjoining wells diminished.

Rights of owners of different tracts covered by oil or gas lease.

Approved in Northwestern Ohio Natural Gas Co. v. Ullery, 68 Ohio St. 272, 67 N. E. 494, holding, under oil or gas lease covering different tracts which pass to separate owners, each entitled to royalty on oil or gas produced on his premises.

Cited in Rymer v. South Penn Oil Co. 54 W. Va. 544, 46 S. E. 559, holding that where several owners leased their land under one lease, the royalty on oil goes to owner of tract from which taken, where oral agreement provided for such division.

Injunctive relief against trespass.

Approved in Steelsmith v. Fisher Oil Co. 47 W. Va. 401, 35 S. E. 15, holding bill for injunction fatally defective which does not aver good title, charge insolvency, or show irreparable damage, and which seeks to enjoin naked trespass upon real property.

Liability of railroad for injury by torpedo.

Distinguished in Cleveland Terminal & Valley R. Co. v. Marsh, 63 Ohio St. 249, 52 L.R.A. 147, 58 N. E. 821, holding railroad company not liable to boy injured by explosion of torpedo on its tracks in absence of proof of negligence of company.

Immateriality of motive in lawful act.

Approved in Lancaster v. Hamburger, 70 Ohio St. 164, 65 L.R.A. 860, 71 N. E. 289, holding patron of street railway not liable to conductor whose misconduct he reported, prompted by ill will.

Cited in Iron Molders' Union v. Greenwald Co. 4 Ohio N. P. N. S. 167, 16 Ohio S. & C. P. Dec. 683, declaring the motives of persons charged with unlawful persuasion immaterial where such persons were in the exercise of a legal right.

Oil and gas as personalty.

Cited in Nonamaker v. Amos, 73 Ohio St. 170, 4 L.R.A.(N.S.) 980, 112 Am. St. Rep. 708, 76 N. E. 949, 4 Ann. Cas. 170, holding valid parol agreement as to royalty under oil lease; Kansas Natural Gas Co. v. Haskell, 172 Fed. 563; Lanyon Zinc Co. v. Freeman, 68 Kan. 696, 75 Pac. 995, 1 Ann. Cas. 403,—on oil and gas as part of realty while contained therein; People v. Bell, 237 Ill. 337, 19 L.R.A.(N.S.) 746, 86 N. E. 593, 15 Ann. Cas. 511, holding that petroleum in place is a mineral; Bender v. Brooks, 103 Tex. 335, 127 S. W. 168, Ann. Cas. 1913A, 559, to the point that owners of land have no specific title to oil therein until it is removed from earth.

Cited in notes (140 Am. St. Rep. 952; 44 L. ed. U. S. 729, 730) on nature of property in petroleum oil or gas.

Construction of oil leases.

Cited in Griner v. Ohio Oil Co. 5 Ohio C. C. N. S. 128, 26 Ohio C. C. 523, on the nature and construction of oil leases; Superior Oil & Gas Co. v. Mehlin, 25 Okla. 817, 138 Am. St. Rep. 942, 108 Pac. 545, declaring that oil and gas leases from their nature are to be construed most strongly against the lessee and in favor of the lessor.

39 L. R. A. 768, HARRIS v. BURR, 32 Or. 348, 52 Pac. 17.

Qualifications of voters.

Followed in Setterlun v. Keene, 48 Or. 521, 87 Pac. 763, holding constitutional provision as to qualifications of voters not applicable to school elections.

Approved in State v. Hingley, 32 Or. 442, 52 Pac. 89, holding power of legislature to establish system of common schools includes power to prescribe qualifications of voters at school meetings and at elections for district officers; Ladd v. Holmes, 40 Or. 179, 91 Am. St. Rep. 457, 66 Pac. 714, holding primary election to choose delegates to nominating convention is within purview of provision of Constitution prescribing qualifications of electors.

Cited in Coggeshall v. Des Moines, 138 Iowa, 738, 128 Am. St. Rep. 221, 117 N. W. 309, holding that constitutional provision as to qualification of electors is not applicable to vote on municipal indebtedness; State ex rel. Gibson v. Monahan, 72 Kan. 494, 115 Am. St. Rep. 224, 84 Pac. 130, 7 Ann. Cas. 661, holding same as to election of drainage directors.

Distinguished in Livesley v. Litchfield, 47 Or. 251, 114 Am. St. Rep. 920, 83 Pac. 142, holding that constitutional provision as to qualifications of voters must govern all city elections.

Right of women to vote.

Cited in note (27 L.R.A.(N.S.) 524) on right of women to vote.

Constitutional construction.

Cited in Wallace v. Board of Equalization, 47 Or. 590, 86 Pac. 365, on effect of legislative interpretation of constitution.

39 L. R. A. 773, SULLIVAN v. WATERMAN, 20 R. I. 372, 39 Atl. 243.

Pleading in action for nuisance.

Cited in Uggla v. Brokaw, 117 App. Div. 591, 102 N. Y. Supp. 857, holding that where acts constituting a nuisance are pleaded, it is not necessary to expressly allege that they amount to a nuisance.

39 L. R. A. 775, SPURLOCK v. NOE, 19 Ky. L. Rep. 1321, 43 S. W. 231

Setting aside judgment for mental incompetency of complainant.

Cited in Moore v. Gilbert, 99 C. C. A. 141, 175 Fed. 5, holding that if person against whom judgment was recovered on bond had sufficient mind to understand purpose and effect of suit against him, judgment ought not to be set aside at suit of heirs; Spence v. Miner, 89 Neb. 618, 131 N. W. 1044 (dissenting opinion), on validity of judgment obtained against insane person, as against collateral attack; Cooper v. Greenleaf, 84 Kan. 503, 35 L.R.A.(N.S.) 1098, 114 Pac. 1086, holding that adjudication of insanity of judgment debtor does not render dormant judgment rendered against him before such adjudication; Moore v. Gilbert, 99 C. C. A. 141, 175 Fed. 5, holding that heirs can not set up insanity as defense to judgment against ancestor as surety on bond where he was sufficiently sane to employ counsel and defend the suit against him as the bond and insanity was not set up as defense.

Cited in footnote to State *ex rel.* Yilek v. Jehlik, 61 L. R. A. 265, which authorizes court to set aside at same term on own motion, judgment in bastardy for mental incompetency of complainant.

Cited in note (35 L.R.A.(N.S.) 1090) on insanity as affecting judgments.

Levy under void judgment.

Cited in note (55 L. R. A. 282) on effect of levy under void or voidable judgment.

39 L. R. A. 784, ST. LOUIS S. W. R. CO. v. JONES, 64 Ark. 613, 44 S. W. 809.

Liability of carrier for assault on passenger.

Cited in Mason v. Nashville, C. & St. L. R. Co. 135 Ga. 758, 33 L.R.A.(N.S.) 290, 70 S. E. 225, holding that if conductor committed assault upon passenger and words and conduct of passenger were such as to arouse anger of conductor, but not such as to justify assault, company is liable.

Cited in footnotes to Haver v. Central R. Co. 43 L. R. A. 84, which holds carrier liable for malicious assault by employee on passenger; Birmingham R. & Electric Co. v. Baird, 54 L. R. A. 752, which holds carrier liable for conductor's assault on passenger; McNamara v. St. Louis Transit Co. 66 L.R.A. 486, which holds exemplary damages against street car company justified by conductor's intentional and unjustified kicking of boy attempting to board car.

Cited in note (40 L.R.A.(N.S.) 1077, 1078) on liability of carrier for wilful torts of servants to passengers.

Burden of proof.

Approved in St. Louis S. W. R. Co. v. Johnson, 29 Tex. Civ. App. 185, 68 S. W. 58, holding conductor assaulting passenger must show that no more force was used than exigencies of case called for; Rutherford v. Foster, 60 C. C. A. 132, 125 Fed. 190, holding burden is on accused to justify assault and battery with deadly weapon.

Cited in footnote to Kohner v. Capital Traction Co. 62 L. R. A. 875, which requires carrier, when peaceable passenger on street car is unlawfully assaulted by conductor, to show that injury was result of unavoidable accident.

Master's liability for assault by servant.

Cited in footnote to McDermott v. American Brewing Co. 52 L. R. A. 684, which denies master's liability for assault by servant to protect his own interest.

39 L. R. A. 789, PHOENIX INS. CO. v. FLEMMING, 65 Ark. 54, 67 Am. St. Rep. 900, 44 S. W. 464.

Avoidance of policy by bringing gasolene on premises.

Cited in Clute v. Clintonville Mut. F. Ins. Co. 144 Wis. 642, 32 L.R.A.(N.S.) 241, 129 N. W. 661, holding that clause in fire policy against keeping gasolene on premises is not violated by delivery in building of five gallon can, ordered for use elsewhere, by one of insured and which was taken away in about one hour.

Cited in footnote to Springfield F. & M. Ins. Co. v. Wade, 58 L. R. A. 714, which holds policy not avoided by bringing gallon of gasoline on premises for temporary use, though causing their destruction.

Dynamite on premises.

Cited in Traders' Ins. Co. v. Dobbins, 114 Tenn. 238, 86 S. W. 383, holding that keeping dynamite in quantity usually kept in hardware store does not avoid policy on hardware stock, though policy contained clause against dynamite.

Cited in footnote to Bastian v. British American Assur. Co. 66 L.R.A. 256, which denies right to recover under policy for loss occurring on premises on which dynamite was kept in violation of condition of policy, although the dynamite had nothing to do with the loss.

Waiver of forfeiture.

Approved in Planters' Mut. Ins. Co. v. Loyd, 67 Ark. 588, 56 S. W. 44, holding, where insurer with knowledge of act working forfeiture enters into negotiations with insured, which recognize validity of policy, and induces him to incur expense or trouble, the forfeiture is waived.

Cited in Leisen v. St. Paul F. & M. Ins. Co. 20 N. D. 327, 30 L.R.A.(N.S.) 547, 127 N. W. 837, holding that where fire insurance company, with full knowledge of facts which under terms of policy, render policy void at inception, delivers same and retains premium therefor, it will be deemed to have waived forfeiture; Queen of Arkansas Ins. Co. v. Forlines, 94 Ark. 232, 126 S. W. 719, holding that any agreement, declaration or course of action by insurance company which leads insured to believe that by conforming thereto forfeiture will not be incurred, followed by conformity on his part, will estop company from insisting on forfeiture; Sullivan v. Mercantile Town Mut. Ins. Co. 20 Okla. 464, 129 Am. St. Rep. 761, 94 Pac. 676, holding condition in policy not waived by knowledge of agent at time policy was issued where it contains provision that agent cannot waive condition except in writing on policy.

Cited in footnote to American Central Ins. Co. v. Nunn, 68 L.R.A. 83, which holds forfeiture of insurance for failure to keep and produce books not waived by examination of insured under oath with knowledge of loss.

Knowledge of agent as notice.

Cited in First Nat. Bank v. German American Ins. Co. — N. D. —, 38 L.R.A. (N.S.) 217, 134 N. W. 873, holding that law will not impute agent's knowledge to principal where agent's duty to principal conflicts with his own interest; Lord v. Des Moines F. Ins. Co. 99 Ark. 479, 138 S. W. 1008, holding that where ad-

juster accepted estimate of cost of building destroyed and verbal statement as to value of goods lost, and promised to pay loss, such acts constituted waiver of further proof unless demanded; Reed v. Munn, 148 Fed. 755, holding knowledge of stockholder prior to his becoming such not notice to corporation.

Sufficiency of general objection to raise question of formal defect in instruction.

Approved in St. Louis, I. M. & S. R. Co. v. Pritchett, 66 Ark. 48, 48 S. W. 809, and Williams v. State, 66 Ark. 267, 50 S. W. 517, holding general objection not sufficient to raise question of defect in form of instruction.

Cited in Thomas v. State, 74 Ark. 436, 86 S. W. 404; Fox v. Spears, 78 Ark. 76, 93 S. W. 560,—holding general objection insufficient in case of ambiguous instruction; St. Louis S. W. R. Co. v. Bowen, 73 Ark. 596, 84 S. W. 788, holding general objection insufficient in case of a mere formal inaccuracy in the instruction; St. Louis, I. M. & S. R. Co. v. Hoshall, 82 Ark. 391, 102 S. W. 207, holding that minor error in instruction will not justify reversal in absence of specific objection or request for proper instruction.

Exemption provision as affected by customary employment.

Approved in Standard Life & Acci. Ins. Co. v. Schmaltz, 66 Ark. 597, 74 Am. St. Rep. 112, 53 S. W. 49, holding exemption in accident policy from liability in case of injury from overexertion or lifting does not prevent recovery where insured ruptured blood vessel while lifting cylinder head in course of his employment.

39 L. R. A. 794, NORWALK STREET R. CO'S APPEAL, 69 Conn. 576, 37 Atl. 1080, 38 Atl. 708.

Limitation of power of courts.

Approved in *Re* Premier Cycle Mfg. Co. 70 Conn. 480, 39 Atl. 800, holding judge of superior court may remove receiver at chambers upon notice given; Malmo's Appeal, 72 Conn. 4, 43 Atl. 485, holding licensing sale of intoxicating liquors not so exclusively an executive function that it cannot be exercised by superior court; State *ex rel.* White v. Barker, 116 Iowa, 109, 57 L. R. A. 252, 93 Am. St. Rep. 222, 89 N. W. 204, holding power of choosing managers of municipal water supply system cannot be vested by legislature in judges of court created by Constitution; State *ex rel.* Godard v. Johnson, 61 Kan. 818, 49 L. R. A. 668, footnote p. 662, 60 Pac. 1068, holding act creating court of visitation to determine reasonable freight charges void as conferring upon tribunal powers that are not judicial; Robey v. Prince George's County, 92 Md. 161, 48 Atl. 48, holding statute providing for approval by judges of circuit court of accounts of certain county officers before their allowance by county commissioners imposes upon them a function not judicial; Michigan Teleph. Co. v. St. Joseph, 121 Mich. 506, 47 L. R. A. 91, 80 Am. St. Rep. 520, 80 N. W. 383, holding court without authority to establish reasonable rules and regulations for extension of telephone lines, but it may require authorities to adopt such rules and regulations and pass upon their validity; Zanesville v. Zanesville Teleph. & Teleg. Co. 63 Ohio St. 453, 59 N. E. 109, holding statute empowering probate court to direct mode in which streets may be used by telephone company unconstitutional as not conferring judicial power; Fair Haven & W. R. Co. v. New Haven, 74 Conn. 105, 49 Atl. 863, holding power of city to impose conditions upon exercise by street railway of its rights under its charter, a judicial question; New Milford Water Co. v. Watson, 75 Conn. 241, 52 Atl. 947, holding finding by judge that taking of water rights by water company is necessary, an exercise of judicial power; Moynihan's Appeal, 75 Conn. 360, 53 Atl. 903,

holding appeal provided to superior court from denial of application for license does not impose upon court purely administrative powers.

Cited in Louisville & N. R. Co. v. Interstate Commerce Commission, 184 Fed. 124, on constitutionality of act of congress imposing upon judiciary performance of nonjudicial duties; Spencer's Appeal, 78 Conn. 305, 61 Atl. 1010, holding invalid act giving court power on appeal, to pass upon that best method of removing grade crossing; State ex rel. Young v. Brill, 100 Minn. 517, 111 N. W. 639, 10 Ann. Cas. 425, holding unconstitutional act conferring upon judges of district court power to appoint member of county board of control; Tyson v. Washington County, 78 Neb. 214, 12 L.R.A.(N.S.) 352, 110 N. W. 634, holding that power can not be conferred upon court to pass upon the practicability of route or necessity of drainage ditch; Re Counties Comprising Seventh Judicial Dist. 22 Okla. 449, 98 Pac. 557, holding invalid act conferring upon court power to fix length of term of office; Re Macfarland, 30 App. D. C. 381, holding that duty of ascertaining value of plant of gas light company as basis for increase of capital stock cannot be imposed upon the court; Denny v. Des Moines County, 143 Iowa, 475, 121 N. W. 1066, holding decision of supervisors as to advisability of construction of drainage ditch, not reviewable by the court; McGovern v. Mitchell, 78 Conn. 548, 63 Atl. 433, on legislative power as to courts and its limitation.

Cited in footnotes to McCrea v. Roberts, 44 L. R. A. 485, which holds judge's duty to decide as to issuance of license under objection, judicial; *Re* Davies, 56 L. R. A. 855, which holds supreme court justice may be empowered to appoint referee to take testimony to aid in suppressing monopoly.

Distinguished in Zanesville v. Zanesville Teleg. & Teleph. Co. 64 Ohio St. 84, 52 L. R. A. 155, footnote p. 150, 83 Am. St. Rep. 725, 59 N. E. 781, holding fact that power is conferred by statute on court of justice, to be exercised in first instance in proceeding instituted therein, is decisive as fixing judicial character of power, unless it is clearly legislative or executive.

Distinguished and disapproved in State v. Harden, 62 W. Va. 378, 58 S. E. 715, on validity of acts granting courts power to incorporate villages and cities.

Appellate review.

Approved in Potter v. Putnam, 74 Conn. 192, 50 Atl. 395, holding on appeal by landowner from failure of city to award damages on laying out of street, superior court may determine his right thereto and grant relief; Hartford v. Hartford Street R. Co. 75 Conn. 475, 53 Atl. 1010, holding act giving right of appeal from orders by local authorities as to occupancy of streets by street railways gives right to appeal from orders as to repair of streets by company.

Cited in Norton v. Shore Line Electric R. Co. 84 Conn. 35, 78 Atl. 587, holding that order of railroad commission which is irregular and contrary to law may on appeal be set aside; New York, N. H. & H. R. Co's Appeal, 80 Conn. 626, 70 Atl. 26, holding that party injured in his legal rights by action of municipal authorities or of railroad commissioners may appeal to the court.

Legislative exercise of judicial power.

Cited in State v. New York, N. H. & H. R. Co. 71 Conn. 49, 40 Atl. 925, raising, but not deciding, question whether legislature has power to open or vacate judgment, or retry through another tribunal the matters thereby tried and determined.

Restriction of legislative power of taxation.

Approved in State v. Travelers Ins. Co. 73 Conn. 260, 57 L. R. A. 483, 47 Atl. 299, holding taxing power of legislature not restricted by any implied rule that taxes must be equal and uniform.

Restricting sale or giving away of newspaper.

Cited in State v. McKee, 73 Conn. 27, 49 L. R. A. 546, 84 Am. St. Rep. 124, 46 Atl. 409, holding statute making it penal offense to sell, lend, or give away paper principally made up of criminal news, does not restrain constitutional liberty of speech or of press, or violate right of citizen to freely speak, write and publish his sentiments.

39 L. R. A. 806, BROWN v. McGILL, 87 Md. 161, 67 Am. St. Rep. 334, 39 Atl. 613.

Liability of married woman upon contract executed jointly with husband.

Approved in Western Nat. Bank v. National Union Bank, 91 Md. 622, 46 Atl. 960, holding separate estate of married woman liable upon contract executed jointly by her with her husband.

Right of creditors to reach trust estate.

Approved in Scott v. Keane, 87 Md. 723, 42 L. R. A. 363, footnote p. 359, 40 Atl. 1070, holding constructive notice arising from record of deed placing property in debtor's name as trustee will not prevent creditor from having trust set aside as fraudulent; Baltimore High Grade Brick Co. v. Amos, 95 Md. 591, 55 Atl. 582, holding subsequent creditor of mortgagor may assail mortgages executed to secure future advances with intent to hinder and delay creditors; Guernsey v. Lazear, 51 W. Va. 337, 41 S. E. 405, upholding spendthrift trust in lands for benefit of testatrix's husband, with exemption of his interest from liability for his debts.

Cited in Wenzel v. Powder, 100 Md. 46, 108 Am. St. Rep. 380, 59 Atl. 194, holding that where whole income of trust goes to beneficiary and may be alienated by him, the income is liable for his debts; Ward v. Marie, 73 N. J. Eq. 523, 68 Atl. 1084, on validity of trust as against rights of creditors.

Cited in footnotes to Schenck v. Barnes, 41 L. R. A. 395, which denies power of person creating trust to keep life interest free from claims of subsequent creditors; Seymour v. McAvoy, 41 L. R. A. 544, which sustains right of author of trust to make beneficiary's interest unassignable and free from creditor's claims; ReQua v. Graham, 52 L. R. A. 641, which holds annuity in wife's will in lieu of other interest, accepted by husband, not trust beyond reach of creditors; Hutchinson v. Maxwell, 57 L. R. A. 384, which denies power to create equitable life estate free from debts of beneficiary; Matthews v. Thompson, 66 L.R.A. 421, which holds void as against creditors, conveyance by insolvent of practically entire property to wife in trust to manage and pay such debts as she deems judicious and distribute estate at his death as he shall appoint.

Cited in note (12 L.R.A.(N.S.) 370) on right, as against subsequent creditors, to create trust to pay income to settlor for life, and thereafter to heirs or devisees.

Right of creditors to reach income of trust.

Approved in Jackson Square Loan & Sav. Asso. v. Bartlett, 95 Md. 663, 93 Am. St. Rep. 416, 53 Atl. 426, holding income of trust estate bequeathed to beneficiary for life, who is forbidden to charge, encumber, or anticipate it, not subject to attachment for his debts.

Cited in footnote to Murphy v. Delano, 55 L. R. A. 727, which holds income of spendthrift trust not within reach of creditors by void agreement of trustee to pay certain portion of income absolutely to beneficiary.

Validity of limitation on power of alienation imposed on equitable estate of married woman.

Cited in note (28 L.R.A.(N.S.) 429) on validity of limitation upon power of alienation imposed upon equitable estate of married woman.

39 L. R. A. 810, MARYLAND TUBE & IRON WORKS v. WEST END IMPROV. CO. 87 Md. 207, 39 Atl. 620.

Taxation of corporate franchises.

Cited in note (57 L. R. A. 77) on taxation of corporate franchises in United States.

Estoppel to deny existence of corporation.

Cited in footnote to Washington Nat. Bldg. Loan & Invest. Asso. v. Stanley, 58 L. R. A. 816, which holds borrower from foreign loan association estopped to defeat foreclosure of mortgage on ground that corporate articles not properly acknowledged.

Bonus tax.

Approved in Cleaveland v. Mullin, 96 Md. 605, 54 Atl. 665, holding payment of bonus tax by corporation, condition precedent to its right to contract or exercise any corporate powers.

Cited in State v. Consolidated Gas, Electric Light & P. Co. 104 Md. 368, 65 Atl. 40, holding that corporation can not issue stock until the bonus tax is paid; National Shutter Bar Co. v. Zimmerman, 110 Md. 317, 73 Atl. 19, holding that corporation can not maintain action for libel published prior to its payment of its bonus tax; Murphy v. Wheatley, 102 Md. 504, 63 Atl. 62, on corporation as having no power to do business until bonus tax is paid.

Cited in note (118 Am. St. Rep. 260) on payment of tax as a prerequisite to a corporation de facto.

39 L. R. A. 815, PERKINS v. GROBBEN, 116 Mich. 172, 72 Am. St. Rep. 512, 74 N. W. 469.

Action for purchase price of chattel retaken by conditional vendor.

Approved in Laclede Power Co. v. Ennis Stationery Co. 79 Mo. App. 307, holding vendor in conditional sale cannot retake chattel and then sue for unpaid purchase money; McBryan v. Universal Elevator Co. 130 Mich. 115, 97 Am. St. Rep. 453, 89 N. W. 683, holding vendor on conditional sale cannot, after retaking property, maintain suit for purchase price.

Distinguished Van Den Bosch v. Bouwman, 138 Mich. 625, 110 Am. St. Rep. 336, 101 N. W. 832, holding that vendor under conditional sale may seize and sell the goods and then sue for balance of purchase price, where contract so provides.

Right of conditional purchaser to insurance.

Cited in footnote to Post Printing & Pub. Co. v. Insurance Co. of N. A. 44 L. R. A. 272, which holds insurer required to pay conditional purchaser cost of property to him, instead of to seller.

Title under conditional sale.

Cited in Taylor v. Applebaum, 154 Mich. 692, 118 N. W. 492, holding that purchaser, from vendee under contract of sale in which vendor retains title until paid, obtains no title as against vendor.

Cited in note (23 Eng. Rul. Cas. 526) on title under conditional sale.

39 L. R. A. 819, O'KEEFE v. LIVERPOOL & L. & G. INS. CO. 140 Mo. 558, 41 S. W. 922.

What constitutes total loss.

Followed in Stevens v. Norwich Union F. Ins. Co. 120 Mo. App. 100, 96 S. W. 684, holding proper instruction that where building is so far destroyed that it

loses its identity, though some parts may remain standing it constitutes total loss.

Approved in Northwestern Mut. L. Ins. Co. v. Rochester German Ins. Co. 85 Minn. 56, 56 L. R. A. 112, footnote p. 108, 88 N. W. 265, holding total loss contemplates such destruction of the building that no substantial part remains which can be used in its reconstruction; Palatine Ins. Co. v. Weiss, 109 Ky. 467, 59 S. W. 509, holding building, so damaged that it cannot be designated as the structure insured, total loss although some parts remain standing.

Cited in Rogers v. Connecticut F. Ins. Co. 157 Mo. App. 682, 139 S. W. 265, holding that total loss means such destruction of property as would render it of no value for purpose for which it was intended to be used.

Cited in footnote to Thuringia Ins. Co. v. Malott, 55 L. R. A. 277, which holds total loss, such injury as to destroy identity and specific character of building as such.

Cited in notes (56 L.R.A. 787, 791) on constructive total loss of insured building; (15 L.R.A.(N.S.) 1064) on arbitration as condition precedent to action on insurance policy for total loss; (59 Am. St. Rep. 811) as to when property is "wholly destroyed" or a "total loss" within meaning of insurance policy.

Appraisement of total loss.

Approved in Liverpool & L. & G. Ins. Co. v. Heckman, 64 Kan. 389, 67 Pac. 879, holding provision in fire insurance policy for appraisement of loss is nugatory and void in case of total loss; Murphy v. American Cent. Ins. Co. 25 Tex. Civ. App. 247, 54 S. W. 407, holding in estimating total loss, injury to foundation of building should not be considered.

What is included in insurance of building.

Cited in Evanston Golf Club v. Home Ins. Co. 119 Mo. App. 177, 95 S. W. 980, holding that insurance of building does not cover a part thereof which has been removed away from the building insured.

39 L. R. A. 821, STATE v. WILLIAMS, 18 Wash. 47, 63 Am. St. Rep. 869, 50 Pac. 580.

Right of accused to meet witnesses.

Cited in State ex rel. Mackintosh v. Superior Ct. 45 Wash. 253, 88 Pac. 207, holding that a person cannot be tried for a crime while insane.

Cited in footnote to State v. Mannion, 45 L. R. A. 638, which holds right of accused to meet witnesses violated by placing him out of sight and hearing of witness.

39 L. R. A. 826, MODERN WOODMEN ACCI. ASSO. v. SHRYOCK, 54 Neb. 250, 74 N. W. 607.

What is accident within terms of policy.

Approved in Travelers Ins. Co. v. Hunter, 30 Tex. Civ. App. 492, 70 S. W. 798, allowing recovery under accident policy where injury produced rheumatism which resulted in death.

Cited in Delaney v. Modern Acci. Club, 121 Iowa, 540, 63 L. R. A. 608, footnote p. 603, 97 N. W. 91, holding death from blood poisoning caused by slight wound in hand is accidental injury within accident insurance policy; Stanton v. Travelers Ins. Co. 83 Conn. 710, 34 L.R.A.(N.S.) 451, 78 Atl. 317, holding that death from appendicitis following strain which would not have caused such disease but for abnormal condition of appendix, due to former attack, is not within terms of accident policy; Patterson v. Ocean Acci. & G. Corp. 25 App. D. C. 69,

holding insurer liable where death resulted from accident though disease also contributed thereto.

Cited in footnotes to Kasten v. Interstate Casualty Co. 40 L. R. A. 651, which holds death caused by blood poisoning from germs in cotton used by dentist covered by accident policy; Atlanta Acci. Asso. v. Alexander, 42 L. R. A. 188, which holds death from hernia from sudden and accidental strain not within clause exempting insurer from death resulting from hernia; Feder v. Iowa State Traveling Men's Asso. 43 L. R. A. 693, which holds death by rupture of artery while reaching over chair to close shutters not accidental; Brown v. Sun L. Ins. Co. 51 L. R. A. 252, which sustains recovery on policy of one whose death caused by taking overdose of morphine; Smith v. Aetna L. Ins. Co. 56 L. R. A. 272, which holds injury by fall from steps of moving train covered by policy; Preferred Acci. Ins. Co. v. Robinson, 61 L. R. A. 145, which denies right to recover under accident policy for inflammation of eyes from accidental contact with poison ivy; Fetter v. Fidelity & C. Co. 61 L. R. A. 459, which holds death from rupture of cancerous kidney covered by accident policy; Maryland Casualty Co. v. Hudgins, 64 L. R. A. 349, which holds death by accidentally eating spoiled oysters within clause of policy exempting from injuries from poison or anything accidentally, or otherwise, taken or absorbed; Horsfall v. Pacific Mut. L. Ins. Co. 63 L. R. A. 425, which holds dilation of heart resulting in death within few weeks, caused by heavy lift, covered by accident policy; Delaney v. Modern Acci. Club, 63 L.R.A. 603, which holds death caused by blood poisoning received through wound on hand an accident within meaning of policy; Maryland Casualty Co. v. Hudgins, 64 L.R.A. 349, which holds death caused by accidentally eating spoiled oysters not covered by policy excluding injuries resulting from poison or anything accidentally taken or absorbed; Richards v. Travelers' Ins. Co. 67 L.R.A. 175, which holds recovery on accident policy on cattle broker whose duties require him to ride on cattle cars not prevented by provision excluding liability for accidents while riding in any part of car not provided for occupation of passengers.

Cited in note (34 L.R.A.(N.S.) 451) on previous disease as affecting accident insurer's liability.

Distinguished in Illinois Commercial News Asso. v. Parks, 103 C. C. A. 286, 179 Fed. 798; White v. Standard L. & Acci. Ins. Co. 95 Minn. 81, 103 N. W. 733, 5 Ann. Cas. 83,—holding insurer not liable where pre-existing disease concurred with an accident in causing death, under policy insuring against death caused solely by accident.

Proximate cause of injury.

Approved in Carr v. Pacific Mut. L. Ins. Co. 100 Mo. App. 608, 75 S. W. 180, holding sickness of insured proximate cause of injury sustained by falling from window of his bedroom while delirious.

Cited in Continental Casualty Co. v. Lloyd, 165 Ind. 60, 73 N. E. 824, holding proximate cause to be for the jury where evidence is conflicting.

Cause of death as question of fact.

Cited in Hardinger v. Modern Brotherhood, 72 Neb. 868, 101 N. W. 983, holding that where evidence leaves room for doubt, question whether death was caused by accident or suicide is for jury; Ward v. Ætna L. Ins. Co. 82 Neb. 505, 118 N. W. 70, holding that where evidence leaves room for difference of opinion, question whether death resulted from injury is for the jury; Western Travelers' Acci. Asso. v. Munson, 73 Neb. 863, 1 L.R.A.(N.S.) 1072, 103 N. W. 688, holding same and that the finding of the jury is conclusive.

Force of statements in application.

Cited in Royal Neighbors v. Wallace, 66 Neb. 546, 92 N. W. 897, on statements in application not being considered as warranties unless there is no room for other construction; Ætna L. Ins. Co. v. Rehlaender, 68 Neb. 292, 94 N. W. 129, 4 Ann. Cas. 251; Bryant v. Modern Woodmen, 86 Neb. 379, 27 L.R.A.(N.S.) 329, 125 N. W. 621,—on answers in application as being mere representations where applicant has no knowledge that they are untrue, or where he is honestly mistaken.

Cited in note (11 L.R.A.(N.S.) 985) on statements as representations, although expressly denominated in policy as warranties.

39 L. R. A. 834, BELLEVILLE STONE CO. v. MOONEY, 61 N. J. L. 253, 39 Atl. 764.

Duty of master to keep place of employment safe.

Approved in Curley v. Hoff, 62 N. J. L. 760, 42 Atl. 731, holding duty of master to keep safe a trench in which bricklayer is building sewer extends only to use of reasonable care to discover and give notice of latent danger.

Cited in Mihelich v. Mignery, 155 Mo. App. 329, 136 S. W. 722, holding that it is duty of master in blasting in quarry to keep place safe by giving warning when blasts are to be fired, in time for servants to reach place of reasonable safety; Burns v. Delaware & A. Teleg. & Teleph. Co. 70 N. J. L. 749, 67 L.R.A. 959, 59 Atl. 220, holding that duty of master as to safety of employee includes reasonable care as to method and system adopted for the work; Ricker v. Central R. Co. 73 N. J. L. 751, 7 L.R.A.(N.S.) 654, 64 Atl. 1068, 9 Ann. Cas. 785; Hardy v. Sulphur Min. Co. 75 N. J. L. 237, 67 Atl. 177,— on duty of master to provide a safe place for employee to work, and to maintain it in a safe condition.

Liability of master for nonperformance of delegated duty.

Approved in Hustis v. James A. Banister Co. 63 N. J. L. 469, 43 Atl. 651, holding master liable for injury due to fall of shafting, although he had delegated duty of repairing it to engineer who failed to perform such duty; D'Agostine v. Pennsylvania R. Co. 72 N. J. L. 360, 60 Atl. 1113; Germanus v. Lehigh Valley R. Co. 74 N. J. L. 665, 67 Atl. 79,—holding that master is liable for failure of foreman of track gang to give signal of approaching train, where custom of giving such signals is proven.

Cited in Consolidated Stone Co. v. Ellis, 46 Ind. App. 87, 91 N. E. 1095, holding that where foreman directed servant to give his whole attention to constructing bed of spalls, assuring him that he, foreman, would warn him of any danger, but because of foreman's failure so to warn servant he was injured, master is liable; Hendrickson v. United States Gypsum Co. 133 Iowa, 92, 9 L.R.A.(N.S.) 556, 110 N. W. 322, 12 Ann. Cas. 246, holding master liable for injury to employee caused by failure to give warning of the exploding of a blast in a mine; Brice-Nash v. Barton Salt Co. 79 Kan. 114, 19 L.R.A.(N.S.) 750, 131 Am. St. Rep. 284, 98 Pac. 768, holding master liable for failure to give warning of dislodging masses of salt in mine, where such warning was necessary to the safety of the employes; Coffeyville Vitrified Brick & Tile Co. v. Shanks, 69 Kan. 311, 76 Pac. 856, holding same in case of employes in shale-pit; Western Electric Co. v. Hanselmann, 70 L.R.A. 767, 69 C. C. A. 346, 136 Fed. 566, holding master liable for injury to one repairing elevator shaft caused by failure to give warning of approaching car.

Cited in notes (1 L.R.A.(N.S.) 669) on duty to tell employee when ordered to perform special service, to give warning to coemployees; (10 L.R.A.(N.S.)

1106) on delegability of duty of railroad or street railway company as to signals or warnings; (26 L.R.A.(N.S.) 641) on delegability of master's duty to instruct or warn servants; (87 Am. St. Rep. 577, 578) on duty of mine owners to prevent injury to employees by warning them of danger.

Distinguished in Knickerbocker Ice Co. v. Smith, 45 Ind. App. 452, 91 N. E. 28, holding that master was not liable for injury caused to servant by failure of other servants to perform ordinary duties in dumping dipper used in scooping up sand; Smith v. Thomas Iron Co. 69 N. J. L. 13, 54 Atl. 562, holding master not liable where miner was injured while attempting to go to his work without a guide, though such guide was customarily furnished; Koneski v. Delaware, L. & W. R. Co. 77 N. J. L. 647, 26 L.R.A.(N.S.) 647, 74 Atl. 516, holding failure of engineer or hostler to give signal upon approaching ash pit resulting in injury to employee stationed there not imputed to railroad company.

Disapproved in McLaine v. Head & D. Co. 71 N. H. 297, 58 L. R. A. 464, 93 Am. St. Rep. 522, 52 Atl. 545, holding master performs his duty as to warning laborer at work in trench when dirt is to be dumped into it, if such warning is required in exercise of ordinary care, by intrusting such duty to competent person.

Vice principalship.

Cited in Ward v. Naughton, 74 App. Div. 71, 77 N. Y. Supp. 344 (dissenting opinion), majority holding failure of foreman in charge of blasting to give warning to employee is neglect of fellow servant.

Cited in notes (51 L. R. A. 569) on vice principalship considered with reference to superior rank of negligent servant; (54 L. R. A. 101) on vice principalship as determined with reference to character of act which caused injury; (4 L.R.A.(N.S.) 1162) on servant charged with duty to warn other servants of danger as vice principal.

Assumption of risk.

Approved in Dillenberger v. Weingartner, 64 N. J. L. 298, 45 Atl. 638, holding servant assumes risk of injury from obvious danger.

Cited in notes (25 L.R.A.(N.S.) 1182) on liability of master for breach of promise to remedy conditions, or furnish other appliances, where already reasonably safe; (28 L.R.A.(N.S.) 1227) as to whether servant may assume risk of dangers created by master's negligence; (29 L.R.A.(N.S.) 600) on effect of promise to repair where danger is great and imminent; (87 Am. St. Rep. 579) on assumption of risks by miners.

Contributory negligence.

Approved in Olney v. Boston & M. R. Co. 71 N. H. 432, 52 Atl. 1097, holding engineer not negligent as matter of law in going forward upon his engine to fix a loosened plate in order to prevent accident.

Cited in Seals v. Whitney, 130 Mo. App. 421, 110 S. W. 35, holding master liable where employee without warning of danger was sent into mining shaft to work which released a deadly gas causing his death.

39 L. R. A. 835, GOOCH v. FAUCETTE, 122 N. C. 270, 29 S. E. 362.

Enforcement of insurance contract.

Approved in Western Massachusetts Mut. F. Ins. Co. v. Hilton, 42 App. Div. 60, 58 N. Y. Supp. 996, holding foreign mutual fire insurance company not authorized to do business in state may maintain suit against policy holder on assessment, where contract made and to be performed in state of company's domicil.

Cited in footnote to Swing v. Munson, 58 L. R. A. 223, which holds insurance contract, valid where made, not enforceable in state where property located whose laws are directly violated.

Comity as affecting construction or enforcement of contract.

Approved in Welling v. Eastern Bldg. & L. Asso. 56 S. C. 296, 34 S. E. 409, holding comity does not require courts of one state to construe an agreement according to laws of another, or to enforce it if injurious to public interests.

Cited in Burris v. Witcover, 158 N. C. 385, 39 L.R.A.(N.S.) 1006, 74 S. E. 11, refusing to enforce draft for margins in transaction in futures, valid in state where made; Williamson v. Postal Teleg. Cable Co. 151 N. C. 229, 65 S. E. 974, holding that stipulation in contract for sending telegraph message limiting the liability of the company, will not be recognized in North Carolina though valid where contract was made; Cannaday v. Atlantic Coast Line R. Co. 143 N. C. 444, 8 L.R.A.(N.S.) 941, 118 Am. St. Rep. 821, 55 S. E. 836, on exceptions to rule that comity requires recognition of contracts valid in state where made.

Cited in note (64 L. R. A. 161) on conflict of laws as to gambling contracts.

Public policy as affecting bond of cashier of branch bank

Cited in Morehead Bkg. Co. v. Tate, 122 N. C. 317, 30 S. E. 341, holding bond to banking corporation given by cashier of branch bank to secure faithful performance of his duties not void as contrary to public policy, although obligee not expressly authorized to establish branch.

Right to abandon partly executed illegal contract.

Cited in footnote to Ullman v. St. Louis Fair Asso. 56 L. R. A. 606, which denies right to abandon partly executed illegal bookmaking contract for specified period, and recover back *pro rata* amount of money paid.

Presumption as to prevalence of law.

Approved in Rosemand v. Southern R. Co. 66 S. C. 98, 44 S. E. 574, holding, in absence of allegations as to laws of another state, court will presume common law prevails there.

Cited in Woods v. Western U. Teleg. Co. 148 N. C. 7, 128 Am. St. Rep. 581, 61 S. E. 653, holding that in absence of evidence to the contrary, the common law is presumed to be in force in another state.

Cited in footnote to Aslanian v. Dostumian, 47 L. R. A. 495, which denies presumption that law merchant as to protest of draft prevails in Asiatic Turkey.

Cited in note (67 L.R.A. 52) on presumption in favor of common law.

Defenses to gambling debts.

Cited in note (119 Am. St. Rep. 174, 175) on defenses to obligations given for gambling debts.

39 L. R. A. 837, BAILY v. PHILADELPHIA, 184 Pa. 594, 63 Am. St. Rep. 812, 39 Atl. 494.

Followed without discussion in Gibbons v. Moyamensing Hook & Ladder Co. No. 1, 184 Pa. 608, 39 Atl. 492.

Municipal water and light systems.

Cited in Penn Iron Co. v. Lancaster, 25 Pa. Super. Ct. 483, holding that city operating water system for supplying inhabitants with water acts in private capacity; Bower v. United Gas Improv. Co. 15 Pa. Dist. R. 254, 37 Pa. Super. Ct. 125; Philadelphia v. Philadelphia Rapid Transit Co. 18 Pa. Dist. R. 578,— on status of a municipality which engages in private enterprises; Cumberland Gaslight Co. v. West Virginia & M. Gas Co. 182 Fed. 674, on power of city to grant franchise to foreign corporation to lay gas pipes in street.

Right of city to lease or transfer water works.

Cited in Carlisle Gas & Water Co. v. Carlisle, 218 Pa. 557, 67 Atl. 844, holding that city purchasing shares of stock in Gas and Water Company has power to

sell such shares where not prohibited by its charter: Pittsburg v. Consolidated Gas Co. 34 Pa. Super. Ct. 380, on right of city as to water main in street with reference to rights of private corporation permitted to lay gas pipes.

Cited in footnote to Ogden v. Bear Lake & River Waterworks & Irrig. Co. 41 L. R. A. 305, which denies city's right to lease or otherwise transfer water works.

Delegation by municipality of ministerial or administrative functions.

Approved in Burge v. Rockwell City, 120 Iowa, 496, 94 N. W. 1103, holding municipality may delegate ministerial or administrative functions to committees, and is bound by their action.

39 L. R. A. 842, STEARNS v. ONTARIO SPINNING CO. 184 Pa. 519, 63 Am. St. Rep. 807, 39 Atl. 292.

Duty to show due care.

Approved in Spees v. Boggs, 198 Pa. 116, 52 L. R. A. 934, 82 Am. St. Rep. 792, 47 Atl. 875, holding employer whose servant is injured by fall of elevator not bound to satisfactorily account for accident, but need only show that he used due care; Baran v. Reading Iron Co. 202 Pa. 286, 51 Atl. 979, holding that if explosion of boiler makes out prima facie case of negligence the only burden cast on defendant is to show exercise of due care.

Cited in Garner v. Chicago Consol. Traction Co. 150 Ill. App. 152, holding that where doctrine of res ipsa loquitur applies, it throws burden upon defendant of showing due care only.

Presumption of negligence from happening of injury.

Approved in Spees v. Boggs, 198 Pa. 116, 52 L. R. A. 934, 82 Am. St. Rep. 792, 47 Atl. 875, holding, in action by servant injured by fall of elevator, mere happening of accident does not raise presumption that machinery was unsafe or defective.

Cited in Bossi v. Burke Electric Co. 20 Pa. Dist. R. 1122, holding that doctrine of res ipsa loquitur is inapplicable in action by employee against his employer for negligence; Galveston, H. & S. A. R. Co. v. Garven, 50 Tex. Civ. App. 248, 109 S. W. 426, holding that no presumption of negligence arises from mere happening of accident where servant is injured by explosion of locomotive boiler; Missouri, K. & T. R. Co. v. Jones, 103 Tex. 191, 125 S. W. 309, holding that no presumption of employer's negligence arose where switchman riding on foot board of engine got off for purpose of throwing switch and stepping on iron bolt, which rolled under his foot, was thrown on track and injured, it appearing proper inspection of tracks were made; Klebe v. Parker Distilling Co. 207 Mo. 491, 13 L.R.A.(N.S.) 144, 105 S. W. 1057, holding that rule of res ipsa loquitur applies to masters and servants if the reason for the rule applies; Dalton v. Tonawanda, 215 Pa. 405, 64 Atl. 547, holding that doctrine of res ipsa loquitur applies only in cases of absolute duty or obligation of insurer; Nebraska Bridge Supply & Lumber Co. v. Jeffery, 95 C. C. A. 137, 169 Fed. 611, on application and effect of doctrine of res ipsa loquitur: Moyer v. Metropolitan Electric Co. 14 Pa. Dist. R. 800, holding burden of proving negligence which caused the injury, to be upon plaintiff in action for death of electric line man; Aument v. Pennsylvania Teleph. Co. 28 Super. Ct. 614, 23 Lanc. L. Rev. 27, holding that as against a stranger, no presumption of negligence arises from the breaking of a telephone wire, and its falling upon a charged electric light wire; Johns v. Pennsylvania R. Co. 226 Pa. 321, 28 L.R.A.(N.S.) 592, 75 Atl. 408, holding that burden of proving negligence rested upon plaintiff in action for death of brakeman caused by collapse of railroad bridge; McNary v. Southwest Pennsylvania Pipe Lines, 34 Pa. Co. Ct. 444, 38 Pittsb. L. J. N. S. 233, 17

Pa. Dist. R. 849, holding that in action against pipe line company for injury to well from escaping oil, plaintiff must prove negligence.

Cited in note (113 Am. St. Rep. 989, 1004, 1011, on presumption of negligence from happening of accident causing personal injuries.

Negligence as question for jury.

Approved in Armbright v. Zion, 108 Iowa, 340, 79 N. W. 72, holding question whether one using iron wrench on elevated platform exercised ordinary vigilance to avoid losing his grasp of tool, for jury.

Cited in Hartman v. Jenkins, 22 Montg. Co. L. Rep. 23, holding that where gist of complaint is negligence of defendant, and evidence is such that inference of negligence on part of plaintiff or defendant could be drawn nonsuit is properly entered; Green v. Baltimore & O. R. Co. 32 Pa. Co. Ct. 282, 14 Pa. Dist. R. 295; White v. Roydhouse, 211 Pa. 16, 60 Atl. 316,—holding it error to leave question of negligence to jury where there was no evidence of circumstances showing negligence.

Presumption of negligence from injury from unknown cause.

Cited in footnote to Benedick v. Potts, 41 L. R. A. 478, which denies presumption of negligence from injury, cause of which unknown or undisclosed.

Duty of injured employee to show employer negligent.

Approved in Diver v. Singer Mfg. Co. 205 Pa. 171, 54 Atl. 718, denying recovery to employee who slipped and fell on polished floor in lighted passageway, in absence of showing that employer was negligent.

Liability for injury by article falling from window.

Cited in note (14 L.R.A.(N.S.) 427) on liability of occupant of building for injury by article falling or thrown from window.

39 L. R. A. 845, ROYCE v. OAKES, 20 R. I. 418, 39 Atl. 758.

Assumpsit or debt to recover money collected.

Followed in Riley v. La Rue, 20 R. I. 426, 39 Atl. 753, holding declaration should be assumpsit or debt, instead of trespass on the case, in action to recover money collected by defendant, an undivided part of which belonged to him.

Cited in V. P. Randolph & Co. v. Walker, 78 S. C. 164, 59 S. E. 856, holding that action for recovery of money deposited with agent in trust to be paid out upon principal's order, is an action on contract.

Trover.

Approved in Salem Traction Co. v. Anson, 41 Or. 567, 69 Pac. 675, holding principal entitled to the identical money received by his agent may maintain trover against him therefor.

Cited in Larson v. Dawson, 24 R. I. 321, 96 Am. St. Rep. 716, 53 Atl. 93, holding that trover is not the proper action where plaintiff entrusted money to defendant to be paid out for him, and which defendant converted to his own use.

Cited in note (20 L.R.A.(N.S.) 36) on trover or case for money collected by agent or attorney.

39 L. R. A. 847, GREENVILLE v. ORMAND, 51 S. C. 58, 64 Am. St. Rep. 663, 28 S. E. 50.

Cross-examination to test correctness of conclusions of witness.

Approved in Bee Pub. Co. v. World Pub. Co. 59 Neb. 723, 82 N. W. 28, holding counsel for defendant entitled to cross-examine plaintiff in action for libel, who

has testified to decrease in his business, and with the information afforded by plaintiff's books test correctness of his conclusions.

39 L. R. A. 856, *Re* KIRBY, 10 S. D. 322, 73 N. W. 92.

Prosecution of disbarment proceeding in name of state.

Approved in *Re* Crum, 7 N. D. 322, 75 N. W. 257, holding proceeding to disbar attorney need not run in name of state.

Causes for disbarment.

Cited in Re Henry, 15 Idaho, 758, 21 L.R.A.(N.S.) 208, 99 Pac. 1054, holding that conviction of larceny is conviction of crime involving moral turpitude and justifying disbarment; Ex parte Biggs, 52 Or. 436, 97 Pac. 713, holding conviction, in Federal court of "conspiracy to suborn perjury" and sentence to jail insufficient of itself as ground for disbarment; Re Hopkins, 54 Wash. 572, 103 Pac. 805, holding attorney falsely certifying to affidavits for pension claims guilty of "moral turpitude;" Fort v. Brinkley, 87 Ark. 404, 112 S. W. 1084, on definition of "moral turpitude."

Cited in footnotes to *Re* Lentz, 50 L. R. A. 415, which denies right to disbar attorney for single wrongful appropriation, without actual intent to defraud, for which full restitution has been made; *Re* Evans, 53 L. R. A. 952, which authorizes disbarment of attorney for champerty; People ex rel. Deneen v. Gilmore, 69 L.R.A. 701, which holds that license to practice law secured by fraudulent concealment of a conviction of embezzling funds from client in another state will be revoked.

Disapproved in State ex rel. Larew v. Sale, 188 Mo. 501, 87 S. W. 967, holding that attorney cannot be disbarred for conviction of a crime while his appeal from such conviction is pending.

Pleading judgment pending appeal therefrom.

Approved in Ransom v. Pierre, 41 C. C. A. 589, 101 Fed. 670, holding judgment may be pleaded as estoppel during pendency of appeal therefrom.

Admissibility in prosecution for nonsupport of judgment in divorce suit.

Cited in footnote to State v. Bradneck, 43 L. R. A. 620, which holds judgment of dismissal in divorce suit for adultery inadmissible in criminal prosecution for nonsupport of wife.

Order to show cause in disbarment proceedings.

Cited in Barnes v. Lyons, 110 C. C. A. 15, 187 Fed. 886, holding that order entered by court while relator was in court, removing him from bar and striking name from roll of attorneys, though irregular because rule to show cause was not entered, will not be disturbed by circuit court of appeals.

What constitutes moral turpitude.

Cited in note (30 L.R.A.(N.S.) 784) on what constitutes moral turpitude as ground for revoking physician's license.

39 L. R. A. 859, *Re* KIRBY, 10 S. D. 414, 73 N. W. 907.

Remedy for improper award of costs.

Approved in Sorenson v. Donahoe, 12 S. D. 206, 80 N. W. 179, holding remedy for improper award of costs is by motion to have judgment modified, and not by appeal from taxation of costs.

Grounds for disbarment of attorneys.

Cited in note (19 L.R.A.(N.S.) 892) on conviction or commission of crime or misconduct by attorney in another state as ground for disbarment.

39 L. R. A. 860, STATE v. HUBBARD, 58 Kan. 797, 51 Pac. 290.

Agents within embezzlement acts.

Cited in note (87 Am. St. Rep. 44) on agents within embezzlement acts.

39 L. R. A. 863, STILWELL v. DUNCAN, 103 Ky. 59, 44 S. W. 357.

Possession as basis for action of trespass.

Cited in Kentucky Coal Lands Co. v. Mineral Development Co. 191 Fed. 920, holding that owner of land may maintain action for trespass although he was not in possession at time trespass was committed.

L. R. A. CASES AS AUTHORITIES.

CASES IN 40 L. R. A.

40 L. R. A. 33, HODGE v. HODGE, 90 Me. 505, 60 Am. St. Rep. 285, 38 Atl. 535.

Liability of sureties on bond.

Approved in Meservey v. Kalloch, 97 Me. 94, 53 Atl. 876, holding administrator *de bonis non* authorized to maintain suit against predecessor and his sureties only as to unadministered property.

Cited in footnotes to Abshire v. Salyer, 56 L. R. A. 936, which holds sureties on guardian's bond, given to obtain release from future liabilities of surety on prior bond, liable for past defalcations; Probate Judge v. Sulloway, 49 L. R. A. 347, which holds sureties on insolvent executor's bond liable for his personal debt to testator.

What assets pass to administrator de bonis non.

Cited in Prusa v. Everett, 78 Neb. 254, 113 N. W. 571, holding administrator de bonis non may sue to recover money owing to estate for chattels sold by former executor and also citing annotation on this point.

Cited in footnote to Chamberlin's Appeal, 41 L. R. A. 204, which holds intestate property, wanted for distribution, assets for administrator *de bonis non.*

Cited in notes (40 L.R.A. 33) on what assets pass to administrator de bonis non; (108 Am. St. Rep. 420, 423) on property which vests in administrators de bonis non.

Effect of appointment of debtor as executor or administrator.

Cited in Stewart v. Hurd, 107 Me. 461, 32 L.R.A.(N.S.) 673, 78 Atl. 838, Ann. Cas. 1912 D, 662, holding that appointment by mortgagee of his mortgagor, executor of his estate, and such executor charging himself with amount of mortgage debt as assets do not operate to discharge mortgage and make debt personal one.

Cited in notes (26 L.R.A.(N.S.) 414) on effect on debt of appointment of debtor as executor or administrator; (112 Am. St. Rep. 413) on liability for debt of executor or administrator owing to the estate.

40 L. R. A. 74, JOHNSON v. DOOLEY, 65 Ark. 71, 44 S. W. 1032.

What constitutes payment.

Approved in Bartlett v. Woodworth-Mason Co. 69 N. H. 317, 41 Atl. 264, holding debt discharged by delivery to creditor of that in which it is payable or capable of being paid.

Checks payable specially.

Cited in Farmers Bank v. Johnson, K. & Co. 134 Ga. 494, 30 L.R.A.(N.S.) 704, 68 S. E. 85, 137 Am. St. Rep. 242, holding protest of check improper where "payable through [a certain] bank" is stamped on it and holder does not present it through that bank but presents it direct to drawee bank.

Provision for payment in certain kind of property.

Cited in Poppleton v. Jones, 42 Or. 33, 69 Pac. 919, denying right to interest on breach of contract to pay given sum in building material, as there is no agreement to pay in money; Jonesboro L. C. & E. R. Co. v. Watts, 80 Ark. 550, 98 S. W. 358, holding under contract payable in services refusal to accept payment in services renders debtor liable in cash; Henry v. North American R. Constr. Co. 85 C. C. A. 409, 158 Fed. 82, holding under contract providing for payment in bonds at face value recovery will be limited to their actual value at time delivery should have been made.

40 L. R. A. 76, HANKINS v. OTTINGER, 115 Cal. 454, 47 Pac. 254.

Bookmaking contracts.

Cited in footnotes to Ullman v. St. Louis Fair Asso. 56 L. R. A. 606, which denies right to abandon partly executed illegal bookmaking contract for specified period, and recover back *pro rata* amount of money paid; Central Trust & S. D. Co. v. Respass, 56 L. R. A. 479, which denies power of courts to settle affairs of bookmaking partnership.

What constitutes wager.

Cited in footnote to Hopkins v. State, 69 L.R.A. 117, which holds playing pool under agreement that loser shall pay for use of table betting at a pool table.

Right to maintain action for prize.

Cited in note (33 L.R.A.(N.S.) 306) on right to maintain action for prize offered in contest.

40 L. R. A. 78, COLFAX MOUNTAIN FRUIT CO. v. SOUTHERN P. CO. 118 Cal. 648, 50 Pac. 775.

Liability of connecting carriers.

Approved in Germain Fruit Co. v. California Southern R. Co. 133 Cal. 428, 65 Pac. 948, holding carrier agreeing to transport freight to terminal station and deliver to consignee there, liable for delivery to wrong person by connecting carrier; Hall v. Wabash R. Co. 80 Mo. App. 467, holding it duty of intermediate carrier to receive goods and transport and deliver them in good order to next connecting line, with necessary instructions as to ultimate destination.

Cited in footnotes to Union State Bank v. Fremont, E. & M. Valley R. Co. 59 L. R. A. 939, which sustains initial carrier's right to limit liability to own line; Taffe v. Oregon R. & Nav. Co. 58 L. R. A. 187, which denies initial carrier's liability beyond own line under bill of lading; New York, P. & N. R. Co. v. Cromwell, 49 L. R. A. 462, which holds carrier leasing cars from other company liable for loss of freight not properly refrigerated; St. Louis, I. M. & S. R. Co. v. Coolidge, 67 L.R.A. 555, which holds that delay by initial carrier in transporting goods liable to injury by climate renders it liable for damage to goods delivered to consignee in damaged condition, unless it shows that such delay did not produce the injury in whole or part, notwithstanding delay of connecting carrier; Kansas City F. S. & M. R. Co. v. Washington, 69 L.R.A. 65, which holds initial carrier checking baggage to destination on through ticket liable for loss on connecting line.

Cited in note (31 L.R.A.(N.S.) 20, 39, 79) on liability of connecting carrier for loss beyond own line.

Distinguished in Taffe v. Oregon R. Co. 41 Or. 74, 58 L. R. A. 192, 67 Pac. 1015, holding initial carrier not liable beyond its own lines, when contract so provides, notwithstanding stipulation for "fastest passenger train service;" Schwartz v. Panama R. Co. 155 Cal. 748, 103 Pac. 196, holding railroad not liable for negligent loss by connecting carrier where its agreement was to deliver goods at a definite point and loss occurred beyond that point.

40 L. R. A. 81, NICHOLS v. PECK, 70 Conn. 439, 39 Atl. 803.

Rights in easements.

Approved in McCusker v. Spier, 72 Conn. 629, 45 Atl. 1011, holding grantor of right of way created by quitclaim deed not liable to grantee for continuance of existing obstructions therein, if he does not object to their removal; Weed v. McKeg, 37 Misc. 110, 74 N. Y. Supp. 250, sustaining right of owner of servient estate to erect suitable structure over right of way, if other's use of same not interfered with.

Cited in Hastings v. Chicago, R. I. & P. R. Co. 148 Iowa, 397, 126 N. W. 786, holding that while railroad cannot obstruct passage way of adjoining owner across tracks, it need not maintain it, in absence of express agreement, but this duty devolves upon land owner.

Cited in notes (2 L.R.A.(N.S.) 833) on failure to maintain easement as raising presumption of abandonment; (15 L.R.A.(N.S.) 993) on duty of servient owner to maintain and protect easement; (95 Am. St. Rep. 323, 324, 328) on rights and obligations of parties to private ways.

Loss of right of way by nonuser.

Cited in note (22 L.R.A.(N.S.) 884) on abandonment or loss of private way by nonuser or improvements inconsistent with use.

40 L. R. A. 84, WESTERN & A. R. CO. v. MORRISON, 102 Ga. 319, 66 Am. St. Rep. 173, 29 S. E. 104.

Effect of failure to put witnesses on stand or procuring false testimony.

Approved in Weinkle v. Brunswick & W. R. Co. 107 Ga. 373, 33 S. E. 471, holding railroad company not required to produce as witnesses all employees engaged in operating train which inflicted injury; Princeville v. Hitchcock, 101 Ill. App. 591, holding that failure to produce witness apparently within party's power raises no presumption against him, where witness equally available to other party.

Cited in McBride v. Macon Teleg. Pub. Co. 102 Ga. 427, 30 S. E. 999, holding delay of one or more terms in filing plea setting up real defense, legitimate matter for comment of counsel; Knox v. State, 112 Ga. 375, 37 S. E. 416, holding failure of accused to call and examine as witness his little daughter, who must have been present when offense was committed, not proper subject for argument before jury; Brown v. State, 98 Miss. 797, 34 L.R.A.(N.S.) 817, 54 So. 305, holding that failure of accused to produce witnesses cannot be made subject of unfavorable comment by prosecuting attorney, if they were equally available to state; Morgan v. State, 124 Ga. 445, 52 S. E. 748, holding it error not to permit counsel for defendant to comment on failure of state to produce person who instituted proceedings; Hartford L. Ins. Co. v. Sherman, 123 Ill. App. 212, holding failure to produce a witness with whom defendant is in touch merely assigning as reason therefor that he is no longer in employ of defendant may be considered by jury as inference against defendant.

Cited in footnote to McHugh v. McHugh, 41 L. R. A. 805, which holds evidence of attempt to procure false testimony or corrupt jurors admissible to raise presumption against guilty parties.

40 L. R. A. 95, HENDERSON v. DADE COAL CO. 100 Ga. 568, 28 S. E. 251.

Effect of intervening negligence of third person.

Approved in Andrews v. Kinsel, 114 Ga. 392, 88 Am. St. Rep. 25, 40 S. E. 300, denying liability for injury by negligence, where independent illegal act of third person, producing the injury, intervened.

Cited in Postal Teleg. Cable Co. v. Kelly, 134 Ga. 219, 67 S. E. 803, holding telegraph company not liable to one whose companions in felling tree caused it to crash against telegraph pole which fell on him, although pole was rotten at its base.

Liability of lessor of convict for his acts.

Cited in Thomas v. Sloss-Sheffield Steel & I. Co. 144 Ala. 192, 39 So. 715, holding mining company not liable for death of watchman shot by convict at work within mine.

Cited in note (12 L.R.A.(N.S.) 317) on responsibility of hirer for acts of convict laborer.

Liability for acts of servant.

Cited in Louisville & N. R. Co. v. Hudson, 10 Ga. App. 173, 73 S. E. 30, holding that railroad company is not liable for homicide committed by employee, where it was not committed in master's business, and within scope of his employment.

Cited in note (17 Eng. Rul. Cas. 280) on master's liability for acts of servant.

40 L. R. A. 98, WELTY v. JACOBS, 171 Ill. 624, 49 N. E. 723.

Specific performance of contract.

Approved in Dixon v. Dixon, 92 Md. 440, 48 Atl. 152, denying right of either party to decree for specific performance, unless both are entitled thereto at date of decree.

Cited in Anderson v. Olsen, 188 Ill. 506, 59 N. E. 239, denying right of either party to specific enforcement of contract for sale of patent, if remedy at law adequate; Turley v. Thomas, 31 Nev. 203, 135 Am. St. Rep. 667, 101 Pac. 568, holding that before specific performance of contract will be decreed, it must appear that there was mutuality, both in obligation and remedy, under contract, so long as it remains executory; Fowler Utilities Co. v. Gray, 168 Ind. 5, 7 L.R.A.(N.S.) 728, 120 Am. St. Rep. 344, 79 N. E. 897, holding contract to heat house for agreed annual payment as long as owner desired heat cannot be specifically enforced; Hoctor-Johnson Co. v. Billings, 65 Neb. 222, 91 N. W. 183, holding contract to convey undivided interest in land on condition that another owner would convey other share not enforceable if he refused.

Cited in footnotes to Standard Fashion Co. v. Siegel-Cooper Co. 43 L. R. A. 854, which sustains right to specific performance of contract giving right to sell certain article in department store; Stanton v. Singleton, 47 L. R. A. 334, which denies right to specific performance of contract involving supervision of long series of acts requiring special knowledge and skill; Bomer Bros. v. Canady, 55 L. R. A. 328, which denies specific performance of indefinite contract to purchase standing timber on fourteen different tracts in two counties, scattered over 5,000 acres; Livesley v. Johnston, 65 L.R.A. 783, which holds that specific performance of contract for sale of hops will not be refused for lack of mutuality

where seller would have been entitled to decree for specific performance on purchaser's capricious and fraudulent refusal to approve the hops.

Cited in notes (6 L.R.A.(N.S.) 1123) on enforcement of contract of service by equity; (140 Am. St. Rep. 57, 59) on specific performance of contract for personal services.

Distinguished in Oswald v. Nehls, 233 Ill. 445, 84 N. E. 619, holding equity will enforce a contract to devise estate in consideration of personal services where such services have been wholly performed.

Injunction against breach of covenant or contract.

Cited in Shubert v. Woodward, 92 C. C. A. 509, 167 Fed. 53, holding injunction will not lie to compel performance of contract of employment as theatre manager who by contract could not be compelled himself to continue in employment or apply skill; Ulrey v. Keith, 237 Ill. 295, 86 N. E. 696, holding lease of oil fields for five years and as long thereafter as oil is found which provides lessee may surrender on payment of one dollar cannot be enforced by injunction against breach; H. W. Gossard Co. v. Crosby, 132 Iowa, 174, 6 L.R.A.(N.S.) 1143, 109 N. W. 483, holding contract to sell and demonstrate corset not specifically enforceable although saleswoman has peculiar qualifications it containing no negative covenant; Rabinovich v. Reith, 120 Ill. App. 415, holding injunction will not issue to enforce a contract of employment as milliner; Philadelphia Baseball Club v. Lajoie, 10 Pa. Dist. R. 314, holding injunction will not lie to compel specific performance of a contract to play on base ball team, although player is exceptionally able and his absence will materially affect attendance; Cleveland v. Martin, 218 Ill. 90, 3 L.R.A.(N.S.) 638, 75 N. E. 772, holding injunction will not issue against book publisher to restrain sale of finished books because not "got up in first-class shape" where he went to all expense and author will not be greatly damaged.

Cited in note (90 Am. St. Rep. 635, 636, 649, 652) on injunction against breach of contract.

Distinguished in Cahill v. Madison, 94 Ill. App. 222, sustaining right to injunction against employee betraying trust reposed in him, by taking away, in violation of express contract, employees of whom he learned while performing duty as employee.

40 L. R. A. 101, PITTSBURG, C. C. & ST. L. R. CO. v. MAHONEY, 148 Ind. 196, 62 Am. St. Rep. 503, 46 N. E. 917, 47 N. E. 464.

Contracts exempting railroad from liability for negligent injury.

Followed as law of case on subsequent appeal in 29 Ind. App. 654, 63 N. E. 232.

Approved in Russel v. Pittsburgh, C. C. & St. L. R. Co. 157 Ind. 314, 55 L. R. A. 256, footnote p. 253, 87 Am. St. Rep. 214, 61 N. E. 678, sustaining contract by sleeping car porter to waive all right of action against railroad company for negligence; Blank v. Illinois C. R. Co. 182 Ill. 338, 55 N. E. 332, sustaining contract that railroad company shall not be liable for negligent injury to express company's employees, carried on trains of former company; Payne v. Terre Haute & I. R. Co. 157 Ind. 617, 56 L. R. A. 473, 62 N. E. 472, sustaining stipulation in pass releasing carrier from liability for negligent injuries; Blank v. Illinois C. R. Co. 80 Ill. App. 484, holding terms of contract by express company, waiving right of recourse against railroad company for injuries to its employees by negligence of latter company or its employees, accepted by one taking employment with former company; Baltimore & O. S. W. R. Co. v. Voigt, 176 U. S. 517, 44 L. ed. 569, 20 Sup. Ct. Rep. 385, denying right of express messenger to recover for injury against railroad company, when by contract he assumed all

risks of injury; McDermon v. Southern P. Co. 122 Fed. 672, sustaining contract by Pullman car porter releasing railroad company from liability for injury which might happen to him; Illinois C. R. Co. v. J. L. Fulton Co. 108 Ill. App. 238, sustaining right of railroad company to stipulate with contractor that latter shall indemnify former for damages recovered for injuries to latter's employees, however occurring.

Cited in Dodd v. Central R. Co. 80 N. J. L. 62, 76 Atl. 544, holding that contract exempting express company and railroad company from liability for negligence, made by employee of express company, is not against public policy; Kelley v. Grand Trunk Western R. Co. 46 Ind. App. 704, 93 N. E. 616, holding that contracts between circus companies and railroad companies by which railroad transports circus trains, but without liability for negligence, are valid; Chicago, R. I. & P. R. Co. v. Hamler, 215 Ill. 530, 1 L.R.A.(N.S.) 677, 106 Am. St. Rep. 187, 74 N. E. 705, 3 Ann. Cas. 42, holding contracts between railroad and sleeping car company and latter and its employees exempting railroad from liability for acts of negligence valid; Kelly v. Malott, 67 C. C. A. 548, 135 Fed. 75, holding contract validly exempting railroad in cases of negligence applies as well in case of "gross" negligence pleaded; Cleveland, C. C. & St. L. R. Co. v. Henry, 170 Ind. 99, 83 N. E. 710, holding railroad a private carrier with regard to traveling show company and employees thereof were chargeable with terms of the contract.

Cited in footnote to Tarbell v. Rutland R. Co. 56 L. R. A. 656, which holds void, contract by next of kin releasing employer from liability for future injuries to employee.

Cited in notes (46 L. R. A. 55) on effect of agreements between plaintiff's master and defendant, exempting latter from liability; (7 L.R.A.(N.S.) 541) on validity of contract exonerating master in advance from liability for negligence; (11 L.R.A.(N.S.) 433, 438; 130 Am. St. Rep. 40) on contract exempting railroad from liability for negligent injury to sleeping car employees, or others sustaining similar relation; (130 Am. St. Rep. 35) on right of private carrier to contract for exemption of liability.

Distinguished in Richmond v. Southern P. R. Co. 41 Or. 56, 57 L. R. A. 617, 93 Am. St. Rep. 694, 67 Pac. 947, holding agreement by passenger with mileage ticket, purchased at reduced rate, not to hold carrier liable for injuries on freight train unenforceable as to such trains designated to carry passengers; Stone v. Union P. R. Co. 32 Utah, 201, 89 Pac. 715, holding contract exempting railroad for negligent acts invalid by statute where messenger was also servant of railroad as well as of express company; Texas & P. R. Co. v. Fenwick, 34 Tex. Civ. App. 226, 78 S. W. 548, holding contracts exempting railroads for negligent acts to messengers invalid where constitution provides that railroads cannot contract as private carriers; Sager v. Northern P. R. Co. 166 Fed. 531, holding of circus company could not wholly exempt railroad from liability for injuries to employees of circus.

Disapproved in Robinson v. St. Johnsbury & L. C. R. Co. 80 Vt. 136, 9 L.R.A.(N.S.) 1252, 66 Atl. 814, 12 Ann. Cas. 1060, holding contract waiving claim against railroad for injuries received as messenger because of railroad's negligence does not bind him where not known to him.

Railroad as private carrier of messengers and the like.

Cited in Denver & R. G. R. Co. v. Whan, 39 Colo. 238, 11 L.R.A.(N.S.) 442, 89 Pac. 39, 12 Ann. Cas. 732, holding railroad not common-carrier as to conductor of sleeping car.

Cited in note (44 L. ed. U. S. 561) on express messengers as passengers.

Effect of contract on privies of contractor.

Cited in State ex rel. Goodwine v. Cadwallader, 172 Ind. 640, 87 N. E. 644, holding contract between two telephone companies whereby patrons of each are to be rendered service by the other charges patrons with terms of contract.

Duty of carrier towards other carriers.

Cited in Donovan v. Pennsylvania Co. 61 L. R. A. 143, 57 C. C. A. 365, 120 Fed. 218, sustaining railroad company's right to give to one hackman exclusive right to solicit patronage within its station.

Motion to strike out.

Cited in Guthrie v. Howland, 164 Ind. 222, 73 N. E. 259, holding it error to strike petition from the files because it does not state a cause of action.

Construction of "or otherwise."

Cited in Territory ex rel. Curran v. Gutierrez, 12 N. M. 277, 78 Pac. 139, holding statute authorizing governor to fill vacancy in county office occurring from death "or otherwise" empowers him to appoint such officer upon legislative ouster.

40 L. R. A. 105, RITCHEY v. WELSH, 149 Ind. 214, 48 N. E. 1031.

Protection of easement rights.

Approved in Ives v. Edison, 124 Mich. 410, 50 L. R. A. 139, 83 Am. St. Rep. 329, 83 N. W. 120, sustaining right of one having easement in stairway to injunction to compel its restoration to its original location.

Cited in note (95 Am. St. Rep. 323) on rights and obligations of parties to private ways.

Way of necessity.

Approved in Dudgeon v. Bronson, 159 Ind. 564, 95 Am. St. Rep. 315, 64 N. E. 910, denying right to increase width of 16-foot way of necessity, after use for twenty-five years; Albemarle Steam Nav. Co. v. Worrell, 133 N. C. 94, 45 S. E. 466, discussing, without deciding, propriety of direction in judgment for partition, that alleyway be allotted to one of the parties; Thomas v. McCoy, 30 Ind. App. 556, 66 N. E. 700, holding that complaint to establish private way of necessity must allege request to owner of servient estate to select location, and his failure to do so or selection of unreasonable route.

Cited in McBurney v. Glenmary Coal & Coke Co. 121 Tenn. 299, 118 S. W. 694, on the acquirement of a way by necessity.

Cited in footnotes to Ellis v. Blue Mountain Forest Asso. 42 L. R. A. 570, which denies right of way by necessity for tract entirely surrounded by other persons' land, in absence of unity of ownership; Lebus v. Boston, 47 L. R. A. 79, which holds parol evidence that grantor agreed he should have no passway over land conveyed admissible to rebut implied reservation of way of necessity; Ann Arbor Fruit & V. Co. v. Ann Arbor R. Co. 66 L.R.A. 431, which holds that continued use of right of way originating in necessity, after necessity has ceased, does not become adverse until notice of adverse claim is brought home to owner of servient estate.

Cited in notes (12 L.R.A.(N.S.) 483) on implication of way by necessity where sale of part of tract involuntary; (26 L.R.A.(N.S.) 343) on easements created by severance of tract with apparent benefit existing.

Identification of lands by exercise of right of selection.

Cited in Jones v. Mount, 166 Ind. 573, 77 N. E. 1089, holding lease containing a covenant to surrender upon condition broken enforceable although power of selection as to part to be surrendered resides in lessee.

40 L. R. A. 109, MILLER v. STATE, 149 Ind. 607, 49 N. E. 894.

Cruel and unusual punishment.

Cited in Com. v. Aul, 18 Pa. Dist. R. 1048, holding statute imposing extra penalty in case of previous conviction for felony valid; Com. v. Walinski, 18 Pa. Dist. R. 506, holding it proper for court in sentencing person convicted of bigamy to declare the second or subsequent marriage void.

Cited in footnotes to Storti v. Com. 52 L. R. A. 520, which holds execution by electricity not cruel or unusual punishment; Territory v. Ketchum, 55 L. R. A. 90, which sustains death penalty for assault upon train, with intent to commit felony.

Indeterminate sentence law.

Followed in Vancleave v. State, 150 Ind. 274, 49 N. E. 1060; Bealer v. State, 150 Ind. 394, 50 N. E. 302; Hunter v. State, 150 Ind. 696, 49 N. E. 1064; Wilson v. State, 150 Ind. 697, 49 N. E. 904; Keesier v. State, 154 Ind. 249, 56 N. E. 232; Bloom v. State, 155 Ind. 294, 58 N. E. 81; Davis v. State, 152 Ind. 152, 52 N. E. 754; People *ex rel.* Clark v. Sing Sing Prison, 39 Misc. 117, 78 N. Y. Supp. 907; Shular v. State, 160 Ind. 310, 66 N. E. 746,— upholding constitutionality of indeterminate sentence law.

Approved in Skelton v. State, 149 Ind. 647, 49 N. E. 901, holding indeterminate sentence authorized and required on conviction of petit larceny; Davis v. State, 152 Ind. 35, 71 Am. St. Rep. 322, 51 N. E. 928, holding indeterminate sentence law not *ex post facto* as to crime committed before its passage; Murphy v. Com. 172 Mass. 275, 43 L. R. A. 159, footnote p. 154, 70 Am. St. Rep. 266, 52 N. E. 505, holding duration of sentence not rendered uncertain by statute allowing right to deductions for good behavior, so as to make it *ex post facto*; Terry v. Byers, 161 Ind. 362, 68 N. E. 596, holding that punishment to be adjudged on conviction under indeterminate sentence law is for maximum term, which may be shortened for good behavior; State v. Page, 60 Kan. 667, 57 Pac. 514, sustaining statute for fixing maximum sentence to state penitentiary and empowering board of managers to grant paroles and absolute releases for exemplary conduct; Hicks v. State, 150 Ind. 298, 50 N. E. 27, holding word "punishable" in indeterminate sentence law inapplicable to case of one not deserving greater punishment in opinion of court or jury than fine and imprisonment in county jail; *Re* Murphy, 62 Kan. 424, 63 Pac. 428, sustaining right to transfer incorrigible prisoner from industrial reformatory to penitentiary; *Re* Linden, 112 Wis. 528, 88 N. W. 645, upholding statute authorizing transfer to state prison for balance of term of inmate of reformatory whose presence is considered detrimental to other inmates; Western U. Teleg. Co. v. Ferguson, 157 Ind. 41, 60 N. E. 679, holding statute providing penalty for failure to properly transmit telegram not void as interference with governor's power to grant reprieves, commutations, and pardons.

Cited in Wilson v. Com. 141 Ky. 349, 132 S. W. 557, holding that indeterminate sentence law does not deprive prisoner of his right of trial by jury, nor encroach upon powers of judiciary; People v. Joyce, 246 Ill. 134, 92 N. E. 607, 20 Ann. Cas. 472, holding that provisions of parole act of 1899, with reference to final discharge of paroled prisoner are not invalid as infringing constitutional right of governor to grant pardons and commute sentences; Re Duff, 141 Mich. 625, 105 N. W. 138, holding where statute provides for indeterminate sentence not to exceed maximum term provided by law a sentence imposing a different maximum is mere surplusage; Re Marlow, 75 N. J. L. 405, 68 Atl. 171, holding statute providing only for maximum sentence valid although it leaves to discretion of court the imposing of a shorter term; People ex rel. Bettram v. Flynn, 55 Misc. 24, 105 N. Y. Supp. 551, holding creation of state re-

formatory and provision for indeterminate imprisonment therein of persons theretofore unconvicted valid; State v. Duff, 144 Iowa, 147, 24 L.R.A.(N.S.) 628, 138 Am. St. Rep. 269, 122 N. W. 829, holding that the parol of prisoners under the indeterminate sentence law, does not infringe the right of the governor to grant pardons and reprieves; People v. Madden, 120 App. Div. 344, 105 N. Y. Supp. 554, holding indeterminate sentence law giving prison managers power of final discharge is no encroachment on judicial or executive prerogatives; Hughes v. Pflanz, 71 C. C. A. 234, 138 Fed. 984, on constitutionality of indeterminate sentence law.

Cited in footnote to People v. Adams, 63 L. R. A. 406, which sustains statute permitting sentence of imprisonment with maximum and minimum terms.

Cited in note (1 L.R.A.(N.S.) 521, 522) on constitutionality of statutory credits for good behavior.

Criticized in *Re* Convicts, 73 Vt. 426, 56 L. R. A. 662, 51 Atl. 10, holding statute providing for maximum and minimum sentence for convicts, and empowering board to grant paroles after expiration of minimum time, in conflict with governor's pardoning power.

Right to jury trial.

Approved in State v. Hamey, 168 Mo. 178, 57 L. R. A. 850, footnote p. 846, 67 S. W. 620, denying right under Constitution to have jury assess punishment in criminal cases.

40 L. R. A. 117, SHULTZ v. GRIFFITH, 103 Iowa, 150, 72 N. W. 445.

Liability for assault by dog.

Cited in Beckler v. Merringer, 131 Iowa, 615, 109 N. W. 185, holding owner of dog liable for death of horse frightened by dog although action of dog caused harness to become loose which added greatly to its fright; Alexander v. Grosby, 143 Iowa, 53, 119 N. W. 717, holding instruction that "if defendant kept dog as owners usually do, that dog followed him in street and he claimed to own the dog then he is owner in law" is sufficient.

Cited in footnotes to Martinez v. Bernhard, 55 L. R. A. 671, which denies liability for bite by dog not known to bite before; Crowley v. Groonell, 55 L. R. A. 876, which holds owner liable for assault by dog, due to known playful propensity; Peck v. Williams, 61 L. R. A. 351, which holds owner liable to one bitten by dog while attempting to climb on owner's cart without leave.

— Under statute.

Followed in Van Bergen v. Eulberg, 111 Iowa, 140, 82 N. W. 483, holding throwing of sticks and stones at dog, no excuse for bite inflicted several months later.

Cited in Sanders v. O'Callaghan, 111 Iowa, 579, 82 N. W. 969, holding evidence that dog had previously bitten others admissible in action for injuries from bite, notwithstanding statutory liability for bite.

Pleadings supporting recovery of future damages.

Cited in Palmer v. Waterloo, 138 Iowa, 310, 115 N. W. 1017, holding allegation that plaintiff suffered great pain and was temporarily and permanently disabled will not sustain evidence of future pain.

Distinguished in Westercamp v. Brooks, 115 Iowa, 162, 88 N. W. 372, sustaining propriety under pleadings, of recovery of future damages; Achey v. Marion, 126 Iowa, 50, 101 N. W. 435, holding instruction to allow for future pain and anguish is proper where pleading alleges that past and present pain will continue in the future.

Negligence by omission and commission.

Cited in German Ins. Co. v. Chicago & N. W. R. Co. 128 Iowa, 391, 104 N. W. 361, holding instruction that, "failure to exercise care and diligence of an ordinarily prudent person in his own affairs is negligence," includes both acts of commission and omission.

who is harborer of dog.

Cited in note (17 L.R.A.(N.S.) 433) as to who is keeper or harborer of a dog.

40 L. R. A. 119, KENTUCKY FEMALE ORPHAN SCHOOL v. LOUISVILLE, 100 Ky. 470, 36 S. W. 921.

What are charitable institutions.

Cited in State *ex rel.* Olsen v. Board of Control, 85 Minn. 179, 88 N. W. 533, holding state normal schools "charitable institutions" as used in title of act; Cathedral of St. John v. Denver, 37 Colo. 387, 86 Pac. 1021, holding exaction of necessary expenses from patients in home for consumptives does not destroy its character as a charitable institution; Widows' & Orphans Home v. Com. 126 Ky. 390, 16 L.R.A.(N.S.) 834, 103 S. W. 354, holding home provided solely for destitute widows and orphans of members of a secret society a public charity.

— Within exemption statutes.

Cited in Bosworth v. Kentucky Chautauqua Assembly, 112 Ky. 118, 65 S. W. 602, holding property of Kentucky Chautauqua Assembly, whose sessions last only few days, whose purposes are social as well as educational, and which is used for gain by stockholders, not exempt; Com. v. Hamilton College, 125 Ky. 335, 101 S. W. 405, holding educational institution exempt although it leased one college for personal gain provided lease money was solely applied to cause of education; Linton v. Lucy Cobb Institute, 117 Ga. 686, 45 S. E. 53, holding college exempt although it charged tuition where all money so received was expended in actual necessities and no profits were sought to be derived; Com. v. Young Men's Christian Asso. 116 Ky. 722, 105 Am. St. Rep. 234, 76 S. W. 522, holding "Y. M. C. A." a charity within statutory exemption; Com. v. Gray, 115 Ky. 668, 74 S. W. 702, holding trust funds invested and the income used for the education of poor children were within the exemption from taxation of purely charitable educational institutions; Norton v. Louisville, 118 Ky. 839, 82 S. W. 621, holding where the will directed that a trust fund should be established for five years and during that time certain real estate should be sold for the benefit of the trust fund, and at the end of five years the fund should be turned over to a charitable institution, the real estate was exempt during such five years.

Cited in footnotes to Harvard College v. Assessors, 48 L. R. A. 547, which holds exempt from taxation, houses occupied by college presidents and professors, and dormitories and dining halls for students; Yale University v. New Haven, 43 L. R. A. 490, which holds college dormitories and dining halls exempt from taxation; German Gymnastic Asso. v. Louisville, 65 L.R.A. 121, which holds institution for teaching physical culture exempt from taxation.

Cited in notes (16 L.R.A.(N.S.) 837, 840, 846) on effect of devotion of property otherwise nontaxable to purposes of particular society; (47 L. ed. U. S. 646) on exemption of property of educational institutions from taxation, as affected by use for other than educational purposes.

Distinguished in Newport v. Masonic Temple Asso. 108 Ky. 341, 49 L. R. A. 254,

56 S. W. 405, holding charity confined exclusively to members of Masonic order not exempt as purely public charity.

40 L. R. A. 127, LORING v. HILDRETH, 170 Mass. 328, 64 Am. St. Rep. 301, 49 N. E. 652.

Cutting off rights of unborn or unknown persons.

Cited in Los Angeles County v. Winans, 13 Cal. App. 245, 109 Pac. 640, holding that contingent interests in remainder of unborn children may be adjudicated under principle of virtual representation in judicial proceeding affecting their interests.

Cited in footnotes to Ridley v. Halliday, 53 L. R. A. 477, which holds sale of realty binding on unborn remaindermen; Harrison v. Turnbull, 41 L. R. A. 703, which holds unborn heirs bound by decree in action to establish claims against estate to which living heirs of same class are parties.

Cited in notes (8 L.R.A.(N.S.) 63, 66) on devestiture of estates of persons not in being; (101 Am. St. Rep. 868) on effect of compulsory partition on persons not in esse.

Due process of law.

Approved in Tyler v. Registration Ct. Judges, 175 Mass. 80, 51 L. R. A. 437, 55 N. E. 812 (distinguished in dissenting opinion), holding notice, by mail, by publication, and by posting on the land, of proceeding for registration of title, to all persons known to make any claim to the land, sufficient.

Sufficiency of gift or creation of trust.

Approved in Welch v. Henshaw, 170 Mass. 414, 64 Am. St. Rep. 309, 49 N. E. 659, holding voluntary trust or gift incomplete and unenforceable where settler or donor has kept the property in his own hands, subject to his own disposal, without informing beneficiary thereof.

Quieting title.

Cited in Gilman v. Gilman, 171 Mass. 48, 50 N. E. 452, holding mere apprehension that adverse claim may be maintained insufficient to support petition to quiet title to land; Sawyer v. Cook, 188 Mass. 170, 74 N. E. 356, holding cancellation of recorded contract concerning real estate entered into twenty years prior to recording and which was entirely abandoned will be granted; Rogers v. Nichols, 186 Mass. 441, 71 N. E. 950, holding that a bill may be maintained to prevent the clouding of title under a statute which it is alleged is unconstitutional; Rogers v. Nichols, 186 Mass. 441, 71 N. E. 950, holding tender of person redeeming from tax sale to purchaser unnecessary where statute provides for tender to tax collector.

40 L. R. A. 131, KINGSTON v. FT. WAYNE & E. R. CO. 112 Mich. 40, 70 N. W. 315, 74 N. W. 230.

Evidence of intoxication.

Approved in Herrick v. Wixom, 121 Mich. 390, 81 N. W. 333, holding evidence as to intoxication on other occasions of one suing for personal injuries admissible only on question as to capacity to earn money; Miller v. Bullion-Beck & C. Min. Co. 18 Utah, 364, 55 Pac. 58, holding evidence that defendant's foreman was a drinking man improper, in absence of anything to show that he was intoxicated at time of injury to plaintiff, or that his drinking habits contributed to the injury; Connor v. Koch, 63 App. Div. 264, 71 N. Y. Supp. 836, holding evidence of intoxication of employees of third person in charge of loading of elevator admissible in favor of owner of building in action against him for death of one

killed by iron pipes falling from elevator through window onto sidewalk, in connection with evidence that the latter assisted in the loading.

Annotation in 40 L. R. A. 131, referred to particularly in Louisville & N. R. Co. v. Cummins, 111 Ky. 339, 63 S. W. 594, holding rights of parties to action for killing plaintiff's intestate at railroad crossing not affected by his intoxication, unless it caused him to fail to exercise ordinary care for his safety; Pittsburgh, C. C. & St. L. R. Co. v. O'Connor, 171 Ind. 699, 85 N. E. 969, holding evidence of the intoxication of the defendant at the time of the injury complained of, was admissible on the question of contributory negligence.

Intoxication of plaintiff as a defense.

Cited in Hughes v. Chicago, R. I. & P. R. Co. 150 Iowa, 236, 129 S. W. 956, holding that intoxication is not bar to recovery for personal injury unless there is such state of intoxication as to preclude exercise of ordinary care; Epelett v. Sault Ste. Marie, 144 Mich. 394, 108 N. W. 360, holding instruction that intoxicated person must use greater care than one not intoxicated properly refused.

Cited in footnote to Vizacchero v. Rhode Island Co. 69 L.R.A. 188, which holds that intoxication does not relieve person from degree of car required of sober man under same conditions.

Cited in note (17 L.R.A.(N.S.) 203) on negligence in falling on uneven sidewalk.

Evidence of habits as affecting probable loss of earnings.

Cited in Carlton v. St. Louis & Suburban R. Co. 128 Mo. App. 459, 106 S. W. 1100, holding evidence of unchastity of character may be considered in assessing amount of recovery for probable loss of earnings in personal injury action.

Carrier's duty toward blind or intoxicated passenger.

Approved in Shelly v. Brunswick Traction Co. 65 N. J. L. 642, 48 Atl. 562, holding evidence of plaintiff's intoxication on occasions previous to accident, inadmissible.

Cited in Fox v. Michigan C. R. Co. 138 Mich. 439, 68 L.R.A. 340, 101 N. W. 624, 5 Ann. Cas. 68, holding defense of contributory negligence barred by knowledge of plaintiff's intoxication, and failure to warn him of danger of standing on platform.

Annotation cited in Price v. St. Louis, I. M. & S. R. Co. 75 Ark. 492, 112 Am. St. Rep. 79, 88 S. W. 575, holding that the doctrine of res ipsa loquitur does not apply to cases of the death of a person by reason of circumstances and conditions that are personal and peculiar to him, such as intoxication.

Cited in footnotes to Wheeler v. Grand Trunk R. Co. 54 L. R. A. 955, which holds carrier liable for fall of drunken passenger permitted to dance and stagger near door of baggage car; Southern P. Co. v. Tarin, 54 L. R. A. 240, which holds carrier liable for injury to unwarned passenger in car left standing till undermined by freshet; Southern R. Co. v. Hobbs, 63 L. R. A. 68, which holds carrier liable to partially blind passenger carried beyond her station without having reasonable opportunity to alight, despite conductor's promise to assist her; Bageard v. Consolidated Traction Co. 49 L. R. A. 424, which denies carrier's liability for injury to sick passenger, supposed to be intoxicated, while going towards back of station, after being helped to front, where way open to street.

Cited in notes (69 L.R.A. 513) on care due to sick, infirm, or helpless persons, with whom no contract relation is sustained; (31 L.R.A.(N.S.) 1032) on intoxication of persons on track as affecting applicability of doctrine of last clear chance.

Duty of street railway to passenger on running board.

Cited in note (18 L.R.A.(N.S.) 161) on duty of street car company to passenger on running board.

40 L. R. A. 150, HARLEY v. PROCUNIER. 115 Mich. 53. 69 Am. St. Rep. 546, 72 N. W. 1099.

Waiver of exemption from levy.

Cited in Grover v. Younie, 110 Iowa, 450, 81 N. W. 684, holding right to exemption of one of several teams from execution waived by executing chattel mortgage thereon; Farmers' & M. Bank v. Hoffman, 5 Neb. (Unof.) 18, 96 N. W. 1044, holding release by husband of exemption in favor of creditors binding on wife although made subsequent to his desertion of her.

40 L. R. A. 151, HAGGERTY v. ST. LOUIS ICE MFG. & STORAGE CO. 143 Mo. 238, 65 Am. St. Rep. 647, 44 S. W. 1114.

Game laws.

Approved in State v. Gallop, 126 N. C. 983, 35 S. E. 180, upholding power of legislature to grant, withhold, or restrict right to hunt and kill game; Smith v. State, 155 Ind. 613, 51 L. R. A. 406, footnote p. 404, 58 N. E. 1044, sustaining statute prohibiting possession of quail during close season.

Cited in People v. Booth Fisheries Co. 253 Ill. 430, 97 N. E. 837, holding that statute prohibiting importation of certain kinds of fish into state for purpose of sale, is not invalid as interfering with interstate commerce; State v. Heger, 194 Mo. 711, 93 S. W. 352, holding statute prohibiting sale of wild game whether taken within or without state constitutional; State v. Weber, 205 Mo. 45, 10 L.R.A.(N.S.) 1158, 120 Am. St. Rep. 715, 102 S. W. 955, 12 Ann. Cas. 382, holding statute prohibiting possession of deer not bearing natural evidence of sex applicable alike to wild and tame deer and constitutional; People v. Bootman, 180 N. Y. 10, 72 N. E. 505, 2 Ann. Cas. 226, holding statute prohibiting possession of game during closed season although imported from another state constitutional; State v. Nielsen, 51 Or. 595, 131 Am. St. Rep. 765, 95 Pac. 720, 16 Ann. Cas. 1113, holding on regulative power of states and as to Columbia river where Oregon and Washington have concurrent jurisdiction the more restrictive laws prevail if there is a conflict; Ex parte Blardone, 55 Tex. Crim. Rep. 192, 21 L.R.A.(N.S.) 610, 115 S. W. 838, on regulations by state as to wild game.

Cited in footnotes to State v. Snowman, 50 L.R.A. 544, which sustains statute requiring license for business of guiding in inland fishing and forest hunting; State v. Mallory, 67 L.R.A. 773, denying right of state to forbid nonresident landowner to take fish and game on his property within the state.

Cited in notes (3 L.R.A.(N.S.) 165) on prohibition of possession of game; (78 Am. St. Rep. 248) on validity of fish and game laws.

Construction of statutes creating offenses.

Cited in note (78 Am. St. Rep. 240) on acts which legislature may declare criminal.

Limited and distinguished in State v. Ferguson, 82 Mo. App. 586, holding that removal with wrongful intent is meant by statute relating to wilful removing of corner stones.

Unlawful contracts; in pari delicto.

Approved in Sedalia Bd. of Trade v. Brady, 78 Mo. App. 592, denying right of one contributing money to political committee under unlawful agreement, to invoke aid of court for its recovery because of wrongful appropriation by chair-

man to his own use; McNeill v. Durham & C. R. Co. 135 N. C. 732, 67 L. R. A. 249, 47 S. E. 765 (dissenting opinion), majority holding one accepting free transportation, which carrier is forbidden to grant, not precluded, on ground that he is *in pari delicto*, from holding carrier liable for injuries due to its negligence; Wright v. Stewart, 130 Fed. 926, holding one consenting to bet money of one side on pretended foot race as his own, not *in pari delicto* with those conspiring to obtain his consent, so as to prevent his recovery of money which he intrusted to one of them, not as a bet, but to enable the latter to make a showing, if stake money was called for by one of the betters.

Cited in Hobbs v. Boatright, 195 Mo. 722, 5 L.R.A.(N.S.) 913, 113 Am. St. Rep. 709, 93 S. W. 934, holding one consenting to bet on race because of conspirators' untrue representations that his man was "fixed to win" not in pari delicto; Sawyer v. Sanderson, 113 Mo. App. 245, 88 S. W. 151, holding holder of note given for purchase of saloon which included purchase of license in pari delicto under law prohibiting transfer of license; Barney v. Spangler, 131 Mo. App. 64, 109 S. W. 855, holding no recovery can be had for unnecessary work done on Sunday where such work constitutes a misdemeanor; Stewart v. Wright, 77 C. C. A. 499, 147 Fed. 339 (dissenting opinion), on recovery of money by parties in pari delicto; McNeill v. Durham & C. R. Co. 135 N. C. 732, 67 L.R.A. 249, 47 S. E. 765 (dissenting opinion), majority holding that a person travelling upon a free railroad pass cannot recover for injuries received where passes were forbidden by law.

Cited in notes (12 L.R.A.(N.S.) 613) on validity of contracts in business which it is misdemeanor to transact; (117 Am. St. Rep. 503) on contracts, consideration for which has partly failed, or is partly illegal.

40 L. R. A. 154, OWINGS v. McKENZIE, 133 Mo. 323, 33 S. W. 802.

Release of surety by extension of time to principal.

Approved in Regan v. Williams, 88 Mo. App. 583, holding surety on note secured by purchase money mortgage not released by contract between original holder and purchaser for extension of time, which was void for lack of consideration; Harburg v. Kumpf, 151 Mo. 21, 52 S. W. 19, holding promise of holder to extend note after maturity for definite period, without other consideration than maker's promise to pay interest for such period, void so as not to discharge sureties; Kansas City use of Diamond Brick & Tile Co. v. McGovern, 78 Mo. App. 517, holding sureties for contractor on city improvements not released by extension of time by city from liability to material men for material furnished before extension; White v. Smith, 174 Mo. 206, 73 S. W. 610, holding surety on note secured by mortgage discharged by creditor's agreement, without surety's knowledge, not to proceed with foreclosure until after specified date.

Cited in Regan v. Williams, 185 Mo. 628, 105 Am. St. Rep. 600, 84 S. W. 959, holding surety not released by extension of time of payment given for no consideration; Commercial Bank v. Brinkerhoff, 110 Mo. App. 439, 85 S. W. 121, holding extension for indefinite period not binding although for consideration.

Effect on note of provisions in mortgage securing it.

Approved in Lawson v. Cundiff, 81 Mo. App. 177, holding maturity of note determined by note itself, instead of by deed of trust securing same; Rumsey v. Peoples R. Co. 154 Mo. 246, 55 S. W. 615, holding clause in deed of trust authorizing foreclosure on default for thirty days in payment of coupon interest notes, valid and self-executing, though note not otherwise affected as to its maturity; Westminister College v. Peirsol, 161 Mo. 286, 61 S. W. 811, holding

entire note due by its terms at specified time, due for purpose of foreclosure whenever interest remains unpaid when due, if deed of trust securing same so provides, but not otherwise affected as to maturity by such deed; Hawes v. Mulholland, 78 Mo. App. 497, holding note and mortgage securing same so far separate that action may be maintained on former regardless of latter, though former refers to latter as being part thereof; McMillan v. Grayston, 83 Mo. App. 433, holding mortgage securing series of notes maturing at different times, providing that default in any payment shall render all due, only has effect to enable mortgagee after sale to apply proceeds to all notes, but does not otherwise affect their maturity; City Nat. Bank v. Goodloe-McClelland Commission Co. 93 Mo. App. 136, holding note not rendered non-negotiable by provisions in mortgage securing same, as the mortgage is mere security creating lien on the property; Rasmussen v. Levin, 28 Colo. 453, 65 Pac. 94, holding foreclosure of quitclaim deed securing note, for nonpayment of taxes, not authorized by provision in mortgages securing same note, giving mortgagee option to foreclose on default in paying taxes.

Cited in Burnes v. Ballinger, 76 Mo. App. 61, holding that in a series of tax bills only those which are defaulted become due, and limitation begins to run against such bills immediately; Curry v. La Fon, 155 Mo. App. 683, 135 S. W. 511, holding that provision in mortgage, given to secure promissory notes, that all notes shall become due on nonpayment of any one, does not affect dates on which notes mature, except for purpose of enforcing mortgage; Farmers' Nat. Bank v. McCall, 25 Akla. 603, 26 L.R.A.(N.S.) 219, 106 Pac. 866, holding that a note does not become non-negotiable because of stipulation for attorney's fees in the mortgage given to secure it.

Explained in Higgins v. Deering Harvester Co. 181 Mo. 311, 79 S. W. 959, holding procuring a third person to sign a note without knowledge of one who signed as surety prior thereto releases such surety and also security given by him.

Disapproved in Brewer v. Penn Mut. L. Ins. Co. 36 C. C. A. 291, 94 Fed. 349, holding holder of notes secured by mortgage entitled to declare them due for all purposes and collect them by suit in ordinary form on default in payment of interest, when the mortgage provides that in such case entire debt shall be due; San Antonio Real Estate Bldg. & L. Asso. v. Stewart, 94 Tex. 445, 86 Am. St. Rep. 864, 61 S. W. 386, holding entire series of instalment notes matured so as to set limitations running, by partial default in payment, where mortgage securing them provides for maturity of entire debt in such case.

40 L. R. A. 158, MORRISON v. BENNETT, 20 Mont. 560, 52 Pac. 553.

Rights under illegal contract.

Cited in Central Trust & S. D. Co. v. Respass, 112 Ky. 616, 56 L. R. A. 484, footnote p. 479, 99 Am. St. Rep. 317, 66 S. W. 421, denying power of courts to divide profits of bookmaking partnership; Stewart v. Wright, 77 C. C. A. 499, 147 Fed. 339 (dissenting opinion), on recovery of money paid on contract the parties to which are in pari delicto; Equitable Mut. F. Ins. Co. v. McCrea, 3 Ill. C. C. 122, holding action may be maintained against agent for premiums collected on insurance policies although policies were illegal.

Cited in footnotes to Ullman v. St. Louis Fair Asso. 56 L. R. A. 606, which denies right to abandon partly executed, illegal bookmaking contract for specified period, and recover back *pro rata* amount of money paid; Hankins v. Ottinger, 40 L. R. A. 76, which sustains agreement by owners of race horses to divide equally all premiums and stake moneys awarded to any of such horses.

Cited in notes (99 Am. St. Rep. 326; 23 L.R.A.(N.S.) 481) on accounting between members of illegal or void partnership, or one engaged in illegal business; (113 Am. St. Rep. 734) on rule of pari delicto.

Distinguished in Gallagher v. Cornelius, 23 Mont. 31, 57 Pac. 447, holding illegality of contract of alderman with city to construct sewer, no defense to his contract to indemnify third person for payment of debts in its construction.

What constitutes partnership.

Cited in notes (115 Am. St. Rep. 431) on what constitutes a partnership; (18 L.R.A.(N.S.) 1091) on effect of agreement to share profits to create partnership.

40 L. R. A. 163, MAYO v. WASHINGTON, 122 N. C. 5, 29 S. E. 343.

What are "necessary expenses" of county or municipality.

Approved in Black v. Buncombe County, 129 N. C. 125, 39 S. E. 818, holding courts entitled to say what are necessary expenses of county, but not to control conduct of commissioners in incurring such expenses; Edgerton v. Goldsboro Water Co. 126 N. C. 97, 48 L. R. A. 445, footnote p. 444, 35 S. E. 243, holding cost of providing water for city, authorized by charter, not a necessary expense; Thrift v. Elizabeth City, 122 N. C. 34, 44 L. R. A. 428, 30 S. E. 349, holding water and lights not necessary expenses; Rodman v. Washington, 122 N. C. 41, 30 S. E. 118, holding support of public schools not a necessary expense; Bear v. Brunswick County, 124 N. C. 212, 70 Am. St. Rep. 586, 32 S. E. 558 (dissenting opinion), on point that public school system is a necessary expense; Wadsworth v. Concord, 133 N. C. 593, 45 S. E. 948, holding furnishing of light not such a necessary expense as to justify board of aldermen in entering into contract extending beyond their term of office.

Cited in Henderson Water Co. v. Henderson Graded Schools, 151 N. C. 175, 65 S. E. 927, holding supplying water to public schools and churches "necessary expense."

Cited in note (15 L.R.A.(N.S.) 713) on power of municipality to own electric light plant.

Overruled in Fawcett v. Mt. Airy, 134 N. C. 130, 63 L. R. A. 872, footnote p. 870, 101 Am. St. Rep. 825, 45 S. E. 1029, holding power to procure lighting plant included in power to city to light its streets.

Necessity of separate readings of bill.

Approved in Rodman-Heath Cotton Mills v. Waxhaw, 130 N. C. 294, 41 S. E. 488, and Glenn v. Wray, 126 N. C. 732, 36 S. E. 167, requiring strict compliance with constitutional requirement for three separate readings on three separate days, of every bill authorizing a town to raise money, create debt, or lay tax.

Conclusiveness of findings of fact.

Followed in Wierse v. Thomas, 145 N. C. 268, 15 L.R.A.(N.S.) 1013, 122 Am. St. Rep. 446, 59 S. E. 58, holding findings not conclusive in a like case.

40 L. R. A. 171, LADD v. BOSTON, 170 Mass. 332, 49 N. E. 627.

Regulations as to supply of water and gas.

Cited in Souther v. Gloucester, 187 Mass. 555, 69 L.R.A. 311, 73 N. E. 558, holding city may charge higher rate for rate supplied to summer cottages which are within city limits where to supply them incurred greater expense; Shaw Stocking Co. v. Lowell, 199 Mass. 121, 18 L.R.A.(N.S.) 748, 85 N. E. 90, 15 Ann. Cas. 377, holding general ordinance requiring special regulations for use of water for private fire protection cannot be avoided because enforced only against more important users and being gradually extended; Wilson v. Talla-

hassee Waterworks Co. 47 Fla. 392, 36 So. 63, holding a minimum annual charge for meter service is not an unreasonable regulation whether right to use meters was restricted to a class or not.

Cited in footnotes to Turner v. Revere Water Co. 40 L. R. A. 657, which holds regulation permitting water company to refuse to turn on water until payment of rates of previous owners or tenants unreasonable; Indiana Natural & Illuminating Gas Co. v. State, 57 L. R. A. 761, which denies right of natural gas company to discriminate against single consumer by enforcing meter rate, instead of flat rate, against him; Souther v. Gloucester, 69 L.R.A. 309, which sustains right to charge higher rates for water furnished owners of summer cottages in outlying districts.

Cited in note (61 L. R. A. 113) on establishment and regulation of municipal water supply.

40 L. R. A. 172, THOMPSON v. SALT LAKE RAPID-TRANSIT CO. 16 Utah, 281, 67 Am. St. Rep. 621, 52 Pac. 92.

Doctrine of last clear chance.

Approved in Klockenbrink v. St. Louis & M. River R. Co. 81 Mo. App. 356, holding negligence of person having last opportunity of avoiding accident, proximate cause of injury; Roberts v. Spokane Street R. Co. 23 Wash. 338, 54 L. R. A. 190, 63 Pac. 506, holding street car company liable for injury to traveler by collision which was proximate result of company's negligence as to condition or management of its car, though traveler's negligence was also a condition of the accident.

Cited in Acton v. Fargo & M. Street R. Co. 20 N. D. 453, 129 N. W. 225, holding that street car company is liable for injuries sustained in collision between vehicle and car where company could, by exercise of ordinary care, avoid accident, notwithstanding negligence of driver's in first instance; Bunker v. Union P. R. Co. 38 Utah, 602, 114 Pac. 764, to the point that if brakeman's injury by being caught between cars because of defective braking appliances, although he was negligent in going upon pilot of engine, yet if his injury would have been avoided but for defective brakes, recovery might be had; Pilmer v. Boise Traction Co. 14 Idaho, 346, 15 L.R.A.(N.S.) 266, 125 Am. St. Rep. 161, 94 Pac. 432, holding it error to grant nonsuit where it appears that motorman saw deceased on track and could have avoided the accident by reasonable care; Davis v. Arkansas Southern R. Co. 117 La. 327, 41 So. 587, holding dismissal of suit by trespasser improper where motorman is alleged to have been able to stop before the accident, had the engine been in good condition; Rhymes v. Jackson Electric R. Light & P. Co. 85 Miss. 148, 37 So. 708, holding street car company liable where motorman saw persons negligently picking up packages along track and ran car down steep grade without control or warning; Southern Indiana R. Co. v. Fine, 163 Ind. 626, 72 N. E. 589, holding railroad liable for injury to cableman caused by conductor's failure to give warning before starting although cableman was negligently in a dangerous position; Teakle v. San Pedro, L. A. & S. L. R. Co. 32 Utah, 292, 10 L.R.A.(N.S.) 493, 90 Pac. 402, holding railroad liable for failure of engineer to notice signals of brakeman which if noticed would have enabled him to avoid the injury.

Cited in footnotes to Western & A. R. Co. v. Ferguson, 54 L. R. A. 802, which holds that duty to exercise care to avoid injury from other's negligence does not arise till negligence is apprehensible; Tesch v. Milwaukee Electric R. & Light Co. 53 L. R. A. 618, which denies liability for injury to one guilty of contributory

negligence, notwithstanding subsequent opportunity of other party to avoid injury; Greenlee v. Southern R. Co. 41 L. R. A. 399, which holds that contributory negligence will not prevent recovery for injury to brakeman resulting from continuing negligence, consisting of absence of self couplers; Baltimore Consol. R. Co. v. Armstrong, 54 L. R. A. 424, which denies liability towards one caught between two street cars by becoming confused after assenting to motorman's instructions as to reaching safe place.

Distinguished in Hortenstein v. Virginia-Carolina R. Co. 102 Va. 921, 47 S. E. 996, holding railroad owes no duty of care to trespasser on its right of way.

Contributory negligence towards street cars.

Cited in Indianapolis Street R. Co. v. Tenner, 32 Ind. App. 321, 67 N. E. 1044 (dissenting opinion), on what constitutes contributory negligence in passing over car tracks; Spiking v. Consolidated R. & Power Co. 33 Utah, 325, 93 Pac. 838, holding it not contributory negligence to rely on street railway having its car under control at crossing used by large numbers of persons; Indianapolis Street R. Co. v. Bolin, 39 Ind. App. 175, 78 N. E. 210, holding it not contributory negligence to turn horse back in attempt to avoid collision where driver did not discover danger until upon tracks.

Rights of street railway in street.

Cited in Citizens Street R. Co. v. Hamer, 29 Ind. App. 429, 62 N. E. 658, holding that street railway company has no superior right over pedestrian in street, but that both are required to use reasonable care to prevent injury.

Proximate cause of injury.

Cited in Stone v. Union P. R. Co. 32 Utah, 206, 89 Pac. 715, holding it for the jury whether railroad's negligence was the proximate cause where it concurred with plaintiff's in causing the injury.

Cited in footnote to Rider v. Syracuse Rapid Transit R. Co. 58 L. R. A. 126, which holds proximate cause that which, in natural sequence, unbroken by new cause, produced event.

Contributory negligence of children.

Cited in footnote to Gleason v. Smith, 55 L. R. A. 622, which denies liability for injury by collision with team, to twelve-year-old boy using street as playground.

Cited in note (11 L.R.A.(N.S.) 171) on what acts of child in attempting to cross car tracks are negligence per se.

Care due to deaf and dumb persons.

Cited in note (69 L.R.A. 522) on care due to deaf and dumb persons, with whom no contract relation is sustained.

40 L. R. A. 177, LETTS v. KESSLER, 54 Ohio St. 73, 42 N. E. 765.

Effect of bad motive.

Approved in Bordeaux v. Greene, 22 Mont. 255, 74 Am. St. Rep. 600, 56 Pac. 218, holding right to shut off light and air from neighbor's windows by building on one's own land not affected by motive: Arbuckle v. Woolson Spice Co. 21 Ohio C. C. 368, 11 Ohio C. D. 733; Cincinnati Volksblatt Co. v. Hoffmeister, 62 Ohio St. 198, 48 L.R.A. 732, 78 Am. St. Rep. 707, 56 N. E. 1033, Affirming 5 Ohio N. P. 72, 8 Ohio S. & C. P. Dec. 463,—holding stockholder's right to inspect corporate books not dependent on his motive; Hamilton, G. & C. Traction Co. v. Parish, 67 Ohio St. 190, 60 L.R.A. 531, 65 N. E. 1011, holding motive inducing plaintiff to bring action, of no importance if he had a legal right which he sought

to protect by the suit; Kelley v. Ohio Oil Co. 57 Ohio St. 328, 39 L.R.A. 765, 63 Am. St. Rep. 721, 49 N. E. 399, upholding absolute right to drill and produce oil on one's own land in legal manner, without question by adjoining owner as to its reasonableness.

Cited in Karasek v. Peier, 22 Wash. 427, 50 L.R.A. 345, 61 Pac. 33, sustaining statute authorizing injunction against malicious erection or maintenance of structure intended to spite neighbor; Lancaster v. Hamburger, 70 Ohio St. 164, 65 L.R.A. 860, 71 N. E. 289, denying liability of street car patron for reporting to superintendent conductor's misconduct while on duty, though he is actuated by ill will and a desire to procure conductor's discharge; Giller v. West, 162 Ind. 21, 69 N. E. 548, holding adjacent lot owner has no cause of action for erection of high unsightly fence on next lot although done in malice; Russell v. State, 32 Ind. App. 245, 69 N. E. 482, holding malicious erection of high fence on lot so as to destroy view from adjacent lot and shut out light does not constitute a nuisance; Cleveland v. Anderson, 66 Neb. 264, 5 L.R.A.(N.S.) 136, 92 N. W. 306, holding conversely, that a combination being in restraint of trade, it was immaterial to its legality that it was entered into for the purpose of protecting its members from the effect of a combination of wholesalers from whom they purchased; Anthony Wilkinson Live Stock Co. v. McIlquam, 14 Wyo. 224, 3 L.R.A.(N.S.) 733, 83 Pac. 364, holding malicious erection of legal fence accompanied by no breach of duty not actionable though actual damage is done in cutting off access to public lands for grazing; Cobbey v. State Journal Co. 77 Neb. 632, 110 N. W. 643, holding grossly malicious intent will not support an action where there exists no legal cause of action.

Annotation cited in Loehr v. Dickson, 141 Wis. 335, 30 L.R.A.(N.S.) 496, 124 N. W. 293, holding wilful refusal to allow one holding a land contract to make a tender of payment thereon whereby his rights are lost does not give him a cause of action.

Cited in footnote to Metzger v. Hochrein, 50 L. R. A. 305, which sustains right to maliciously erect unsightly high-board fence on own property, obstructing neighbor's light, air, and view.

Cited in notes (40 L. R. A. 177) on liability for malicious erection of fence; (62 L. R. A. 676, 683, 684) on effect of bad motive to make actionable what would otherwise not be.

Disapproved in effect in Horan v. Byrnes, 72 N. H. 98, 62 L.R.A. 604, footnote p. 602, 101 Am. St. Rep. 670, 54 Atl. 945, which sustains statute, forbidding erection of boundary fence more than 5 feet high, for sole purpose of annoying adjoining owner.

Negligence as to substances on own land or escaping on another's.

Distinguished in Cleveland Terminal & Valley Ry. v. Marsh, 63 Ohio St. 249, 52 L. R. A. 147, 58 N. E. 821, holding small boy employed by station agent without company's knowledge to place switch light, entitled to no greater care from company to keep right of way safe than station agent himself; Lake Shore & M. S. Ry. v. Liidtke, 69 Ohio St. 397, 69 N. E. 653, denying liability for injury to boy on railroad track because of insufficiency of fence which company owed him no duty to maintain.

Unsightly or annoying partition fences.

Cited in Dixon v. Messer, 136 Ill. App. 494, holding city cannot regulate size of partition fences where it does not amount to nuisance; Koblegard v. Hale, 60 W. Va. 40, 114 Am. St. Rep. 868, 53 S. E. 793, 9 Ann. Cas. 732, holding action will not lie to restrain adjoining land owner from erecting high ugly fence because it shuts out light; State v. Whitlock, 149 N. C. 545, 128 Am. St. Rep.

670, 63 S. E. 123, 16 Ann. Cas. 765, holding billboard regulation by city ordinance valid if reasonable and for public safety, and not purely from æsthetic motives; Cleveland (City) v. Bryan, 8 Ohio N. P. 554, 11 Ohio S. & C. P. Dec. 477, holding that ordinance prohibiting billboards above certain height and within certain distance of building line is void; Cossack Co. v. Cincinnati (City) 9 Ohio N. P. N. S. 472, 20 Ohio S. & C. P. Dec. 224 holding that provision of building code that no billboard shall be nearer to lot line on any streets than house line adjoining same is void.

Cited in notes (123 Am. St. Rep. 572) on duty and liability of land owners to adjoining proprietors as to erection of spite fences; (40 L.R.A. 177; 25 L.R.A. (N.S.) 831) on liability for malicious erection of fence; (3 L.R.A.(N.S.) 733) on erection of fences so as to interfere with access to public lands; (7 L.R.A.(N.S.) 50) on injunctive relief as to fences or gates.

Liability for result of lawful acts.

Cited in Iron Molders' Union v. Greenwald Co. 4 Ohio N. P. N. S. 167, 16 Ohio S. & C. P. Dec. 683, holding that strikers may peacefully entice employees to leave their employment when not under contract; Kinney v. Pocock, 8 Ohio N. P. N. S. 133, 19 Ohio S. & C. P. Dec. 364, holding that joinder of contracting part in crusade against boys working in beer bottle factory, rendering business unprofitable, is no excuse for nonperformance of contract to maintain factory; Offutt v. Roth Packing Co. 11 Ohio C. C. N. S. 358, 31 Ohio C. C. 59, holding that nonadjoining, nonabutting owner cannot enjoin bridge over street as interference with light, air and view.

Validity of police regulations as to billboards.

Cited in St. Louis Gunning Advertising Co. v. St. Louis, 235 Mo. 213, 137 S. W. 929 (dissenting opinion), on validity of ordinance regulating size and construction of bill boards upon persons own land.

40 L. R. A. 185, MARCOTTE v. ALLEN, 91 Me. 74, 39 Atl. 346.

Liability of officer for taking illegal fees.

Cited in notes (95 Am. St. Rep. 92) on liability of ministerial officers for taking illegal fees; (15 L.R.A.(N.S.) 184) on recovery of unauthorized fees exacted by public officer.

Recovery of money paid under mistake of law.

Cited in Houlehan v. Kennebec County, 108 Me. 399, 81 Atl. 449, holding that money paid under mistake of law, with full knowledge of facts, is not recoverable, in absence of fraud, or undue advantage or duress.

Cited in footnote to Scott v. Ford, 68 L.R.A. 469, which denies right to recover back money paid by executors under mistaken belief that payee was entitled thereto as representative of a deceased legatee.

40 L. R. A. 187, INTERNATIONAL FRATERNAL ALLIANCE v. STATE, 86 Md. 550, 39 Atl. 512.

Title of acts.

Cited in Himmel v. Eichengreen, 107 Md. 614, 69 Atl. 511, as approving the title to the act amended by the act in question, being an act "To amend article 23, of the Code of Public General Laws, title corporations, subtitle 'Insurance Department.'"

40 L. R. A. 191, INGERSOLL v. HOPKINS, 170 Mass. 401, 49 N. E. 623.

Revocation of will by marriage.

Cited in Re Adler's Estate, 52 Wash. 543, 100 Pac. 1019, holding will which

provides for woman subsequently married to testator not revoked by the marriage where no issue were born therefrom.

Cited in footnotes to *Re* Kelly, 56 L. R. A. 754, which holds woman's will not revoked by subsequent marriage; Glascott v. Bragg, 56 L. R. A. 258, which holds will in favor of third person revoked by marriage and adoption of child; Hudnall v. Ham, 48 L. R. A. 557, which holds revocation of will by subsequent marriage not prevented by antenuptial agreement in its support; Re Teopfer, 67 L.R.A. 315, which holds antenuptial will revoked by testator's marriage.

40 L. R. A. 194, *Re* THOMPSON, 32 Or. 499, 52 Pac. 570.

Pro confesso judgment of disbarment.

Cited in Re Burnette, 70 Kan. 237, 78 Pac. 440 (dissenting opinion) on failure to plead to a charge in disbarment proceedings as warranting a finding of guilty merely on the accusation; Re Burnette, 73 Kan. 632, 85 Pac. 575, holding failure of attorney to appear in defense to action of disbarment may be considered as evidence of guilt in rendering judgment.

40 L. R. A. 195, STATE *ex rel.* CHEYENNE v. SWAN, 7 Wyo. 166, 75 Am. St. Rep. 889, 51 Pac. 209.

Legislative journals.

Cited in Weaver v. Davidson County, 104 Tenn. 327, 59 S. W. 1105, holding legislative journals competent to show invalidity of enactment; State ex rel. Hynds v. Cahill, 12 Wyo. 265, 75 Pac. 433, holding that legislative journals are competent evidence as to matters expressly made by the constitution a matter of journal record and as to such matters it may rebut the presumption of regularity as to the passing of an enrolled bill; Home Teleg. Co. v. Nashville, 118 Tenn. 12, 101 S. W. 770, 11 Ann. Cas. 824, holding that the clause in the Constitution requiring the fact that the speaker signed the bills in open session, be entered in the legislative journal, is directory only.

Cited in footnotes to Stanly County v. Snuggs, 39 L. R. A. 439, which holds fatal, omission to enter yeas and nays in journal on second and third readings on bill authorizing tax; State *ex rel.* Brickman v. Wilson, 45 L. R. A. 772, which denies right of clerk of House of Representatives to expunge false entries from journal after delivery to Secretary of State.

Conclusiveness of enrolled bill.

Cited in note (40 L.R.A.(N.S.) 10, 19, 26, 27, 37, 38) on conclusiveness of enrolled bill.

40 L. R. A. 201, DORSEY v. STATE, 38 Tex. Crim. Rep. 527, 70 Am. St. Rep. 762, 44 S. W. 514.

Regulation of sale of articles of food.

Cited in footnotes to Frost v. Chicago, 49 L. R. A. 657, which holds void, ordinance prohibiting colored netting over package of fruit, etc.; State v. Layton, 62 L. R. A. 164, which sustains statutory prohibition against manufacture or sale of baking powder containing alum; Arbuckle v. Blackburn, 65 L.R.A. 864, which upholds statute prohibiting the coloring, coating, or polishing of article intended for food, whereby damage or inferiority is concealed.

Cited in notes (1 L.R.A.(N.S.) 184, 187) on validity of police regulations as to branding or labeling articles of commerce; (78 Am. St. Rep. 262) on validity of pure food laws.

40 L. R. A. 203, PALESTINE WATER & P. CO. v. PALESTINE, 91 Tex. 540, 44 S. W. 814.

Forfeiture of franchise of water company.

Cited in St. Cloud v. Water, Light & P. Co. 88 Minn. 334, 92 N. W. 1112, sustaining power of city to annul franchise of water company for breach of agreement to furnish pure water of specified amount daily; Gainsville Water Co. v. Gainesville, 57 Tex. Civ. App. 262, 122 S. W. 959, upholding judgment forfeiting franchise of water company where it appeared that it was insolvent and unable to comply with contract with city.

Cited in note (61 L. R. A. 93) on forfeiture of franchise of water company for breach of duty.

Distinguished in Gainesville Water Co. v. Gainesville, 103 Tex. 401, 128 S. W. 370, holding that acceptance of water company plant by city as compliance with contract and failure to demand tests of its capacity estopped city from maintaining action to forfeit company's franchise for failure to perform duty.

Right of water company in streets.

Cited in note (61 L. R. A. 78, 80) on use of highways by water companies.

40 L. R. A. 209, WESTERN U. TELEG. CO. v. MITCHELL, 91 Tex. 454, 66 Am. St. Rep. 906, 44 S. W. 274.

Refusal of court of civil appeals to dismiss cause in 44 S. W. 1075.

Negligence as to telegrams.

Subsequent appeal in 23 Tex. Civ. App. 445, 56 S. W. 439, holding it necessary for plaintiff to show his agent's inability, without his own personal presence and influence, to make arrangements for procuring water.

Followed in Western U. Teleg. Co. v. Moseley, 28 Tex. Civ. App. 563, 67 S. W. 1059, holding company not liable for failure to deliver message to sendee's wife in his absence, unless she is his agent.

Approved in Western U. Teleg. Co. v. Redinger, 22 Tex. Civ. App. 365, 54 S. W. 417, holding question as to negligence in delivering telegram, for jury; Harper v. Western U. Teleg. Co. 92 Mo. App. 312, holding that telegraph company may bind itself to deliver message at specified place, regardless of direction contained in message.

Cited in Southwestern Teleg. & Teleph. Co. v. Gotcher, 93 Tex. 118, 53 S. W. 686, holding statement of death of brother of wife of addressee of message requesting him to attend funeral insufficient notice that message was for benefit of wife also; Barefoot v. Western U. Teleg. Co. 28 Tex. Civ. App. 459, 67 S. W. 912, holding delivery of telegram on Sunday to clerk of hotel where sendee usually stopped while in town, without attempting to find members of his business firm who were to forward message, insufficient; Western U. Teleg. Co. v. Hendricks, 26 Tex. Civ. App. 368, 63 S. W. 341, same case on later appeal in 29 Tex. Civ. App. 414, 68 S. W. 720, holding delivery of death message to business partner of person in whose care message was sent, without attempting to deliver at sendee's residence 4 miles out of town, insufficient where extra charges to secure delivery were paid; Western U. Teleg. Co. v. Norris, 25 Tex. Civ. App. 46, 60 S. W. 982, holding evidence that sendee would have known that his son was meant by telegram incorrectly naming him, and would have reached the place before his burial if message had been delivered, admissible; Louisiana & N. W. R. Co. v. Reeves, 95 Ark. 217, 128 S. W. 1051, holding that whether messenger who was charged with delivery of telegram, and who failed, in addressee's absence, to deliver it at his residence, exercised ordinary diligence is question for jury; Barnes v. Postal Teleg.-Cable Co. 156 N. C. 154, 72 S. E. 78, holding that

telegraph company has not right to deliver message, especially by telephone, in manner which necessarily discloses its contents to one not agent of addressee to receive telegrams; Western U. Teleg. Co. v. M'Caul, 115 Tenn. 105, 90 S. W. 856, holding telegram sent in care of certain person is not sufficiently delivered by delivery to the wife of that person; Sweet v. Western U. Teleg. Co. 139 Mich. 332, 102 N. W. 850, 5 Ann. Cas. 730, holding it not negligence to deliver telegram to person in whose care it is sent where company is told addressee is out of the city; Glover v. Western U. Teleg. Co. 78 S. C. 507, 59 S. E. 526, holding telegraph company responsible for delay occasioned by third person to whom telegram was unauthorizedly delivered; Willis v. Western U. Teleg. Co. 69 S. C. 534, 104 Am. St. Rep. 828, 48 S. E. 538, 2 Ann. Cas. 52, holding it for jury whether son's telegram inquiring as to mother's condition would have been answered by father if duly delivered; Klopf v. Western U. Teleg. Co. 100 Tex. 541, 10 L.R.A.(N.S.) 499, 123 Am. St. Rep. 831, 101 S. W. 1072, holding mistake of operator in taking down address imputable to telegraph company where in consequence it was not propeprly delivered.

Cited in footnotes to Western U. Teleg. Co. v. Cobb, 58 L. R. A. 698, which holds delivery of telegram to clerk of hotel where sendee boards, insufficient; Lefler v. Western U. Teleg. Co. 59 L. R. A. 477, which sustains delivery to ticket agent of telegram directed to person in care of railroad company there.

Evidence as to what would have been done but for defendant's negligence.

Cited in Gulf, C. & S. F. R. Co. v. Hays, 40 Tex. Civ. App. 171, 89 S. W. 29, holding testimony of employees that proper notice to them of obstruction on track would have prevented collision is proper in action for injuries through negligence of railroad.

— Telegraph cases.

Cited in Texas & W. Teleg. & Teleph. Co. v. Mackenzie, 36 Tex. Civ. App. 183, 81 S. W. 581, holding testimony of persons with whom plaintiff intended to contract that they would have accepted his bid admissible in action for delay in delivering telegram.

40 L. R. A. 212, *Ex parte* FAGG, 38 Tex. Crim. Rep. 573, 44 S. W. 294.

Jurisdiction of municipality over offense.

Approved in *Ex parte* Coombs, 38 Tex. Crim. Rep. 654, 44 S. W. 854, denying power of legislature to confer jurisdiction on corporation courts, and holding their jurisdiction confined to matters pertaining to them as incidents to municipal charters; *Ex parte* Wilbarger, 41 Tex. Crim. Rep. 520, 55 S. W. 968, sustaining statute creating corporation courts for cities, towns, and villages, and authorizing them to adopt such courts.

Cited in Mantel v. State, 55 Tex. Crim. Rep. 458, 131 Am. St. Rep. 818, 117 S. W. 855, holding where there is a conflict as to the grant of power to a municipality, the grant will be construed most strongly in favor of the granting power, and against the grantee; Ex parte Anderson, 46 Tex. Crim. Rep. 375, 81 S. W. 973, holding city court has no jurisdiction to try person accused of violation of state penal statute; Ex parte Hinson, 46 Tex. Crim. Rep. 587, 81 S. W. 987, holding city court has no jurisdiction over vagrancy cases where it is a state offense; Ex parte Abrams, 56 Tex. Crim. Rep. 474, 120 S. W. 883, 18 Ann. Cas. 45 (dissenting opinion), on power of legislature to authorize trial of state offenses by city court; Ex Parte Levine, 46 Tex. Crim. Rep. 371, 81 S. W. 1206, sustaining a conviction by a municipal court which had been ineffectually transformed into a state court, where the defense was exclusively

cognizable by a municipal court, and the offense was punishable under the municipal ordinance.

Cited in footnotes to Ogden v. Madison, 55 L. R. A. 506, which sustains city's power to impose penalty for keeping house of ill fame, though misdemeanor under state statute; Judy v. Lashley, 57 L. R. A. 414, which denies power to make punishable by city ordinance, carrying of deadly weapons made punishable by state law.

Cited in notes (1 L.R.A.(N.S.) 384) on power of municipality to legislate on subjects covered by state laws; (17 L.R.A. N. S. 53, 76) on power of municipality to punish act also an offense under state law.

Construction of term "prosecution."

Cited in Bentler v. Com. 143 Ky. 509, 136 S. W. 896; State v. Mayhew, 155 N. C. 480, 71 S. E. 447,—to the point that "prosecution" of criminal offense means whole or any part of procedure which law provides for bringing offenders to justice; People ex rel. Scharff v. Frost, 135 App. Div. 479, 120 N. Y. Supp. 491 (dissenting opinion), on definition of prosecution in criminal action; Ex parte Jackson, 50 Tex. Crim. Rep. 32, 96 S. W. 924, holding that a trial on a criminal charge by complaint before a justice of the peace for an offense cognizable by him, is a prosecution within the meaning of the Constitution requiring all prosecutions to be carried on in the name of the state.

40 L. R. A. 216, BALTIMORE TRUST & G. CO. v. HAMBLETON, 84 Md. 456, 36 Atl. 597.

Relations and rights of syndicate members and corporate promoters.

Subsequent appeal in 86 Md. 312, 38 Atl. 43, in which the court holds syndicate member becoming fraudulently possessed of some of its funds not entitled to the part not claimed by other members failing to become parties to action to recover such funds.

Cited in Blais v. Brazeau, 25 R. I. 419, 56 Atl. 186, holding void a sale by majority of property of incorporated society to themselves as a syndicate where sale was for amount far below real value and opposed by minority; Jackson v. Hooper, 76 N. J. Eq. 199, 74 Atl. 130, to the point that accounting may be had as between persons engaged in joint enterprise whether same constitutes partnership or not; Hossack v. Ottawa Development Asso. 244 Ill. 291, 91 N. E. 439, holding that if voluntary association is organized for pecuniary profit, it will be treated as partnership so far as rights of third persons are concerned; Gasser v. Wall, 115 Minn. 63, 131 N. W. 850, holding that persons united in common purpose must be loyal to each other, and none may secure to himself unfair advantage over those interested with him.

Cited in footnotes to Ferguson v. Gooch, 40 L. R. A. 234 which holds members of syndicate secretly obtaining commission from vendors on purchasing property for syndicate guilty of fraud as to other members; Reed v. Schmidt, 61 L. R. A. 270, which denies right to require withdrawal of railroad bonds the holder of which has borne his share of expense of protecting common interests, from syndicate agreement for its purchase on foreclosure; Milwaukee Cold Storage Co. v. Dexter, 40 L. R. A. 837, which denies promoter's liability for profit on transferring to corporation land purchased before formation of corporation.

Cited in note (40 L. R. A. 216) on relations and rights of syndicate members.

Distinguished in Donnelly v. Baltimore Trust & G. Co. 102 Md. 29, 61 Atl. 301, holding that purchasers of the bonds of corporations stand upon a different footing from the purchasers of stock from the promoters as to fraud in the representations made in selling the bonds.

Fraudulent representations of agent as binding upon the principal.

Cited in Wilson v. Pritchett, 99 Md. 593, 58 Atl. 360, holding that the fraudulent statements of the agent in the ordinary course of his employment and within the apparent and presumable scope of his authority, and which are material to the transaction, bind the principal as a part of the res gestæ.

40 L. R. A. 234, FERGUSON v. GOOCH, 94 Va. 1, 26 S. E. 397.

Agent acting for himself or third person.

Approved in Francis v. Cline, 96 Va. 221, 31 S. E. 10, holding that trust for mother's benefit attaches to land, where son, as her agent, obtained conveyance of legal title from her husband and trustee and exchanged the land for other, title to which he took in his own name.

Cited in Houts v. Scharbauer, 46 Tex. Civ. App. 613, 103 S. W. 679, holding joint investor in real estate will not be permitted to accept large commission in making sale, unknown to others; Beury v. Davis, 111 Va. 589, 69 S. E. 1050, holding that agent acting as agent for both parties to land sale cannot recover commissions where such double agency was not disclosed.

Cited in footnotes to Strong v. Brennan, 47 L. R. A. 792, which denies right of attorney to recover for services to association employing him, when also engaged and paid by adverse party; Kimball v. Ranney, 46 L. R. A. 403, which denies right of agent employed to sell mortgaged property for owner, to purchase at sale.

Distinguished in Farmers' Benev. F. Ins. Co. v. Kinsey, 101 Va. 243, 43 S. E. 338, holding waiver of failure to pay assessment within specified time after notice, by making subsequent assessment against insured in accordance with custom of insurer, not affected by fact that agent making assessment was also agent of insured; Truslow v. Parkersburg Bridge & Terminal R. Co. 61 W. Va. 633, 57 S. E. 51, holding vendor who with knowledge that his agent accepted commission from vendee accepted contract as arranged by agent waives right to avoid contract.

What constitutes a partnership.

Approved in Winslow v. Young, 94 Me. 162, 47 Atl. 149, holding partnership not created by syndicate purchasing land for speculative purposes.

Cited in footnotes to Shrum v. Simpson, 49 L. R. A. 792, which holds no partnership created by contract for working farm and dividing proceeds; Brandon v. Connor, 63 L. R. A. 260, which holds partnership as to third persons constituted by agreement between contractor for grading railroad and one furnishing mules and harness, to give half of net profits to latter.

Cited in note (115 Am. St. Rep. 413) on what constitutes a partnership.

Effect of custom.

Cited in Consumers Ice Co v. Jennings, 100 Va. 723, 42 S. E. 879, holding that a custom of trade cannot change intrinsic character of contract of parties ignorant thereof; Pennsylvania R. Co. v. Naive, 112 Tenn. 256, 64 L. R. A. 447, 79 S. W. 124, holding custom of carrier to suspend business on July 4th not unreasonable, even as to delivery of perishable freight; Bowler v. Rice, 107 Va. 55, 57 S. E. 575, holding that knowledge of the existence of a custom must be brought home to the plaintiffs and cannot be done so by mere allegations in the answer, unless it is so uniform and notorious at the place where the parties affected reside, so as to raise a presumption that they knew of it.

40 L. R. A. 237, VIRGINIA F. & M. INS. CO. v. NEW YORK CAROUSAL MFG. CO. 95 Va. 515, 28 S. E. 888.

Situs of debt for garnishment purposes.

Cited in footnotes to Tootle v. Coleman, 57 L. R. A. 120, which holds right to

garnish debtor not limited to situs of chose in action; Strause Bros. v. Ætna Ins. Co. 48 L. R. A. 452, which holds debt of insurance company for loss in other state, without situs, where company has agent, for garnishment purposes, in third state.

Cited in note (67 L.R.A. 222) as to where debt garnishable.

Protection of nonresident creditor as to garnishment.

Cited in footnotes to Louisville & N. R. Co. v. Nash, 41 L. R. A. 331, which holds garnishment of debt due nonresident not personally served in state, invalid; Hawley v. Hurd, 52 L. R. A. 195, which sustains discrimination between banks in and out of state as to attachment of negotiable paper; Pennsylvania R. Co. v. Rogers, 62 L. R. A. 178, which holds nonresident summoned as garnishee while temporarily within state not subject to further proceedings unless he has property within state; National Broadway Bank v. Sampson, 66 L.R.A. 606, which holds liability of nonresident to nonresident corporation not subject to attachment within state when debtor is temporarily within jurisdiction as situs of debt is at place of residence either of debtor or of creditor.

Distinguished in Stewart v. Northern Assur. Co. 45 W. Va. 739, 44 L. R. A. 104, 32 S. E. 218, holding garnishee of nonresident debtor served by constructive service only, in action based on contract utterly in state where principal debtor resides, not protected by judgment, against suit by such debtor.

Pendency of garnishment proceedings as a defense.

Cited in Minor Shull v. Missouri P. R. Co. 221 Mo. 148, 119 S. W. 1086, holding conditional judgment only can be rendered against defendant who pleads pendency of garnishment proceedings for same debt.

Cited in note (35 L.R.A.(N.S.) 1155) on recovery of judgment for exempt claim pending garnishment in another state.

40 L. R. A. 240, CARDWELL v. KELLY, 95 Va. 570, 28 S. E. 953.

Parties in pari delicto.

Approved in Tate v. Commercial Bldg. Asso. 97 Va. 79, 45 L. R. A. 245, 75 Am. St. Rep. 770, 33 S. E. 382, holding one agreeing to insure his life for benefit of an association to which he belongs not *in pari delicto* so as to prevent court from compelling the association to account if it receives the benefit of the insurance.

Cited in Bendet v. Ellis, 120 Tenn. 300, 18 L.R.A.(N.S.) 121, 127 Am. St. Rep. 1000, 111 S. W. 795, on parties to wager insurance contracts as not being in pari delicto.

Stockholder's liability for unpaid subscription.

Cited in footnote to Vermont Marble Co. v. Declez Granite Co. 56 L. R. A. 728, which holds liability for unpaid subscription not defeated by transfer of stock without transferee's consent.

Cited in note (18 L.R.A.(N.S.) 349) on right, in action by receiver to recover unpaid balance of stock subscriptions, to interpose defense available against corporation.

— Lottery inducements.

Followed in Reed v. Gold, 102 Va. 45, 45 S. E. 868, holding contract to subscribe stock and for lots to be distributed by drawing contest not against public policy hence no defense in suit to enforce liability of stockholder in corporation organized for that purpose for unpaid subscription.

40 L. R. A. 244, HAUG v. RILEY, 101 Ga. 372, 29 S. E. 44.

Transfer by delivery of negotiable paper payable to order.

Cited in Brazil v. State, 117 Ga. 34, 43 S. E. 460, on the passing of the equitable title to a negotiable instrument payable to order, by delivery.

Cited in note (17 L.R.A.(N.S.) 1107, 1110) on transferee, without indorsement, of bill or note payable or indorsed "to order" as bona fide purchaser.

— Necessity of indorsement before maturity.

Cited in Lowry Nat. Bank v. Maddox, 4 Ga. App. 330, 61 S. E. 296, holding that to enable the holder of a promissory note payable to order to assert successfully the rights of a bona fide purchaser for value, it must appear that the note was formally indorsed by the payee in writing before maturity; Baskins v. Valdosta Bank & Trust Co. 5 Ga. App. 601, 63 S. E. 648, holding that proof that the note was in the possession of the original holders but a short while prior to maturity does not shift the burden resting on the defendant of showing that the undated indorsement was made after maturity.

Days of grace.

Cited in Patton v. Band of Lafayette, 124 Ga. 971, 5 L.R.A.(N.S.) 596, 53 S. E. 664, 4 Ann. Cas. 639, holding maturity of note is to be reckoned as of last day of grace for purpose of computing interest in advance.

Competency of copy of lost instrument.

Cited in Continental Fertilizer Co. v. Pass, 7 Ga. App. 723, 67 S. E. 1052, holding copy of lost paper in complaint together with affidavit that original note was lost is sufficient upon which to base an action.

Bona fide holder of reissued commercial paper.

Cited in Ehrlich v. Jennings, 78 S. C. 274, 125 Am. St. Rep. 795, 58 S. E. 922, 13 Ann. Cas. 1166, holding city liable on coupon bond although once redeemed where it failed to cancel it as required by law and suit is by bona fide holder before maturity.

40 L. R. A. 250, AMERICAN TRUST & BKG. CO. v. BOONE, 102 Ga. 202, 66 Am. St. Rep. 167, 29 S. E. 182.

Contract with insane person.

Approved in Orr v. Equitable Mortg. Co. 107 Ga. 500, 33 S. E. 708, holding contract with insane person invalid, though other party did not know of the insanity, and it could not have been discovered by ordinarily reasonable and prudent person; Woolley v. Gaines, 114 Ga. 123, 88 Am. St. Rep. 22, 39 S. E. 892, holding that ignorance by one party to alleged contract of insanity of other party does not *per se* entitle him to enforce it against the latter.

Cited in note (71 Am. St. Rep. 426) on contracts of insane persons.

Effect of adjudication of insanity.

Cited in Slaughter v. Heath, 127 Ga. 751, 27 L.R.A.(N.S.) 18, 57 S. E. 69, holding decision of commissioners that testator was not an imbecile made two days subsequent to drawing of will not conclusive as to his imbecility at the time will was drawn.

Relation and liability between bank and depositor.

Approved in Paul v. Draper, 158 Mo. 201, 81 Am. St. Rep. 296, 59 S. W. 77, holding relation of debtor and creditor, not that of trustee and *cestui que trust*, created by deposit in bank by guardian as trustee for his wards to bank's knowledge, preventing payment in preference to other debts in absence of special circumstances; Globe Sav. Bank v. National Bank of Commerce, 64 Neb. 417, 89

N. W. 1030, holding bank liable to true owner, for appropriating to indebtedness due from depositor, money deposited which it knew to be trust funds.

Cited in footnote to Kimmel v. Bean, 64 L. R. A. 785, which holds bank receiving from agent for deposit in his name, money of principal, without notice of agency, protected in applying it to past-due debt of depositor.

Cited in notes (52 L. R. A. 799) on liability of bank or other depositary or of drawee for taking deposit of agent, fiduciary, or other representative to pay his own debt; (82 Am. St. Rep. 521) on effect of deposit in bank to "trustee."

40 L. R. A. 253, SOUTHERN R. CO. v. COVENIA, 100 Ga. 46, 62 Am. St. Rep. 312, 29 S. E. 219.

Right to recover for death of young child.

Reaffirmed in Atlanta Consol. Street R. Co. v. Arnold, 100 Ga. 567, 28 S. E. 224, denying right of action for loss of services of three-year-old child killed, notwithstanding allegation that it rendered valuable services.

Cited in Crawford v. Southern R. Co. 106 Ga. 878, 33 S. E. 826, holding it question for jury in action for death of child four and one half years old, whether it could render valuable services to its father; Fuller v. Inman, 10 Ga. App. 691, 74 S. E. 287, holding that child six years of age of average capacity and experience, cannot be said, as matter of law, to be incapable of contributing materially to mother's support.

Right to recover funeral expenses of person negligently killed.

Cited in notes (9 L.R.A.(N.S.) 1194) on right, at common law, to recover for loss of time and funeral expenses necessitated by negligent killing of wife; (2 Brit. Rul. Cas. 713) on right to recover funeral or medical expenses of person negligently killed.

Matters admitted by demurrer.

Cited in Bower v. Chess & W. Co. 83 Miss. 223, 35 So. 444, holding demurrer to bill alleging clerical error in dating tax deed does not admit the validity of such deed, in action to confirm tax title; Seaboard Air-Line R. Co. v. Rainey, 122 Ga. 308, 106 Am. St. Rep. 134, 50 S. E. 88, 2 Ann. Cas. 675, holding pleading insufficient on demurrer which alleged in an action for carrying passenger beyond destination that the carrier failed to announce the arrival at the station, and it would have awakened the passenger as he was a light sleeper.

Judicial notice.

Cited in note (124 Am. St. Rep. 42) on facts of which courts will take judicial notice.

40 L. R. A. 256, ORCHARDSON v. COFIELD, 171 Ill. 14, 63 Am. St. Rep. 211, 49 N. E. 197.

Mental unsoundness and its effect.

Approved in Pyott v. Pyott, 191 Ill. 288, 61 N. E. 88, Affirming 90 Ill. App. 219, holding marriage void *ab initio*, where husband's mental faculties were so impaired that he was unable to understand nature and effect of act of marriage, and he was subjected to improper influences; *Re* Brush, 35 Misc. 696, 72 N. Y. Supp. 421, holding want of testamentary capacity not shown by belief in Christian Science, unless it dethroned her reason, making her subject to insane delusions; Layer v. Layer, 110 Ky. 552, 62 S. W. 15, holding insane delusion by testator that he was not the father of one of his children, ground for setting aside will practically disinheriting him.

Cited in Holland v. Riggs, 53 Tex. Civ. App. 374, 116 S. W. 167, holding that if plaintiff in suit brought by next friend was insane and incapable of contracting

marriage, marriage ceremony between her and defendant, pending suit, would have no effect on right to prosecute suit, nor give him any right to control it; Scott v. Scott, 212 Ill. 603, 72 N. E. 708, holding an enthusiastic advocacy of Swedenborgianism no evidence of monomania in suit to set aside a will; Owen v. Crumbaugh, 228 Ill. 405, 119 Am. St. Rep. 442, 81 N. E. 1044, 10 Ann. Cas. 606, holding belief of testator in spiritualism attended by avowed belief that son who died in infancy was grown to manhood in the world of spirits insufficient to avoid will; Dowie v. Sutton, 126 Ill. App. 64, holding a fixed conviction of testator that all women including his sister were attempting to murder him is sufficient insanity to avoid will; Gesell v. Baugher, 100 Md. 686, 60 Atl. 481, holding occasional statements by sick person that attendants were trying to poison him, made during last illness, not sufficient to set aside will.

Cited in footnotes to *Re* Buchanan, 50 L. R. A. 378, which holds sane, for purpose of trial for crime, person rendered dangerous at frequent intervals by uncontrollable appetite for liquor; People v. Gilman, 46 L. R. A. 218, which holds conspiracy to cheat shown by materializing seances, and professed medium punishable, though obvious humbug.

Cited in notes (15 L.R.A.(N.S.) 675) on belief in spiritualism as affecting testamentary capacity; (27 L.R.A.(N.S.) 77) on effect of insane delusion on testamentary capacity; (63 Am. St. Rep. 93, 94, 97) on insane delusions; (79 Am. St. Rep. 376, 377) on invalidity of marriage of insane persons.

Undue influence on deluded testator.

Cited in Steinkuehler v. Wempner, 169 Ind. 165, 15 L.R.A.(N.S.) 679, 81 N. E. 482, holding it for jury whether will was unduly influenced by medium in case where testator was a staunch believer in spiritualism; O'Dell v. Goff, 149 Mich. 158, 10 L.R.A.(N.S.) 991, 119 Am. St. Rep. 662, 112 N. W. 736, holding grant of grossly disproportionate amount of estate to founding a home for aged mediums caused by advice of spiritualistic advisers presumes an undue influence.

Cited in footnote to Kennedy v. Dickey, 68 L.R.A. 317, which holds will not annulled for undue influence by honest and moderate intercession or persuasion unaccompanied with fraud, deceit, threats, or putting in fear.

Effect of void marriage.

Cited in note (96 Am. St. Rep. 268) on effect of void marriage.

40 L. R. A. 266, DETLOR v. HOLLAND, 57 Ohio St. 492, 49 N. E. 690.

Term of lease.

Cited in Brown v. Fowler, 65 Ohio St. 522, 63 N. E. 76, as to length of term under provisions in granting and habendum clauses in oil and gas lease; Murdock-West Co. v. Logan, 69 Ohio St. 520, 69 N. E. 984, holding that lessee's rights under lease for specified term, and so much longer thereafter as oil or gas shall be found in paying quantities, cease on failure to actually find oil or gas within term specified.

Distinction between lease and license.

Cited in footnote to Paul v. Cragnas, 47 L. R. A. 540, which holds lease, not license, made by instrument by which first party "leases" his interest in mining claim for one year, the other agreeing to work the same and pay royalty for all ores taken out.

Construction of terms descriptive of minerals.

Followed in McKinney v. Central Kentucky Natural Gas Co. 134 Ky. 243, 120 S. W. 314, holding grant of "all minerals" does not include any subsequently discovered natural gas.

Cited in Griner v. Ohio Oil Co. 5 Ohio C. C. N. S. 128, 26 Ohio C. C. 523, on the construction of oil and gas leases; Nephi Plaster & Mfg. Co. v. Juab County, 33 Utah, 120, 14 L.R.A.(N.S.) 1043, 93 Pac. 53, holding tax on "mines" includes gypsum; Sult v. Hochstetter Oil Co. 63 W. Va. 325, 61 S. E. 307, holding reservation of "all minerals" includes oil and gas; Kolachny v. Galbraith, 26 Okla. 781, 38 L.R.A.(N.S.) 458, 110 Pac. 902, holding a grant of the oil and gas in the land does not vest any title until the same has been reduced to possession.

Notice to one of joint tenants.

Cited in Wright v. Kaynor, 150 Mich. 19, 113 N. W. 779, holding notice by lessee of premises of intent to renew lease binding on joint lessor's heirs where notice is given to other lessor as provided in lease.

Quieting title against extinguished mining right.

Cited in Negaunee Iron Co. v. Iron Cliffs Co. 134 Mich. 276, 96 N. W. 468, holding equity will enjoin lessee from entering premises under ninety-nine year lease which it abandoned for forty-three years.

40 L. R. A. 269, PEOPLE v. EBANKS, 117 Cal. 652, 49 Pac. 1049.

Elisors to summon jury.

Approved in People v. Fellows, 122 Cal. 238, 54 Pac. 830, holding it error to appoint elisor to summon jury where sheriff is disqualified, unless the coroner is also shown to be disqualified.

Placing jury under charge of disqualified officer.

Approved in People v. Fellows, 122 Cal. 238, 54 Pac. 830, holding that sheriff disqualified by bias to summon jury should not be given charge of them on their retirement to consider their verdict.

Effect of misconduct or separation of jury.

Cited in People v. Chaves, 122 Cal. 140, 54 Pac. 596, holding permitting jury to separate several times during trial, after being admonished, not ground for setting aside conviction.

Cited in footnotes to State v. Cotts, 55 L. R. A. 176, which holds conviction not avoided by juror's conversation with third person on matter foreign to case on trial; Gamble v. State, 60 L. R. A. 547, which holds mere separation of jurors in capital case not ground for reversal; People v. Adams, 66 L.R.A. 247, which holds one convicted of crime entitled to new trial where after submission of case to jury sheriff locked them in three separate rooms on different floors of hotel for night instead of keeping them together unless harmlessness is affirmatively shown.

Cited in notes (24 L.R.A.(N.S.) 778) on permitting separation of jury in capital case; (103 Am. St. Rep. 160) on effect of separation of jury.

Prejudicial error in cross-examination.

Approved in Cook v. Los Angeles & P. Electric R. Co. 134 Cal. 281, 66 Pac. 306, holding improper cross-examination on mere preliminary questions not productive of injury no ground for reversal.

Instruction as to reasonable doubt.

Cited in People v. Sternberg 127 Cal. 513, 59 Pac. 942, holding instruction that jury should consider danger of convicting an innocent person in determining question of reasonable doubt, properly modified by also calling their attention to the danger to society from acquitting a guilty person.

Presumptions on appeal.

Cited in People v. Nogiri, 142 Cal. 597, 76 Pac. 490, referring to rule that error must be shown and will not be presumed on appeal; People v. Allen, 144

Cal. 300, 77 Pac. 948, holding instruction of court to jury to disregard certain evidence raises no presumption of error in admitting such evidence.

Evidence of other crimes.

Cited in People v. Walker, 142 Cal. 95, 75 Pac. 658 (dissenting opinion), majority holding inadmissible, evidence of shortage in defendant's general balance of accounts with a corporation, in which the money of such corporation which he is charged with embezzling is not included; People v. Ruef, 14 Cal. App. 602, 114 Pac. 54; People v. Tomalty, 14 Cal. App. 234, 111 Pac. 513,—holding that evidence of other crimes logically tending to prove any fact necessary or pertinent to proof of crime charged, is admissible; Gunn v. Bates, 6 Cal. App. 270, holding evidence that the defendant procured the return of the forged deed to him under an assumed name, was properly admitted though it also tended to show the defendant guilty of another crime; People v. Rowland, 12 Cal. App. 19, 106 Pac. 428, holding in action of embezzlement evidence of a general shortage is proper as tending to prove specific charge; People v. Botkin, 9 Cal. App. 253, 98 Pac. 861, holding in prosecution for murder evidence of defendant's dishonorable and close relationship to husband of murdered woman may be introduced to show motive.

Cited in note (62 L. R. A. 321) on evidence of other crimes in criminal case.

What constitutes appealable order after judgment.

Distinguished in People v. Flannelly, 128 Cal. 94, 60 Pac. 670, holding warrant of execution not an order made after judgment from which appeal may be taken.

Hypnotic influence in crime.

Annotation approved in State v. Donovan, 128 Iowa, 49, 102 N. W. 791, holding evidence of exercise or pretended exercise of hypnotic influence in securing seduction admissible.

Judicial notice.

Cited in note (82 Am. St. Rep. 442) on judicial notice of localities and boundaries.

40 L. R. A. 280, STATE *ex rel.* GARTH v. SWITZLER, 143 Mo. 287, 63 Am. St. Rep. 653, 45 S. W. 245.

Taxation or appropriations; for what purposes.

Approved in State *ex rel.* Fath v. Henderson, 160 Mo. 216, 60 S. W. 1093, holding collateral inheritance tax for public purpose, and a right or privilege which state has power to tax.

Cited in Lucas County v. State (Davies v. State) 75 Ohio St. 137, 7 L.R.A. (N.S.) 1201, 78 N. E. 955, holding an act providing for the relief of the blind from the general funds of the county is unconstitutional; State ex rel. Board of St. Louis School & Museum of Fine Arts v. St. Louis, 216 Mo. 90, 115 S. W. 434, on when taxation is for a "public purpose" within the meaning of the constitution; First State Bank v. Shallenberger, 172 Fed. 1003, holding an act prohibiting the engaging in the banking business unless done through the agency of a corporation and requiring subscriptions to depositor's guaranty fund was unconstitutional being for private purpose; Larabee v. Dolley, 175 Fed. 391, on the validity of the exercise of the taxing power by state.

Cited in footnotes to Dodge v. Mission Twp. 54 L. R. A. 242, which holds promotion of construction and operation of sugar mills a private purpose not authorizing taxation; Pritchard v. Magoun, 46 L. R. A. 381, which authorizes taxes to aid in building for highway and railway purposes, toll bridge owned

by private corporation; Allen v. State Auditors, 47 L. R. A. 117, which denies right to appropriate public money to pay pardoned convict for alleged wrongful imprisonment; Boehm v. Hertz, 48 L. R. A. 575, which sustains appropriation for state normal school maintained by private corporation; Oren *ex rel.* Barbour v. Pingree, 46 L. R. A. 407, which holds void, statute empowering city to purchase and operate street railways.

Uniformity in taxation.

Cited in Pingree v. Auditor General, 120 Mich. 112, 78 N. W. 1025 (concurring opinion), majority holding tax on telegraph and telephone lines, levied at average rate of all taxes levied throughout state during previous year, in lieu of other taxes, void of lack of uniformity; State v. Bixman, 162 Mo. 70, 62 S. W. 828 (dissenting opinion), majority upholding act imposing inspection tax on beer and permitting manufacture and sale of other intoxicants without inspection.

Cited in note (7 L.R.A.(N.S.) 1198) on validity of statute providing for assistance of individual members of certain classes of unfortunate or afflicted persons.

— Inheritance taxes.

Approved in State *ex rel.* Fath v. Henderson, 160 Mo. 215, 60 S. W. 1093, upholding act imposing succession tax on collateral kindred and exempting lineal descendants; Knowlton v. Moore 178 U. S. 58, 44 L. ed. 976, 20 Sup. Ct. Rep. 747, 9 Pa. Dist. R. 309, upholding progressive rate feature of war revenue act of June, 1898, grading rates according to amounts of legacies or distributive shares, progressively increasing as such amounts increase.

Cited in Union Trust Co. v. Wayne Probate Judge, 125 Mich. 493, 84 N. W. 1101, holding inheritance tax a tax on privilege of transfer, not on property, and not within requirement as to uniformity; Black v. State, 113 Wis. 223, 90 Am. St. Rep. 853, 89 N. W. 522, holding void for unlawful discrimination, act imposing inheritance tax on estates exceeding $10,000 in value and exempting those below that amount; Booth v. Com. 130 Ky. 102, 33 L.R.A.(N.S.) 604, 113 S. W. 61, holding an inheritance tax is not a property tax within the meaning of a constitutional provision requiring uniformity.

Cited in footnotes to Drew v. Tifft, 47 L. R. A. 525, which requires uniformity and equal application in exemption from inheritance tax; Kochersperger v. Drake, 41 L. R. A. 446, which sustains succession tax exempting some, and making different rates for other, classes; Billings v. People, 59 L. R. A. 807, which sustains transfer tax on lineal descendants to whom life estate given with remainder to lineal descendants, but exempting lineal descendants taking fee.

Cited in note (6 L.R.A.(N.S.) 735) on classification for purposes of succession tax on basis of amount.

Inheritance tax; validity of.

Cited in Stellwagen v. Wayne Probate Judge, 130 Mich. 170, 89 N. W. 728, holding that exemption allowed by statute is to be deducted from whole estate instead of from each interest transferred, as other construction would make tax void as one on property instead of upon transfer; People v. Koenig, 37 Colo. 291, 85 Pac. 1129, 11 Ann. Cas. 140, on the constitutionality of an inheritance tax under the Fourteenth Amendment; Nunnemacher v. State, 129 Wis. 233, 9 L.R.A.(N.S.) 140, 108 N. W. 627, 9 Ann. Cas. 711 (dissenting opinion), on the constitutionality of an inheritance tax.

Cited in footnote to Ferry v. Campbell, 50 L. R. A. 92, which holds succession tax void for want of notice of proceedings to fix amount of tax.

Cited in notes (33 L.R.A.(N.S.) 608) on nature of inheritance tax; (127

Am. St. Rep. 1043, 1044, 1057; 23 Eng. Rul. Cas. 107) on validity of inheritance taxes.

When certiorari lies.

Cited in State *ex rel.* Hamilton v. Guinotte, 156 Mo. 526, 50 L. R. A. 794, 57 S. W. 281, holding remedy by certiorari not barred by remedy by appeal or writ of error, unless it is adequate to meet necessities of case; State *ex rel.* Kansas & T. Coal R. Co. v. Shelton, 154 Mo. 691, 50 L. R. A. 807, 55 S. W. 1008, holding that certiorari will not lie to quash judgment denying right to condemn property, for errors which may be corrected by appeal or error, though latter are inadequate for slowness; State ex rel. Arnold v. Lichta, 130 Mo. App. 290, 109 S. W. 825, holding the action of a county court in revoking the license of a dramshop is subject to review on certiorari; State ex rel. Sanks v. Johnson, 138 Mo. App. 314, 121 S. W. 780, on certiorari as being the proper remedy to restrain inferior courts from acting in excess of jurisdiction.

Paternalism of state.

Cited in State *ex rel.* Industrial Home v. Pike County, 144 Mo. 279, 45 S. W. 1096, upholding act authorizing binding of "any female child" as apprentice to industrial home, when construed as meaning any girl which probate court might bind as apprentice.

What are "public schools."

Cited in State ex rel. Moodie v. Bryan, 50 Fla. 384, 39 So. 929, construing the use of the term public schools in a statute.

40 L. R. A. 291, ATHERTON v. ATHERTON, 155 N. Y. 129, 63 Am. St. Rep. 650, 49 N. E. 933.

Conclusiveness of decree of other state.

Cited in People v. Dewey, 23 Misc. 269, 50 N. Y. Supp. 1013, sustaining right to challenge habeas corpus decree rendered in other state on ground of its rendition on Sunday; Olmsted v. Olmsted, 216 U. S. 391, 54 L. ed. 532, 25 L.R.A. (N.S.) 1295, 30 Sup. Ct. Rep. 292, Affirming judgment pursuant to 190 N. Y. 466, 123 Am. St. Rep. 585, 83 N. E. 569, holding that the courts of New York were not bound to give full faith and credit to the statute and decree of the courts of Michigan as to the legitimization of a child so as to control the devolution of property in New York, especially where it would disturb vested rights.

— Decree of divorce.

Reversed in 181 U. S. 155, 45 L. ed. 794, 21 Sup. Ct. Rep. 544, holding mailing of letter to nonresident in divorce suit by attorney appointed to represent her, giving full nature of the suit, addressed to her at her residence, sufficient effort to give notice of suit.

Approved in Winston v. Winston, 165 N. Y. 555, 59 N. E. 273, holding decree of divorce rendered in territory against resident of New York, without personal service or appearance, invalid in New York; Gebhard v. Gebhard, 25 Misc. 3, 54 N. Y. Supp. 406, holding jurisdiction of nonresident defendant in divorce suit not acquired by substituted service on her, by mail, of petition and order, nor by personal service thereof on her at her residence; Starbuck v. Starbuck, 62 App. Div. 440, 71 N. Y. Supp. 104, holding divorced wife entitled to dower in land in New York acquired by husband after divorce procured by her in state where she had acquired domicil after separating from her husband who was personally served in New York where he still resided.

Cited in Tysen v. Tysen, 140 App. Div. 371, 125 N. Y. Supp. 479, holding that divorce granted by default, in another state upon service by publication where

no personal appearance was made, is void; People ex rel. Catlin v. Catlin, 69 Misc. 193, 126 N. Y. Supp. 350, holding that divorce recovered in another state without personal service on defendant or his personal appearance, is valid in this state only when it is recovered in state of defendant's domicil or matrimonial domicil of parties; Williams v. Igel, 62 Misc. 355, 116 N. Y. Supp. 778, holding a divorce obtained by a wife in another state without personal service on husband and without his appearance is void.

Cited in footnotes to Arrington v. Arrington, 52 L. R. A. 201, which holds foreign decree for alimony after defendant's appearance entitled to full faith and credit; Felt v. Felt, 47 L. R. A. 546, which holds divorce on substituted service in other state, where complainant domiciled, entitled to recognition by interstate comity; Herking v. Pfaff, 43 L. R. A. 618, which sustains right of Federal court in suit on decree of divorce rendered in other state to inquire into jurisdiction of court rendering it, in order to determine its validity; Kempson v. Kempson, 58 L. R. A. 484, which sustains jurisdiction in state where parties married and wife resides, of suit to enjoin fraudulent divorce suit by husband in other state; Trowbridge v. Spinning, 54 L. R. A. 204, which holds judgment for alimony, though subject to alteration, final for enforcement in other state.

Cited in notes (59 L. R. A. 163, 170–172, 176, 186) on conflict of laws on subject of divorce; (83 Am. St. Rep. 617; 94 Am. St. Rep. 554) on extraterritorial effect of decree of divorce.

Distinguished in Lacey v. Lacey, 38 Misc. 200, 77 N. Y. Supp. 235, holding that divorce for abandonment in other state on service by publication against the husband, who had left his home there, prevents subsequent suit by wife in New York, for divorce for husband's adultery.

Domicil of married woman.

Cited in Harris v. Harris, 83 App. Div. 129, 82 N. Y. Supp. 568, holding that wife's absence from state of husband's domicil, owing to her mother's illness, does not make her nonresident; Re Bushbey, 59 Misc. 320, 112 N. Y. Supp. 262, holding a woman having no legal grounds for a divorce or a separation cannot by a removal to this state acquire a separate domicil; Gordon v. Yost, 140 Fed. 82, holding a wife deserted by her husband may acquire a domicil in another state for the purpose of maintaining an action for the alienation of affections; Harry v. Dodge, 66 Misc. 306, 123 N. Y. Supp. 37; Callahan v. Callahan, 65 Misc. 175, 121 N. Y. Supp. 39,—on the presumption that the domicil of the husband is that of the wife.

Cited in note (84 Am. St. Rep. 30, 34) on exceptions to rule that husband's domicil is that of wife.

Abrogation of separation agreements.

Cited in note (83 Am. St. Rep. 877) on abrogation of separation agreements.

40 L. R. A. 294, WILHELM v. DEFIANCE, 58 Ohio St. 56, 65 Am. St. Rep. 745, 50 N. E. 18.

Power of city to compel abutting owner to construct a sufficient sidewalk.

Distinguished in McGuire v. East Cleveland, 1 Ohio C. C. N. S. 438, 25 Ohio C. C. 501, holding that where a lot owner constructed a sidewalk according to the requirements of the city ordinance the city could not compel him to alter it so as to conform to the sidewalks constructed contrary to the ordinance.

Liability for personal injuries caused by defective sidewalk.

Cited in Lynch v. C. C. C. & St. L. R. Co. 20 Ohio C. C. 250, 11 Ohio C. D. 244, holding that a railroad was not liable for injuries because of defective side-

walk in front of lots owned by it abutting upon its right of way; Detmers v. Columbus, 2 Ohio N. P. N. S. 658, 15 Ohio S. & C. P. Dec. 213, on the right of the city to recover of an abutting owner, damages it has been compelled because of personal injuries caused by the negligent construction of a sidewalk; Lewiston v. Isaman, 19 Idaho, 669, 115 Pac. 494, holding an owner of abutting property failing to maintain a sidewalk in a proper manner is not liable to the city which is compelled to pay damages for injuries sustained by reason of such defect.

Cited in notes (115 Am. St. Rep. 995) on liability of property owners to persons injured by nonrepair of sidewalks; (12 L.R.A.(N.S.) 950) on right of municipality to indemnity from owner or occupant of abutting property for damages recovered for defect in street.

Contribution between joint tort-feasors.

Cited in Northern Ohio Ry. Co. v. Akron Canal & Hydraulic Co. 7 Ohio C. C. N. S. 81, 28 Ohio C. C. 62, holding that the owner of a mill race who has been compelled to pay damages to a landowner because of the flooding of his land may recover such sum from a railroad company which caused the flooding by an obstruction of the mill race in building its track.

40 L. R. A. 297, VIETOR v. GLOVER, 17 Wash. 37, 48 Pac. 788.

Subsequent action against assignors to determine adverse claims to land in 21 Wash. 677, 59 Pac. 516.

Transfers by insolvent partnership.

Approved in Bedford v. McDonald, 102 Tenn. 365, 52 S. W. 157, denying right of firm creditors, after partners have divided the assets between themselves without asserting any lien as partners, to enforce such lien even though firm was insolvent, in absence of fraud; Excelsior Mill Co. v. Hanover, 102 Wis. 317, 78 N. W. 737, concurring opinion by Marshall, J., who upholds conveyance of firm's assets by members of insolvent firm to pay individual debts of one member, as against firm creditor.

Cited in footnote to Kincaid v. National Wall Paper Co. 54 L. R. A. 412, which sustains right of partners to appropriate, with other partners' consent, interest in firm to pay individual, in preference to firm, debts.

What constitutes an assignment for creditors.

Cited in note (37 L. R. A. 363) on whether preference by mortgage or sale is an assignment for creditors.

Preferences of creditors.

Cited in McAvoy v. Jennings, 44 Wash. 85, 87 Pac. 53, holding debtor may prefer creditors by making an assignment for the benefit of such as will discharge their claims upon receiving a pro rata share of assets; Zent v. Gilson, 52 Wash. 321, 100 Pac. 739, holding a debtor may prefer one creditor by mortgaging to him all his property; Peterson v. Doak, 43 Wash. 252, 86 Pac. 663, on right of insolvent debtor to prefer creditors.

Transfers in fraud of creditors.

Cited in National Surety Co. v. Udd, 65 Wash. 476, 118 Pac. 347, holding that conveyance of property of failing debtor in payment of antecedent indebtedness is not void as to creditors.

Cited in note (12 L.R.A.(N.S.) 174) on applicability of bulk sales law to transfer to creditor.

40 L. R. A. 302, DENNIS v. MOSES, 18 Wash. 537, 52 Pac. 333.

Impairing obligation by changing remedy.

Cited in footnotes to Peninsular Lead & Color Works v. Union Oil & Paint Co. 42 L. R. A. 331, which holds statute for dissolution of attachment by assignment for creditors within ten days void as to contracts made when right of attachment absolute; Jones v. German Ins. Co. 46 L. R. A. 860, which sustains statute shortening time of insurance company's immunity from suit, without extending period of limitations; Kirkman v. Bird, 58 L. R. A. 670, which sustains, as to prior obligations, statute exempting wages for sixty days preceding levy; Miners' & Merchants' Bank v. Snyder, 68 L.R.A. 313, which holds corporate creditor's contract rights not impaired by statute requiring all creditors to unite in one suit against all stockholders for equitable distribution of liability fund among creditors.

Contracts for payment in gold coin.

Cited in footnote to Blanck v. Sadlier, 40 L. R. A. 666, which holds undisclosed gold clause in mortgage on land sold subject to mortgage not defect authorizing cancelation of purchase.

Construction of statutes.

Cited in Wintermute v. Standard Furniture Co. 53 Wash. 641, 102 Pac. 443, on the necessity that purpose and spirit of an act be kept in view in its construction; State v. Robinson, 67 Wash. 432, 121 Pac. 848, to the point that in construing statute general purpose or spirit of act must always be held in view, and when object and general intent are ascertained general words may be restrained to it.

— Deficiency judgment law.

Cited in Bradley Engineering & Mach. Co. v. Muzzy, 54 Wash. 230, 103 Pac. 37, 18 Ann. Cas. 1072, holding a later statute authorizing deficiency judgments upon the foreclosure of a mortgage did not relate to procedure, since it included other purposes.

Agreements respecting equity of redemption.

Cited in note (131 Am. St. Rep. 922) on agreements respecting equity of redemption made simultaneously with mortgage.

40 L. R. A. 317, STATE *ex rel.* BARNARD v. BOARD OF EDUCATION, 19 Wash. 8, 67 Am. St. Rep. 706, 52 Pac. 317.

Supervisory jurisdiction.

Cited in State *ex rel.* Smith v. Superior Court, 26 Wash. 283, 66 Pac. 385, sustaining right to writ of review where remedy by appeal inadequate.

Distinguished in State ex rel. Young v. Superior Ct. 43 Wash. 37, 85 Pac. 989, holding certiorari would not lie to review an order denying a temporary injunction to prevent damage to property without making compensation.

Prohibition.

Cited in Forest Coal Co. v. Doolittle, 54 W. Va. 213, 46 S. E. 238; Reese v. Steel, 73 Ark. 74, 83 S. W. 335 (dissenting opinion),—on when the writ of prohibition will lie.

Supersedeas.

Cited in Lund v. Idaho & W. N. R. Co. 48 Wash. 455, 93 Pac. 1071, on when supersedeas will issue by the supreme court; State ex rel. Martin v. Poindexter, 43 Wash. 148, 86 Pac. 176, on the effect of an appeal from a self executing judgment.

Distinguished in State *ex rel.* Bringgold v. Burns, 21 Wash. 229, 57 Pac.

804, denying supersedeas to continue stay pending appeal from order of police board upon objection as to jurisdiction; State *ex rel.* Cawley v. Bremerton, 32 Wash. 510, 73 Pac. 477, refusing supersedeas to stay judgment of court below pending appeal, where it appears that controversy will have ceased by time appeal will be heard.

Distinguished and cited as changed by constitutional provision in Anderson v. Tingley, 20 Wash. 595, 56 Pac. 371, denying supersedeas in foreclosure proceedings under statute making sheriff receiver.

Disqualification by interest.

Cited in State ex rel. Cook v. Houser, 122 Wis. 575, 100 N. W. 964, holding the decision of the state central committee as to which of two factions were entitled to the use of the party name on the ballot was not void on the grounds of interest on the part of many members.

Distinguished in O'Connell v. Baker, 35 Wash. 381, 77 Pac. 678, refusing to enjoin board of county commissioners from hearing a petition for the establishment of a drainage district because the chairman of the board on behalf of the county signed the petition.

Disapproved in State ex rel. Dorgan v. Fisk, 15 N. D. 228, 107 N. W. 191, holding the proceedings of a board of drainage commissioners was not void because one of the members of the board owned land in the territory to be benefited by their act.

40 L. R. A. 321, WALSH v. PACKARD, 165 Mass. 189, 52 Am. St. Rep. 508, 42 N. E. 577.

To whom covenant is available.

Approved in Carleton v. Bird, 94 Me. 191, 47 Atl. 154, holding action not maintainable by third person on purely personal covenant in contract under seal; Pearson v. Bailey, 177 Mass. 319, 58 Atl. 1028, holding that grantee by deed stating that it is subject to a mortgage which covers adjoining lot also, cannot take advantage of promise by prior grantee of such lot to pay such mortgage as part of the consideration; Lincoln v. Burrage, 177 Mass. 379, 52 L. R. A. 111, 59 Atl. 67, holding that promise to pay share of cost of party wall when used, made by grantee for himself, his heirs and assigns, to grantor who had previously sold adjoining lot, does not run with the land.

On whom judgment is binding.

Approved in Forbes v. Douglass, 175 Mass. 192, 55 Atl. 847, holding administrator not bound by judgment dismissing suit by heirs to set aside contract by decedent on ground of insanity and fraud.

40 L. R. A. 345, THOMPSON v. LOWELL, L. & H. STREET R. CO. 170 Mass. 577, 64 Am. St. Rep. 323, 49 N. E. 913.

Liability for dangerous premises.

Cited in Ainsworth v. Lakin, 180 Mass. 400, 57 L. R. A. 135, 91 Am. St. Rep. 314, 62 N. E. 746, holding owner of wall left standing after fire more than reasonable time for investigation liable for ordinary consequences; Sebeck v. Plattdeutsche Volksfest Verein, 59 C. C. A. 534, 124 Fed. 14, holding owner of pleasure resort exercising due care to employ competent and skilful person to manufacture and discharge fireworks, and taking proper precautions to protect spectators, not liable for injury by premature explosion of bomb; Indianapolis Street R. Co. v. Dawson, 31 Ind. App. 608, 68 N. E. 909, holding street railway company owning park liable for assault made on colored person thereat, without interference by its employees, by persons conspiring to its knowledge to make

assaults on colored persons; Murrell v. Smith, 152 Mo. App. 117, 133 S. W. 76, holding that managers of public entertainments must keep place in reasonably safe condition for protection of patrons: Williams v. Mineral City Park Asso. 128 Iowa, 38, 1 L.R.A.(N.S.) 431, 111 Am. St. Rep. 184, 102 N. W. 783, 5 Ann. Cas. 924, holding the owners of an amusement park were not liable for an injury received by a patron when struck by a bottle falling from a band platform raised above the amphitheater; Larkin v. Saltair Beach Co. 30 Utah, 100, 3 L.R.A.(N.S.) 987, 116 Am. St. Rep. 818, 83 Pac. 686, 8 Ann. Cas. 977, on the degree of care required of the proprietors of an amusement resort.

Cited in footnotes to Mastad v. Swedish Brethren, 53 L. R. A. 803, which holds proprietor of place of amusement required to use reasonable care to protect patrons from assaults by one rendered disorderly by liquor sold there; Sebeck v. Plattdeutsche Volksfest Verein, 50 L. R. A. 199, which denies proprietor's liability for injury to spectator at exhibition by explosion of bomb in hands of skilled person.

Cited in notes (1 L.R.A.(N.S.) 429) on negligence of proprietor of place of entertainment injuring visitor; (3 L.R.A.(N.S.) 1134) on liability of one maintaining place of public amusement for safety of patrons; (100 Am. St. Rep. 196) on liability of owner to persons invited to use dangerous property.

Distinguished in Clark v. Northern P. R. Co. 29 Wash. 148, 59 L. R. A. 512, footnote p. 508, 69 Pac. 636, denying liability of railroad company permitting circus on its vacant land adjoining switch yard, for injury to person crossing yard to reach circus.

— Independent contractors.

Approved in Boomer v. Wilbur, 176 Mass. 484, 53 L. R. A. 173, footnote p. 172, 57 N. E. 1004, denying owner's liability for injury by fall of bricks through negligence of independent contractor repairing chimney; Thornton v. Maine State Agri. Soc. 97 Me. 115, 94 Am. St. Rep. 488, 53 Atl. 979, holding agricultural society liable for death of person killed by patron of shooting gallery on the grounds, in which deadly weapons were used, whether proprietor of such gallery was tenant or licensee.

Cited in Frostman v. Stirrat & G. Invest. Co. 65 Wash. 613, 118 Pac. 742, holding that fact that it was duty of contractor to erect staging over sidewalk area does not relieve owner of premises from liability for failure to have staging up, where permit was issued to him and he agreed to comply with ordinance; Turgeon v. Connecticut Co. 84 Conn. 542, 80 Atl. 714, holding that street railway which owns and maintains amusement park is bound to exercise reasonable care to keep grounds and structures and appliances reasonably safe for visitors, although others operate and control them subject to company's supervision; Stickel v. Riverview Sharpshooters Park Co. 250 Ill. 455, 34 L.R.A.(N.S.) 660, 95 N. E. 445, holding that owner of amusement park who receives percentage of receipts of concessioners is bound to see that devices and attractions operated by them are reasonably safe; Stickel v. Riverview Sharpshooters Park Co. 159 Ill. App. 114, holding that owner of amusement park is liable for injuries to patron caused by defective apparatus employed by concessioners, where owner receives percentage of admission fees; Thomas v. Springer, 134 App. Div. 643, 119 N. Y. Supp. 460, holding the owner of a theater was not liable for an injury to a patron through the negligence of an employee of the theatrical company playing in the theater for a percentage of receipts; Hollis v. Kansas City, Mo. Retail Merchants Asso. 205 Mo. 518, 14 L.R.A.(N.S.) 288, 103 S. W. 32, on liability for the negligence of independent contractors.

Cited in footnotes to Peerless Mfg. Co. v. Bagley, 53 L. R. A. 285, which holds

landlord liable for independent contractor's negligence in putting in automatic fire extinguisher; Pittsfield Cottonwear Mfg. Co. v. Pittsfield Shoe Co. 60 L. R. A. 116, which holds landlord liable to tenants of lower floor for injury from freezing of automatic fire extinguisher in portion retained by former, though building heated by independent contractor; Bonaparte v. Wiseman, 44 L. R. A. 482, which requires one employing independent contractor to excavate near neighbor's house, to notify neighbor or see that contractor exercises due care; Smith v. Benick, 42 L. R. A. 277, which denies liability of proprietor of public resort for negligence of balloonist, who was an independent contractor; Wright v. Big Rapids Door & Blind Mfg. Co. 50 L. R. A. 495, which denies liability of owner of premises for negligent piling of lumber taken from car by independent contractor; Hoff v. Shockley, 64 L. R. A. 538, which holds property owner not liable for injuries to traveler by obstructions placed in street, without danger signals, by independent contractor for construction of building.

Cited in notes (65 L.R.A. 836, 838, 855) on liability for injuries caused by performance of work by independent contractor which is dangerous unless certain precautions are observed; (14 L.R.A.(N.S.) 285) on liability of one conducting fair for injury to patron through negligence of concessionary; (76 Am. St. Rep. 407, 414, 415) on liability for negligence and torts of independent contractors.

40 L. R. A. 347, LORENZO v. WIRTH, 170 Mass. 596, 49 N. E. 1010.

Liability for defective coal hole.

Cited in footnotes to West Chicago Masonic Asso. v. Cohn, 55 L. R. A. 235, which denies landlord's liability for injury by defective condition of coal hole in sidewalk; Lincoln v. First Nat. Bank, 60 L. R. A. 923, which holds purchaser at sheriff's sale not liable to city for amount of judgment against it, for injury, three weeks after sheriff's deed issued, from negligently constructed coal hole.

Liability for dangerous condition of premises.

Cited in Hoyt v. Woodbury, 200 Mass. 346, 22 L.R.A.(N.S.) 732, 86 N. E. 772, holding the owner of a building on a street to which there was a grade was not liable for injuries received by a patron leaving a store in the building by falling down a step in leaving it; Sheehan v. Bailey Bldg. Co. 42 Wash. 539, 85 Pac. 44, holding owner of premises was not liable for one injured by falling down a stairway on a private alley while seeking to escape from a runaway horse.

Cited in note (5 L.R.A.(N.S.) 733) on duty to trespasser as to excavations on uninclosed land near highway.

40 L. R. A. 350, PIERCE v. SOUTHERN P. CO. 120 Cal. 156, 47 Pac. 874, 52 Pac. 302.

Foreign corporations.

Cited in footnote to Williams v. Metropolitan Street R. Co. 64 L. R. A. 794, which holds foreign corporation "out of state" within provision as to running of statute of limitations.

Cited as *obiter* in Harrigan v. Home L. Ins. Co. 128 Cal. 540, 61 Pac. 99, sustaining right of foreign corporation complying with conditions as to doing business, to rely on statute of limitations.

Carrier's liability for loss of goods.

Cited in footnote to New York, P. & N. R. Co. v. Cromwell, 49 L. R. A. 462, which holds carrier leasing cars from other company liable for loss of freight not properly refrigerated.

Cited in notes (31 L.R.A.(N.S.) 93) on liability of connecting carrier for loss beyond own line; (90 Am. St. Rep. 301) on liability of carrier for destruction of goods by the elements.

Act of God affecting carriers.

Cited in footnote to Smith v. North American Transp. & Trading Co. 44 L. R. A. 557, which holds steamer company compelled to abandon trip before completion, required to bring passenger back without charge.

Limitation of carrier's liability.

Approved in Merrill v. Pacific Transfer Co. 131 Cal. 589, 63 Pac. 915, denying right of carrier to limit its liability for loss resulting from its gross negligence; Nelson v. Great Northern R. Co. 28 Mont. 323, 72 Pac. 642, denying carrier's power to limit by special contract, its liability for delay in transportation, due to negligence.

Cited in Chicago, R. I. & P. R. Co. v. Wehrman, 25 Okla. 155, 105 Pac. 328, holding that contract between carrier and shipper of livestock, in consideration of reduced freight rates, providing that in case of total loss of any of the livestock, liability of carrier shall not exceed maximum valuation stipulated in contract is valid; Blackwell v. Southern P. Co. 184 Fed. 492, holding that contract between shipper and carrier limiting amount of carrier's liability because of lower freight rates and releasing carrier from all loss except that caused by gross negligence is valid; Roberts v. Sierra R. Co. 14 Cal. App. 197, 111 Pac. 519, on right of passenger carrier to limit its responsibility by special contract; Donlon Bros. v. Southern P. Co. 151 Cal. 773, 11 L.R.A.(N.S.) 816, 91 Pac. 603, 12 Ann. Cas. 1118, holding a railroad company might properly enter into a contract with a shipper fixing an agreed valuation on the property shipped; Kelly v. Southern R. Co. 84 S. C. 252, 66 S. E. 198, holding a stipulation for the payment of damages to be computed on the value of the property at the time and place of shipment must include the value when received by the carrier and freight paid; Deschamps v. Atlantic Coast Line R. Co. 84 S. C. 360, 66 S. E. 414, holding to same effect.

Cited in footnotes to Ullman v. Chicago & N. W. R. Co. 56 L. R. A. 246, which sustains carrier's right to secure entire exemption from liability as insurer for loss not due to negligence or misfeasance; Mears v. New York, N. H. & H. R. Co. 56 L. R. A. 884, which authorizes carrier to stipulate for exemption from liability for wet; Parker v. Atlantic Coast Line R. Co. 63 L. R. A. 827, which holds requirement that perishable freight must be carried at owner's risk, void where no other terms offered by carrier; Tecumseh Mills v. Louisville & N. R. Co. 49 L. R. A. 558, which holds prohibition against carriers limiting liability inapplicable to contract by domestic corporation in other state for transportation entirely outside of state; Rosenthal v. Weir, 57 L. R. A. 527, which holds failure to comply with agreement for stoppage *in transitu* not within contract limiting liability to specified amount; Central R. Co. v. Murphey, 53 L. R. A. 720, which holds negligent carrier liable for true value, notwithstanding arbitrary preadjustment in bill of lading, assented to by shipper; Bosley v. Baltimore & O. R. Co. 66 L.R.A. 871, which denies right of carrier of live stock to exempt itself from liability for loss by delay in transportation occasioned by its negligence or misfeasance by contract providing that shipper shall accept as full compensation in case of unusual detention amount actually expended in purchase of food and water while so detained.

Cited in note (1 L.R.A.(N.S.) 986) on limiting valuation of property as affecting amount of recovery for loss by carrier's negligence; (88 Am. St. Rep. 106, 119) on limitation of carrier's liability in bills of lading.

Right to fix route of through shipments.

Cited in Chartrand v. Southern R. Co. 85 S. C. 485, 67 S. E. 741, holding that if no special route is agreed upon, carrier must in selecting route, have due regard to interests of shipper.

Cited in footnote to Post v. Southern R. Co. 55 L. R. A. 481, which sustains carrier's right to designate route of through shipment at through rates.

Cited in notes (37 L.R.A.(N.S.) 223) on duty of carrier as to route; (2 Brit. Rul. Cas. 595) on effect of deviation upon carrier's rights and liabilities.

Liquidated damages.

Cited in footnotes to Salem v. Anson, 56 L. R. A. 169, which holds stipulated amount to be paid to city for failure to complete electric light plant within specified time, liquidated damages; Kilbourne v. Burt & B. Lumber Co. 55 L. R. A. 275, which holds provision for retaining 15 cents per 100 feet for logs not delivered by specified date, one for liquidated damages; Chicago House-Wrecking Co. v. United States, 53 L. R. A. 122, which holds stipulation for certain sum as damages for failure to remove building by certain time, penalty, when actual damages easily assessable.

Residence of corporation.

Cited in Keystone Driller Co. v. Superior Ct. 138 Cal. 742, 72 Pac. 398, holding the residence of a corporation is of the place of its organization.

Plea of statute of limitations by a foreign corporation.

Cited in O'Brien v. Big Casino Gold Min. Co. 9 Cal. App. 286, 99 Pac. 209, holding the plea of the statute of limitations will not lie on behalf of a foreign corporation which has failed to designate a resident upon whom process might be served.

Cited in footnote to Colonial & U. S. Mortg. Co. v. Northwest Thresher Co. 70 L.R.A. 814, which holds bar of limitations available to foreign corporation which has complied with laws of state and has regularly done business in state during entire statutory period during all of which time it has had an agent resident in state on whom process could be served.

Presumption as to laws of foreign states.

Cited in Easton v. Wostenholm, 70 C. C. A. 108, 137 Fed. 530, on the law of a foreign country as being presumed to be the same as that of state in absence of proof.

Cited in note (67 L.R.A. 43) on how case determined when proper foreign law not proved.

40 L. R. A. 355, LEES v. COLGAN, 120 Cal. 262, 52 Pac. 502.

Who entitled to reward.

Cited in Clinton County v. Davis, 162 Ind. 67, 64 L. R. A. 784, 69 N. E. 680, holding vote buyer not entitled to reward offered by statute to person furnishing information resulting in conviction for selling vote; Cornwell v. St. Louis Transit Co. 100 Mo. App. 262, 73 S. W. 305, holding that renewal of offer of reward for conviction to one who had been member of sheriff's posse at time of arresting criminal, but who has been discharged, entitles him to reward on securing conviction.

Cited in footnotes to Hogan v. Stophlet, 44 L. R. A. 809, which denies sheriff's right to reward for making arrest within county for felony committed therein; Smith v. Vernon County, 70 L.R.A. 59, which sustains right of police officer to reward offered by authorities of another state for apprehension of perpetrator of crime committed there where he acts as private detective in making arrest. Cited in note (11 L.R.A.(N.S.) 1170) on right of officer to reward for arrest

40 L. R. A. 358, DUMAS v. NORTHWESTERN NAT. INS. CO. 12 App. D. C. 245.

Construction of insurance policy.

Approved in Mitchell v. Potomac Ins. Co. 16 App. D. C. 262, requiring adoption of construction of ambiguous insurance contract most favorable to insured.

Conditions in policy.

Followed in Hunt v. Springfield F. & M. Ins. Co. 20 App. D. C. 50, conceding validity of condition that policy shall be void if insured property be encumbered by chattel mortgage; Germier v. Springfield F. & M. Ins. Co. 109 La. 345, 33 So. 361, holding insurance on contents of house avoided by false representation, made a warranty, as to ownership of house, where parties agree that "entire policy" shall be void if there is any misrepresentation.

Cited in Wyandotte Brewing Co. v. Hartford F. Ins. Co. 144 Mich. 444, 6 L.R.A.(N.S.) 854, 115 Am. St. Rep. 458, 108 N. W. 393, holding a fire insurance policy avoided by reason of fact that the land on which the building stood belonged to another than insured, where such fact not communicated by insured, he having no knowledge of the provision as to ownership; Parsons v. Lane (Re Millers' & Mfrs.' Ins. Co.) 97 Minn. 112, 4 L.R.A.(N.S.) 238, 106 N. W. 485, 7 Ann. Cas. 1144, holding a policy with a condition that it should be void if the interest of insured was other than sole and unconditional was void where the building stood on leased ground although insured had no notice of the condition and the insured was not informed of such fact; St. Landry Wholesale Mercantile Co. v. New Hampshire F. Ins. Co. 114 La. 153, 38 So. 87, 3 Ann. Cas. 821, on the sufficiency of compliance with conditions in policy.

Cited in footnotes to Southern Ins. Co. v. Estes, 52 L. R. A. 915, which holds policy not avoided by existence of vendor's lien, nor institution of foreclosure proceedings; Steinmeyer v. Steinmeyer, 59 L. R. A. 319, which holds entry of judgment setting aside voluntary deed does not change grantee's ownership.

Cited in notes (16 L.R.A.(N.S.) 1248) on estoppel to forfeit policy for the false answers inserted by insurance agent without questioning insured; (32 L.R.A.(N.S.) 460) on effect of false swearing in proofs of loss.

Interest of insured when not sole and unconditional.

Cited in Glens Falls Ins. Co. v. Michael, 167 Ind. 689, 8 L.R.A.(N.S.) 720, 74 N. E. 964 (dissenting opinion), on when interest of insured in property is not unconditional and sole within the meaning of the policy.

Cited in footnote to Phenix Ins. Co. v. Kerr, 66 L.R.A. 569, which holds interest of owner of property held by another under option to purchase which is irrevocable by owner but which owner of option is not bound to accept, sole and unconditional ownership.

Cited in note (20 L.R.A.(N.S.) 779) on vendee under land contract as owner within meaning of insurance policy.

Indivisibility of insurance contract.

Cited in Sullivan v. Mercantile Town Mut. Ins. Co. 20 Okla. 469, 129 Am. St. Rep. 761, 94 Pac. 676, on the indivisibility of a contract of insurance upon property.

Cited in footnotes to Miller v. Delaware Ins. Co. 65 L.R.A. 173, which holds policy on a building and on fixtures and merchandise therein, specifying a certain amount for each, severable and valid as to building and fixtures, notwithstanding breach of condition as to inventory avoiding policy as to merchandise; Dow v. National Ins. Co. 67 L.R.A. 479, which holds policy on furniture of house void in toto where a large part of the furniture has not been paid for.

40 L. R. A. 364, PARISH v. WESTERN & A. R. CO. 102 Ga. 285, 29 S. E. 715.

Contributory negligence on railroad track.

Approved in Hopkins v. Southern R. Co. 110 Ga. 89, 35 S. E. 307, holding one running on track in front of train which she is looking at, guilty of negligence preventing recovery for her death.

Cited in Moore v. Southern R. Co. 136 Ga. 877, 72 S. E. 403, to the point that in cases of personal injuries, plaintiff is bound to use ordinary care to avoid consequences of defendant's negligence; Seaboard Air-Line R. Co. v. Smith, 3 Ga. App. 6, 59 S. E. 199, holding defendant not liable for the homicide of a passenger put off the train after it had passed his station, he being in an intoxicated condition, where he was struck by another of defendants trains while walking on the track.

Cited in footnote to Neal v. Carolina C. R. Co. 49 L. R. A. 684, which denies liability for death of person walking on track, by train running at excessive speed without ringing bell.

Acts of person after injury.

Cited in Rollestone v. Cassirer, 3 Ga. App. 175, 59 S. E. 442, on the intervening acts of injured party as relieving another from liability for his negligent acts.

Duty owed by railroad company to trespassers.

Cited in Birmingham R. Light & P. Co. v. Jones, 153 Ala. 163, 45 So. 177, holding no duty rested upon a railroad company to be on the lookout for children trespassing on tracks; Hall v. Western & A. R. Co. 123 Ga. 215, 51 S. E. 311, on the duty owed by railroad company to trespassers.

Cited in note (69 L.R.A. 544, 546) on care due to sick, infirm, or helpless persons, with whom no contract relation is sustained.

40 L. R. A. 367, CHICAGO PACKING & PROVISION CO. v. SAVANNAH, F. & W. R. CO. 103 Ga. 140, 29 S. E. 698.

Misdelivery by carrier.

Approved in Schwarzchild & S. Co. v. Savannah, F. & W. R. Co. 76 Mo. App. 629, holding carrier fully protected as against shipper in delivering goods with his assent without bill of lading.

Cited in footnote to Southern R. Co. v. Atlanta Nat. Bank, 56 L. R. A. 546, which holds carrier liable to holder of bill of lading for loss of cotton by delivery from its compress to third person at consignor's direction.

Delivery by carrier of goods under bill of lading.

Cited in Paxson Bros. v. Warfield, 6 Ga. App. 317, 65 S. E. 34, on the rights of the legal holder of a bill of lading as being superior to that of the consignor and consignee with reference to their delivery.

Cited in footnotes to Clegg v. Southern R. Co. 65 L.R.A. 717, which holds carrier refusing to deliver freight because of refusal of excessive charge liable for ensuing loss, though the one making the demand had not obtained the bill of lading nor an order for delivery; National Newark Banking Co. v. Delaware L. & W. R. Co. 66 L.R.A. 595, which holds carrier bound to deliver goods to true owner claiming under consignee when it has notice of true owner's rights and bill of lading has already been surrendered.

40 L. R. A. 369, SMALLS v. STATE, 101 Ga. 570, 28 S. E. 981.

Coroner's inquest as evidence.

Cited in notes (95 Am. St. Rep. 766) on coroner's inquest as evidence; (68 L.R.A. 286) on admissibility of finding of coroner to show cause of death.

40 L. R. A. 370, MAGEE v. OVERSHINER, 150 Ind. 127, 65 Am. St. Rep. 358, 49 N. E. 951.

Additional servitude.

Approved in Coburn v. New Teleph. Co. 156 Ind. 95, 52 L. R. A. 674, footnote p. 672, 59 N. E. 324, holding occupation of sidewalk with trench and pipes for conduit for telephone wires not additional burden; Castle v. Bell Teleph. Co. 49 App. Div. 441, 63 N. Y. Supp. 482, holding subsurface conduit in street for telephone wires previously maintained on poles not additional burden.

Cited in McCann v. Johnson County Teleph. Co. 69 Kan. 217, 66 L.R.A. 176, 76 Pac. 870, 2 Ann. Cas. 156; Frazier v. East Tennessee Teleph. Co. 115 Tenn. 420, 3 L.R.A.(N.S.) 325, 112 Am. St. Rep. 856, 90 S. W. 620, 5 Ann. Cas. 838; Kirby v. Citizens' Teleph. Co. 17 S. D. 371, 97 N. W. 3, 2 Ann. Cas. 152,—holding the construction and maintenance of a telephone system is not such an additional servitude on the streets as to entitle the abutting owners to compensation; Lowther v. Bridgeman, 57 W. Va. 310, 50 S. E. 410; Cumberland Teleph. & Teleg. Co. v. Avritt, 120 Ky. 39, 85 S. W. 204, 8 Ann. Cas. 955,—holding same as to highways; Kinsey v. Union Traction Co. 169 Ind. 586, 81 N. E. 922; Mordhurst v. Ft. Wayne & S. W. Traction Co. 163 Ind. 280, 66 L.R.A. 116, 106 Am. St. Rep. 222, 71 N. E. 642, 2 Ann. Cas. 967,—holding that an interurban electric railway is not an additional burden upon a street, though it carries express and other matter, besides passengers; Pittsburgh, C. C. & St. L. R. Co. v. Browning, 34 Ind. App. 93, 71 S. W. 227; Citizens Street R. Co. v. Hamer, 29 Ind. App. 429, 62 N. E. 658,—on street railroads as not being an additional servitude on property of abutting owners.

Cited in footnotes to Palmer v. Larchmont Electric Co. 43 L. R. A. 672, which holds electric light poles not additional burden on fee in country highway; Bronson v. Albion Teleph. Co. 60 L. R. A. 426, which holds poles and wires permanently and exclusively occupying portion of street, an additional burden.

Cited in note (106 Am. St. Rep. 262, 263) on what are additional servitudes in highways.

Disapproved in Krueger v. Wisconsin Teleph. Co. 106 Wis. 107, 50 L. R. A. 304, footnote p. 298, 81 N. W. 1041; Nicoll v. New York & N. J. Teleph. Co. 62 N. J. L. 737, 72 Am. St. Rep. 666, 42 Atl. 583; Donovan v. Allert, 11 N. D. 297, 58 L. R. A. 780, footnote p. 775, 95 Am. St. Rep. 720, 91 N. W. 441; Bronson v. Albion Teleph. Co. 67 Neb. 115, 60 L.R.A. 428, footnote p. 426, 93 N. W. 201,—holding telephone poles and wires in street, additional burden.

Rights in highway.

Cited in Wyant v. Central Teleph. Co. 123 Mich. 55, 47 L. R. A. 499, 81 Am. St. Rep. 155, 81 N. W. 928, sustaining right of telephone company having right to string wires in highway, to do necessary trimming of trees in proper manner without first giving landowner the opportunity; Western U. Teleg. Co. v. Krueger, 30 Ind. App. 30, 64 N. E. 635, holding abutting owner who owns fee in highway has the rights and remedies of owner of a freehold, subject to public easement, as to shade trees on his side of highway.

Cited in footnote to French v. Robb, 57 L. R. A. 956, which holds right to maintain as against owner of soil, poles and wires rightfully placed in street to light it, not lost by wrongfully using for private lighting.

Individual ownership and operation of business of public nature.

Cited in State ex rel. Goodwine v. Cadwallader, 172 Ind. 629, 87 N. E. 644, on right of individual to own and operate telephone line.

Adaptation of public service to new discoveries.

Cited in Indianapolis v. Consumers' Gas Trust Co. 75 C. C. A. 442, 144 Fed. 646, holding the right of city to purchase a natural gas distributing plant under statutory power given city to construct and establish gas works is not affected by the fact that at the time of the grant of such power the use of natural gas was not known to be available.

40 L. R. A. 375, CALLANAN v. VOTRUBA, 104 Iowa, 672, 63 Am. St. Rep. 538, 74 N. W. 13.

Rendition of judgment.

Approved in Christie v. Iowa L. Ins. Co. 111 Iowa, 179, 82 N. W. 499, holding finding of facts and conclusions of law filed with clerk not judgment till spread on court records; Miles v. Tomlinson, 110 Iowa, 327, 81 N. W. 587 (dissenting opinion), majority holding proceedings by fence viewers who met on the land, viewed it, located the fence, and fixed its cost and their fees, not invalidated by their going to adjoining township to put their findings in writing; Bristol Sav. Bank v. Judd, 116 Iowa, 28, 89 N. W. 93, holding order for sale of land by assignee of no validity when made without notice and not entered of record; Kennedy v. Citizens' Nat. Bank, 119 Iowa, 125, 93 N. W. 71, holding filing of memorandum for judgment containing direction to clerk to enter judgment unless amount is paid, and clerk's entry in judgment docket of recital of judgment, not a judgment sufficient to sustain an appeal; Hull v. Eby, 123 Iowa, 259, 98 N. W. 774, holding that judgment for costs erroneously entered may be corrected at any time before decree is spread on the record; Coffey v. Gamble, 117 Iowa, 549, 91 N. W. 813, holding filing of decision that temporary injunction granted should be dissolved, sufficient dissolution without entry of formal decree.

Cited in Robertson v. Donelan, 138 Ky. 154, 127 S. W. 754, Ann. Cas. 1912A, 1280, to the point that judgment is not complete so that appeal may be taken therefrom until it is recorded in accordance with law; Moore v. Crandall, 146 Iowa, 33, 140 Am. St. Rep. 276, 124 N. W. 812, holding that "O. K." of decree by opposite attorney before it was recorded will not estop such party from questioning ruling made therein on appeal, where error is such that it can be first raised and corrected on appeal; Stutsman v. Sharpless, 125 Iowa, 338, 101 N. W. 105, holding the time for taking an appeal begins to run from the time of entry of judgment of record; Greazel v. Price, 135 Iowa, 366, 112 N. W. 827; Hoffman-Bruner Granite Co. v. Stark, 132 Iowa, 103, 108 N. W. 329,—holding a judgment is not appealable until entered of record.

Entry for record as necessary to the validity of an order.

Cited in Williams v. Des Moines Land & T. Co. 126 Iowa, 26, 101 N. W. 277, holding the failure to enter of record an order fixing time of hearing and for service of notice until after service made renders invalid further proceedings; Re Manning, 134 Iowa, 170, 111 N. W. 409, holding an order of court authorizing guardian to pay attorney's fees must be entered of record; Smith v. District Ct. 132 Iowa, 606, 109 N. W. 1085, 11 Ann. Cas. 296, on sentence by the court as evidence by the records only.

40 L. R. A. 377, WHITMORE v. ORONO PULP & PAPER CO. 91 Me. 297, 64 Am. St. Rep. 229, 39 Atl. 1032.

Liability of owner for injury by defects in premises.

Approved in Boardman v. Creighton, 95 Me. 162, 49 Atl. 663, denying quarry owner's liability for injury to servant of independent contractor, due to latter's negligent manner of operating quarry.

— Leased premises.

Approved in Shackford v. Coffin, 95 Me. 71, 49 Atl. 57, holding landlord not liable for injury to tenant by defect in stairway of which he had no knowledge, although he had covenanted to make repairs; Smith v. State, 92 Md. 530, 51 L. R. A. 775, footnote p. 772, 48 Atl. 92, denying landlord's liability for injury to subtenant's child from defective balustrade on porch.

Cited in Bailey v. Kelly, 86 Kan. 919, 39 L.R.A.(N.S.) 382, 122 Pac. 1027, holding landlord liable to tenant's servant for injury by reason of nuisance created by landlord; Hill v. Day, 108 Me. 469, 81 Atl. 581, holding that lessor of premises is not liable to subtenant for injury caused by plaster falling, in absence of agreement by landlord to keep premises in repair; Baker v. Moeller, 52 Wash. 608, 101 Pac. 231; Bennett v. Sullivan, 100 Me. 122, 60 Atl. 886,—holding in the absence of express warranty there is no liability on the part of landlord for an injury to a lessee because of a defective condition of the premises.

Cited in footnotes to Towne v. Thompson, 46 L.R.A. 748, which denies boarding-house lessee's liability to tenant's boarders for illness from unsanitary condition of premises; Brady v. Klein, 62 L. R. A. 909, which denies right of action by licensee of tenant on landlord's covenant to repair, for injury due to defective condition of premises; Langenbaugh v. Anderson, 62 L. R. A. 948, which denies liability of lessor of lot for production of oil or gas therefrom, for injury to adjoining owner's property through escape of oil by lessee's negligence.

Cited in notes (17 L.R.A.(N.S.) 1162) on liability of owner for injury to tenant's guests or employees by defect in premises; (34 L.R.A.(N.S.) 801) on liability of landlord for injury to tenants from defects in premises; (66 Am. St. Rep. 785) on liability of landlord letting premises in defective condition; (92 Am. St. Rep. 509, 511) on liability to third persons of lessors of real or personal property.

Nuisance per se.

Cited in Melker v. New York, 190 N. Y. 488, 16 L.R.A.(N.S.) 624, 83 N. E. 565, 13 Ann. Cas. 544, on what is necessary to constitute a thing a nuisance per se.

40 L. R. A. 380, LOWNDES v. COOCH, 87 Md. 478, 39 Atl. 1045.

Law governing lapse of legacies.

Cited in note (2 L.R.A.(N.S.) 467) on law governing lapse of legacies.

40 L. R. A. 382, GORE v. CONDON, 87 Md. 368, 739, 67 Am. St. Rep. 352, 39 Atl. 1042.

Liability for inducing breach of contract with third person.

Cited in London Guarantee & Acci. Co. v. Horn, 206 Ill. 504, 99 Am. St. Rep. 185, 69 N. E. 526, sustaining right of action against third person for procuring discharge of employee whose employment, though terminable at will, would otherwise have continued indefinitely; Knickerbocker Ice Co. v. Gardiner Dairy Co. 107 Md. 563, 16 L.R.A.(N.S.) 753, 69 Atl. 405; Mahoney v. Roberts, 86 Ark. 139, 110 S. W. 225,—holding the inducing of another to violate their contract with a third person to the damage of the latter may be the basis of a cause of action for damages.

Cited in footnotes to Doremus v. Hennessy, 43 L. R. A. 797, which holds actionable, maliciously persuading one to break contract with third person for purpose of injuring latter; Plant v. Woods, 51 L. R. A. 339, which sustains injunction against threats by labor union to make employers induce employees

to leave other union and rejoin former; *Re* Young, 48 L. R. A. 153, which sustains state statute against soliciting seaman to desert from any vessel within jurisdiction of state; Raymond v. Yarrington, 62 L. R. A. 962, which holds person responsible for another's engaging in business in breach of contract, liable for damages thereby caused to other contracting party; Employing Printers' Club v. DeBlosser Co. 69 L.R.A. 90, which holds actionable a combination to injure person in his trade in inducing employee to break contract or to decline to continue longer in his employment.

Cited in note (16 L.R.A.(N.S.) 748) on right of action for inducing breach of contract.

40 L. R. A. 385, KAUMEIER v. CITY ELECTRIC R. CO. 116 Mich. 306, 72 Am. St. Rep. 525, 74 N. W. 481.

Liability for injury to trespassing children.

Approved in George v. Los Angeles R. Co. 126 Cal. 364, 46 L. R. A. 831, footnote p. 829, 77 Am. St. Rep. 184, 58 Pac. 819, denying liability of street car company for injury to boy playing on trailer cars left in street with brakes so set as to hold the cars unless loosened.

Cited in Berg v. Duluth, S. S. & A. R. Co. 111 Minn. 311, 126 N. W. 1093, holding that railroad was not liable for injury to boy eleven years old caused by his attempting to catch ride on freight train near yards where boys were occasionally permitted to play.

Cited in footnotes to Biggs v. Consolidated Barb-Wire Co. 44 L. R. A. 655, which holds owner liable for maintaining dangerous machinery on private grounds unprotected from visits of trespassing children; Kopplekom v. Colorado Cement Pipe Co. 54 L. R. A. 284, which holds owner of uninclosed city lot liable for injury to young child by toppling over of large cement pipe used by children as plaything; Kramer v. Southern R. Co. 52 L. R. A. 359, which denies railroad company's liability for death of child by fall of pile of cross-ties in unused portion of street; O'Leary v. Brooks Elevator Co. 41 L. R. A. 677, which denies owner's liability for injury to trespassing child by wire projecting from shaft of machinery.

Cited in notes (6 L.R.A.(N.S.) 908) on duty towards children with respect to obstructions or defects in streets; (19 L.R.A.(N.S.) 1138) on attractive nuisance; (26 L.R.A.(N.S.) 721) on proximate cause of injury from car or engine set in motion by third person.

Distinguished in Iamurri v. Saginaw City Gas Co. 148 Mich. 33, 111 N. W. 884, holding that owner of tank wagon containing explosives was liable to child injured by explosion, while playing about wagon left unattended in highway; Cahill v. Stone, 153 Cal. 576, 19 L.R.A.(N.S.) 1099, 96 Pac. 84, holding a demurrer was improperly sustained to a complaint charging the defendant company with liability for injuries received by a child playing about a push car left unguarded and unlocked on the public street.

Children as trespassers.

Cited in Iamurri v. Saginaw City Gas Co. 148 Mich. 38, 111 N. W. 884, when children to be considered as trespassers.

Distinguished in O'Leary v. Michigan State Teleph. Co. 146 Mich. 247, 109 N. W. 434, holding a child of seven was not such a trespasser as to bar his right to recovery by being caught in a pulley operated in the street by men more than a block away.

40 L. R. A. 388, ST. BARNABAS HOSPITAL v. MINNEAPOLIS INTERNATIONAL ELECTRIC CO. 68 Minn. 254, 70 N. W. 1126.

40 L. R. A. 389, JACOBSON v. WISCONSIN, M. & P. R. CO. 71 Minn. 519, 70 Am. St. Rep. 358, 74 N. W. 893.

Regulation of carriers.

Cited in Atlantic, S. River & G. R. Co. v. State, 42 Fla. 361, 89 Am. St. Rep. 233, 29 So. 319, upholding compulsory establishment of switches, side tracks, and connections with other railroads under police power: Louisville & N. R. Co. v. Central Stock Yards Co. 133 Ky. 169, 97 S. W. 778, holding that legislature has power to compel railroad companies to make interchange of cars at points of physical connection with other roads; State ex rel. Burr v. Atlantic Coast Line R. Co. 59 Fla. 628, 52 So. 4, holding that property becomes clothed with public interest when used in manner to make it of public consequence and affect community at large, and becomes subject to public control; State ex rel. Collins v. St. Louis & S. E. R. Co. 238 Mo. 614, 142 S. W. 279, holding that statute requiring railroads to provide depots at their intersection at grade with other railroads, refers only to crossings of other railroads on which separate trains are run; Pittsburgh, C. C. & St. L. R. Co. v. Railroad Commission, 171 Ind. 203, 86 N. E. 328, holding that railroad company may be compelled to construct interchange track, though such construction will divert some of its business to competing roads.

As interference with commerce.

Affirmed in 179 U. S. 287, 45 L. ed. 194, 21 Sup. Ct. Rep. 115, holding state requirement of track connections and facilities for interchange of cars and traffic at railroad intersections not unlawful regulation of commerce.

Approved in State *ex rel.* Railroad & W. Commission v. Minneapolis & St. L. R. Co. 80 Minn. 196, 89 Am. St. Rep. 514, 83 N. W. 60, sustaining act authorizing state railroad commission to establish joint through freight rate over connecting lines within state; State *ex rel.* Lamar v. Jacksonville Terminal Co. 41 Fla. 405, 27 So. 225, holding regulation by state railroad commissioners requiring terminal company to furnish terminal facilities to railroad company operating road to point outside of state, not interference with interstate commerce.

Cited in State v. Missouri P. R. Co. 81 Neb. 27, 115 N. W. 614, holding that statute regulating railroad traffic within state is constitutional and does not interfere with interstate commerce.

Due process of law as to regulation of carriers; track connections; power of railroad commission.

Affirmed in 179 U. S. 287, 45 L. ed. 194, 21 Sup. Ct. Rep. 115, upholding requirement that railroad companies shall furnish track connections where roads intersect.

Approved in State *ex rel.* Lamar v. Jacksonville Terminal Co. 41 Fla. 413, 27 So. 225, sustaining power of state railroad commissioners to compel terminal company to furnish terminal facilities at reasonable rates to railroad company seeking same.

Cited in State v. Chicago, M. & St. P. R. Co. 115 Minn. 53, 131 N. W. 859, holding that order of railroad commission requiring railroad to put in side track to stone quarry will not be set aside merely because it will impose pecuniary burden upon company; State v. Boehm, 92 Minn. 378, 100 N. W. 957, holding an act providing for the destruction of certain noxious weeds and a penalty for a failure to do so was a reasonable exercise of the police power of the state: State v. Tower Lumber Co. 100 Minn. 43, 110 N. W. 254, holding a legislative act providing for the protection of the fish of the state was a reasonable exercise of the police power; Louisville & N. R. Co. v. Interstate R. Co. 107 Va. 230,

57 S. E. 654, holding the railroad commission may provide and order the putting in of a switch at the junction of two crossing railroads.

Cited in footnotes to *Re* Stillwater & M. Street R. Co. 59 L. R. A. 489, which holds electric railways entitled to track connections with intersecting steam roads; State *ex rel.* Tompkins v. Chicago, St. P. M. & O. R. Co. 47 L. R. A. 569, which sustains railroad commissioners' authority to require building of depot.

Presumption as to local business of railroad company.

Approved in State *ex rel.* Lamar v. Jacksonville Terminal Co. 41 Fla. 405, 27 So. 225, requiring presumption that local railroad business is sufficient to justify regulation of state railroad commission in absence of showing that it took interstate business into consideration.

Interference with charter privileges.

Cited in Deposit Bank v. Daviess County, 44 L.R.A. 825, which holds extension of corporate charter subject to act previously passed making all grants to corporations amendable, though original charters contained irrevocable exemption.

Police power.

Cited in State v. Boehm, 92 Minn. 378, 100 N. W. 95, holding that statute requiring destruction of wild mustard, is reasonable exercise of police power; State v. Tower Lumber Co. 100 Minn. 43, 110 N. W. 254, holding that statute providing that no person, company or corporation shall obstruct game and fish commission of state while engaged in gathering fish spawn, is valid exercise of police power.

40 L. R. A. 393, GRATZ v. LAND & RIVER IMPROV. CO. 27 C. C. A. 305, 53 U. S. App. 499, 82 Fed. 381.

Petition for certiorari to United States Supreme Court denied in 173 U. S. 705, 43 L. ed. 1186, 19 Sup. Ct. Rep. 884.

Water as boundary.

Cited in note (42 L. R A. 506) on effect of bounding grant on river or tide water.

Burden of proof as to prior unrecorded instrument.

Approved in Walter v. Brown, 115 Iowa, 363, 88 N. W. 832, holding that burden of proving that grantee of land had notice of prior unrecorded mortgage rests on one claiming under such mortgage; Mullins v. Butte Hardware Co. 25 Mont. 540, 87 Am. St. Rep. 430, 65 Pac. 1004, holding that burden of proving notice of earlier instrument not first recorded, or of oral contract, rests on one claiming thereunder as against grantee of deed first recorded.

Cited in Wilkins v. McCorkle, 112 Tenn. 706, 80 S. W. 834, holding the burden of proof upon a claimant under an unrecorded deed to show that a subsequent claimant took with notice of the prior conveyance; Re Ducker, 67 C. C. A. 117, 134 Fed. 50, holding the burden on claimants under an unrecorded mortgage to show that subsequent creditors had notice of such mortgage.

Cited in note (36 L.R.A.(N.S.) 1131) on burden of proof as to bona fides or purchaser claiming against prior unrecorded conveyance.

Conveyance of an undivided quantity of land.

Cited in Grider v. Wood, 102 C. C. A. 109, 178 Fed. 911, on how deed to undivided number of acres in a larger tract is to be construed.

Cited in note (100 Am. St. Rep. 652, 653) on conveyance by one cotenant of specific part of common property.

Common tenants' rights.

Cited in Schoonover v. Tyner, 72 Kan. 478, 84 Pac. 124, on possession by a tenant in common as being the possession of all.

Revocation of power of attorney.

Cited in note (110 Am. St. Rep. 864) on revocation of power of attorney.

40 L. R. A. 402, ROWZEE v. PIERCE, 75 Miss. 846, 65 Am. St. Rep. 625, 23 So. 307.

Misappropriation of land dedicated to public.

Approved in McIntyre v. El Paso County, 15 Colo. App. 88, 61 Pac. 237, holding resident property owner proper party to bring action to restrain county commissioners from erecting county court house on public park.

Cited in Thorndike v. Milwaukee Auditorium Co. 143 Wis. 13, 126 N. W. 881, holding that suit in equity lies to restrain unlawful diversion or misuser of property dedicated to particular public use; Louisville & N. R. Co. v. Cincinnati, 76 Ohio St. 506, 81 N. E. 983, on the right to enjoin the misappropriation of property dedicated to a public use; Wilkins v. Chicago, St. L. & N. O. R. Co. 110 Tenn. 450, 75 S. W. 1026, on dedication of property for the benefit of public as preventing municipal authorities from misappropriating its use.

Cited in footnotes to Douglass v. Montgomery, 43 L. R. A. 376, which denies city's power to grant right to lay railroad across public park, and then abandon it and confirm reversioner's title; Davenport v. Buffington, 46 L. R. A. 377, which holds municipality estopped to revoke dedication of public park after property rights acquired in reliance thereon; Riverside v. Maclean, 66 L.R.A. 288, which denies right to devote to establishment of public highway portion of tract of land dedicated for public park where result will be to cut the tract into small parcels and destroy their utility for the original purpose intended.

Cited in note (25 L.R.A.(N.S.) 983) on what use of squares, parks, or commons is consistent with purpose of dedication.

Distinguished in Ritz v. Wheeling, 45 W. Va. 274, 43 L. R. A. 154, 31 S. E. 993, denying liability of city for drowning in reservoir of boy crawling through necessary opening in fence for drain, even though premises had been dedicated for common and had been misappropriated as reservoir.

Dedication of property for park or square.

Cited in Frauenthal v. Slaten, 91 Ark. 355, 121 S. W. 395, holding the use of the word "square" on a plat designating a portion of ground in a town, indicates a public use.

40 L. R. A. 405, SEARS v. GALLATIN COUNTY, 20 Mont. 462, 52 Pac. 204.

Right to mileage, etc.

Approved in Wade v. Lewis & C. County, 24 Mont. 340, 61 Pac. 879, denying right of county surveyor to mileage under statute; State *ex rel.* Johnson v. Smith, 84 Minn. 299, 87 N. W. 775, holding that custom on part of county commissioners to allow improper claims for use of horses by county surveyors while at work for county cannot convert them into legal demands against it.

40 L. R. A. 408, PHENIX INS. CO. v. FULLER, 53 Neb. 811, 68 Am. St. Rep. 637, 74 N. W. 269.

Waiver of conditions as to ownership in policy.

Followed in Milwaukee Mechanics' F. Ins. Co. v. Fuller, 53 Neb. 815, 74 N. W. 273, and Slobodisky v. Phenix Ins. Co. 53 Neb. 821, 74 N. W. 270, upholding conclusive presumption of waiver of provision in policy against

liability unless title be unconditional and unencumbered, where no inquiries or false representations as to title were made, insured had an insurable interest, and premium was paid and retained; Strause v. Palatine Ins. Co. 128 N. C. 65, 38 S. E. 256, holding insurer estopped to set up that insured did not have sole and unconditional ownership, where agent knew the facts when he issued policy and took premium.

Cited in German F. Ins. Co. v. Herbertson, 49 Colo. 218, 112 Pac. 690, holding that conditions as to ownership of property are waived where policy is issued upon building upon leased grounds without inquiry or representation as to title; Glen Falls Ins. Co. v. Michael, 167 Ind. 673, 8 L.R.A.(N.S.) 714, 74 N. E. 964, holding a policy of insurance is not avoided by reason of the fact that insurer's interest in property is not unconditional and sole where no inquiries were made as to whether insurer's interest was sole and as fraud was practised by the insured; Farmers & M. Ins. Co. v. Mickel 72 Neb. 124, 100 N. W. 130, 9 Ann Cas. 992, to same effect; Parsons v. Lane (Re Millers' & Mfrs.' Ins. Co.) 97 Minn. 108, 4 L.R.A.(N.S.) 237, 106 N. W. 485, 7 Ann. Cas. 1144, on failure of insured to disclose the nature of his interest where no inquiry made concerning as how affecting the validity of the policy.

Cited in note (16 L.R.A.(N.S.) 1246) on waiver of condition against incumbrances by failure to question insured.

40 L. R. A. 410, NORTH HUDSON COUNTY R. CO. v. ANDERSON, 61 N. J. L. 248, 68 Am. St. Rep. 703, 39 Atl. 905.

What is legal tender.

Cited in note (35 L.R.A.(N.S.) 1031) on character or condition of coin or currency tendered in payment of fare.

— Effect of redemption rules of Treasury Department.

Cited in Cincinnati Northern Traction Co. v. Rosnagle, 84 Ohio St. 318, 35 L.R.A.(N.S.) 1030, 95 N. E. 884, Ann. Cas. 1912C, 639, holding that rules of United States Treasury Department in regard to redemption of coins authorized by statute relate only to redemption and do not affect question of legal tender.

40 L. R. A. 411, HUDA v. AMERICAN GLUCOSE CO. 154 N. Y. 474, 48 N. E. 897.

Contributory negligence of, and assumption of risks by, servant.

Cited in Bruen v. Uhlmann, 30 App. Div. 456, 51 N. Y. Supp. 958, holding track repairer negligent in working on track with back towards approaching engine, without erecting signals required by rules; Dowd v. New York, O. & W. R. Co. 170 N. Y. 471, 63 N. E. 541, holding burden of proving servant's waiver, implied by alleged assumption of risk, upon master; Reinersten v. Erie R. Co. 142 App. Div. 35, 126 N. Y. Supp. 745, holding that railway carpenter employed in nailing planks between tracks in terminal yards assumed risk of being struck by train, where he knew that he was not guarded by watchman and undertook to rely on his own watchfulness; Utess v. Erie R. Co. 131 App. Div. 451, 115 N. Y. Supp. 389, on risks assumed by a servant.

Cited in note (28 L.R.A.(N.S.) 1216) as to whether servant may assume risk of dangers created by master's negligence.

— Master's neglect of statutory duty.

Approved in Hutchinson v. Charles F. Parker & Co. 39 App. Div. 138, 57 N. Y. Supp. 168, holding risks of injury from explosion by coemployee of unexploded dynamite cartridge assumed by employee of contractor for blasting and removing rock: Armaindo v. Ferguson, 37 App. Div. 161, 55 N. Y. Supp. 769, hold-

ing right of action for failure to maintain rope as means of escape from hotel waived by occupying room for several months without complaint, with knowledge of such fact; Landgraf v. Kuh, 188 Ill. 499, 59 N. E. 501, holding it question for jury whether employee assumed risk of insufficient number of fire escapes.

Cited in Narramore v. Cleveland, C. C. & St. L. R. Co. 48 L. R. A. 76, 37 C. C. A. 504, 96 Fed. 303, holding risk of unblocked switches not assumed by continuing in service without complaint, with knowledge of noncompliance with statute requiring their blocking; Monteith v. Kokomo Wood Enameling Co. 159 Ind. 161, 58 L. R. A. 949, 64 N. E. 610, holding employee not prevented from recovering for injuries from master's neglect of statutory duty to guard circular saw, by fact that defect was obvious; Marino v. Lehmaier, 173 N. Y. 536, 61 L. R. A. 814, 66 N. E. 572, sustaining civil liability of proprietor of factory employing children under prescribed age, for injuries to such employees, notwithstanding his criminal liability.

Cited in footnote to Weeks v. McNulty, 43 L. R. A. 185, which denies liability of keeper of hotel without fire escapes, for death of guest, unless death caused thereby.

Duty to provide building with fire protection.

Cited in Maiorca v. Myers, 131 App. Div. 211, 115 N. Y. Supp. 923; People v. Davis, 1 Ill. C. C. 259,—on no duty existing at common law on the part of the owner of a building to provide fire escapes and fire apparatus.

Violation of statutory duty — As evidence of negligence.

Cited in Acton v. Reed, 104 App. Div. 510, 93 N. Y. Supp. 911; Pelin v. New York C. & H. R. R. Co. 102 App. Div. 78, 92 N. Y. Supp. 468 (dissenting opinion),—on the violation of a statutory duty as being evidence of negligence.

— As giving right of action.

Cited in Racine v. Morris, 136 App. Div. 473, 121 N. Y. Supp. 146; Paltey v. Egan, 122 App. Div. 516, 107 N. Y. Supp. 444,—on a violation of a statutory duty as giving a right of action to one injured by reason thereof; Racine v. Morris, 201 N. Y. 244, 94 N. E. 864, holding that owner of building was liable to patrolman for injury caused by falling down unguarded elevator shaft, while performing his duty in night time.

Cited in notes (10 L.R.A.(N.S.) 180) on liability for injuries caused by lack or insufficiency of fire escapes; (19 Eng. Rul. Cas. 57) on liability for injury due to neglect of statutory precautions.

40 L. R. A. 415, NARRON v. WILMINGTON & W. R. CO. 122 N. C. 856, 29 S. E. 356.

Validity of condemnation proceedings.

Cited in Harkins v. Asheville, 123 N. C. 639, 31 S. E. 853, sustaining validity of condemnation proceedings, where notice was given to grantor in trust deed who was in possession though notice was not given to the trustee.

Cited in footnote to Southern P. Co. v. Hyatt, 54 L. R. A. 522, which holds railroad right of way not acquirable by prescription or limitation.

Who may grant easement in land.

Cited in Hodges v. Western U. Teleg. Co. 133 N. C. 237, 45 S. E. 572, denying right of railroad company to which a right of way and easement has been granted, as against its grantor, to convey to telegraph company right to erect line on right of way.

Cited in note (136 Am. St. Rep. 688) on who may grant easement in land.

40 L. R. A. 418, STATE *ex rel.* NATIONAL LIFE ASSO. v. MATTHEWS, 58 Ohio St. 1, 49 N. E. 1034.

Right to revoke license.

Cited in footnote to Wallace v. Reno, 63 L. R. A. 338, which authorizes revocation of liquor license by legislature or municipal officers, with or without notice to licensee.

Validity of assessment plan.

Cited in State v. Toledo & L. Co. Burial Asso. 8 Ohio C. C. N. S. 251, 28 Ohio C. C. 413, on the validity of the initiation fees and dues as assessments in a burial association.

40 L. R. A. 426, HENDERSON v. EVANS, 51 S. C. 331, 29 S. E. 5.

40 L. R. A. 426, MITCHELL v. NASHVILLE, C. & ST. L. R. CO. 100 Tenn. 329, 45 S. W. 337.

Demurrer to evidence.

Approved in Barr v. Southern R. Co. 105 Tenn. 546, 58 S. W. 849, holding bill of exceptions unnecessary to review trial court's action on demurrer to evidence; Southern Queen Mfg. Co. v. Morris, 105 Tenn. 656, 58 S. W. 651, requiring amount of recovery in action for unliquidated damages to be fixed on evidence embodied in demurrer to the evidence where such demurrer is overruled.

Cited in Coleman v. Bennett, 111 Tenn. 714, 69 S. W. 734, holding a case was properly submitted to the jury on the evidence on the overruling of a demurrer to the evidence.

Liability for frightening horses.

Approved in Brown v. Missouri P. R. Co. 89 Mo. App. 196, holding that engine should not be permitted to suddenly throw out large volume of steam with unusual and terrifying noise, calculated to terrify horses of ordinary gentleness, where road runs parallel with and near to highway.

Cited in Mumma v. Easton & A. R. Co. 73 N. J. L. 661, 65 Atl. 208, holding a recovery might be had for injuries received when plaintiff's horse took fright at the sudden and unnecessary sounding of an engine whistle under the bridge which he was crossing; Hickey v. Rio Grande Western R. Co. 29 Utah, 408, 82 Pac. 29, holding it was a question for the jury whether the engineer was negligent in allowing steam to escape so close to plaintiff's horses as to frighten them; Louisville & N. R. Co. v. Sawyer, 114 Tenn. 86, 69 L.R.A. 663, 108 Am. St. Rep. 881, 86 S. W. 386, 4 Ann. Cas. 948, on railroad as liable for the frightening of horses in consequences of the excessive blowing of whistle.

Cited in footnotes to Kentucky & I. Bridge Co. v. Montgomery, 57 L. R. A. 781, which requires railroad company operating railroad bridge as toll bridge to keep lookout to prevent frightening teams by trains; Snyder v. Philadelphia Co. 63 L. R. A. 896, which holds negligent blowing off of gas well is proximate cause of injury to teamster whose horses were frightened, although one of his lines broke because of insufficiency; Hinchman v. Pere Marquette R. Co. 65 L.R.A. 553, which sustains liability of railroad company for injury due to emission of steam from engine in highway at a railroad crossing while a traveler was attempting to drive across the track.

40 L. R. A. 428, STATE v. SHATTUCK, 69 Vt. 403, 60 Am. St. Rep. 936, 38 Atl. 81.

Validity of marriage.

Followed in State v. Richardson, 72 Vt. 50, 47 Atl. 103, holding divorced

person lawfully marrying in other state not punishable in Vermont on returning there within three years after divorce, though statute forbids remarriage within that period; *Re* Wood, 137 Cal. 135, 69 Pac. 900, upholding marriage, valid where solemnized, of divorced person before expiration of year from granting of divorce fixed by statute of state where divorce granted.

Cited in State v. Sartwell, 81 Vt. 23, 130 Am. St. Rep. 1017, 69 Atl. 151, holding that under statute prohibiting libelee from marrying for three years, such prohibited marriage is absolutely void and not merely voidable; Lando v. Lando, 112 Minn. 262, 30 L.R.A.(N.S.) 944, 127 N. W. 1125, holding that validity of marriage is to be determined by law of place where ceremony is performed; State v. Hand, 87 Neb. 192, 28 L.R.A.(N.S.) 756, 126 N. W. 1002, holding that marriage prohibited by statute, is yet valid if celebrated elsewhere according to laws of place where celebrated; Lanham v. Lanham, 136 Wis. 366, 17 L.R.A.(N.S.) 806, 128 Am. St. Rep. 1085, 117 N. W. 787, holding the evasion of the laws of a state prohibiting the marriage of divorced persons within a certain time, by remarrying outside the state will not invalidate the marriage.

Cited in footnote to Norman v. Norman, 42 L. R. A. 343, which holds marriage on high seas by parties leaving land to evade laws of residence invalid.

Cited in notes (57 L.R.A. 169, 170) on conflict of laws as to validity of marriage; (16 L.R.A.(N.S.) 102) on presumptions flowing from foreign marriage ceremony; (79 Am. St. Rep. 361, 364–368) on what marriages are void; (124 Am. St. Rep. 106) on common law marriages.

Presumption as to foreign common law.

Cited in note (67 L.R.A. 54) on presumption as to similarity of foreign common law.

40 L. R. A. 430, STATE *ex rel.* WINSTON v. HUDSON LAND CO. 19 Wash. 85, 52 Pac. 574.

Ownership of real estate by aliens through corporation.

Cited in State ex rel. Morrell v. Stevens County, 33 Wash. 551, 74 Pac. 686, holding a corporation, the majority of whose stock was held by aliens could not acquire a right of way by condemnation proceedings.

Distinguished in Abrams v. State, 45 Wash. 341, 9 L.R.A.(N.S.) 190, 122 Am. St. Rep. 914, 88 Pac. 327, 13 Ann. Cas. 527, holding one conveying realty to an alien could not set up the invalidity of the deed on such account.

40 L. R. A. 432, FIDELITY & C. CO. v. CHAMBERS, 93 Va. 138, 24 S. E. 896.

Review of judgment on demurrer to evidence.

Followed without special discussion in McDonald v. Norfolk & W. R. Co. 95 Va. 106, 27 S. E. 821.

Accidents covered by accident policy.

Approved in Hess v. Preferred Masonic Mut. Acci. Asso. 112 Mich. 207, 40 L. R. A. 451, 70 N. W. 460, holding bank cashier insured against accidents by policy providing that it shall be void as to accidents while engaged in employment not rated as preferred, entitled to recover for accident by slipping and falling against buzz saw after he had ceased to use it.

Cited in Hunt v. United States Acci. Asso. 146 Mich. 524, 7 L.R.A.(N.S.) 940, 117 Am. St. Rep. 655, 109 N. W. 1042, 10 Ann. Cas. 449, holding a policy exempting insurer from liability for accidents resulting from voluntary and unnecessary exposure to danger covered a broken ankle occurring while engaged in playing indoor baseball; Diddle v. Continental Casualty Co. 65 W. Va. 174, 22 L.R.A.(N.S.) 786, 63 S. E. 962; Johnson v. Canada Guarantee & Acci.

Ins. Co. 17 Ont. L. Rep. 474; Bateman v. Travelers Ins. Co. 110 Mo. App. 452, 85 S. W. 128,—on what will constitute a voluntary exposure to unnecessary danger within the meaning of an accident insurance policy.

Annotation cited in McNevin v. Canadian R. Acci. Ins. Co. 2 Ont. L. Rep. 529, on what a voluntary exposure to unnecessary danger within meaning of policy.

Cited in footnotes to Fidelity & C. Co. v. Sittig, 48 L. R. A. 359, which holds traveling salesman's attempt to board moving train not *per se* voluntary exposure to unnecessary danger; Small v. Travelers' Protective Asso. 63 L. R. A. 510, which holds attempt by experienced traveling man to board train running at 8 or 10 miles an hour a voluntary exposure to danger; Smith v. Ætna L. Ins. Co. 56 L. R. A. 272, which holds injury by fall from steps of moving train covered by policy; United States Mut. Acci. Asso. v. Hubbell, 40 L. R. A. 453, which holds attempt of traveling salesman to cross slough in public road not voluntary exposure to danger; Wildey Casualty Co. v. Sheppard, 47 L. R. A. 650, which holds barber not engaged in more hazardous occupation while hunting rabbits as incident to daily life; Rustin v. Standard Life & Acci. Ins. Co. 46 L. R. A. 253, which holds attempt of strong man, accustomed to lifting, to raise 300-pound weight not overexertion; Smith v. Ætna L. Ins. Co. 64 L. R. A. 117, which holds steeple-chase riding by one giving occupation as cotton merchant, voluntary exposure to unnecessary danger; Small v. Travelers' Protective Asso. 63 L.R.A. 510, which holds experienced travelingman's attempt to board train running from 8 to 10 miles an hour an exposure to obvious risk of injury.

Cited in notes (40 L.R.A. 437) on voluntary exposure to unnecessary danger within meaning of insurance policy; (22 L.R.A.(N.S.) 780; 27 L.R.A.(N.S.) 1164; 139 Am. St. Rep. 702, 704, 708) on same point.

Distinguished in Garcelon v. Commercial Travelers' Eastern Acci. Asso. 195 Mass. 537, 10 L.R.A.(N.S.) 963, 81 N. E. 201, holding under a policy exempting defendant company from liability for accidents resulting from exposure to unnecessary danger, no recovery could be had for injuries received by plaintiff in attempting to board a moving train.

Intoxication as avoiding policy.

Cited in note (15 L.R.A.(N.S.) 213) on provisions in insurance policies forbidding use of intoxicants.

Distinguished in Furry v. General Acci. Ins. Co. (Grinnell v. General Acci. Ins. Co.) 80 Vt. 529, 15 L.R.A.(N.S.) 209, 130 Am. St. Rep. 1012, 68 Atl. 655, 13 Ann. Cas. 515, holding a finding that a decedent at time of accident was not under the influence of intoxicating liquor so as to prevent him from being fairly able to care for himself left him within the exception limiting liability if loss occurred while under influence of intoxicating liquor.

Construction of limitations on liability of insurer.

Cited in Beard v. Indemnity Ins. Co. 65 W. Va. 292, 64 S. E. 119, on limitations on the liability of insurers as to be most strongly insured against them.

40 L. R. A. 437, CORNWELL v. FRATERNAL ACCI. ASSO. 6 N. D. 201, 69 N. W. 191.

Accidents covered by accident policy.

Cited in footnotes to Smith v. Ætna L. Ins. Co. 56 L. R. A. 272, which holds injury by fall from steps of moving train covered by policy; Wildey Casualty Co. v. Sheppard, 47 L. R. A. 650, which holds barber not engaged in more hazardous occupation while hunting rabbits as incident to daily life; Burt v.

Union Cent. L. Ins. Co. 59 L. R. A. 393, which denies right to recover on policy on life of innocent person executed after conviction of capital offense.

Voluntary exposure of insured to danger.

Cited in note (139 Am. St. Rep. 700, 706, 707) on voluntary exposure of insured to danger.

Attempt to commit crime.

Cited in note (6 L.R.A.(N.S.) 804) on procuring or providing instrumentalities with intent to commit crime, as an attempt.

40 L. R. A. 440, JOHNSON v. LONDON GUARANTEE & ACCI. CO. 115 Mich. 86, 69 Am. St. Rep. 549, 72 N. W. 1115.

What constitutes "voluntary" exposure or overexertion by insured.

Cited in Irwin v. Phœnix Acci. & Safe Benefit Asso. 127 Mich. 631, 86 N. W. 1036, holding thoughtlessness not within exemption from liability by insured's voluntary or unnecessary exposure to danger; Rustin v. Standard Life & Acci. Ins. Co. 58 Neb. 795, 46 L. R. A. 254, 76 Am. St. Rep. 136, 79 N. W. 712, holding that "voluntary overexertion" in accident policy refers to conscious or intentional act or reckless disregard of consequences; Hunt v. United States Acci. Asso. 146 Mich. 523, 7 L.R.A.(N.S.) 940, 117 Am. St. Rep. 655, 109 N. W. 1042, 10 Ann. Cas. 449, holding the attempt of a runner in a game of indoor baseball to stop by putting his foot against the wall was not a voluntary exposure to unnecessary danger that would relieve defendants from liability for broken leg; Continental Casualty Co. v. Jennings, 45 Tex. Civ. App. 20, 99 S. W. 423, holding condition against voluntary exposure to unnecessary danger was not violated where the insured fell from a high tree while engaged in gathering pecans; Diddle v. Continental Casualty Co. 65 W. Va. 174, 22 L.R.A.(N.S.) 786, 63 S. E. 962; Bateman v. Travelers Ins. Co. 110 Mo. App. 451, 85 S. W. 128,—on what will constitute a voluntary exposure to unnecessary danger within the meaning of an accident policy.

Cited in footnotes to Berliner v. Travelers' Ins. Co. 41 L. R. A. 467, which holds riding on locomotive by invitation does not prevent one being a passenger within accident policy; Wildey Casualty Co. v. Sheppard, 47 L. R. A. 650, which holds barber not engaged in more hazardous occupation while hunting rabbits as incident to daily life; Smith v. Ætna L. Ins. Co. 56 L. R. A. 272, which holds injury by fall from steps of moving train covered by policy.

Cited in notes (40 L.R.A. 436) on voluntary exposure to unnecessary danger within meaning of insurance policy; (95 Am. St. Rep. 381; 139 Am. St. Rep. 700, 706) on same point.

Distinguished in Garcelon v. Commercial Travellers' Eastern Acci. Asso. 195 Mass. 527, 10 L.R.A.(N.S.) 963, 81 N. E. 201, holding under a policy exempting defendant company from liability for accidents resulting from exposure to unnecessary danger no recovery could be had for injuries received in attempting to board a moving train.

Change of employment under policy of insurance.

Distinguished in Ætna L. Ins. Co. v. Dunn, 71 C. C. A. 79, 138 Fed. 634, holding one insuring as a druggist had assumed the hazard of a supervising farmer under the policy where after the burning of his drug store he moved upon a tract of land and was engaged in the cultivation thereof at the time of injury.

Occupation of farming.

Cited in Re Johnson, 149 Fed. 868, holding a wife to whom husband has conveyed farm to place it beyond reach of creditors is not a farmer within

the meaning of the bankruptcy act the husband taking full charge of its operation and the wife only performing incidental wifely services.

40 L. R. A. 444, HESS v. PREFERRED MASONIC MUT. ACCI. ASSO. 112 Mich. 196, 70 N. W. 460.

Increase of hazard and exposure to danger.

Cited in Johnson v. London Guarantee & Acci. Co. 115 Mich. 91, 40 L. R. A. 443, 69 Am. St. Rep. 549, 72 N. W. 1115, denying increase of hazard by one insured as grocer's secretary and treasurer returning to farming.

Cited in footnotes to Smith v. Ætna L. Ins. Co. 56 L. R. A. 272, which holds injury by fall from steps of moving train covered by policy; Wildey Casualty Co. v. Sheppard, 47 L. R. A. 650, which holds barber not engaged in more hazardous occupation while hunting rabbits as incident to daily life; Doody v. National Masonic Acci. Asso. 60 L. R. A. 424, which holds carrying loaded gun from one room to another, "handling firearms" within clause limiting amount of insurance.

Presumption and burden of proof as to cause of death or injury.

Cited in Carnes v. Iowa State Traveling Men's Asso. 106 Iowa, 286, 68 Am. St. Rep. 306, 76 N. W. 683, sustaining presumption against suicide in case of death from morphine poisoning, in absence of evidence to contrary.

Cited in note (4 L.R.A.(N.S.) 638) on duty of insured to negative death or accident from excepted cause.

Change of occupation.

Cited in Thorn v. Casualty Co. 106 Me. 283, 76 Atl. 1106, holding that where insured's occupation was stated as being "managing beef company" and duties were described as "office duties and traveling only" company is liable for injury received while in refrigerating plant illustrating to workmen how to do work; Everson v. General Acci. & Life Assur. Corp. 202 Mass. 176, 88 N. E. 658, holding it for jury whether accident occurred within occupation of manufacturer as described in the policy, where at time he was living in temporary camp near his works and had casually assisted in some experiments.

Cited in note (24 L.R.A.(N.S.) 1175) on temporary pursuit of other activities as change of occupation within meaning of accident policy.

40 L. R. A. 453, UNITED STATES MUT. ACCI. ASSO. v. HUBBELL, 56 Ohio St. 516, 47 N. E. 544.

"Increased hazard" or "voluntary exposure" under insurance policy.

Cited in Ashenfelter v. Employer's Liability Assur. Corp. 31 C. C. A. 197, 59 U. S. App. 479, 87 Fed. 686, denying exemption for voluntary exposure unless insured purposely assumed risks; Hunt v. United States Acci. Asso. 146 Mich. 523, 7 L.R.A.(N.S.) 938, 117 Am. St. Rep. 655, 109 N. W. 1042, 10 Ann. Cas. 449, holding one breaking his ankle while stopping himself by putting his foot against the wall in an indoor ball game did not thereby expose himself unnecessarily to danger within the meaning of a policy; Continental Casualty Co. v. Jennings, 45 Tex. Civ. App. 20, 99 S. W. 423, holding climbing out on the limb of a tree, high up in the air while gathering pecans was not a voluntary exposure to unnecessary danger; Dillon v. Continental Casualty Co. 130 Mo. App. 507, 109 S. W. 89, on what is voluntary exposure to danger within the meaning of an accident policy; Da Rin v. Casualty Co. 41 Mont. 188, 27 L.R.A. (N.S.) 1164, 137 Am. St. Rep. 709, 108 Pac. 649, holding that miner does not expose himself to unnecessary danger, as matter of law, by attempt to rescue coemployee overcome with gas; North America Acci. Ins. Co. v. Gulick, 1 Ohio

C. C. N. S. 480, 25 Ohio C. C. 39, holding that killing of passenger by crossing in front of train to get his train is not accident due to unnecessary or negligent exposure to obvious danger.

Cited in footnotes to Wildey Casualty Co. v. Sheppard, 47 L. R. A. 650, which holds barber not engaged in more hazardous occupation while hunting rabbits as incident to daily life; Preferred Acci. Ins. Co. v. Robinson, 61 L. R. A. 145, which denies right to recover under accident policy for inflammation of eyes from accidental contact with poison ivy; Smith v. Ætna L. Ins. Co. 56 L. R. A. 272, which holds injury by fall from steps of moving train covered by policy.

Cited in notes (139 Am. St. Rep. 705; 40 L.R.A. 432) on voluntary exposure to unnecessary danger within meaning of insurance policy.

Distinguished in Garcelon v. Commercial Travellers' Eastern Acci. Asso. 195 Mass. 537, 10 L.R.A.(N.S.) 961, 81 N. E. 201, holding one injured while attempting to board a moving train exposed himself voluntarily to unnecessary danger within the meaning of a policy.

Burden on insured to prove exception.

Cited in Travelers Ins. Co. v. Leibus, 8 Ohio C. C. N. S. 206, 28 Ohio C. C. 704, holding that burden is on insurer to show specific cause of death to have been other than accident.

40 L. R. A. 457, COOK v. MINNEAPOLIS, ST. P. & S. STE. M. R. CO. 98 Wis. 624, 67 Am. St. Rep. 830, 74 N. W. 561.

Liability of joint tort feasors.

Cited in Olson v. Phœnix Mfg. Co. 103 Wis. 339, 79 N. W. 409, holding contractor liable for negligent injury of another contractor on same building, notwithstanding presence of contributing human agencies.

Liability for fires.

Cited in footnotes to Stone v. Boston & A. R. Co. 41 L. R. A. 794, which holds negligence in permitting oil to stand on station platform not proximate cause of loss by fire set by careless dropping of match; Hoffman v. King, 46 L. R. A. 672, which denies liability of one negligently starting fire for damage to lands of remote proprietors to which fire spreads; Owen v. Cook, 47 L. R. A. 646, which holds one starting back fire to protect own property not liable for loss which would have resulted from original fire.

Construction of statutes.

Cited in Perrault v. Minneapolis, St. P. & S. S. M. R. Co. 117 Wis. 523, 94 N. W. 348, construing provision of statute that barbed-wire fence of specified kind shall be deemed a sufficient fence, not to mean that no other kind of fence shall be deemed sufficient.

Liability where concurrent causes or agencies produce injury.

Cited in Geuder, P. & F. Co. v. Milwaukee, 147 Wis. 502, 133 N. W. 835, holding that if two causes operate together in producing injury, one of which is of actionable nature, and other not, former is not actionable under particular circumstances, unless, had it not been operative injury would not have occurred; Paquin v. Wisconsin C. R. Co. 99 Minn. 174, 108 N. W. 882, holding the failure of defendant company to fence according to statute did not render it liable for an injury to a child of tender years crawling on track where fence should have been, by cars set in motion by trespassers; Pluchak v. Crawford, 137 Mich. 513, 100 N. W. 765, on liability where damage is caused by a combination of a responsible agency with a natural irresponsible agency.

40 L. R. A. 465, WAVERLY v. PAGE, 105 Iowa, 225, 74 N. W. 938.

Surface waters.

Cited in Garland v. Aurin, 103 Tenn. 561, 48 L. R. A. 864, 76 Am. St. Rep. 699, 53 S. W. 940, sustaining easement of owner of city property in flowage of surface waters over lower lands; Brown v. Armstrong, 127 Iowa, 177, 102 N. W. 1047, on no right as existing to interfere with the flow of surface water in a well defined channel.

Cited in notes (22 L.R.A.(N.S.) 792) on right of owner of lower as against upper landowner to obstruct surface water in natural channel; (85 Am. St. Rep. 723) on right of land owner to accelerate or diminish flow of water to or from lands of another.

Nuisances.

Cited in notes (53 L. R. A. 897, 904) on prescriptive right to maintain public nuisances; (51 L. R. A. 657) on right of municipality to maintain suit to enjoin or abate public nuisances; (42 L. R. A. 814) on injunctions by municipalities against nuisances on highways and streets.

— Pollution of water.

Cited in footnotes to Lowe v. Prospect Hill Cemetery Asso. 46 L. R. A. 237, which authorizes injunction against interment in cemetery when likely to pollute and poison water in wells in vicinity; Weston Paper Co. v. Pope, 56 L. R. A. 899, which authorizes injunction against pollution of stream by discharge from strawboard works.

Cited in note (40 L. R. A. 465) on injunctions by municipalities against nuisances by waters and water courses.

40 L. R. A. 471, BARRY v. KIRKLAND (Ariz.) 52 Pac. 771.

Ratification of forged instrument.

Cited in note (36 L.R.A.(N.S.) 1014) on ratification of forged instrument.

40 L. R. A. 473, LITTLE ROCK TRACTION & ELECTRIC CO. v. WALKER, 65 Ark. 144, 45 S. W. 57.

Liability for causing arrest.

Cited in Mayfield v. St. Louis, I. M. & S. R. Co. 97 Ark. 32, 32 L.R.A.(N.S.) 530, 133 S. W. 168, holding that railroad company is not responsible for act of station agent in using his official position as agent, to secure arrest of person who was eloping with daughter of friend; Dobbins v. Little Rock R. & Electric Co. 79 Ark. 95, 95 S. W. 794, 9 Ann. Cas. 84; Little Rock R. & Electric Co. v. Dobbins, 78 Ark. 564, 95 S. W. 788,—holding a street car company was not liable for the act of a conductor in having a passenger whom he had evicted from the car arrested for a breach of the peace.

Cited in footnotes to Brunswick & W. R. Co. v. Ponder, 60 L. R. A. 714, which denies carrier's liability for failure to prevent illegal arrest by officers, or for stopping train to permit removal; Markley v. Snow, 64 L. R. A. 685, which denies liability of employer for act of employee in causing arrest, long after commission of the crime, of one suspected of having set fire to building of employer; Palmer v. Maine C. R. Co. 44 L. R. A. 673, which holds passenger's unreasonable refusal to tell whether name on mileage ticket is his own, no justification for procuring his arrest; Daniel v. Atlantic C. L. R. Co. 67 L.R.A. 455, which holds railroad company not liable for arrest by cashier with power to collect money, give receipts, sell tickets, care for money received and forward it to treasurer, of innocent person whom he suspects of having stolen money which has come into his possession; Texas Midland Railroad v. Dean, 70

L.R.A. 943, which holds railroad company liable for act of baggage master in assisting in wrongful arrest at instance of city authorities of passenger awaiting at station for train.

Cited in notes (7 L.R.A.(N.S.) 170; 40 L.R.A.(N.S.) 1008, 1049; 17 Eng. Rul. Cas. 280) on liability of carrier for arrest of passenger by servant.

Distinguished in Schmidt v. New Orleans R. Co. 116 La. 322, 7 L.R.A.(N.S.) 174, 40 So. 714, holding defendant company liable where plaintiff was falsely arrested at the instance of one of their conductors.

40 L. R. A. 476, KENNEDY v. BURNAP, 120 Cal. 488, 52 Pac. 843.

Right to light and air.

Cited in footnote to Townsend v. Epstein, 52 L. R. A. 409, which sustains abutter's right to relief against diminution of light and air by bridge over street.

Cited in notes (26 L.R.R.(N.S.) 371) on easements of light and air created by severance of tract with apparent benefit existing; (81 Am. St. Rep. 771) on passing of easement of light and air as appurtenance; (122 Am. St. Rep. 219) on grant of easements of light and air by implication.

Explained in Bryan v. Grosse, 155 Cal. 136, 99 Pac. 499, holding an easement of light and air might be created by words of covenant.

40 L. R. A. 479, BRISTOL v. NEW ENGLAND R. CO. 70 Conn. 305, 39 Atl. 235.

Functions of railroad commission.

Cited in Meriden v. Bennett, 76 Conn. 67, 55 Atl. 564, on the appropriation of land for a highway through the act of the railroad commissioners as being an exercise of the paramount power of the state.

Review of acts of railroad commissioners.

Cited in Meriden v. Bennett, 76 Conn. 67, 55 Atl. 564, on the acts of railroad commissioners in laying out a highway as being reviewable on an appeal to the Supreme Court.

40 L. R. A. 483, SAVANNAH, F. & W. R. CO. v. QUO, 103 Ga. 125, 68 Am. St. Rep. 85, 29 S. E. 607.

Followed without discussion in Georgia R. & Electric Co. v. Baker, 120 Ga. 991, 48 S. E. 355.

Carrier's liability for employee's assault.

Cited in Wolfe v. Georgia R. & Electric Co. 2 Ga. App. 502, 58 S. W. 899; Wolfe v. Georgia R. & Electric Co. 124 Ga. 696, 63 S. E. 239,—on it being the duty of a carrier to protect its passengers from the violence and illtreatment at the hands of its employees.

Cited in footnotes to Birmingham R. & Electric Co. v. Baird, 54 L. R. A. 752, which holds carrier liable for conductor's assault on passenger; Kohner v. Capital Traction Co. 62 L. R. A. 875, which requires carrier, when peaceable passenger on street car is unlawfully assaulted by conductor, to show that injury was result of unavoidable accident; McNamara v. St. Louis Transit Co. 66 L.R.A. 486, which holds exemplary damages against street car company justified by conductor's intentional and unjustified kicking of boy attempting to board car.

Cited in notes (4 L.R.A.(N.S.) 494) on liability for malicious act of servant when master owes special duty to party injured; (40 L.R.A.(N.S.) 1011, 1053) on liability of carrier for wilful torts of servants to passengers.

Competency of juror as witness.

Cited in Atkins v. State, 7 Ga. App. 203, 66 S. E. 479, holding a witness

called by the state with reference to facts other than the commission of the crime is not thereby disqualified from acting as a juror in the trial of the cause; Georgia R. & Electric Co. v. Dougherty, 4 Ga. App. 616, 62 S. E. 158, holding the trial court erred in refusing to instruct that the jurors must not consider any personal knowledge they had concerning the plaintiff, in an action where the plaintiff's counsel said he hoped some of the jurors knew the plaintiff personally.

40 L. R. A. 485, ADA COUNTY FARMERS' IRRIG. CO. v. FARMERS' CANAL CO. 5 Idaho, 793, 51 Pac. 990.

Forfeiture of water rights by nonuser.

Cited in footnote to Salt Lake City v. Salt Lake City Water & Electrical Power Co. 61 L. R. A. 649, which holds appropriator's right to use water not forfeited by not putting to actual use, through opposition of prior appropriators.

Ditch and water rights as real property.

Cited in Nielson v. Parker, 19 Idaho, 733, 115 Pac. 488, holding that water right in realty and one who has actually diverted water of stream and applied it to beneficial use is in actual possession of such real property and this possession constitutes actual notice to others; Taylor v. Hulett, 15 Idaho, 269, 19 L.R.A.(N.S.) 538, 97 Pac. 37, holding proceedings to determine the nature and extent of a water right and the priority thereof are in the nature of an action to quiet title to real estate; Knowles v. New Sweden Irrigation Dist. 16 Idaho, 225, 101 Pac. 81; Nelson Bennett Co. v. Twin Falls Land & Water Co. 14 Idaho, 15, 93 Pac. 789,—on the property rights in ditch and water rights as being in the nature of real property; Speer v. Stephenson, 16 Idaho, 716, 102 Pac. 365, holding a permit given to appropriate waters is not real property.

Distinguished in Watson v. Molden, 10 Idaho, 583, 79 Pac. 503, holding under statute shares of stock in a canal or ditch company are personal property.

Separate rights to ditch and water.

Cited in Swank v. Sweetwater Irrig. & Power Co. 15 Idaho, 360, 98 Pac. 297, on the ownership of a ditch as not necessarily implying the existence of a right to the flow of water through it in the same party.

Cited in note (65 L.R.A. 409, 413) on transfer of right to use water for irrigation.

40 L. R. A. 488, WELLENVOSS v. GRAND LODGE, K. OF P. 103 Ky. 415, 45 S. W. 360.

Power of court over benevolent societies.

Cited in Gaines v. Farmer, 55 Tex. Civ. App. 608, 119 S. W. 874, holding that where no property rights are involved court has no power to determine regularity of election of officers of benevolent association.

Right to mandatory injunction.

Cited in footnote to Allen v. Stowell, 68 L.R.A. 223, which sustains right to mandatory injunction to compel removal of dams wrongfully diverting water onto plaintiff's property so as to destroy trees and cut gulches.

40 L. R. A. 489, McMURTRY v. PHILLIPS INVEST. CO. 103 Ky. 308, 45 S. W. 96.

Enforcement of building restrictions in deed.

Cited in James v. Irvine, 141 Mich. 381, 104 N. W. 631, on who may properly maintain an action to enforce building restrictions in a deed.

Violation of building restrictions.

Cited in Sanders v. Dixon, 114 Mo. App. 249, 89 S. W. 577, holding the erection of a double building on a lot for the use of more than one family was a violation of a restriction in the deed providing that not more than one dwelling house be erected on each lot; Jones v. Williams, 56 Wash. 592, 106 Pac. 166, on when the use made of property will be declared to be in violation of building restrictions; James v. Irvine, 141 Mich. 381, 104 N. W. 631, holding that restrictions in deeds will be construed strictly against grantors and those claiming right to enforce them.

Cited in notes (1 Brit. Rul. Cas. 996) on structure separately accommodating more than one family as violating restriction against erection of more than one house, etc.; (95 Am. St. Rep. 220) on validity of conditions and restrictions in deed.

40 L. R. A. 491, COHEN v. MANUEL, 91 Me. 274, 64 Am. St. Rep. 225, 39 Atl. 1030.

Extent of innkeeper's liability.

Cited in footnotes to Bradley Livery Co. v. Snook, 55 L. R. A. 208, which denies innkeeper's liability for team tied under shed without his attention having been called to fact; Rains v. Maxwell House Co. 64 L. R. A. 471, which holds watch within statute providing that if guest fails to deposit jewels in safe provided by hotelkeeper, it shall be at his own risk.

Cited in notes (22 L.R.A.(N.S.) 577) on effect of statute limiting innkeeper's liability for goods not delivered into his custody; (99 Am. St. Rep. 586, 598) on liability of innkeepers for injury to, or loss of, guest's property.

Rule of parl delicto.

Cited in note (113 Am. St. Rep. 731) on rule of pari delicto.

40 L. R. A. 494, BALTIMORE v. FAIRFIELD IMPROV. CO. 87 Md. 352, 67 Am. St. Rep. 344, 39 Atl. 1081.

Public nuisances.

Cited in Perrin v. Cresent City Stockyard & Slaughter-house Co. 119 La. 99, 43 So. 938, 12 Ann. Cas. 903, on the right to maintain an offensive occupation not being acquired by prescription.

Cited in footnotes to Van Fossen v. Clark, 52 L. R. A. 279, which holds that purchaser's knowledge of existence of nuisance from discharge from drain does not estop him from suing to abate same; Bly v. Edison Electric Illuminating Co. 58 L. R. A. 500, which sustains right of tenant to maintain action to abate nuisance created by third person's method of conducting business before lease renewed; Storms v. Manhattan R. Co. 66 L.R.A. 625, which holds lessee's right to damages for injuries to building by interference with light, air, and access by construction of elevated railway in abutting street not cut off by renewal of lease in accordance with its terms.

Cited in notes in (53 L.R.A. 891) on prescriptive right to maintain public nuisances; (107 Am. St. Rep. 233, 240) on what are public nuisances.

— Pesthouse or hospital.

Cited in Thompson v. Kimbrough 23 Tex. Civ. App. 353, 57 S. W. 328, sustaining injunction against maintenance of authorized pesthouse near school, where other locations available; Anable v. Montgomery County, 34 Ind. App. 79, 107 Am. St. Rep. 173, 71 N. E. 272, holding a county board building a pest house under statutory duty, in such a manner that it injures and destroys the use of private property, has the burden of showing justification; Gowen v.

O'Hara, 15 Pa. Dist. R. 756, holding the maintenance of a hospital for the open air treatment of tuberculosis was not per se a nuisance.

Cited in footnotes to Clayton v. Henderson, 44 L. R. A. 474, which sustains city's liability for establishing pesthouse near residence; Deaconess Home & Hospital v. Bontjes, 64 L. R. A. 215, which denies right to establish hospital so near private residence that the necessary sights, sounds, and smells become intolerable nuisance; Henderson v. O'Haloran, 59 L. R. A. 718, which holds city liable for contraction of smallpox by guest from inmate of house contracting disease from unlawful location of pesthouse near.

Cited in notes (5 L.R.A.(N.S.) 1029) on right of property owner to complain of location of contagious disease hospital in neighborhood; (18 L.R.A. (N.S.) 260) on right of municipality to establish contagious disease hospital beyond city limits; (29 L.R.A.(N.S.) 49) on hospital as nuisance; (93 Am. St. Rep. 852) on liability of persons communicating contagious or infectious disease to others; (109 Am. St. Rep. 914) on erection of pesthouse or hospital as "damage" to property within provision that property shall not be taken or damaged for public use without compensation.

Distinguished in Frazer v. Chicago, 186 Ill. 488, 51 L. R. A. 309, footnote p. 306, 78 Am. St. Rep. 296, 57 N. E. 1055, holding establishment of smallpox hospital not taking or damaging of adjoining property; Barry v. Smith, 191 Mass. 89, 5 L.R.A.(N.S.) 1035, 77 N. E. 1099, 6 Ann Cas. 817, on the liability of officials where they so negligently maintain a pest house that it becomes a nuisance.

— Enjoining maintenance.

Cited in Everett v. Paschall, 61 Wash. 54, 31 L.R.A.(N.S.) 830, 111 Pac. 879, Ann. Cas. 1912B, 1128, holding that maintenance of tuberculosis sanitarium in residential section of city may be enjoined as nuisance; Densmore v. Evergreen Camp No. 147, W. W. 61 Wash. 233, 31 L.R.A.(N.S.) 610, 112 Pac. 255, Ann. Cas. 1912B, 1206, holding that maintenance of undertaking establishment in residence part of city, within few feet of neighboring residences may be enjoined by their owners as nuisance; Stotler v. Rochelle, 83 Kan. 91, 29 L.R.A.(N.S.) 53, 109 Pac. 788, holding that establishment of cancer hospital in residence neighborhood in near proximity to dwellings may be enjoined; Hessin v. Manhattan, 81 Kan. 157, 25 L.R.A.(N.S.) 237, 105 Pac. 44, refusing to enjoin city in the maintenance of a pest house in a certain locality where the city authorities were combating a contagious disease which was spreading and the building used was the only one available for the purpose; Cherry v. Williams, 147 N. C. 460, 125 Am. St. Rep. 566, 61 S. E. 267, 15 Ann. Cas. 715, holding the use of a building in a thickly settled neighborhood as a sanitorium for the treatment of tuberculosis might be enjoined where a menace to the health of adjacent owners.

Cited in note (23 L.R.A.(N.S.) 1189) on right to injunction against being sent to pesthouse.

40 L. R. A. 498, O'HERRON v. GRAY, 168 Mass. 573, 60 Am. St. Rep. 411, 47 N. E. 429.

Devesting of ownership in chattels.

Cited in Scollans v. E. H. Rollins & Sons, 173 Mass. 278, 73 Am. St. Rep. 284, 53 N. E. 863, holding title to registered bond not transferred by fraudulent pledge.

Cited in note (19 L.R.A.(N.S.) 111) on rights of owner of negotiable paper,

payable to bearer, or indorsed in blank, as against bona fide purchaser from one unlawfully in possession.

Distinguished in National Safe Deposit, Sav. & Trust Co. v. Hibbs, 32 App. D. C. 470, holding the title to a certificate of stock indorsed in blank passes to a bona fide purchaser from an employee of a trust company who by fraud secures it from an officer of the company to whom it had been assigned as security for a loan and negotiates it through a stock broker.

Effect of notice of transferrer's trust interest.

Cited in Scollans v. E. H. Rollins & Sons, 179 Mass. 353, 88 Am. St. Rep. 386, 60 N. E. 983, holding effect of notice of trust expressed on face of registered certificate as to pledgee not destroyed by customary understanding of indorsement in blank: Farmers' Bank v. Diebold Safe & Lock Co. 66 Ohio St. 377, 58 L. R. A. 624, footnote p. 620, 90 Am. St. Rep. 586, 64 N. E. 518, denying right of second pledgee taking registered certificate without inquiry or attempt to secure prescribed transfer on books; Hunting v. Safford, 183 Mass. 160, 66 N. E. 642, denying right of testamentary trustees to accept receipt for accumulated income from guardian of minor, under agreement that he should receive therefor receipt from one of trustees as guardian of other minor for amount due latter minor from former guardian; Tuttle v. First Nat. Bank, 187 Mass. 535, 105 Am. St. Rep. 420, 73 N. E. 560, holding a bank lending money on a note signed by a trustee as such and taking a transfer of shares of stock belonging to the trust as security for a loan to the trustee as such has no remedy against the trust estate; Fillebrown v. Hayward, 190 Mass. 480, 77 N. E. 45, holding the signing of checks as treasurer of a corporation was not notice of the fiduciary capacity in which they were issued, the authority to issue checks being incidental to the office: Gentry v. Bearss, 82 Neb. 793, 118 N. W. 1077, holding a person taking a note and mortgage from one with knowledge of relationship as guardian was not an innocent purchaser where no steps were taken to learn of guardian's authority to execute mortgage; State v. Omaha Nat. Bank, 66 Neb. 915, 93 N. W. 319 (dissenting opinion), on parties dealing with another with notice of his trust relationship as bound to learn the extent of his authority.

Distinguished in Gardner v. Beacon Trust Co. 190 Mass. 32, 2 L.R.A.(N.S.) 773, 112 Am. St. Rep. 303, 76 N. E. 455, 5 Ann. Cas. 581, holding a guardian might sell and transfer personalty of his ward without a license from the probate court.

Negligence estopping owner.

Cited in Scollans v. Rollins, 173 Mass. 281, 73 Am. St. Rep. 284, 53 N. E. 863, holding owner of registered bonds not estopped as against pledgee, by negligent deposit with, and continued confidence in, fraudulent pledgeor; Westlake v. Dunn, 184 Mass. 263, 100 Am. St. Rep. 557, 68 N. E. 212, holding land owner not negligent in temporarily intrusting deed with grantee's name in blank to another, to enable latter to procure part of purchase money from a friend, so as to estop him from claiming title as against bank taking mortgage from such person, who inserted his own name as grantee.

Negligence as working an estoppel.

Cited in Marshall Field & Co. v. Sutherland, 136 Iowa, 220, 13 L.R.A.(N.S.) 579, 113 N. W. 770, holding a creditor cannot recover from guarantors of debtor's credit where by mistake he gives debtor excessive credit which mistake is not discovered until after the insolvency of the debtor.

Certificates of stock as negotiable instruments.

Cited in Schumacher v. Greene Cananea Copper Co. 117 Minn. 129, 38 L.R.A.

(N.S.) 183, 134 N. W. 510, holding that stock certificates have not attributes of negotiable instruments and custom among brokers to pass such certificates endorsed in blank, without inquiry as to source of title does not change rule of law.

Power of guardian as to deposits.

Cited in note (89 Am. St. Rep. 297) on common law powers of guardians as to deposits.

Rights of owner of stolen stock or bonds.

Cited in footnote to The Jennie Clarkson Home for Children v. Missouri K. & T. R. Co. 70 L.R.A. 787, which holds corporation canceling registration of bonds and making them payable to bearer contrary to agreement liable to owner for their value, although transfer agent was deceived by forgeries of owner's agent while acting outside scope of authority.

40 L. R. A. 501, BUSINESS MEN'S LEAGUE v. WADDILL, 143 Mo. 495, 45 S. W. 262.

Equitable jurisdiction over conjectural injury from invalid statute.

Cited in Nebraska Teleph. Co. v. Cornell, 58 Neb. 827, 80 N. W. 43, denying sufficiency of mere conjectural injury from invalid statute, to support equitable jurisdiction; Schubach v. McDonald, 179 Mo. 182, 65 L. R. A. 142, 101 Am. St. Rep. 452, 78 S. W. 1020, sustaining jurisdiction of equity to enjoin ticket brokers from disposing or attempting to dispose of tickets purchased by them knowing them to be nontransferable.

Delegation of judicial or legislative functions to a ministerial officer.

Cited in State ex rel. Hickman v. Preferred Tontine Mercantile Co. 184 Mo. 182, 82 S. W. 1075, holding an act is not unconstitutional as conferring judicial or legislative powers in that it requires the filing of the articles of association and plan of doing business with a supervisor who shall issue a certificate to do business.

40 L. R. A. 503, GRAHAM v. SMITH, 100 Ga. 434, 62 Am. St. Rep. 323, 28 S. E. 225.

Status of dogs.

Cited in Vantreese v. McGee, 26 Ind. App. 526, 60 N. E. 318, sustaining replevin for body of dead dog and referring with approval to annotation in 40 L. R. A. 503; Salley v. Manchester & A. R. Co. 54 S. C. 484, 71 Am. St. Rep. 810, 32 S. E. 526, sustaining right to damages for negligent running over and killing of dog; Vaughn v. Nelson, 5 Ga. App. 107, 62 S. E. 708, holding that dog is such property as to be subject to levy and sale for debts of his owner; Columbus R. Co. v. Woolfolk, 128 Ga. 632, 10 L.R.A.(N.S.) 1137, 119 Am. St. Rep. 404, 58 S. E. 152; Florida C. & P. R. Co. v. Davis, 45 Fla. 278, 34 So. 218, 3 Ann. Cas. 274,—holding a railroad company was liable for the negligent killing of a dog; Vaughn v. Nelson, 5 Ga. App. 107, 62 S. E. 708, holding a dog subject to levy and sale for the owner's debts; Strong v. Georgia R. & Electric Co. 118 Ga. 515, 45 S. E. 366, on the status of dogs as property and also citing annotation on same point.

Cited in footnotes to Fox v. Mohawk & H. River Humane Soc. 51 L. R. A. 681, which sustains summary killing or appropriation of dog by humane society without notice to owner; Gibson v. Harrison, 54 L. R. A. 268, which holds exaction of fee of $1.50 for privilege of keeping dog, authorized by statute; Walker v. Towle, 53 L. R. A. 749, which authorizes killing by policeman of unmuzzled dog, at large on city street; Moore v. Charlotte E. R. L. & P. Co. 67 L.R.A.

470, which holds street railroad company not liable for killing dog by car in motion unless it was done wilfully, wantonly, or recklessly.

Cited in notes (40 L.R.A. 503) on property rights in dogs; (6 L.R.A.(N.S.) 91) on duty of railroads or street railways with respect to dogs on track; (67 Am. St. Rep. 289, 291) on property in dogs and remedies for its enforcement.

— "Domestic animals."

Cited in Wilcox v. State, 101 Ga. 564, 39 L. R. A. 710, 28 S. E. 981, holding dogs within act making cruelty to "domestic animals" indictable.

40 L. R. A. 508, HAMBY v. SAMSON, 105 Iowa, 112, 67 Am. St. Rep. 285, 74 N. W. 918.

Property rights in dogs.

Approved in Louisville & N. R. Co. v. Fitzpatrick, 129 Ala. 324, 87 Am. St. Rep. 64, 29 So. 859, sustaining right of action for negligent killing of dog.

Cited in Harper v. St. Paul City R. Co. 99 Minn. 255, 6 L.R.A.(N.S.) 914, 116 Am. St. Rep. 415, 109 N. W. 227, holding a recovery may be had for the negligent killing of a dog; State v. Churchill, 15 Idaho, 656, 19 L.R.A.(N.S.) 842, 98 Pac. 853, 16 Ann. Cas. 947; Strong v. Georgia R. & Electric Co. 118 Ga. 521, 45 S. E. 366,—on the status of the dog as property.

Cited in notes (19 L.R.A.(N.S.) 835) on right to kill dogs; (21 L.R.A.(N.S.) 700) on validity of statute permitting summary killing of domestic animals at large, other than dogs; (67 Am. St. Rep. 290, 291, 297) on property in dogs and remedies for its enforcement; (80 Am. St. Rep. 757) on replevin or claim and delivery of dogs; (90 Am. St. Rep. 215) on summary proceedings to impound and sell animals.

Annotation in 40 L. R. A. 508, referred to with approval in Hodges v. Causey, 77 Miss. 356, 48 L. R. A. 95, 96, 78 Am. St. Rep. 525, 26 So. 945, holding that trespassing dog cannot lawfully be killed merely because owner had been notified to keep it off premises.

— Larceny of dog.

Approved in State v. Langford, 55 S. C. 326, 74 Am. St. Rep. 746, 33 S. E. 370, holding dog subject of larceny, and referring with approval to annotation in 40 L. R. A. 503.

Cited in Re Burkell, 2 Alaska, 120, holding the stealing of a dog constituted larceny; Rockwell v. Circuit Judge, 133 Mich. 12, 94 N. W. 378, holding a dog may be the subject of larceny.

Cited in note (88 Am. St. Rep. 588, 589) on larceny of dogs.

40 L. R. A. 518 CITIZENS' RAPID-TRANSIT CO. v. DEW, 100 Tenn. 317, 66 Am. St. Rep. 754, 45 S. W. 790.

Property status of dogs.

Approved in Louisville & N. R. Co. v. Fitzpatrick, 129 Ala. 325, 87 Am. St. Rep. 64, 29 So. 859, holding that due care must be exercised to avoid injury of dog.

Cited in Harper v. St. Paul City R. Co. 99 Minn. 255, 6 L.R.A.(N.S.) 914, 116 Am. St. Rep. 415, 109 N. W. 227; Florida C. & P. R. Co. v. Davis, 45 Fla. 278, 34 So. 218, 3 Ann. Cas. 274,—holding a railroad company is liable for the negligent killing of a dog; Strong v. Georgia R. & Electric Co. 118 Ga. 521, 45 S. E. 366, on the status of a dog as property; Phillips v. Lewis, 3 Shannon, Cas. 232, on status of dogs as property.

Cited in footnote to Moore v. Charlotte E. R. L. & P. Co. 67 L.R.A. 470, which holds street railroad company not liable for killing dog by car in motion unless it was done wilfully, wantonly, or recklessly.

Cited in notes (40 L.R.A. 509) on property rights in dogs; (6 L.R.A.(N.S.)

913) on duty of railroads or street railways with respect to dogs on track; (67 Am. St. Rep. 289, 292, 293, 296) on property in dogs and remedies for its enforcement.

Right to rely upon quickness of dog to avoid accident.

Cited in West Chicago Street R. Co. v. Klecka, 94 Ill. App. 349, denying right of street car motorman to rely upon quick movements of dog near track to avoid accident; St. Louis, I. M. & S. R. Co. v. Rhoden, 93 Ark. 34, 137 Am. St. Rep. 73, 123 S. W. 798, 20 Ann. Cas. 915, holding that employee of railroad company cannot rely upon quickness and celerity of dog to absolve company from duty and care to avoid running over dog; Moore v. Charlotte Electric R. Light & P. Co. 136 N. C. 558, 67 L.R.A. 472, 48 S. E. 822, on liability of railroad company for the killing of dogs.

Pedigree as evidence of animal's value.

Cited in Pacific Exp. Co. v. Lothrop, 20 Tex. Civ. App. 342, 49 S. W. 898, holding pedigree admissible on question of value of dog; Warrick v. Reinhard, 136 Iowa, 30, 111 N. W. 983, holding the pedigree of an animal may be shown on the question of damages for its wrongful killing; State v. Churchill, 15 Idaho, 655, 19 L.R.A.(N.S.) 842, 98 Pac. 853, 16 Ann. Cas. 947, on the nature of evidence admissible as to the value of a dog wrongfully killed.

Cited in note (125 Am. St. Rep. 857) on admissibility in evidence against third person of books of pedigree.

40 L. R. A. 526, CORNING v. SAGINAW, 116 Mich. 74, 74 N. W. 307.

Municipal liability for officers' negligence.

Approved in McAuliffe v. Victor, 15 Colo. App. 339, 62 Pac. 231, denying municipal liability to one under arrest for injury by negligent burning of jail by its officers.

Cited in footnotes to Nicholson v. Detroit, 56 L. R. A. 601, which denies city's liability for death of unwarned employee from smallpox contracted in tearing down smallpox hospital; Hall v. Concord, 58 L. R. A. 455, which denies city's liability for negligent management of steam roller in repairing city street under supervision of state superintendent; Dudley v. Flemingsburg, 60 L. R. A. 575, which denies city's liability for injuries by failure to prevent coasting in streets; McFadden v. Jewell, 60 L. R. A. 402, which denies city's liability for injury to child by negligence of one employed to clear alley of weeds; Colwell v. Waterbury, 57 L. R. A. 218, which denies city's liability for injury to employee through defect in machine for crushing stone for highway; Bowden v. Kansas City, 66 L.R.A. 181, which holds that city is performing ministerial public duty in maintaining fire station so as to be liable in damages to employee for personal injuries resulting from neglect of city to furnish reasonably safe place to work.

Cited in note (19 L.R.A.(N.S.) 1178, 1179) on liability of municipality for negligence of bridge tender.

Disapproved in Naumburg v. Milwaukee, 77 C. C. A. 67, 146 Fed. 649, holding the negligence of the tender of a draw bridge maintained by the city was imputable to the city so as to render it liable.

40 L. R. A. 528, FOWLES v. BRIGGS, 116 Mich. 425, 72 Am. St. Rep. 537, 74 N. W. 1046.

Effect of intervening negligence.

Followed in Lellis v. Michigan C. R. Co. 124 Mich. 39, 82 N. W. 828, denying shipper's liability for defective loading after railroad's failure to inspect.

Cited in Griffin v. Jackson Light & Power Co. 128 Mich. 655, 55 L. R. A. 320, footnote p. 318, 92 Am. St. Rep. 496, 87 N. W. 888, denying electric light company's liability for injury to stranger attempting to use defectively insulated movable light which storekeeper has continued to use; Missouri, K. & T. R. Co. v. Merrill, 65 Kan. 443, 59 L. R. A. 714, 93 Am. St. Rep. 287, 70 Pac. 358, denying liability of railroad company delivering defective car to other company for injury to employee of latter company after inspection by it; Brady v. Klein, 133 Mich. 426, 62 L. R. A. 911, 95 N. W. 557, denying liability of landlord to licensee of tenant, for injury due to defective condition of premises; Nickey v. Steuder, 164 Ind. 192, 73 N. E. 117, holding defendant company negligent per se in employing a minor in violation of law was not liable for injuries received through the act of a third person not in the employment of defendant: Southern Oil Co. v. Church, 32 Tex. Civ. App. 327, 74 S. W. 797, holding one furnishing defective machinery to an independent contractor, to be used in the performance of services for the person furnishing is not liable for injuries to servants of contractor; McNamara v. Boston & M. R. Co. 202 Mass. 500, 89 N. E. 131, on the effect of intervening negligence of third parties on liability of defendant for negligence: Douglas v. Marsh, 141 Mich. 214, 104 N. W. 624, on liability of master for injury to employee through the act of a third party.

Cited in notes (46 L.R.A. 119) on liability, as dependent on proximity of cause, for injuries caused by condition of chattels delivered by defendant to plaintiff's master; (92 Am. St. Rep. 557) on liability to third persons of lessors of real or personal property, in absence of intervening human agency.

Duty of railroad to inspect cars.

Cited in note (130 Am. St. Rep. 47) on duty of railroad to inspect cars.

40 L. R. A. 531, OMAHA v. BOWMAN, 52 Neb. 293, 66 Am. St. Rep. 506, 72 N. W. 316.

Later appeal in 63 Neb. 334, 88 N. W. 521.

Liability for dangerous premises.

Approved in Savannah, F. & W. R. Co. v. Beavers, 113 Ga. 409, 54 L. R. A. 319, footnote p. 314, 39 S. E. 82, denying duty of one making excavation on own land to guard trespassing children from injury; Stendal v. Boyd, 73 Minn. 57, 42 L. R. A. 290, footnote p. 288, 72 Am. St. Rep. 597, 75 N. W. 735, holding landowner not liable for failure to fence premises containing pond having alluring attractiveness for children; Tucker v. Draper, 62 Neb. 70, 54 L. R. A. 324, 86 N. W. 917, sustaining submission of question of negligence as to condition of pond upon land where decedent invited to go.

Cited in Indianapolis Water Co. v. Harold, 170 Ind. 177, 83 N. E. 993, holding defendant water company was not liable for the drowning of a boy of tender years while attempting to cross a canal maintained by it on a footlog placed across the canal; Wheeling & L. E. R. Co. v. Harvey, 77 Ohio St. 245, 19 L.R.A.(N.S.) 1145, 122 Am. St. Rep. 503, 83 N. E. 66, 11 Ann. Cas. 981, holding railroad company not liable for injuries received by a child playing about a turn table.

Cited in footnotes to Biggs v. Consolidated Barb-Wire Co. 44 L. R. A. 655, which holds owner liable for maintaining dangerous machinery on private grounds unprotected from visits of trespassing children; Kramer v. Southern R. Co. 52 L. R. A. 359, which denies railroad company's liability for death of child by fall of pile of cross-ties in unused portion of street; Rachmel v. Clark, 62 L. R. A. 959, which holds manufacturer storing stone slabs on sidewalk in front of building liable for injuries to person lawfully using the sidewalk; Cooper v.

Overton, 45 L. R. A. 591, which denies owner's liability for drowning of trespassing child in unfenced city lot in pond formed by damming surface water; Kopplekom v. Colorado Cement Pipe Co. 54 L. R. A. 284, which holds owner of uninclosed city lot liable for injury to young child by toppling over of large cement pipe used by children as plaything; Heimann v. Kinnare, 52 L. R. A. 652, which holds thirteen-year-old boy negligent *per se* in jumping over strip of water onto rotten ice on pond, and sliding to point where water was over his head.

Cited in note (19 L.R.A.(N.S.) 1147) on attractive nuisance.

— Municipal liability.

Approved in Ritz v. Wheeling, 45 W. Va. 267, 43 L. R. A. 151, 31 S. E. 993, denying city's liability to trespasser for unsafe condition of its premises.

Cited in Reeder v. Omaha, 73 Neb. 848, 103 N. W. 672, holding city not liable for the drowning of a boy of tender years in a pond formed by the grading of a street, where negligence of city was not connected with the drowning; Kansas City v. Siese, 71 Kan. 286, 80 Pac. 626 (dissenting opinion), on the liability of municipality for injuries resulting from the maintenance of a dangerous condition of premises; Nothdurft v. Lincoln, 66 Neb. 438, 96 N. W. 163, on liability of municipality for injuries due to defective condition of streets; McCook v. McAdams, 76 Neb. 9, 110 N. W. 1005, on necessity that it be shown that it was the city's negligence in the carrying off of surface water that was the proximate cause of the injury.

Cited in footnotes to Rome v. Cheney, 55 L.R.A. 221, which denies city's liability for drowning of child in necessary sewer, 4 feet wide and 2 feet deep; Temby v. Ishpeming, 69 L.R.A. 618, which denies liability of city for injuries to traveler by fall of billboard insecurely fastened by abutting owner; Carey v. Kansas City, 70 L.R.A. 65, which holds fence 4½ feet high around water supply reservoir in public park so constructed that children must remove shoes to climb it sufficient to relieve city from liability for death by drowning of child who scaled fence for his own purposes after being warned not to go inside.

Distinguished on later appeal in 59 Neb. 85, 80 N. W. 259, sustaining city's liability for drowning of child in unprotected pond partly in street, formed by city's negligent filling up of street.

Presumption of negligence.

Cited in note (113 Am. St. Rep. 988) on presumption of negligence from happending of accident causing personal injuries.

40 L. R. A. 534, A. J. NEIMEYER LUMBER CO. v. BURLINGTON & M. RIVER R. CO. 54 Neb. 321, 74 N. W. 670.

Title to consigned property; consignment to vendor.

Followed in Missouri P. R. Co. v. Lau, 57 Neb. 561, 78 N. W. 291, holding that consignment to order of shipper raises presumption of retention of ownership.

Cited in Hoffman v. Gosline, 96 C. C. A. 318, 172 Fed. 117, on consignment of goods in name of vendor as creating presumption of intent to retain title; Keller v. State, — Tex. Crim. Rep. —, 1 L.R.A.(N.S.) 507, 87 S. W. 669 (dissenting opinion), upon the retention of title till after payment.

Cited in footnotes to Hopkins v. Cowen, 47 L. R. A. 124, which holds title to goods not passed by consignment to consignor's order, where bill of lading with draft attached requires its surrender to obtain delivery of goods; Kentucky Ref. Co. v. Globe Ref. Co. 42 L. R. A. 353, which holds title to property not

changed by mere acceptance of draft for purchase price, with bill of lading attached, by which goods consigned to consignor's order.

— F. o. b.

Cited in Globe Oil Co. v. Powell, 56 Neb. 466, 76 N. W. 1081, discussing, without deciding, effect of contract to ship f. o. b.; Dannemiller v. Kirkpatrick, 201 Pa. 223, 50 Atl. 928, holding contract to bill at "price f. o. b." destination raises presumption of agreement to deliver at destination, but question is for jury where evidence conflicting; Detroit Southern R. Co. v. Malcomson, 144 Mich. 174, 115 Am. St. Rep. 390, 107 N. W. 915, holding where prices of coal were quoted as a certain price "f. o. b." on a certain railroad, title did not pass until a delivery made to the buyer at the designated place; Evanston Elevator & Coal Co. v. Castner, 133 Fed. 410, holding a contract for delivery "f. o. b. cars at the mines" did not impose an obligation upon the seller to furnish cars; Davis v. Alpha Portland Cement Co. 134 Fed. 278; Vogt v. Schienebeck, 122 Wis. 496, 67 L.R.A. 759, 106 Am. St. Rep. 989, 100 N. W. 820, 2 Ann. Cas. 814,—on what meant by a sale "f. o. b. cars."

Cited in note (62 L. R. A. 796, 807, 808) on effect of contract to ship goods f. o. b.

Distinguished in Olson v. Wabash Coal Co. 126 Ill. App. 257, holding where the price was quoted "f. o. b." "tracks your station" the vendee was not required to look to carrier for a delay in delivery; Hurst v. Altamont Mfg. Co. 73 Kan. 427, 6 L.R.A.(N.S.) 932, 117 Am. St. Rep. 525, 85 Pac. 551, 9 Ann. Cas. 549, holding no duty rests on buyer to furnish cars where the seller agrees to sell a certain number of car loads to be delivered "f. o. b. cars" at the seller's place of business.

Delivery to carrier as affecting passing of title.

Cited in Orthwein's Sons v. Wichita Mill & Elevator Co. 32 Tex. Civ. App. 602, 75 S. W. 364, holding on the delivery of grain to the common carrier under an oral contract for its sale and the delivery of the bill of lading to the buyer, title to the grain vested in the buyer; Easton v. Wostenholm, 70 C. C. A. 108, 137 Fed. 532; Matheson v. Southern R. Co. 79 S. C. 159, 60 S. E. 437,—on delivery to carrier as affecting the passing of title; Heert v. Ridenour-Raymond Grocer Co. 48 Colo. 45, 139 Am. St. Rep. 259, 108 Pac. 968, holding that delivery to carrier pursuant to instructions of buyer of goods is delivery to purchaser, although seller pays freight, not intending to retain title.

Right of stoppage in transitu.

Cited in Re W. A. Paterson Co. 34 L.R.A.(N.S.) 33, 108 C. C. A. 493, 186 Fed. 631, holding that it is only where goods are in transit between vendor and vendee that right of stoppage in transitu exists in former.

Cited in note (34 L.R.A.(N.S.) 31) on stoppage in transitu after reshipment.

40 L. R. A. 549, GERNERD v. GERNERD, 185 Pa. 233, 66 Am. St. Rep. 646, 39 Atl. 884.

Right of action for loss of husband's or wife's affection.

Approved in Knapp v. Wing, 72 Vt. 338, 47 Atl. 1075, and Wolf v. Frank, 92 Md. 143, 52 L. R. A. 105, footnote p. 102, 48 Atl. 132, sustaining wife's right of action for alienation of husband's affections; Lonstorf v. Lonstorf, 118 Wis. 167, 95 N. W. 961 (dissenting opinion), majority denying wife's right of action for alienating her husband's affections; King v. Hanson, 13 N. D. 97, 99 N. W. 1085, holding a married woman may maintain an action for the alienation of husband's affections.

Cited in Thompson v. Thompson, 58 Pittsb. L. J. 43, holding that in action by wife against husband's relatives for alienation of affections improper motives must be shown; Nolin v. Pearson, 191 Mass. 290, 4 L.R.A.(N.S.) 649, 114 Am. St. Rep. 605, 77 N. E. 890, 6 Ann. Cas. 658; Dodge v. Rush, 28 App. D. C. 152, 8 Ann. Cas. 671,—holding an action maintainable by a wife for the alienation of husband's affections; Keath v. Shiffer, 37 Pa. Super. Ct. 579, 26 Lanc. L. Rev. 68, holding husband might maintain action for the alienation of husband's affections.

Cited in footnotes to Houghton v. Rice, 47 L. R. A. 310, which denies right of action against other woman for alienating husband's affections when unaccompanied by adultery; Dietzman v. Mullin, 50 L. R. A. 808, and Betser v. Betser, 52 L. R. A. 630, which sustains wife's right of action for alienating her husband's affection; Beach v. Brown, 43 L. R. A. 114, which sustains divorced wife's right of action in own name for prior alienation of husband's affections.

— Liability for advice to son or daughter.

Approved in Eagon v. Eagon, 60 Kan. 705, 57 Pac. 942, denying presumption of unworthy object in advice and counsel to son as to treatment of wife.

Cited in Oakman v. Belden, 94 Me. 284, 80 Am. St. Rep. 396, 47 Atl. 553, holding erroneous, instruction that parents are liable if daughter's affections alienated through their active interference, either by threats, persuasion, or arguments.

40 L. R. A. 550, DEMPSEY v. DOBSON, 184 Pa. 588, 63 Am. St. Rep. 809, 39 Atl. 493.

Effect of local or trade usage.

Followed in Silliman v. Whitmer, 11 Pa. Super. Ct. 260, denying competency of evidence to show ownership in one person according to local or trade usage, where common law places it in another.

Approved in Becker v. Hall, 116 Iowa, 593, 56 L. R. A. 575, 88 N. W. 324, denying validity of custom as to appropriation of ice on public waters, when unreasonable and against public rights.

Cited in Pennsylvania R. Co. v. Naive (Tenn.) 64 L. R. A. 447, 79 S. W. 124, sustaining reasonableness of custom of carrier to suspend all business on July 4th, even when applied to delivery of perishable freight.

Right of master to inventions of servant.

Cited in note (2 L.R.A.(N.S.) 1178) on right of master to inventions of servant.

40 L. R. A. 552, *Re* DU PLAINE, 185 Pa. 332, 64 Am. St. Rep. 651, 39 Atl. 947.

40 L. R. A. 553, UNION P. R. CO. v. YATES, 25 C. C. A. 103, 49 U. S. App. 241, 79 Fed. 584.

Scientific works as evidence.

Approved in Bixby v. Omaha & C. B. R. & Bridge Co. 105 Iowa, 302, 43 L. R. A. 537, footnote p. 533, 67 Am. St. Rep. 299, 75 N. W. 182, denying right to read standard medical books as evidence.

Cited in Dunbauld v. Thompson, 109 Iowa, 201, 80 N. W. 324, discussing, without deciding, question as to admissibility of medical books as evidence; MacDonald v. Metropolitan Street R. Co. 219 Mo. 492, 118 S. W. 78, 16 Ann. Cas. 810, on medical books not being admissible as independent evidence.

Annotation cited in Springfield Electric Light & P. Co. v. Calvert, 134 Ill.

App. 289, holding standard mortality tables were admissible for the purpose of determining the probable duration of life.

Cited in footnote to Scott v. Astoria & C. River R. Co. 62 L. R. A. 544, which sustains right of civil engineer, testifying as expert, to refer to standard works on subject as corroborating his opinion.

Cited in note (40 L. R. A. 566) on scientific books and treatises as evidence.

Annotation in 40 L. R. A. 553, referred to with approval in Crouse v. Chicago & N. W. R. Co. 102 Wis. 207, 78 N. W. 446, holding annuity tables admissible upon question of damages in action for injuries producing permanent disability.

Applicability of local rules of evidence in Federal courts.

Cited in Chicago & N. W. R. Co. v. Kendall, 93 C. C. A. 422, 167 Fed. 67, 16 Ann. Cas. 560, on the rules of the state courts on questions of procedure as not being binding on the Federal courts.

Cited in note (40 L.R.A.(N.S.) 451) on questions of state law as to which state court decisions must be followed in actions originating in, or removed to, Federal courts.

Disapproved in Stewart v. Morris, 32 C. C. A. 205, 60 U. S. App. 557, 89 Fed. 292, holding that Federal court will follow local state decisions as to rules of evidence.

40 L. R. A. 561, WESTERN ASSUR. CO. v. J. H. MOHLMAN CO. 28 C. C. A. 157, 51 U. S. App. 577, 83 Fed. 811.

Conditions subsequent in policy of insurance.

Cited in Traveler's Protective Asso. v. Gilbert, 55 L. R. A. 542, 49 C. C. A. 312, 111 Fed. 273, holding condition subsequent created by provision in benefit certificate denying recovery in case of accidental or designed poisoning; Phenix Ins. Co. v. Luce, 60 C. C. A. 657, 123 Fed. 259, holding condition subsequent created by provision in policy that, if any part of building fall except as result of fire, all insurance shall immediately cease, burden of establishing which is on insurer; Floyd v. Travelers Protective Asso. 115 Ill. App. 245, holding the burden not on the representative of insured to show that insured had complied with all the conditions thereof; N. & M. Friedman Co. v. Atlas Assur. Co. 133 Mich. 217, 94 N. W. 757, holding the burden on an insurer against fire to show that other causes than fire caused the building to fall; Ferris v. Court of Honor, 152 Mich. 324, 116 N. W. 448, holding the burden was on the insurer to show that the insured committed suicide; Davis v. Connecticut F. Ins. Co. 158 Cal. 774, 32 L.R.A.(N.S.) 611, 112 Pac. 549 (dissenting opinion), on burden as upon insurer to show that loss occurred from excepted risk; Loomis v. Connecticut F. Ins. Co. 16 Cal. App. 546, 117 Pac. 642, holding that insurer is not exempt from liability unless building or substantial part thereof fell from another cause than fire, "before" building or goods were attacked by fire.

Cited in note (32 L.R.A.(N.S.) 608) on fall of building clause in fire insurance policies.

Scientific works as evidence.

Cited in Scott v. Astoria & C. River R. Co. 43 Or. 41, 62 L. R. A. 550, footnote p. 544, 99 Am. St. Rep. 710, 72 Pac. 594, sustaining right of civil engineer, testifying as expert, to refer to standard works on subject as corroborating his opinion; Lynes v. Northern P. R. Co. 43 Mont. 328, 117 Pac. 81, Ann. Cas. 1912C, 183, holding that tables showing effect of experiments made by manufacturer of air-brakes for purpose of showing their available power to control movements of train were admissible in evidence.

Cited in note (40 L. R. A. 553, 575) on scientific books and treatises as evidence.

40 L. R. A. 577, RASCH v. NOTH, 99 Wis. 285, 67 Am. St. Rep. 858, 74 N. W. 820.

Ejectment where enjoyment not limited.

Followed in Rahn v. Milwaukee Electric R. & Light Co. 103 Wis. 471, 79 N. W. 747, denying ejectment by one enjoying land to boundary line, against one whose foundation extends beneath plaintiff's walls.

Cited in Huber v. Stark, 124 Wis. 362, 109 Am. St. Rep. 937, 102 N. W. 12, 4 Ann. Cas. 340, on ejectment as a remedy for the invasion of property rights: Beck v. Ashland Cigar & Tobacco Co. 146 Wis. 326, 130 N. W. 464, Ann. Cas. 1912C, 239, holding that where wall projects over line so that owner is dispossessed of entire use of disputed strip, ejectment is proper remedy.

Cited in notes (11 L.R.A.(N.S.) 918) on ejectment for encroachments under surface, or overhead; (116 Am. St. Rep. 583) on property or invasion of possession for which ejectment is maintainable.

Distinguished in Butler v. Frontier Teleph. Co. 186 N. Y. 489, 11 L.R.A. (N.S.) 922, 116 Am. St. Rep. 563, 79 N. E. 716, 9 Ann. Cas. 858, holding the removal of wires strung over one's property may be enforced by ejectment proceedings.

40 L. R. A. 579, *Re* ZILLEY, 98 Wis. 428, 67 Am. St. Rep. 820, 74 N. W. 126.

Alimony; maintenance of children.

Cited in Harding v. Harding, 79 Ill. App. 617, sustaining allowance for support of minor children, with mother while living apart from husband without fault, and before custody awarded her; McCloskey v. McCloskey, 93 Mo. App. 400, 67 S. W. 669, denying that mere decree of divorce relieves husband from obligation to support minor children while with mother; Libbe v. Libbe, 157 Mo. App. 614, 138 S. W. 688, holding that mother cannot pending divorce suit between husband and herself maintain suit against husband for expenses already by her in maintenance of child as all matters as to custody and support of children must be determined in divorce suit; Alvey v. Hartwig, 106 Md. 265, 11 L.R.A. (N.S.) 683, 67 Atl. 132, 14 Ann. Cas. 250; Spencer v. Spencer, 97 Minn. 60, 2 L.R.A.(N.S.) 854, 114 Am. St. Rep. 695, 105 N. W. 483, 7 Ann. Cas. 901; Lukowski v. Lukowski, 108 Mo. App. 209, 83 S. W. 274; Brown v. Brown, 132 Ga. 718, 131 Am. St. Rep. 229, 64 S. E. 1092,—holding where custody of child is awarded to mother on divorce but no provision is made for its maintenance, the mother may maintain an action against the father to compel contribution to its support; State v. Seghers, 124 Ga. 116, 49 So. 998, holding the granting of a divorce and the awarding of the custody of the children to the mother does not absolve the father from the obligation to support; Beilfuss v. State, 142 Wis. 666, 126 N. W. 33, holding the detention of children by wife after separation from husband does not relieve him from liability for their support; Harding v. Harding, 180 Ill. 508, 54 N. E. 587, on right of wife on divorce to an allowance for the maintenance of children; Finn v. Adams, 138 Mich. 261, 101 N. W. 533, 4 Ann. Cas. 1186, on the obligation imposed on father to support child; Hector v. Hector, 51 Wash. 438, 99 Pac. 13, on dissolution of marriage as affecting parent's liability for support of children.

Cited in footnotes to Gibson v. Gibson, 40 L. R. A. 587, which sustains mother's right to recover from divorced husband for maintenance of child awarded to her; McKay v. Superior Court, 40 L. R. A. 585, which sustains order that father

pay for support of minor children awarded to mother's custody, granted long after divorce decree final and mother remarried; Streitwolf v. Streitwolf, 45 L. R. A. 842, which holds funds for professional education of son in law school not properly included in allowance of alimony; Keller v. St. Louis, 47 L. R. A. 391, holding father's duty to support child not devested by divorce decree giving care and custody to mother.

Cited in notes (2 L.R.A.(N.S.) 851) on effect of divorce on liability for support of children; (38 L.R.A.(N.S.) 509) on recovery by mother against father for money expended in support of children; (114 Am. St. Rep. 701) on father's duty to support child awarded to mother by divorce decree silent as to maintenance.

Distinguished in Demonet v. Burkart, 23 App. D. C. 318, holding where divorce made no provision for the maintenance of the child and the mother retained control of and maintained it although the father was willing to do so, he is not liable for its maintenance.

40 L. R. A. 585, McKAY v. SUPERIOR COURT, 120 Cal. 143, 52 Pac. 147.

Alimony.

Cited in footnotes to Wetmore v. Wetmore, 48 L. R. A. 666, which holds right to alimony from income from testamentary trust for support of former husband terminated by remarriage of divorced woman; Streitwolf v. Streitwolf, 45 L. R. A. 842, which holds funds for professional education of son in law school not properly included in allowance of alimony.

Support of minor children of separated parents.

Cited in State v. Seghers, 124 La. 116, 49 So. 998, holding the dissolution of the marriage and the award of custody of minor children to mother did not relieve father from liability for their support; Harlan v. Harlan, 154 Cal. 345, 98 Pac. 32, on liability of father for the support of minor children on the dissolution of the marriage.

Cited in footnotes to Gibson v. Gibson, 40 L. R. A. 587, which sustains mother's right to recover from divorced husband for maintenance of child awarded to her; *Re* Zilley, 40 L. R. A. 579, which holds father liable to pay mother after divorce for keeping of child which father entitled to under decree; Keller v. St. Louis, 47 L. R. A. 391, which holds father's duty to support child not devested by divorce decree giving care and custody to mother.

Cited in note (114 Am. St. Rep. 703) on father's duty to support child awarded to mother by divorce decree silent as to maintenance.

Limited in McKay v. McKay, 125 Cal. 69, 57 Pac. 677, denying reimbursement to mother for past expenses for voluntary support of minor children.

Changing decree.

Cited in McFarlane v. McFarlane, 43 Or. 485, 73 Pac. 203, upholding right of courts, after rendition of divorce decree, to require husband to contribute to future support and pay reasonable sum for past support of minor children.

Cited in footnotes to Alexander v. Alexander, 45 L. R. A. 806, which sustains right to reduce alimony after decree therefor; Livingston v. Livingston, 61 L. R. A. 800, which holds unchangeable provision for alimony in divorce decree cannot be impaired by subsequent statute empowering courts to modify same; Cariens v. Cariens, 55 L. R. A. 930, which holds divorce decree fixing custody of child should only be changed when conditions altered.

40 L. R. A. 587, GIBSON v. GIBSON, 18 Wash. 489, 51 Pac. 1041.

Actions for support of minor child.

Followed in Ditmar v. Ditmar, 27 Wash. 15, 91 Am. St. Rep. 817, 67 Pac. 353,

sustaining action against divorced husband for support of children awarded to mother.

Cited in State v. Seghers, 124 La. 116, 49 So. 998, holding the dissolution of the marriage and the award of the custody of minor children to the mother did not relieve the father from liability for their support; Spencer v. Spencer, 97 Minn. 60, 2 L.R.A.(N.S.) 854, 114 Am. St. Rep. 695, 105 N. W. 483, 7 Ann. Cas. 901; Lukowski v. Lukowski, 108 Mo. App. 209, 83 S. W. 274; Alvey v. Hartwig, 106 Md. 263, 11 L.R.A.(N.S.) 683, 67 Atl. 132, 14 Ann. Cas. 250,—holding the dissolution of the marriage and the award of the custody of the minor children to the mother without provision for their support did not relieve the father from liability for their maintenance.

Cited in footnotes to Keller v. St. Louis, 47 L. R. A. 391, which holds father's duty to support child not devested by divorce decree giving care and custody to mother; *Re* Zilley, 40 L. R. A. 579, which holds father liable to pay mother after divorce for keeping child which father entitled to under decree; Streitwolf v. Streitwolf, 45 L. R. A. 842, which holds funds for professional education of son in law school not properly included in allowance of alimony; McKay v. Superior Court, 40 L. R. A. 585, which sustains order that father pay for support of minor children awarded to mother's custody, granted long after divorce decree final and mother remarried.

Cited in notes (2 L.R.A.(N.S.) 851) on effect of divorce on liability for support of children; (114 Am. St. Rep. 701) on father's duty to support child awarded to mother by divorce decree silent as to maintenance.

Distinguished in Hector v. Hector, 51 Wash. 437, 99 Pac. 13, holding father liable to contribution to support of minor children whose custody have been awarded to mother on dissolution of the marriage without provision for their support.

40 L. R. A. 589, SELLERS v. GREER, 172 Ill. 549, 50 N. E. 246.

Acceptance as execution of contract.

Cited in Raphael v. Hartman, 87 Ill. App. 636, sustaining mutuality of contract accepted and acted upon by party not signing: Ramsay & Realty Co. v. Ramsay, 135 Iowa, 614, 113 N. W. 468, holding a written contract binding on one signing in a representative capacity where he has accepted the benefits thereof; Case Threshing Mach. Co. v. Donalson, 10 Ga. App. 431, 73 S. E. 618, holding that where one party accepts and performs contract according to its terms, although acceptance of contract was not in writing, contract is binding on both parties; Broatch v. Boysen, 99 C. C. A. 278, 175 Fed. 706; Bailey v. Leishman, 32 Utah, 130, 89 Pac. 78, 13 Ann. Cas. 1116; McDermott v. Mahoney, 139 Iowa, 298, 115 N. W. 32,—holding same where party not signing accepted its terms and acted upon it.

Contracts or acts of stockholders binding upon corporation.

Cited in Jones v. Vance Shoe Co. 115 Fed. 709, denying right to damages for breach of contract by one stockholder with another to advance working funds to corporation; De La Vergne Refrigerating Mach. Co. v. German Sav. Inst. 175 U. S. 53, 44 L. ed. 69, 20 Sup. Ct. Rep. 20, holding formal action by corporation essential to valid conveyance of corporate property; Coal Belt Electric R. Co. v. Peabody Coal Co. 230 Ill. 168, 13 L.R.A.(N.S.) 1146, 120 Am. St. Rep. 282, 82 N. E. 627, holding the purchase of all the stock in a corporation does not make the purchaser the owner so that representations made to him work an estoppel in favor of the corporation; Edmunds v. Illinois C. R. Co. 2 Ill. C. C. 480, holding the title and right of corporation to its property is not affected by

the want of power in the stockholders to exercise the right; Beardstown Pearl Button Co. v. Oswald, 13 Ill. App. 295; Manufacturers' Exhibition Bldg. Co. v. Landay, 219 Ill. 174, 76 N. E. 146,—on the property of a corporation as not being subject to the control of its members or stockholders.

Disapproved in Aransas Pass Harbor Co. v. Manning, 94 Tex. 562, 63 S. W. 627, holding stockholders estopped to claim corporate assets given away by president with consent of stockholders.

When specific performance decreed.

Cited in Mack v. McIntosh, 181 Ill. 642, 54 N. E. 1019, denying specific performance of contract to convey, where complainant knew, before filing of bill, of vendor's incapacity; Farson v. Fogg, 205 Ill. 341, 68 N. E. 755, denying power to compel specific performance of contract by street railway company with property owner to pave street; Ormsby v. Graham, 123 Iowa, 209, 98 N. W. 724, holding specific performance of contract to convey not maintainable by one who knew when contract was made that vendors did not have title to the land.

40 L. R. A. 593, STATE *ex rel.* DENNY v. BRIDGES, 19 Wash. 44, 52 Pac. 326.

Waters.

Cited in Johnson v. Johnson, 14 Idaho, 579, 24 L.R.A.(N.S.) 1250, 95 Pac. 499; Ferry Pass Inspectors' & Shippers' Asso. v. White River Inspectors' & Shippers' Asso. 57 Fla. 402, 22 L.R.A.(N.S.) 349, 48 So. 643,—on rights of riparian owner in navigable waters on which his property fronts.

Cited in notes (39 L. R. A. 492) on right to construct log booms; (42 L. R. A. 175) on title to land under water; (50 L. R. A. 737) on state and Federal ownership of waters; (59 L. R. A. 48) on right to obstruct or destroy rights of navigation; 67 L.R.A. 821, 844) on right to improve navigability of stream; (34 L.R.A.(N.S.) 423) on right to obstruct wharf rights in navigable waters for public purposes, without compensation; (38 L.R.A.(N.S.) 763) on private right of action for obstruction of navigable stream.

Lease of harbor area.

Cited in State *ex rel.* Trimble v. Bridges, 22 Wash. 101, 60 Pac. 66, denying validity of provision that lessee of harbor area may improve same at option, subject to approval of board; Chlopeck Fish Co. v. Seattle, 64 Wash. 323, 117 Pac. 232, holding that city streets may be extended in any direction over harbor area to deep water at outer harbor line under provisions of constitution.

Cited in notes (63 L.R.A. 264) on right of state to grant tide land so as to destroy wharfage right of shore owner; (22 L.R.A.(N.S.) 337) on right of state to grant tide lands.

Criticized in State ex rel. Hulme v. Grays Harbor & Puget Sound R. Co. 54 Wash. 533, 103 Pac. 809, holding state might lease the right to build a railroad on the harbor area.

Rights of littoral owner or proprietor.

Cited in San Francisco Sav. Union v. R. G. R. Petroleum & Min. Co. 144 Cal. 138, 66 L.R.A. 245, 103 Am. St. Rep. 72, 77 Pac. 823, 1 Ann. Cas. 182, holding a littoral proprietor could not be deprived of his right of access by an act of the secretary of war authorizing the use of tide water lands in front of his property for the purpose of developing petroleum thereon.

Cited in footnotes to San Francisco Savings Union v. R. G. R. Petroleum & M. Co. 66 L.R.A. 242, which sustains riparian littoral owner's right to maintain action to enjoin trespasser from placing structures at high and low water mark which will interfere with his right of access to and from water; Richards v. New York, N. H. & H. R. Co. 69 L.R.A. 929, which denies right of owner of

land on cove leading off from a river to recover for interference with his right of access to the river by construction of railroad track across the mouth of the cove which does not completely cut off access.

Cited in notes (22 L.R.A.(N.S.) 345; 24 L.R.A.(N.S.) 79) on right of owner of upland to access to navigable water; (28 L.R.A.(N.S.) 385) on interference with access to highway from part of parcel not taken as element of damages; (45 L. ed. U. S. 126) on right in improving navigation to destroy access of riparian owner.

40 L. R. A. 607, STATE v. HARBOURNE, 70 Conn. 484, 66 Am. St. Rep. 126, 40 Atl. 179.

Cited in State v. Scott, 80 Conn. 320, 68 Atl. 258, historically as to the reasons for the passage of an act.

Validity of anti-gambling statutes.

Cited in Ames v. Kirby, 71 N. J. L. 447, 59 Atl. 558, holding a statute prohibiting the keeping of a place for pool selling or bookmaking or betting upon horse races is not in violation of the interstate commerce clause of the constitution because it prevents interstate wagers; Logan v. Postal Teleg. & Cable Co. 157 Fed. 584, holding an act is not unconstitutional as interfering with interstate commerce which prohibits the dealing in margins because it prohibits the transmission of quotations; McQuesten v. Steinmetz, 73 N. H. 10, 111 Am. St. Rep. 592, 58 Atl. 876, on the prohibition of the receipt of money for transmission to other places to be bet on horse races.

40 L. R. A. 611, BANTA v. CHICAGO, 172 Ill. 204, 50 N. E. 233.

Licenses and taxes.

Followed without discussion in Douthart v. Congdon, 197 Ill. 352, 90 Am. St. Rep. 167, 64 N. E. 348.

Approved in Hill v. Abbeville, 59 S. C. 417, 38 S. E. 11, sustaining license tax which applies to but one occupation, but to all following same; Besette v. People, 193, Ill. 342, 56 L. R. A. 561, 62 N. E. 215, denying that raising of revenue is object of statute for licensing of horseshoers, and prescribing fee to pay expenses of administration.

Cited in Chicago v. Collins, 175 Ill. 454, 49 L. R. A. 411, 67 Am. St. Rep. 224, 51 N. E. 907, denying power to license use of streets under power to regulate their use; Los Angeles v. Los Angeles Independent Gas Co. 152 Cal. 768, 93 Pac. 1006, holding that license tax imposing same amount upon all engaged in same business, regardless of business done, or profits received, is not unreasonable discrimination; Hately v. Kiser, 253 Ill. 290, 97 N. E. 651, Reversing 162 Ill. App. 553, holding that stock broker is not required to take out license under ordinances of city of Chicago; Fuchs v. Block, 156 Ill. App. 485, holding that ordinance is valid which provides that broker who conducts business in violation of its provisions requiring obtaining of license, cannot recover commission; Com. v. Payne Medicine Co. 138 Ky. 172, 127 S. W. 760, holding that statute which exacts tax from persons selling patent medicines, and exempts therefrom merchants or druggists selling such medicines, is unconstitutional; Harder's Fire Proof Storage & Van Co. v. Chicago, 235 Ill. 67, 85 N. E. 245, 14 Ann. Cas. 536, holding an act authorizing a license tax or fee from owners using vehicles upon the streets was constitutional; Conklin Lumber Co. v. Chicago, 127 Ill. App. 105, holding a city might properly require the securing of a license to conduct a lumber yard.

Cited in footnotes to State v. Garbroski, 56 L. R. A. 570, which holds void,

statute exempting veterans from requirement for peddling license; Knisely v. Cotterel, 50 L. R. A. 87, which sustains statute fixing different rates of license for retailers, wholesalers, and sellers on board of trade; Com. use of Titusville v. Clark, 57 L. R. A. 348, which holds void, exemption from license tax of contractors and real-estate dealers, but not others, whose business less than $1,000; Harrodsburg v. Renfro, 51 L. R. A. 897, which holds void, ordinance imposing greater license fee for sale of liquors on main street of town than elsewhere; Bitzer v. Thompson, 44 L. R. A. 141, which denies validity of ordinance requiring license for buying claims against city.

Cited in notes (60 L.R.A. 334, 340, 344) on constitutional equality in United States in relation to corporate taxation; (129 Am. St. Rep. 251, 280) on constitutional limitations on power to impose license or occupation taxes.

Explained in Price v. People, 193 Ill. 117, 55 L. R. A. 589, footnote p. 588, 86 Am. St. Rep. 306, 61 N. E. 844, sustaining license fee on employment agencies; Mercantile Incorporating Co. v. Junkin, 85 Neb. 563, 123 N. W. 1055, holding in the construction of constitutional provisions regulating the taxing power the rule that the expression of one thing excludes another not enumerated does not apply.

Direct taxes.

Cited in Salt Lake City v. Christensen Co. 34 Utah, 43, 17 L.R.A.(N.S.) 902, 95 Pac. 523, holding a tax on the carrying on of a business is not a direct tax on property.

40 L. R. A. 617, FLETCHER v. WALL, 172 Ill. 426, 50 N. E. 230.

Elections; right to use pasters.

Followed in McSorley v. Schroeder, 196 Ill. 104, 63 N. E. 697, and Roberts v. Quest, 173 Ill. 428, 50 N. E. 1073, denying right to insert candidate's name by paster.

Approved in *Re* McDade, 29 Misc. 221, 60 N. Y. Supp. 105, denying right to use paster ballot.

Cited in note (91 Am. St. Rep. 686) on right of elector to vote for candidate not named on official ballot.

40 L. R. A. 621, HIBBARD v. CHICAGO, 173 Ill. 91, 50 N. E. 256.

Private rights within streets.

Cited in McGann v. People, 194 Ill. 539, 62 N. E. 941, denying power of common council to grant use of public street to individual for private purposes; Snyder v. Mt. Pulaski, 176 Ill. 402, 44 L. R. A. 409, footnote p. 407, 52 N. E. 62, holding permission to use well in street a mere license, although part of electric light franchise; People *ex rel.* Kocourek v. Chicago, 193 Ill. 563, 62 N. E. 187 (dissenting opinion), as to abutter's right to encroach upon street where no one is injured thereby; General Electric R. Co. v. Chicago & W. I. R. Co. 184 Ill. 595, 56 N. E. 963, denying right of steam railway company to enjoin construction of street railway across its tracks in highway; Pennsylvania Co. v. Chicago, 181 Ill. 296, 53 L. R. A. 226, 54 N. E. 825, denying abutter's control of street as stand for hacks under consent or acquiescence of municipal authorities; People *ex rel.* Faulkner v. Harris, 203 Ill. 280, 96 Am St. Rep. 304, 67 N. E. 785, denying city's power to authorize, by ordinance, private citizen to construct projection extending into street for any distance in front of his property; Cereghino v. Oregon Short Line R. Co. 26 Utah, 479, 99 Am. St. Rep. 843, 73 Pac. 634, denying power of city council to authorize permanent switch track on street to be operated by steam railway for convenience of private corporation;

Sullivan Realty & Improv. Co. v. Crockett, 158 Mo. App. 581, 138 S. W. 924, holding that private use of street which is beyond power of city to license is nuisance per se; Helena v. Wooten, 98 Ark. 158, 135 S. W. 828, holding that ordinance requiring removal of stationary awnings over sidewalks, is not void, although they were erected in compliance with former ordinance; People ex rel. Faulkner v. Harris, 203 Ill. 280, 96 Am. St. Rep. 304, 67 N. E. 785, holding it no defense that a permanent encroachment in the street does not injure or obstruct anyone; Chicago, R. I. & P. R. Co. v. People, 222 Ill. 435, 78 N. E. 790, holding city without authority to grant exclusive use of street to a railroad company; Chicago Cold Storage Warehouse Co. v. People, 215 Ill. 228, 74 N. E. 133, holding a proceeding by mandamus to compel the removal of a platform from street which was placed there under an ordinance, does not involve a franchise or freehold; Chicago Cold Storage Warehouse Co. v. People, 224 Ill. 291, 79 N. E. 692, denying authority of city to authorize the elevation of a sidewalk for the convenience of private owners; Chicago v. Pooley, 112 Ill. App. 345, holding an ordinance permitting the storage of goods upon the sidewalk was void; Chicago v. Rothschild & Co. 130 Ill. App. 557, holding that construction of a connecting passage way from an elevated road to a store was illegal; John A. Tolman & Co. v. Chicago, 145 Ill. App. 240, refusing to enjoin city from denying complainant the privilege of maintaining a raised platform on the sidewalk in front of his premises; Lacy v. Oskaloosa, 143 Iowa, 711, 31 L.R.A.(N.S.) 857, 121 N. W. 542, holding a city might properly remove hitching posts in streets placed there under a license from the city authorities.

Cited in footnotes to First Nat. Bank v. Tyson, 59 L. R. A. 399, which sustains right of injunction against pillars in street in front of adjoining lot, obstructing light and air from street; State v. Kean, 48 L. R. A. 102, which holds indictable nuisance created by bay window extending over street.

Cited in note (20 L.R.A.(N.S.) 146) on power of municipality to compel removal of awnings or signs encroaching on streets.

Distinguished in Chicago v. Norton Mill. Co. 196 Ill. 587, 63 N. E. 1043, sustaining right of city to lease vault under street to abutters; F. S. Webster Co. v. Frank, 1 Ill. C. C. 532, holding the erection of an awning under authority of a city ordinance will not be restrained at the instance of an adjoining property owner where it does not interfere with public travel.

Repeal of ordinance by order or resolution.

Cited in Backhaus v. People, 87 Ill. App. 177, denying that ordinance can be repealed by order not passed and published as ordinance; Joliet v. Petty, 96 Ill. App. 452, denying that ordinance can be repealed by resolution; People *ex rel.* Raymond v. Latham, 203 Ill. 23, 67 N. E. 403, holding that ordinance cannot be repealed, amended, or suspended by resolution; People *ex rel.* Rinne v. Blocki, 203 Ill. 372, 67 N. E. 809, denying power of city council to repeal, by resolution, ordinance granting permit to lay tracks in street; Hearst's Chicago American v. Spiss, 117 Ill. App. 438; Bloomington & N. R. Electric & Heating Co. v. Bloomington, 123 Ill. App. 645; People ex rel. Raymond v. Latham, 203 Ill. 23, 67 N. E. 403,—holding an ordinance cannot be repealed by a resolution; People ex rel. Rinne v. Blocki, 203 Ill. 372, 67 N. E. 809, denying right to repeal an ordinance by resolution; Potter v. Calumet Electric Street R. Co. 158 Fed. 526, holding an ordinance could not be amended by the informal acceptance and filing of a contract with a private corporation; Bullis v. Chicago, 235 Ill. 478, 85 N. E. 614, on ordinances as not being subject to amendment or modification by resolution.

Ordinances void for discrimination.

Cited in People *ex rel.* Rinne v. Blocki, 203 Ill. 372, 67 N. E. 809, holding order of city council, singling out particular switch tracks and ordering removal as nuisance, void for discrimination.

Limitations on municipal ordinances.

Cited in People ex rel. Healy v. Clean Street Co. 225 Ill. 484, 9 L.R.A.(N.S.) 460, 116 Am. St. Rep. 156, 80 N. E. 298, on the necessity that municipal ordinances do not conflict with constitutional requirements.

Enactment of ordinances.

Cited in McLean v. East St. Louis, 222 Ill. 514, 78 N. E. 815, holding statute requires a concurrence of majority of council to the passage of an ordinance.

What are purprestures.

Cited in note (69 Am. St. Rep. 273) on what are purprestures.

Remedies for abatement of purprestures.

Cited in note (69 Am. St. Rep. 279) on remedies for abatement of purprestures.

40 L. R. A. 623, STRINGFELLOW v. SOMERVILLE, 95 Va. 701, 29 S. E. 685.

Custody of children.

Approved in Hibbette v. Baines, 78 Miss. 715, 51 L. R. A. 847, footnote p. 839, 29 So. 80, sustaining father's right to custody of child, notwithstanding assent to wife's deathbed contract to give custody to her relatives; Meyer v. Meyer, 100 Va. 229, 40 S. E. 1038, refusing to take young child from custody of divorced mother.

Cited in Dawson v. Dawson, 57 W. Va. 533, 110 Am. St. Rep. 800, 50 S. E. 613; Taylor v. Taylor, 103 Va. 759, 50 S. E. 273,—on the discretion vested in a court in determining who entitled to custody of children.

Cited in footnotes to Fletcher v. Hickman, 55 L. R. A. 896, which holds father bound by agreement intrusting custody of infant child to another; State *ex rel.* Lasserre v. Michel, 54 L. R. A. 927, which denies father's absolute right to custody of minor child; Anderson v. Young, 44 L. R. A. 277, which sustains court's power to uphold, in interest of child, custody held under void agreement with parent; Stapleton v. Poynter, 53 L. R. A. 784, which sustains taking of custody of child against its will from wealthy grandparent and giving to parent of moral habits; Jones v. Bowman, 67 L.R.A. 860, which holds that religious belief will not in absence of statutory requirement be considered in determining the proper custodian of an infant.

Cited in note (88 Am. St. Rep. 873) on contracts for transfer of parental custody and responsibility.

40 L. R. A. 626, KINNEY v. KINNEY, 104 Iowa, 703, 74 N. W. 688.

40 L. R. A. 628, STATE USE OF COCKING v. WADE, 87 Md. 529, 40 Atl. 104.

Liability of officers and sureties on their bonds.

Cited in Maddox v. Hudgeons, 31 Tex. Civ. App. 293, 72 S. W. 414, denying sheriff's liability for unlawful arrest by constable asked by deputy sheriff, without sheriff's directions, to assist in making arrests for burglary committed; Brown v. King, 41 Tex. Civ. App. 593, 93 S. W. 1017, holding a sheriff was not liable for injuries due to the unlawful act of his deputies; State ex rel. Mann v. Superior Ct. 52 Wash. 157, 100 Pac. 198, holding a sheriff is not liable in damages to persons entitled to a reward for the capture of criminals where they escape from him and the reward is lost; McPhee v. United States Fidelity

& G. Co. 52 Wash. 157, 21 L.R.A.(N.S.) 537, 132 Am. St. Rep. 958, 100 Pac. 174, holding that a sheriff is never liable at the suit of third parties unless expressly bound by the duty of his office, except in case of negligence in caring for a prisoner.

Cited in footnotes to State *ex rel.* Bruns v. Clausmeier, 50 L. R. A. 73, denying sheriff's liability on bond for libelous sending out of photograph of prisoner; Feller v. Gates, 56 L. R. A. 630, which denies liability on bond for return of money taken by constable from execution defendant to stay execution pending appeal; State use of Wilson v. Fowler, 42 L. R. A. 849, which holds sheriff liable on bond for levy on growing crop of peaches, and failure to gather or allow owner to gather them until crop worthless; Johnson v. Williams, 54 L. R. A. 220, which holds sheriff liable on bond for killing by deputy under mistaken belief as to identity; Brown v. Weaver, 42 L. R. A. 423, which sustains liability on sheriff's bond for wrongful shooting by deputy of prisoner attempting to escape from arrest for misdemeanor; State *ex rel.* McLauren v. McDaniel, 50 L. R. A. 118, which holds sureties on mayor's bond liable for his causing arrest without warrant, and trying and sentencing for offense not punishable by city ordinance.

Cited in notes (11 L.R.A.(N.S.) 758) on liability of sureties of peace officer for death due to act or default of officer or deputy; (71 Am. St. Rep. 521) on liability of sureties for personal injury inflicted by officer; (78 Am. St. Rep. 421, 424) on sureties on official bond escaping liability on ground that principal was a trespasser; (91 Am. St. Rep. 542) on acts for which sureties on official bonds are liable; (95 Am. St. Rep. 128) on liability of ministerial officers for nonperformance and misperformance of official duties.

40 L. R. A. 632, BAGBY & R. CO. v. RIVERS, 87 Md. 400, 67 Am. St. Rep. 357, 40 Atl. 171.

Name as asset.

Cited in footnote to Slater v. Slater, 61 L. R. A. 796, which holds firm name an asset of partnership which executor of deceased partner has right to have sold.

Corporate liability for stockholder's act.

Cited in footnote to Merchants' Ad-Sign Co. v. Sterling, 46 L. R. A. 142, which holds stockholder's attempt to transfer good will of corporation with stock, invalid.

Effect of incorporation on right to good will and noncompetition in business.

Disapproved in Bradford v. Montgomery Furniture Co. 115 Tenn. 616, 9 L.R.A.(N.S.) 981, 92 S. W. 1104, holding the organization of a corporation to conduct a business does not terminate a contract by third persons not to compete in business with the organizers.

40 L. R. A. 635, MADISON v. MAYERS, 97 Wis. 399, 65 Am. St. Rep. 127, 73 N. W. 43.

Ancient or original landmarks.

Cited in Lewis v. Prien, 98 Wis. 92, 73 N. W. 654, holding location of corner properly established by measurements from original stakes still existing; Galesville v. Parker, 107 Wis. 367, 83 N. W. 646, holding lines of ancient fences and long-continued occupation, of greater probative value than measurement of contradictory courses and distances, or plat; Smith v. Beloit, 122 Wis. 421, 100 N. W. 877, holding the construction placed upon a plat by the owners building with reference thereto will be given greater weight in determining the true loca-

tion of a line than mere measurements of courses and distances; Off v. Heinrichs, 124 Wis. 448, 102 N. W. 904, holding a rail fence recognized as the true division line for over twenty years would be taken as such although by measurement it was not located on the true line; Vernon v. Nicolai, 125 Wis. 326, 103 N. W. 1111, holding a survey made over sixty years after the establishment of a highway and fences under the original survey would be entitled to little weight in establishing that a fence was not located upon the true line; Brew v. Nugent, 136 Wis. 338, 117 N. W. 813, holding in the location of boundaries the original location of monuments is controlling over courses and distances marked on the map: Miller v. Lavelle, 130 Wis. 504, 110 N. W. 421; Thompson v. Fuhrmann, 130 Wis. 378, 110 N. W. 236,—on courses and distances as giving way to ancient monuments in the determination of boundaries.

Distinguished in Blair v. Milwaukee Light, Heat & Traction Co. 110 Wis. 65, 85 N. W. 675, sustaining conclusiveness of description of highway as contained in order.

Effect of nonuser of portion of street.

Cited in Ashland v. Chicago & N. W. R. Co. 105 Wis. 403, 80 N. W. 1101, holding whole street dedicated is accepted where portion opened and worked.

Actions as to streets.

Cited in Lewis v. Black River Improv. Co. 105 Wis. 395, 81 N. W. 669, denying town's right of action under contract to keep roads in repair when damaged by flooding from promisor's dam, until it has incurred expenditure or liability; Pewaukee v. Savoy, 103 Wis. 279, 50 L. R. A. 847, 74 Am. St. Rep. 859, 79 N. W. 436, sustaining city's right to injunction to prevent construction of fence obstructing passage from street to adjoining waters: Wauwatosa v. Dreutzer, 116 Wis. 120, 92 N. W. 551, holding action in equity maintainable by city to obtain mandatory injunction for removal of encroachment from street without first giving opportunity to remove it without suit, pursuant to order served.

Cited in footnote to Richards v. New York, N. H. & H. R. Co. 69 L.R.A. 929, which holds that wharfage rights of owner of land on cove leading off from river are not destroyed by construction of embankment across mouth of cove.

Cited in note (22 L.R.A.(N.S.) 347) on right of owner of upland to access to navigable water.

Right to erect wharves.

Cited in Fowler v. Wood, 73 Kan. 540, 6 L.R.A.(N.S.) 175, 117 Am. St. Rep. 534, 85 Pac. 763, holding a riparian owner has no right to build obstructions across the current of a stream so as to deflect it into a new channel.

Annotation cited in Nicholls v. Circuit Judge, 155 Mich. 455, 120 N. W. 343, on the right of city to erect wharves.

Cited in footnote to Revell v. People, 43 L. R. A. 790, which holds piers built into lake to protect land from erosion a purpresture removable by state.

Cited in notes (59 L.R.A. 53) on right to obstruct or destroy rights of navigation; (63 L.R.A. 265) on right of state to grant tide land so as to destroy wharfage right of shore owner; (70 L.R.A. 193) on right to wharfage; (34 L.R.A.(N.S.) 423) on right to obstruct wharf rights in navigable waters for public purposes, without compensation.

Annotation in 40 L. R. A. 635, referred to particularly in Cobb v. Lincoln Park, 202 Ill. 433, 63 L. R. A. 268, 95 Am. St. Rep. 258, 67 N. E. 5, denying right of riparian owner to wharf out over submerged land to navigable water of Lake Michigan.

Acquirement of private rights in highways or streets.

Cited in Quinn v. Baage, 138 Iowa, 434, 114 N. W. 205, holding no right can

be acquired in a highway by its occupation for a long period of time with the acquiescence of the public officials.

Title to streets.

Cited in Thorndike v. Milwaukee Auditorium Co. 143 Wis. 15, 126 N. W. 881, holding that fee of roads and streets is held by abutting owners.

Right of municipality to engage in private enterprises.

Cited in note (31 L.R.A.(N.S.) 117) on right of municipality to engage in enterprises of private character.

40 L. R. A. 651, KASTEN v. INTERSTATE CASUALTY CO. 99 Wis. 73, 74 N. W. 534.

What deaths or injuries within accident policy.

Cited in Maryland Casualty Co. v. Hudgins (Tex.) 64 L. R. A. 351, footnote p. 349, 72 S. W. 1047, holding death by accidentally eating spoiled oysters is within clause of policy exempting from injuries from poison or anything accidentally or otherwise taken or absorbed.

Cited in footnotes to Fetter v. Fidelity & C. Co. 61 L. R. A. 459, which holds death from rupture of cancerous kidney covered by accident policy; Horsfall v. Pacific Mut. L. Ins. Co. 63 L. R. A. 425, which holds dilation of heart resulting in death within few weeks, caused by heavy lift, covered by accident policy; Preferred Acci. Ins. Co. v. Robinson, 61 L. R. A. 145, which denies right to recover under accident policy for inflammation of eyes from accidental contact with poison ivy; Brown v. Sun L. Ins. Co. 51 L. R. A. 252, which sustains recovery on policy of one whose death caused by taking overdose of morphine; Western Commercial Travelers' Asso. v. Smith, 40 L. R. A. 653, which holds death from blood poisoning, resulting from abrasion of skin of toe by wearing new shoe, covered by accident policy; Delaney v. Modern Acci. Club. 63 L. R. A. 603, which holds death from blood poisoning contracted through slight wound, as result of accidental injury, covered by accident policy; Fidelity & C. Co. v. Loewnstein, 46 L. R. A. 450, which holds death by accidentally inhaling gas while asleep covered by accident policy; Smith v. Ætna L. Ins. Co. 56 L. R. A. 272, which holds injury by fall from steps of moving train covered by policy; Feder v. Iowa State Traveling Men's Asso. 43 L. R. A. 693, which holds death by rupture of artery while reaching over chair to close shutters, not accidental; Atlanta Acci. Asso. v. Alexander, 42 L. R. A. 188, which holds death from hernia caused by sudden and accidental strain not within clause exempting insurer from death resulting from hernia; Maryland Casualty Co. v. Hudgins, 64 L.R.A. 349, which holds death caused by accidentally eating spoiled oysters not covered by policy excluding injuries resulting from poison or anything accidentally taken or absorbed; Richards v. Travelers' Ins. Co. 67 L.R.A. 175, which holds recovery on accident policy on cattle broker whose duties require him to ride on cattle cars not prevented by provision excluding liability for accidents while riding in any part of car not provided for occupation of passengers.

Cited in notes (5 L.R.A.(N.S.) 927) on liability on accident policy for sickness or death caused by blood poisoning; (26 L.R.A.(N.S.) 1005) on liability under accident policy for death or injury caused by medical treatment.

Burden of proof.

Cited in Maryland Casualty Co. v. Gehrmann, 96 Md. 651, 54 Atl. 678, holding burden of proving breach of warranty in application for accident insurance, on company.

40 L. R. A. 653, WESTERN COMMERCIAL TRAVELERS' ASSO. v. SMITH, 29 C. C. A. 223, 56 U. S. App. 393, 85 Fed. 401.

Liability on insurance against accident.

Cited in McGlother v. Provident Mut. Acci. Co. 32 C. C. A. 320, 60 U. S. App. 705, 89 Fed. 687, holding death from poison accidentally taken under mistaken belief that it is harmless medicine, within exemption of liability for "death resulting from poison;" Travelers Ins. Co. v. Hunter, 30 Tex. Civ. App. 492, 70 S. W. 798, authorizing recovery on accident policy for death resulting from rheumatism produced by accidental injury; Thornton v. Travelers Ins. Co. 116 Ga. 127, 94 Am. St. Rep. 99, 42 S. E. 287, holding right to recover on accident policy not prevented by fact that existing hernia rendered consequences of injury more serious, unless its existence is shown to be substantial contributing cause of injury resulting from accident; Jenkins v. Hawyeye Commercial Men's Asso. 147 Iowa, 118, 30 L.R.A.(N.S.) 1184, 124 N. W. 199, holding that death from blood poisoning due to perforation of rectum by bone, presumably followed with food, is caused by external, violent and accidental means, within meaning of terms of insurance policy; Sullivan v. Modern Brotherhood, 167 Mich. 533, 42 L.R.A.(N.S.) 140, 133 N. W. 486, Ann. Cas. 1913A, 1116, holding that loss of eye resulting from gonorrheal infection contracted while insured was washing clothing by water splashing into eye, was covered by accident policy; Jordan v. Iowa Mut. Tornado Ins. Co. 151 Iowa, 83, 130 N. W. 177, Ann. Cas. 1913A, 266, upholding verdict of jury in favor of insured under policy indemnifying against loss of livestock by tornado, cyclone or windstorm; Ludwig v. Preferred Acci. Ins. Co. 113 Minn. 512, 130 N. W. 5, to the point that if, in act which precedes injury, something unforeseen, unexpected, unusual, occurs, which produces injury, then injury has resulted through accidental means; Dent v. Railway Mail Asso. 183 Fed. 842, holding that where insured died as result of hand coming in contact with poison ivy while he was cutting branch from tree, his death was "accidental" within policy; Hastings v. Travelers' Ins. Co. 190 Fed. 260, holding that death resulting from exertion, in person raising and lowering himself repeatedly in and from Morris chair by use of his hands and arms alone, was not within terms of accident policy; Fidelity & C. Co. v. Stacey, 5 L.R.A.(N.S.) 662, 74 C. C. A. 409, 143 Fed. 275, 6 Ann. Cas. 955; Cary v. Preferred Acci. Ins. Co. 127 Wis. 75, 5 L.R.A.(N.S.) 932, 115 Am. St. Rep. 997, 106 N. W. 1055, 7 Ann. Cas. 484; Central Acci. Ins. Co. v. Rembe, 220 Ill. 158, 5 L.R.A.(N.S.) 936, 110 Am. St. Rep. 235, 77 N. E. 123, 5 Ann. Cas. 235, Affirming 122 Ill. App. 510,—holding a recovery might be had under an accident policy where death results from blood poisoning resulting from the infection of an accidental wound; United States Health & Acci. Ins. Co. v. Harvey, 129 Ill. App. 107, holding to same effect; Fidelity & C. Co. v. Morrison, 129 Ill. App. 366, holding a recovery might be had under an accident policy where insured while attempting to board a moving train was knocked from the platform by a projection receiving injuries resulting in his death; Continental Casualty Co. v. Colvin, 77 Kan. 570, 95 Pac. 565, holding a recovery might be had under an accident policy where the injuries received brought on a diseased condition which resulted in death; McAuley v. Casualty Co. 39 Mont. 193, 102 Pac. 586, holding a recovery might be had under an accident policy where death resulted from a disease brought on by an accident; Young v. Railway Mail Asso. 126 Mo. App. 346, 103 S. W. 557, holding a rupture and hemorrhage of the lungs caused by the lifting of a heavy article was accidental within the meaning of a policy; Schumacher v. Great Eastern Casualty & Indemnity Co. 197 N. Y. 62, 27 L.R.A.(N.S.) 482, 90 N. E. 353; French v. Fidelity & C. Co.

135 Wis. 271, 17 L.R.A.(N.S.) 1016, 115 N. W. 869; Driskell v. United States Health & Acci. Ins. Co. 117 Mo. App. 370, 93 S. W. 880,—on when death is the result of an accident within the meaning of a policy; Binder v. National Masonic Acci. Asso. 127 Iowa, 35, 102 N. W. 190, holding no right to recover for death under an accident policy where the accident which was slight in nature would not have resulted in death but for the diseased condition of the insured; Herdic v. Maryland Casualty Co. 146 Fed. 397, on septicemia as being a ground of liability in accident insurance.

Cited in footnotes to Smith v. Ætna L. Ins. Co. 56 L. R. A. 272, which holds injury by fall from steps of moving train covered by policy; Fetter v. Fidelity & C. Co. 61 L. R. A. 459, which holds death from rupture of cancerous kidney covered by accident policy; Horsfall v. Pacific Mut. L. Ins. Co. 63 L. R. A. 425, which holds dilation of heart resulting in death within few weeks, caused by heavy lift, covered by accident policy; Delaney v. Modern Acci. Club, 63 L. R. A. 603, which holds death from blood poisoning contracted through slight wound, as result of accidental injury, covered by accident policy; Maryland Casualty Co. v. Hudgins, 64 L. R. A. 349, which holds death by accidentally eating spoiled oysters is within clause of policy exempting from injuries from poison or anything accidentally or otherwise taken or absorbed; Kasten v. Interstate Casualty Co. 40 L. R. A. 651, which holds death caused by blood poisoning contracted from germs in cotton used by dentist, covered by accident policy; Brown v. Sun L. Ins. Co. 51 L. R. A. 252, which sustains recovery on policy of one whose death caused by taking overdose of morphine; Preferred Acci. Ins. Co. v. Robinson, 61 L. R. A. 145, which denies right to recover under accident policy for inflammation of eyes from accidental contact with poison ivy; Feder v. Iowa State Traveling Men's Asso. 43 L. R. A. 693, which holds death by rupture of artery while reaching over chair to close shutters, not accidental; Atlanta Acci. Asso. v. Alexander, 42 L. R. A. 188, which holds death from hernia caused by sudden and accidental strain not within clause exempting insurer from death resulting from hernia; Maryland Casualty Co. v. Hudgins, 64 L.R.A. 349, which holds death caused by accidentally eating spoiled oysters not covered by policy excluding injuries resulting from poison or anything accidentally taken or absorbed; Richards v. Travelers' Ins. Co. 67 L.R.A. 175, which holds recovery on accident policy on cattle broker whose duties require him to ride on cattle cars not prevented by provision excluding liability for accidents while riding in any part of car not provided for occupation of passengers.

Cited in note (5 L.R.A.(N.S.) 926) on liability on accident policy for sickness or death caused by blood poisoning.

Distinguished in Schmid v. Indiana Travelers Acci. Asso. 42 Ind. App. 487, 85 N. E. 1032, holding that death by paralysis of the heart caused by exertion in a rarefied atmosphere was not accidental within the meaning of a policy.

Time of giving notice of death or accident.

Cited in Horsfall v. Pacific Mut. L. Ins. Co. 32 Wash. 137, 63 L. R. A. 427, 98 Am. St. Rep. 846, 72 Pac. 1028, holding delay of twelve days after accidental death not unreasonable, though policy required immediate notice of accident, which occurred several weeks before death; United Commercial Travelers v. Sain, 108 C. C. A. 317, 186 Fed. 276, holding that requirement of notice of death within specified time is waived by sending of general surgeon and superintendent of claims to make personal investigation; Fidelity & C. Co. v. Brown, 4 Ind. Terr. 405, 69 S. W. 915, holding where policy required immediate written notice of accidents and proof of death within two months thereafter proof of death made immediately thereafter was a sufficient compliance therewith.

Cited in notes (14 L.R.A.(N.S.) 504) on nondevelopment of injury as affecting time for giving notice required by accident policy; (18 L.R.A.(N.S.) 110) as to when strict compliance with requirement as to time of notice in accident or health policy excused.

Distinguished in Travelers' Ins. Co. v. Nax, 73 C. C. A. 649, 142 Fed. 659, holding where an accident policy required immediate notice, a notice given one hundred and thirty-nine days after the accident and sixty-seven days after the death of the insured was not sufficient.

Death or injuries from specified causes in policies.

Cited in Knights & Ladies, C. O. v. Shoaf, 166 Ind. 371, 77 N. E. 738, holding there could be no recovery under a policy exempting the defendant company from liability in case of death arising from pregnancy where death is caused by puerperal septicemia.

40 L. R. A. 657, TURNER v. REVERE WATER CO. 171 Mass. 329, 68 Am. St. Rep. 432, 50 N. E. 634.

Water and gas rates.

Cited in Leighton v. Ricker, 173 Mass. 566, 54 N. E. 254, denying that water rates constitute lien on premises; Kimball v. North East Harbor Water Co. 107 Me. 472, 32 L.R.A.(N.S.) 808, 78 Atl. 865, holding that water company may require one desiring to take water to run elevator to install tank from which water may be supplied; State ex rel. Shewalter v. Jones, 141 Mo. App. 305, 125 S. W. 1169, holding that ordinance requiring delinquent customer of city lighting plant to pay all bills to city for light and fifty cents additional, before service will be given, is unreasonable; Cox v. Malden & M. Gaslight Co. 199 Mass. 326, 17 L.R.A.(N.S.) 1235, 127 Am. St. Rep. 503, 85 N. E. 180, holding gas company had no lien on premises for failure of former occupants to pay gas bills; Linne v. Bredes, 43 Wash. 543, 6 L.R.A.(N.S.) 708, 117 Am. St. Rep. 1068, 86 Pac. 858, 11 Ann. Cas. 238; Burke v. Water Valley, 87 Miss. 736, 112 Am. St. Rep. 468, 40 So. 820,—holding void for unreasonableness a municipal regulation authorizing the refusal of water to a tenant because the former occupant thereof failed to pay his water bill; Poole v. Paris Mountain Water Co. 81 S. C. 443, 128 Am. St. Rep. 923, 62 S. E. 874; McDowell v. Avon-by-the-Sea Land & Improv. Co. 71 N. J. Eq. 114, 63 Atl. 13,—holding same in case of like regulation of private company; State ex rel. Shewalter v. Jones, 141 Mo. App. 306, 125 S. W. 1169, holding a regulation of a city that on a customer becoming delinquent in the payment of his light bill, it might refuse to continue the service without the payment of a penalty was unreasonable and void; Souther v. Gloucester, 187 Mass. 556, 69 L.R.A. 311, 73 N. E. 558, on uniformity in the levy of water rates.

Cited in footnotes to Indiana Natural & Illuminating Gas Co. v. State, 57 L.R.A. 761, which denies right of natural gas company to discriminate against single consumer by enforcing meter rate, instead of flat rate, against him; Souther v. Gloucester, 69 L.R.A. 309, which sustains right to charge higher rates for water furnished owners of summer cottages in outlying districts.

Cited in note (1 L.R.A.(N.S.) 771) on compelling owner to pay for water furnished former occupant of premises.

Distinguished in East Grand Forks v. Luck, 97 Minn. 375, 6 L.R.A.(N.S.) 200, 107 N. W. 393, 7 Ann. Cas. 1015, holding an act making the owner of property liable for the unpaid light and water bill of tenant was constitutional; State ex rel. Latshaw v. Water & Light Comrs. 105 Minn. 477, 127 Am. St. Rep. 581, 117 N. W. 827, holding a charter provision authorizing a refusal to

supply gas until payment of gas bill in arrears was valid; Mansfield v. Humphreys Mfg. Co. 82 Ohio St. 223, 31 L.R.A.(N.S.) 306, 92 N. E. 233, 19 Ann. Cas. 842, holding under statutory authority a city might authorize a refusal to supply water until the payment of back rent with a penalty for default.

Extent of duty of water company to furnish water.

Cited in Milford Water Co. v. Hopkinton, 192 Mass. 497, 78 N. E. 451, on water company as having no right to unreasonably refuse a request for water.

Public nature of water service.

Cited in Canaan v. Enfield Village Fire Dist. 74 N. H. 530, 70 Atl. 250, holding the property of defendant fire district exempt from taxation, being affected with a public nature.

40 L. R. A. 661, PETERSON v. WESTERN U. TELEG. CO. 72 Minn. 41, 71 Am. St. Rep. 461, 74 N. W. 1022.

Later appeal in 75 Minn. 371, 43 L.R.A. 582, 74 Am. St. Rep. 502, 77 N. W. 985.

Libel.

Cited in footnotes to Gambrill v. Schooley, 52 L. R. A. 87, which holds dictation of libelous letter to confidential stenographer, a publication; Kansas City, M. & B. R. Co. v. Delaney, 45 L. R. A. 600, which holds letters of recommendation stating that former employee left employer's service during strike, not actionable *per se*.

Cited in note (1 Brit. Rul. Cas. 467) on postcard or telegram as publication.

Negligence in publication of libel as evidence of malice.

Cited in Davis v. Hearst, 160 Cal. 173, 116 Pac. 530, holding that negligence in publication of libel is not to be confounded with malice, and proof of negligence does not justify inference of malice.

40 L. R. A. 664, *Re* HATCH, 155 N. Y. 401, 50 N. E. 49.

Reargument denied in 156 N. Y. 660, 50 N. E. 1117.

Right to set-off.

Cited in Colton v. Dovers' Perpetual Bldg. & L. Asso. 90 Md. 92, 46 L. R. A. 392, footnote p. 388, 78 Am. St. Rep. 431, 45 Atl. 23, sustaining right to set off, without demand, deposit in insolvent bank against note maturing after receiver appointed; Smith v. Eighth Ward Bank, 31 App. Div. 10, 52 N. Y. Supp. 290, sustaining set-off by bank, against proceeds of note deposited for collection, of obligations maturing before, but not after, appointment of receiver; Kilby v. First Nat. Bank, 32 Misc. 375, 66 N. Y. Supp. 579, sustaining off-set of matured debt due from bank against unmatured debt due to bank; De Camp v. Thomson, 159 N. Y. 449, 70 Am. St. Rep. 570, 54 N. E. 11, denying set-off of judgments where appeal from one pending; *Re* Arkell Pub. Co. 29 Misc. 148, 60 N. Y. Supp. 832, denying set-off as between corporation's receiver and creditor, of claim not arising until after dissolution; Richardson v. Anderson, 109 Md. 647, 25 L.R.A.(N.S.) 398, 130 Am. St. Rep. 543, 72 Atl. 485, holding claims purchased after an assignment for creditors cannot be set off against a debt owing to the insolvent; Jump v. Leon, 192 Mass. 515, 116 Am. St. Rep. 265, 78 N. E. 532, holding a note purchased after the commencement of an action on a promissory note cannot be made the subject of set-off; Assets Realization Co. v. Buffalo, 118 App. Div. 573, 103 N. Y. Supp. 153, holding a city might set off a debt owned by an insolvent against an assignee of a claim against the city allowed after insolvency; Wyckoff v. Williams, 136 App. Div. 498, 121 N. Y.

Supp. 189, on when equity will compel the allowance of a set-off; Leask v. Hoagland, 64 Misc. 162, 118 N. Y. Supp. 1035, on right to equitable set-off.

Cited in note (25 L.R.A.(N.S.) 396) on effect of immaturity of claim at time of insolvency proceedings upon right of set-off.

Equity regards that as done which ought to have been done.

Cited in Lighton v. Syracuse, 48 Misc. 145, 96 N. Y. Supp. 692, holding equity would regard a certificate of approval of a title as having been made where the title was good and the certificate ought to have been made.

40 L. R. A. 666, BLANCK v. SADLIER, 153 N. Y. 551, 47 N. E. 920.

Effect of gold clause in bond.

Cited in Ghiglione v. Marsh, 23 App. Div. 70, 48 N. Y. Supp. 604, holding issuance of bonds payable in gold within power to bond.

Marketable title.

Cited in Weil v. Radley, 31 App. Div. 29, 52 N. Y. Supp. 398, holding title acquired by one who, as executor, conveyed to third person, with stipulation for reconveyance, not marketable until equitable rights of those interested in estate barred; Faile v. Crawford, 30 App. Div. 544, 52 N. Y. Supp. 353, as to whether missing link in chain of title renders it unmarketable; Ruess v. Ewen, 34 App. Div. 487, 54 N. Y. Supp. 357, holding title unmarketable where its validity depends upon facts to be determined by parol evidence, unless it is certain that it cannot be contradicted; Salisbury v. Ryon, 105 App. Div. 448, 94 N. Y. Supp. 352, holding specific performance will not lie to compel contract vendee of testator's real property to perform contract where doubt exists whether executors under will have power of sale and remaindermen are not parties to the proceedings; Empire Realty Corp. v. Sayre, 107 App. Div. 418, 95 N. Y. Supp. 371, holding contract vendee of real estate will not be compelled to specifically perform contract where there is likelihood that a cloud on the title exists; Frank v Frank, 123 App. Div. 804, 108 N. Y. Supp. 549, holding provision in mortgage having but one year to run that in case tax on mortgages be increased and owner fail to pay mortgagee might declare mortgage due in thirty days, does not justify rejection of title by vendee; Schnitzer v. Bernstein, 119 App. Div. 49, 103 N. Y. Supp. 860, holding vendee of lands bound by provisions of mortgages on record when contract of sale states premises are subject to certain specific mortgages; Feltenstein v. Ernst, 49 Misc. 264, 97 N. Y. Supp. 376, on whether grantee of land subject to incumbrance is chargeable with knowledge of details.

Cited in note (38 L.R.A.(N.S.) 5, 24) on what is a marketable title.

Distinguished in Oppenheim v. McGovern, 115 App. Div. 138, 100 N. Y. Supp. 712, holding vendee of real estate cannot be compelled to give mortgage that can be foreclosed in thirty days where contract of sale previously made stipulates three year mortgage; Feist v. Block, 115 App. Div. 213, 100 N. Y. Supp. 843, holding vendee of lands will not be compelled to make purchase money mortgage containing unusual provisions where contract of sale is silent thereon; Levin v. Hill, 117 App. Div. 474, 102 N. Y. Supp. 690, holding vendee of land not chargeable with notice of building restrictions in recorded deed where contract of sale contains covenant against nuisances which does not refer to building restrictions.

Relief from purchase at auction for mistake.

Cited in note (34 L.R.A.(N.S.) 930) on relief from purchase at auction on ground of mistake.

40 L. R. A. 670, BAXTER v. McDONNELL, 155 N. Y. 83, 49 N. E. 667.

Conclusiveness of decisions of associations or corporations.

Cited in Fay v. Supreme Tent. K. O. T. M. 38 Misc. 431, 77 N. Y. Supp. 994, holding void, suspension of member of benefit association without notice required by by-law; Trinity M. E. Church v. Harris, 73 Conn. 225, 50 L. R. A. 640, 47 Atl. 116, sustaining conclusiveness of action by ecclesiastical authorities affecting consolidation of its churches; Travers v. Abbey, 104 Tenn. 669, 51 L. R. A. 261, 58 S. W. 247, refusing to review removal of church pastor in accordance with discipline, where no contract infringed; Hilton v. Roylance, 25 Utah, 143, 58 L. R. A. 729, 95 Am. St. Rep. 821, 69 Pac. 660, holding that Mormon marriage for time and eternity must be respected by civil courts; Westminster Presby. Church v. Presbytery of New York, 142 App. Div. 862, 127 N. Y. Supp. 836, holding that right of membership in church of religious denomination is ecclesiastical question, and decision of ecclesiastical authorities is binding on courts; Murray v. Supreme Hive, L. M. 112 Tenn. 680, 80 S. W. 827; Stein v. Marks, 44 Misc. 143, 89 N. Y. Supp. 921,—on when courts will interpose to control proceedings of voluntary associations; Boyles v. Roberts, 222 Mo. 755, 121 S. W. 805; Presbytery v. Westminster Presbyterian Church, 67 Misc. 322, 122 N. Y. Supp. 309; State ex rel. Hatfield v. Cummins, 171 Ind. 119, 36 L.R.A. (N.S.) 951, 85 N. E. 359,—on when courts will interpose to control proceedings of ecclesiastical bodies; Stein v. Marks, 44 Misc. 146, 89 N. Y. Supp. 921, on whether member of voluntary association bound by by-laws.

Cited in notes (49 L.R.A. 388) on conclusiveness of decisions of tribunals of associations or corporations; (68 Am. St. Rep. 865) on jurisdiction of equity over voluntary unincorporated associations; (100 Am. St. Rep. 735, 741) on jurisdiction of civil courts over church controversies.

Sufficiency of pleading.

Cited in Williamson v. Wager, 90 App. Div. 192, 86 N. Y. Supp. 684, sustaining complaint so drawn as to place on defendant association, burden of sustaining validity of its refusal to permit plaintiff to exercise rights of membership therein.

40 L. R. A. 677, OKLAHOMA AGRI. & MECHANICAL COLLEGE v. WILLIS, 6 Okla. 593, 52 Pac. 921.

Incorporated or state institutions.

Cited in *Re* Royer, 123 Cal. 623, 44 L. R. A. 369, footnote p. 364, 56 Pac. 461, sustaining power of state university to take bequest; Moody v. State Prison, 128 N. C. 13, 53 L. R. A. 855, footnote p. 855, 38 S. E. 131, denying liability of state to prison guard for injury by defective ladder; State ex rel. Wyoming Agri. College v. Irvine, 14 Wyo. 377, 84 Pac. 90, holding agricultural college created and maintained by state whose trustees are appointed by governor and the title to whose land is in the state is a state institution.

Cited in footnotes to Maia v. Eastern State Hospital 47 L. R. A. 577, which denies liability of state hospital for injuries to inmate from negligence or misconduct of persons in charge; Overholser v. National Home for Disabled Volunteer Soldiers, 62 L. R. A. 937, which holds national home for disabled soldiers a part of United States government not subject to action sounding in tort; Trevett v. Prison Asso. 50 L. R. A. 564, which holds prison association not controlled by state, liable for its torts; Watson Seminary v. County Court, 45 L. R. A. 675, which holds charter provision of educational corporation changeable at will of legislature.

Suits against public corporations.

Cited in White v. Alabama Insane Hospital, 138 Ala. 483, 35 So. 454, holding

state insane hospital not liable for injuries to employee; Beadles v. Fry, 15 Okla. 432, 2 L.R.A.(N.S.) 857, 82 Pac. 1041, holding judgment against city may be satisfied by levy on private property held by city where statute authorizes city to be sued.

Cited in note (35 L.R.A.(N.S.) 244) on immunity of state institutions from suit.

40 L. R. A. 679, MACK v. SOUTH BOUND R. CO. 52 S. C. 323, 68 Am. St. Rep. 913, 29 S. E. 905.

Evidence of failure to ring bell or blow whistle for crossing.

Cited in Mason v. Southern R. Co. 58 S. C. 74, 53 L. R. A. 916, 79 Am. St. Rep. 826, 36 S. E. 440, holding evidence of failure to blow whistle and ring bell admissible under allegations of gross negligence and parents' contributory negligence; Boggero v. Southern R. Co. 64 S. C. 113, 41 S. E. 819, holding evidence of failure to give statutory signal for crossing admissible in action for injury to person on track beyond crossing; Goodwin v. Atlantic Coast Line R. Co. 82 S. C. 327, 64 S. E. 242, holding evidence of failure to give statutory signals at road crossings competent in action for injuries received near crossing to show reckless negligence in running train.

Recovery of damages for mental suffering.

Followed in Douglass v. Southern R. Co. 82 S. C. 83, 62 S. E. 15, holding railroad company liable for damages for mental and physical injuries resulting from fright caused by its negligence; Black v. Atlantic Coast Line R. Co. 82 S. C. 481, 64 S. E. 418; Norris v. Southern R. Co. 84 S. C. 21, 65 S. E. 956; Taylor v. Atlantic Coast Line R. Co. 78 S. C. 559, 59 S. E. 641,—holding damages for mental suffering not recoverable in absence of bodily injury.

Cited in Gulf, C. & S. F. R. Co. v. Hayter, 93 Tex. 242, 47 L. R. A. 326, footnote p. 325, 77 Am. St. Rep. 856, 54 S. W. 944, sustaining recovery of damages for physical injuries resulting from shock from wrongful act or omission; Denver & R. G. R. Co. v. Roller, 49 L. R. A. 86, 41 C. C. A. 34, 100 Fed. 750; Hickey v. Welch, 91 Mo. App. 12, holding that mental anguish may be considered in aggravation of damages; Lewis v. Western U. Teleg. Co. 57 S. C. 330, 35 S. E. 556, denying damages for mental suffering disconnected with and in absence of bodily injury; Watson v. Dilts, 116 Iowa, 252, 57 L. R. A. 561, footnote p. 559, 93 Am. St. Rep. 239, 89 N. W. 1068, holding one liable for frightening woman, causing nervous prostration, by stealthily entering her home in nighttime; Watkins v. Kaolin Mfg. Co. 131 N. C. 542, 60 L. R. A. 620, footnote p. 617, 42 S. E. 983, sustaining right of action for physical injury or disease from fright or nervous shock from negligent acts; Robinson v. St. Matthews, 89 S. C. 32, 71 S. E. 234, holding that mental pain and suffering connected directly with physical injury constitute part of physical injury for which damages may be awarded; Geiger v. Grand Trunk R. Co. 10 Ont. L. Rep. 519, holding damages cannot be recovered for mental shock in absence of bodily injuries; Pankopf v. Hinkley, 141 Wis. 149, 24 L.R.A.(N.S.) 1161, 123 N. W. 625, holding women suffering miscarriage resulting from fright caused by defendant running automobile into team, may recover therefor; Simone v. Rhode Island Co. 28 R. I. 203, 9 L.R.A.(N.S.) 748, 66 Atl. 202, holding street railway company liable for injuries to passenger resulting from nervous shock caused by its negligence; Green v. Shoemaker & Co. 111 Md. 82, 23 L.R.A.(N.S.) 673, 73 Atl. 688, holding contractor liable for nervous prostration of woman resulting from fright caused by rocks being hurled on her premises in blasting.

Cited in footnotes to Smith v. Postal Teleg. Cable Co. 47 L. R. A. 323, which

denies recovery for sickness due to fright caused by grossly negligent act of one knowing such result would follow; Braun v. Craven, 42 L. R. A. 199, which denies right to recover for mere fright superinducing nervous shock; Sanderson v. Northern P. R. Co. 60 L. R. A. 403, which denies right to recover for fright resulting in physical injury, but without contemporaneous injury, unless fright proximate result of legal wrong; Kline v. Kline, 58 L. R. A. 397, which sustains right to damages for mental suffering for assault by pointing gun with threat to shoot unless house abandoned; Homans v. Boston Elev. R. Co. 57 L. R. A. 292, which holds carrier liable for passenger's nervous shock which results from being negligently thrown from seat; Reed v. Maley, 62 L. R. A. 900, which holds that merely soliciting woman to sexual intercourse gives her no right of action.

Cited in note (3 L.R.A.(N.S.) 59) on right to recover for physical injury resulting from fright caused by wrongful act.

Disapproved in Morse v. Chesapeake & O. R. Co. 117 Ky. 16, 77 S. W. 361, holding railroad company not liable for injuries to one not a passenger or employee resulting from fright where no personal injury or trespass to real estate occurred.

Duty as to safety of children.

Cited in footnotes to Ashworth v. Southern R. Co. 59 L. R. A. 592, which holds company liable for injury to young child while riding on running board of engine according to known custom of children; Craddock v. Louisville & N. R. Co. 63 L. R. A. 657, which denies duty of those in charge of locomotive to discover at earliest possible moment, infants on track at place remote from highway.

Care requisite at railroad crossing.

Cited in Cooper v. Charleston & W. C. R. Co. 65 S. C. 218, 43 S. E. 682, holding it duty of those in charge of train to give notice of its approach at all points of known or reasonably apprehended danger; Clifford v. Southern R. Co. 87 S. C. 328, 69 S. E. 513, holding that failure to give statutory signals at crossings is negligence per se in action at common law for injury near crossing.

Cited in footnote to Passman v. West Jersey & S. R. Co. 61 L. R. A. 609, which holds cutting of train on side track at highway crossing not invitation to cross without using ordinary precaution.

Proximate cause.

Cited in Marsh v. Western U. Teleg. Co. 65 S. C. 436, 43 S. E. 953, holding it question for jury whether illness due to riding in carriage 20 miles on cold day to place of father's funeral was proximate result of failure to deliver telegram until too late to take train; Cooper v. Richland County, 76 S. C. 204, 10 L.R.A. (N.S.) 800, 121 Am. St. Rep. 946, 56 S. E. 958, quoting definition of proximate cause and holding defective bridge was proximate cause of injury by its fall while driver was trying to free his horse.

Recovery of punitive damages.

Followed in Osteen v. Southern R. Co. 76 S. C. 378, 57 S. E. 196, holding punitive damages may be assessed in action against railroad company for injuries caused by failure to blow whistle at crossing.

Cited in Brasington v. South Bound R. Co. 62 S. C. 331, 89 Am. St. Rep. 905, 40 S. E. 665, and Watts v. South Bound R. Co. 60 S. C. 74, 38 S. E. 240, sustaining right to recover exemplary damages under allegation of wanton negligence resulting in injury; Rowe v. Southern R. Co. 85 S. C. 25, 66 S. E. 1056, holding that in action for injury at crossing where testimony was given tending to show that no signals were given, such testimony might be considered by jury in determining whether plaintiff was entitled to punitive damages; Nickles v.

Seaboard Air Line R. Co. 74 S. C. 135, 54 S. E. 255, holding assessment of punitive damages against railroad company for running train over trestle at greater rate than allowed by statute, proper in action for damages for death of passenger caused by trestle falling.

Presumption of negligence from act.

Cited in Doolittle v. Southern R. Co. 62 S. C. 140, 40 S. E. 133, holding that fact of passenger being injured on train raises presumption of carrier's negligence; McKittrick v. Greenville Traction Co. 88 S. C. 98, 70 S. E. 414, holding that presumption arising from fact that passenger was injured through instrumentality of carrier continues throughout trial: Garner v. Western U. Teleg. Co. 87 S. C. 321, 69 S. E. 510; Baker v. Western U. Teleg. Co. 87 S. C. 176, 69 S. E. 151,—holding that when presumption of negligence arises from act, nonsuit should not be ordered unless evidence of defendant explains so clearly fact on which presumption rests that original presumption would be completely destroyed; Cumming v. Lawrence, 87 S. C. 465, 69 S. E. 1090, holding that presumption that minor under fourteen years of age is incapable of assuming risk of employment among dangerous machinery, and this presumption continues until rebutted by evidence; Williford v. Southern R. Co. 85 S. C. 303, 67 S. E. 302, holding that person who has purchased ticket and is injured while about to board train is passenger, and presumption of negligence arises from injury, which continues throughout trial: Ritter v. Atlantic Coast Line R. Co. 83 S. C. 215, 65 S. E. 175, holding finding dead cows on railroad track raises presumption of negligence.

Destruction of presumption.

Cited in Bryan v. Donnelly, 87 S. C. 394, 69 S. E. 840, holding that presumption of grant arising from adverse possession of land is not destroyed by attempt to show color of title.

40 L. R. A. 687, STATE v. REPP, 104 Iowa, 305, 65 Am. St. Rep. 463, 73 N. W. 829.

Location of bees.

Cited in Parsons v. Manser, 119 Iowa, 92, 62 L. R. A. 135, 97 Am. St. Rep. 283, 93 N. W. 86, holding keeper of bees negligent in locating hives within few feet of hitching post.

Ownership of stolen goods.

Cited in State v. Loomis, 129 Iowa, 142, 105 N. W. 397, on whether ownership of stolen goods must be alleged and proved in prosecutions for larceny.

Cited in note (88 Am. St. Rep. 595) on sufficiency of ownership in prosecution for larceny.

Rights of landowners in wild creatures.

Cited in Harper v. Galloway, 58 Fla. 261, 26 L.R.A.(N.S.) 797, 51 So. 226, on rights of landowners to wild game on their land.

Cited in footnote to State v. Mallory, 67 L.R.A. 773, denying right of state to forbid nonresident landowner to take fish and game on his property within the state.

40 L. R. A. 690, STATE v. GRAMM, 7 Wyo. 329, 52 Pac. 533.

Liability of public officer for safe keeping of funds.

Approved in Roberts v. Laramie County, 8 Wyo. 208, 56 Pac. 915, denying that public officer is made insurer of safe keeping of funds by condition to deliver to successor.

Cited in footnotes to Maloy v. Bernalillo County, 52 L. R. A. 126, which holds county treasurer's liability on bond absolute except for overruling necessity; Thomssen v. Hall County, 57 L. R. A. 303, which holds county treasurer liable on bond for loss of money by bank failure; Northern P. R. Co. v. Owens, 57 L. R. A. 634, which holds clerk of court liable on bond for loss by bank failure of money received as clerk; Dreyer v. People, 58 L. R. A. 869, which holds loss of public funds from failure of bank ceasing business, to carry out agreement to pay all officer's checks to unlimited amount, no defense to indictment for failure to pay over.

Cited in notes (36 L.R.A.(N.S.) 292) on public officer's liability for loss of funds by failure of bank; (91 Am. St. Rep. 523, 526) on acts for which sureties on official bonds are liable.

Disapproved in Van Trees v. Territory, 7 Okla. 370, 54 Pac. 495, holding county treasurer liable on bonds for loss of money by failure of bank which was solvent when money was deposited; Swift v. Trustees of Schools, 91 Ill. App. 228 holding reasonable care of township trustee in depositing money of township in bank, which failed without his prior knowledge, no defense to action on his bond.

40 L. R. A. 710, STATE *ex rel.* NOBLE v. CHEYENNE, 7 Wyo. 417, 52 Pac. 975.

Issuance of licenses.

Cited in Cooke v. Loper, 151 Ala. 551, 44 So. 78, sustaining validity of ordinance authorizing committee of city council to grant or refuse liquor license in their discretion and providing for appeal to mayor and council from committee's decision; State ex rel. Jones v. Natrona County, 18 Wyo. 163, 105 Pac. 295, holding that sale of intoxicating liquors at retail may be restricted, limited or prohibited within designated districts.

Cited in footnotes to Jourdan v. Evansville, 67 L.R.A. 613, which upholds provision empowering city to require licenses for sale of intoxicating liquors within four miles of corporate limits; Whissen v. Furth, 68 L.R.A. 161, which holds person who in connection with a saloon has been running a gambling house in known violation of law not a person of good moral character so as to be entitled to a license.

— Right or discretion.

Cited in Harrison v. People, 125 Ill. App. 183, holding mayor of Chicago without power to refuse liquor license when applicant has complied with all requirements of law.

40 L. R. A. 717, SHERMAN v. BAKER, 20 R. I. 446, 40 Atl. 11.

Validity of bequest for Masses.

Cited in Re Lennon, 152 Cal. 330, 125 Am. St. Rep. 58, 92 Pac. 870, 14 Ann. Cas. 1024, which sustains bequest to bishop to say masses; Re Kavanaugh, 143 Wis. 97, 28 L.R.A.(N.S.) 473, 126 N. W. 672, sustaining a testamentary gift for masses for the repose of souls of designated persons, as a valid charitable bequest.

Cited in footnotes to Webster v. Sughrow, 48 L. R. A. 100, which sustains trust for saying of masses; Hoeffer v. Clogan, 40 L. R. A. 730, which sustains validity of bequest for masses as public and charitable trusts; McHugh v. McCole, 40 L. R. A. 724, which holds void for lack of beneficiary, bequest to bishops for masses for repose of souls of certain persons.

Cited in notes (40 L.R.A. 717) on validity of bequests for masses; (14 L.R.A.(N.S.) 97; 65 Am. St. Rep. 120–122) on same point.

Validity of bequest for care of burial place.

Cited in Morse v. Natick, 176 Mass. 513, 57 N. E. 996, sustaining validity of bequest for permanent care of testator's burial lot; Rhode Island Hospital Trust Co. v. Warwick, 29 R. I. 395, 71 Atl. 644, sustaining validity under statute of bequest to town council for permanent care of burial lot.

Cited in notes (14 L.R.A.(N.S.) 69) on enforcement of general bequest for charity or religion; (1 Brit. Rul. Cas. 934) on testamentary provision for monument or care of tomb, etc.

Gift to class.

Cited in footnote to Allison v. Allison, 63 L.R.A. 920, which holds that devise of remainder at death of life tenant to be divided among testator's heirs at law refers to heirs living at testator's death.

Cited in note (25 Eng. Rul. Cas. 611) on time of vesting of gift by will to such of a class as fulfill a certain condition.

40 L. R. A. 721, HARRISON v. BROPHY, 59 Kan. 1, 51 Pac. 883.

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Cited in notes (40 L.R.A. 717) on validity of bequests for masses; (14 L.R.A. (N.S.) 96, 97; 65 Am. St. Rep. 118, 119, 122) on same point.

Trust as distinguished from absolute gift to trustee.

Cited in note (14 L.R.A.(N.S.) 81) on trust as distinguished from absolute gift to trustee.

40 L. R. A. 724, McHUGH v. McCOLE, 97 Wis. 166, 72 N. W. 631.

Bequest to charitable use.

Approved in Harrington v. Pier, 105 Wis. 496, 50 L. R. A. 313, 76 Am. St. Rep. 922, 82 N. W. 345, sustaining bequest for "temperance work" in certain city; Holmes v. Walter, 118 Wis. 420, 62 L. R. A. 990, 95 N. W. 380, holding trust not void for uncertainty merely because no time for its termination is stated in instrument creating it.

Cited in Methodist Episcopal Church South v. May, 201 Mo. 371, 99 S. W. 1093, holding bequest in will to "Methodist E. Church South and missionary cause," void for indefiniteness.

Cited in footnotes to *Re* Winchester, 54 L. R. A. 281, which holds valid bequest possible to unincorporated educational society with existing organization; Woman's Foreign Missionary Soc. v. Mitchell, 53 L. R. A. 711, which holds legacy to board of managers of Foreign Missionary Society of M. E. Church properly paid to Woman's Foreign Missionary Society; Thompson v. Brown, 62 L. R. A. 398, which upholds devise of fund for distribution by executor "to poor, in his discretion."

Cited in notes (14 L.R.A.(N.S.) 54, 63, 81, 126, 144) on enforcement of general bequest for charity or religion; (64 Am. St. Rep. 758, 771, 772) on certainty and unity required in charitable trusts.

— For Masses.

Cited in Webster v. Sughrow, 69 N. H. 381, 48 L. R. A. 101, 45 Atl. 139, hold-

ing bequest to be expended at executor's discretion for saying of masses for specified persons, valid as for charitable use.

Cited in notes (40 L.R.A. 721) on validity of bequests for masses; (14 L.R.A. (N.S.) 96, 97) on same point.

Distinguished in Sherman v. Baker, 20 R. I. 448, 40 L. R. A. 719, 40 Atl. 11, sustaining gift by will to priest to say masses for testator; Re Kavanaugh, 143 Wis. 94, 28 L.R.A.(N.S.) 471, 126 N. W. 672, sustaining a bequest for masses for the repose of souls of designated persons, as a valid charitable bequest.

Beneficiary of trust.

Cited in Filkins v. Severn, 127 Iowa, 739, 104 N. W. 346, holding trust void which neither designates nor provides for selection of a beneficiary.

When conversion of realty into personalty effected.

Cited in note (20 L.R.A.(N.S.) 118) as to when there is such a failure of testator's purpose as to preclude equitable conversion.

Distinguished in Harrington v. Pier, 105 Wis. 496, 50 L. R. A. 313, 76 Am. St. Rep. 922, 82 N. W. 345, holding equitable conversion effected where will contemplates distribution in money, notwithstanding invalidity of devise.

Resulting trusts to donor.

Cited in Cone v. Wold, 85 Minn. 309, 88 N. W. 977, holding that police relief department receiving moneys from city holds same for city as resulting trust, upon dissolution.

Judicial knowledge of "laws."

Followed in Katzer v. Milwaukee, 104 Wis. 23, 79 N. W. 745, denying that "laws of the Catholic Church" are subject to judicial notice.

Doctrine of cy pres.

Cited in footnote to Gladding v. St. Matthew's Church, 65 L.R.A. 225, which holds that legacy to a particular church will not be administered cy pres after termination of its existence in behalf of deaf mutes for whose benefit the church was.

Implied power of executor to sell realty.

Cited in note (32 L.R.A.(N.S.) 685) on implied power of executor or trustee to sell realty.

40 L. R. A. 730, HOEFFER v. CLOGAN, 171 Ill. 462, 63 Am. St. Rep. 241, 49 N. E. 527.

Bequests to charitable uses.

Approved in St. James Orphan Asylum v. Shelby, 60 Neb. 808, 83 Am. St. Rep. 553, 84 N. W. 273, sustaining bequest to specified bishop for discretionary application to "some charity," with preference to an orphanage; Harrington v. Pier, 105 Wis. 500, 50 L. R. A. 314, 76 Am. St. Rep. 922, 82 N. W. 345, sustaining validity of bequest to trustees for "temperance work" in specified city; Trafton v. Black, 187 Ill. 38, 58 N. E. 292, sustaining bequest for erection of church buildings within specified territory for specified denominations.

Cited in Mason v. Perry, 22 R. I. 484, 48 Atl. 671, denying validity of bequest to Masonic lodge for relief of needy members, or preferably for general purposes including occasional entertainments; Grant v. Saunders, 121 Iowa, 88, 100 Am. St. Rep. 310, 95 N. W. 411, holding bequest in trust for benefit of such poor as trustee thinks best to help, not void for failure to provide for successor of trustee in case of her death or inability to act; Marie M. E. Church v. Trinity M. E. Church, 205 Ill. 605, 69 N. E. 73, holding that resulting trust cannot arise in favor of a mission church, an organized religious society being essen-

tial to such trust; French v. Calkins, 252 Ill. 258, 96 N. E. 877, holding that bequest for support of churches is for charitable use: Lewis v. Gaillard, 61 Fla 844, 56 So. 281, holding that gift of income of estate given by will to state institution of learning does not lapse by technical abolishment of institution if it is promptly re-established under another name; Banner v. Rolf, 43 Tex. Civ. App. 92, 94 S. W. 1125, sustaining bequest to church "for support of poor, helpless, and dependent members and orphan children of;" Welch v. Caldwell, 226 Ill. 496, 80 N. E. 1014, holding bequest to charitable and religious purposes without designating them but directing wife to select them, valid; Kemmerer v. Kemmerer, 233 Ill. 333, 122 Am. St. Rep. 169, 84 N. E. 256, holding failure to designate trustee in charitable trust does not render same void.

Cited in notes (14 L.R.A.(N.S.) 52, 55, 56, 68, 77, 118) on enforcement of general bequest for charity or religion; (64 Am. St. Rep. 756) on certainty and unity required in charitable trusts; (139 Am. St. Rep. 905) on gifts and trusts in favor of churches and religious organizations as charities.

— Masses.

Approved in Webster v. Sughrow, 69 N. H. 381, 48 L. R. A. 101, 45 Atl. 139, sustaining validity of will creating trust for saying of Masses.

Cited in Coleman v. O'Leary, 114 Ky. 402, 70 S. W. 1068, sustaining validity of bequest in trust for saying of masses; Re Lennon, 152 Cal. 331, 125 Am. St. Rep. 58, 92 Pac. 870, 14 Ann. Cas. 1024, sustaining validity of bequest to bishop to say masses: Gilmore v. Lee, 237 Ill. 414, 127 Am. St. Rep. 330, 86 N. E. 568, holding gift to priest to be used for saying masses, valid; Re Kavanaugh, 143 Wis. 97, 28 L.R.A.(N.S.) 473, 126 N. W. 672, sustaining a testamentary gift for masses for the repose of the souls of designated persons, as a valid charitable bequest.

Cited in notes (40 L.R.A. 717) on validity of bequests for masses; (14 L.R.A. (N.S.) 96; 65 Am. St. Rep. 118-122) on same point.

40 L. R. A. 733, ARON v. WAUSAU, 98 Wis. 592, 74 N. W. 354.

Admissions by demurrer.

Cited in Hoyer v. Ludington, 100 Wis. 445, 76 N. W. 348, denying that demurrer admits mere conclusions of law from facts alleged.

Municipal liability for injury by persons in street.

Cited in footnotes to Madisonville v. Bishop, 57 L. R. A. 130, which holds city liable for injuries by unorganized crowd of merrymakers; Bartlett v. Clarksburg, 43 L. R. A. 295, which denies liability of town for injuries from fireworks, etc., fired on streets with consent of town authorities.

Cited in note (3 L.R.A.(N.S.) 761) on liability for injury caused by placing or exploding bomb or fireworks in highway.

Riot.

Cited in Spring Garden Ins. Co. v. Imperial Tobacco Co. 132 Ky. 18, 20 L.R.A. (N.S.) 280, 136 Am. St. Rep. 164, 116 S. W. 234, on what constitutes a riot and holding evidence showed that insured property was burned by rioters.

Cited in notes (10 L.R.A.(N.S.) 925) on what is a mob or riot for act of which municipality responsible; (23 Eng. Rul. Cas. 139) on what constitutes a riot and liability therefor.

40 L. R. A. 735, DOLAN v. HUGHES, 20 R. I. 513, 40 Atl. 344.

Assignment of wages.

Cited in Rodijkeit v. Andrews, 74 Ohio St. 116, 5 L.R.A.(N.S.) 568, 77 N. E. 747, 6 Ann. Cas. 761, holding assignment of wages to be earned in future, valid if under an existing employment.

Cited in footnotes to Mallin v. Wenham, 65 L.R.A. 602, which upholds assignment of wages to be earned in future under existing contract; O'Neil v. Helmke, 70 L.R.A. 338, which holds neither legal transfer of nor lien on proceeds of milk to be delivered by producer to cheese manufacturer effected by order directing latter to deliver to third person proceeds of all milk delivered by producer at factory in future.

Setting aside conveyance for fraud.

Cited in Coombs v. Aborn, 29 R. I. 44, 14 L.R.A.(N.S.) 1250, 68 Atl. 817, on whether fraud must be firmly established in order to set aside a conveyance on that ground.

40 L. R. A. 737, SIMS v. SIMS, 121 N. C. 297, 61 Am. St. Rep. 665, 28 S. E. 407.

Effect of marriage of insane person.

Cited in Holland v. Riggs, 53 Tex. Civ. App. 374, 116 S. W. 167, holding that marriage of person mentally incapable of entering marriage relation is nullity.

Cited in notes (40 L.R.A. 744) on marriage of person when insane; (38 L.R.A. (N.S.) 818) on mental capacity essential to a valid marriage; (79 Am. St. Rep. 376, 377) on invalidity of marriage of insane persons, idiots, etc.

Findings in lunacy proceeding.

Cited in Re Denny, 150 N. C. 423, 64 S. E. 187, on whether finding of jury in an inquisition of lunacy that person is incompetent by reason of excessive use of intoxicants is conclusive; Sprinkle v. Wellborn, 140 N. C. 180, 3 L.R.A.(N.S.) 182, 111 Am. St. Rep. 827, 52 S. E. 666, holding in action to set aside deed for lack of mental capacity record of cited case was not admissible to show plaintiff's marriage was annulled for want of mental capacity.

Grounds for annulment of marriage.

Cited in note (30 L.R.A.(N.S.) 302) on misrepresentation as to disposition or character as ground for annulling marriage.

Effect of removal of impediment to marriage after cohabitation.

Cited in note (3 L.R.A.(N.S.) 247) on effect of removal of impediment to marriage after cohabitation begun.

Power of guardian over marriage of ward.

Cited in note (89 Am. St. Rep. 280) on common law powers of guardian as to marriage of ward.

40 L. R. A. 746, SOUTHERN R. CO. v. SMITH, 30 C. C. A. 58, 52 U. S. App. 708, 86 Fed. 292.

Liability for safety of "passengers."

Cited in Farley v. Cincinnati, H. & D. R. Co. 47 C. C. A. 159, 108 Fed. 17, denying carrier's liability for injury to mail clerk entering car before same placed in readiness for run, unless his presence there customary under circumstances.

Cited in footnotes to Chesapeake & O. R. Co. v. King, 49 L. R. A. 102, which sustains alighting passenger's right to presume against dangerous operation of trains; Duchemin v. Boston Elev. R. Co. 66 L.R.A. 980, which holds that street car company does not owe to person approaching car to enter it as passenger same high degree of care with respect to defects in car that it owes to passengers actually on board.

Who are passengers.

Cited in Gregg v. Northern P. R. Co. 49 Wash. 192, 94 Pac. 911, on who are passengers.

Cited in footnotes to Exton v. Central R. Co. 56 L. R. A. 509, which holds purchaser of ticket a passenger while using depot for purpose of journey; Phillips v. Southern R. Co. 45 L. R. A. 163, which holds one coming to station with intent to take next train, a passenger; Chicago & E. I. R. Co. v. Jennings, 54 L. R. A. 827, which holds one with ticket, crossing tracks on highway to board train on further track, not a passenger; Illinois C. R. Co. v. Laloge, 62 L. R. A. 405, which holds intending passenger resorting to station unreasonable time before train's departure not entitled, as passenger, to protection from assaults of strangers.

Care required at railroad crossings.

Cited in Tucker v. Chicago & G. T. R. Co. 122 Mich. 151, 80 N. W. 984, holding duty to look and listen before crossing railroad not lessened by knowledge that schedule time of train is past.

Effect of evidence of impossible fact.

Cited in Chicago & E. I. R. Co. v. Kirby, 86 Ill. App. 59, holding that uncontradicted testimony of impossible fact must be rejected; Chicago & N. W. R. Co. v. Andrews, 64 C. C. A. 405, 130 Fed. 71, holding plaintiff's testimony that he stopped, looked, and listened before stepping on track immediately in front of train not entitled to credence when contradicted by circumstances and large number of witnesses.

Contributory negligence.

Cited in Sorenson v. Illinois C. R. Co. 155 Ill. App. 611, holding that failure of passenger to look and listen for trains approaching from direction from which plaintiff had no reason to anticipate their coming did not constitute contributory negligence.

40 L. R. A. 750, DUFFY v. HARRIS, 65 Ark. 251, 67 Am. St. Rep. 925, 45 S. W. 545.

Widow's right of dower or homestead.

Cited in Redmond v. Redmond, 112 Ky. 766, 66 S. W. 745, holding widow entitled to dower in land which husband had conveyed to his son to defeat her dower right; Lyons v. Lyons, 101 Mo. App. 498, 74 S. W. 467, holding right to husband's homestead not forfeited by wife's abandonment of him; Mason v. Dierks Lumber & Coal Co. 94 Ark. 110, 26 L.R.A.(N.S.) 577, 125 N. W. 656, holding that wife is not estopped to claims rights in homestead because she was living apart from husband and he represented that he was unmarried.

Distinguished in Ullman v. Abbott, 10 Wyo. 110, 67 Pac. 467, holding widow who never lived with her husband in the state where he had resided for many years before his death not entitled to his homestead.

40 L. R. A. 752, JONES v. SKINNER, 87 Md. 560, 40 Atl. 381.

Voting residence.

Cited in Kinehart v. Howard, 90 Md. 5, 44 Atl. 1040, denying that residence is determined by appearance of name on registration books and fact of voting there.

Cited in footnote to Howard v. Skinner, 40 L. R. A. 753, which holds residence of clerk on steamboat insufficient to give voting residence.

40 L. R. A. 753, HOWARD v. SKINNER, 87 Md. 556, 40 Atl. 379.

Voting residence.

Followed in Jones v. Skinner, 87 Md. 560, 40 L. R. A. 752, footnote p. 752, 40 Atl. 381, denying purser's power, by living on boat, to change voting residence

to other district of same city; Chew v. Wilson, 93 Md. 198, 48 Atl. 708, denying right to strike from voters' list name lawfully placed there, where no other domicil acquired.

Cited in White v. Slama, 89 Neb. 70, 130 N. W. 978, Ann. Cas. 1912C, 518, holding that person who came to state to work temporarily on railway and lives in box car which is moved from place to place does not gain voting residence.

40 L. R. A. 754, BAKER v. WILLARD, 171 Mass. 220, 50 N. E. 620.

Easement of light and air.

Cited in Lipsky v. Heller, 199 Mass. 317, 85 N. E. 453, holding no easement of light and air over court is created by deed granting right of way "in along or over" court where such an easement is not indispensable for use of land conveyed.

Cited in footnote to Townsend v. Epstein, 52 L. R. A. 409, which sustains abutter's right to relief against diminution of light and air by bridge over street.

Cited in notes (16 L.R.A.(N.S.) 194) on interference with light and air by building over right of way; (26 L.R.A.(N.S.) 372) on easement of light and air created by severance of tract with apparent benefit existing; (122 Am. St. Rep. 219) on grant of easement of light and air by implication.

Creation of easement by devise.

Cited in note (38 L.R.A.(N.S.) 886) on devise as carrying visible easement.

40 L. R. A. 757, BANDFIELD v. BANDFIELD, 117 Mich. 80, 72 Am. St. Rep. 550, 75 N. W. 287.

Right of action between husband and wife.

Cited in Thompson v. Thompson, 218 U. S. 619, 54 L. ed. 1183, 30 L.R.A.(N.S.) 1156, 31 Sup. Ct. Rep. 111, 21 Ann. Cas. 921, holding that wife cannot under married womens' statute recover damages from her husband for assault and battery committed by him upon her person; Peters v. Peters, 156 Cal. 34, 23 L.R.A.(N.S.) 701, 103 Pac. 219, holding action for battery will not lie by husband against wife.

Cited in footnote to Lyon v. Lyon, 42 L. R. A. 195, which sustains injunction against husband's eating and sleeping in wife's house pending suit for divorce.

Cited in note (6 L.R.A.(N.S.) 192) on right of wife to sue husband for personal tort.

— Parent and child.

Cited in Roller v. Roller, 37 Wash. 245, 68 L.R.A. 894, 107 Am. St. Rep. 805, 79 Pac. 788, 3 Ann. Cas. 1, holding action for damages will not lie for rape committed on minor daughter by father.

Statutes in derogation of common law.

Cited in Miller v. Detroit, 156 Mich. 636, 132 Am. St. Rep. 537, 121 N. W. 490, 16 Ann. Cas. 832, on statutes in derogation of the common law being strictly construed.

40 L. R. A. 759, SELKIRK v. STEVENS, 72 Minn. 335, 75 N. W. 386.

State's jurisdiction over Indian reservation.

Followed in Hankey v. Bowman, 82 Minn. 331, 84 N. W. 1002, holding that election districts may be established within White Earth Indian reservation.

Cited in State v. Cooney, 77 Minn. 519, 80 N. W. 696, holding Indians on White Earth reservation not subject to state game and fish laws.

— As to acts not within limits of reservation.

Cited in Bem-way-bin-ness v. Eshelby, 87 Minn. 113, 91 N. W. 291, sustaining ejectment in state courts by tribal Indian as to land outside of reservation.

Meaning of word "shipped."

Cited in State v. Carson, 147 Iowa, 563, 140 Am. St. Rep. 330, 126 N. W. 698, to the point that ordinary meaning of word "shipped" is to load for transportation.

40 L. R. A. 761, DRUMMOND CARRIAGE CO. v. MILLS, 54 Neb. 417, 69 Am. St. Rep. 719, 74 N. W. 966.

Priority of mechanics' lien over pre-existing mortgage.

Cited in footnote to Fisher v. Wineman, 52 L. R. A. 192, which holds void, judgment giving preference to labor debt over pre-existing lien, without making lienor party.

Rights of chattel mortgagor after condition broken.

Cited in note (137 Am. St. Rep. 897) on actions maintainable by chattel mortgagor against third persons after condition broken.

40 L. R. A. 765, TISDELL v. NEW HAMPSHIRE F. INS. CO. 155 N. Y. 163, 49 N. E. 664.

Cancelation of insurance.

Cited in German Union F. Ins. Co. v. Fred G. Clarke Co. 116 Md. 627, 39 L.R.A.(N.S.) 833, 82 Atl. 974, holding tender or return of unearned premium necessary to effect cancelation of insurance; Taylor v. Insurance Co. 25 Okla. 96, 138 Am. St. Rep. 906, 105 Pac. 354, holding that when policy provides that "when this policy is canceled by company it shall retain only pro rata premium" return of unearned premium is essential to cancelation by company; Gosch v. Firemen's Ins. Co. 33 Pa. Super. Ct. 503; Kinney v. Rochester German Ins. Co. 141 Ill. App. 553,—holding tender of unearned premium to insured by company necessary to cancel policy; Hartford F. Ins. Co. v. Tewes, 132 Ill. App. 329, holding return of unearned premium necessary to cancel insurance policy containing provision that when policy is canceled company shall retain only pro rata premium; Fireman's Fund Ins. Co. v. Hellner, 159 Ala. 452, 49 So. 297, 17 Ann. Cas. 793, holding mere receipt of telegram from insurance company by agent directing him to cancel policy did not of itself cancel same.

Cited in note (13 L.R.A.(N.S.) 885) on return of premium as condition of canceling insurance.

Distinguished in Gough v. Davis, 24 Misc. 248, 52 N. Y. Supp. 947, holding insured not guilty of fraud or false swearing in proofs of loss by omitting to mention contemporary policy recalled but not canceled before fire: Buckley v. Citizens' Ins. Co. 188 N. Y. 403, 13 L.R.A.(N.S.) 892, 81 N. E. 165, Reversing 112 App. Div. 454, 98 N. Y. Supp. 622; George Hotel Co. v. Liverpool & L. & G. Ins. Co. 122 App. Div. 155, 106 N. Y. Supp. 732,—holding surrender of policy by insured on promise of insurer to remit unearned premium waives right to have policy continued in force until return of unearned premium.

Disapproved in Davidson v. German Ins. Co. 74 N. J. L. 489, 13 L. R. A. (N.S.) 885, 65 Atl. 996, 12 Ann. Cas. 1065, holding tender of unearned premiums to insured not necessary to cancel policy by company.

— Effect of notice of cancelation.

Cited in Philadelphia Linen Co. v. Manhattan F. Ins. Co. 8 Pa. Dist. R. 262, sustaining rigrt to cancel policy five days after receipt of written notice, though less than five days designated in such notice; Webb v. Granite State F. Ins. Co.

164 Mich. 142, 129 N. W. 19, holding that under statute notice of cancellation by insurer to insured terminates obligation after specified time, without tender of unearned premium.

Disapproved in Schwarzschild & S. Co. v. Phœnix Ins. Co. 59 C. C. A. 574, 124 Fed. 54, Affirming 115 Fed. 656, holding return or tender of unearned premium before surrender of policy not essential to effectiveness of notice of cancelation.

40 L. R. A. 768, TURCOTT v. YAZOO & M. VALLEY R. CO. 101 Tenn. 102, 70 Am. St. Rep. 661, 45 S. W. 1067.

Running of limitations against foreign corporation.

Cited in Tiller v. St. Louis & S. F. R. Co. 189 Fed. 998, holding that statute of limitations runs against foreign corporation authorized to do business within state, from time claim comes due; Boro v. Hidell, 122 Tenn. 92, 135 Am. St. Rep. 857, 120 S. W. 961, holding that nonresidence of defendant does not suspend operation of statute of limitations where complete relief may be had by suit by publication; Volizar v. Richmond Cedar Works, 152 N. C. 657, 68 S. E. 200; Colonial & U. S. Mortg. Co. v. Northwest Thresher Co. 14 N. D. 153, 70 L.R.A. 817, 116 Am. St. Rep. 642, 103 N. W. 915, 8 Ann. Cas. 1160; Green v. Snyder, 114 Tenn. 104, 84 S. W. 808; Sidway v. Missouri Land & Live Stock Co. 187 Mo. 673, 86 S. W. 150,—holding foreign corporation maintaining office and agents in state on whom service may be had not precluded from pleading statute of limitations.

Cited in footnotes to Williams v. Metropolitan Street R. Co. 64 L.R.A. 794, denying right of foreign corporation to avail itself of advantage of statute of limitations; Colonial & U. S. Mortg. Co. v. Northwest Thresher Co. 70 L.R.A. 814, which holds bar of limitations available to foreign corporation which has complied with laws of state and has regularly done business in state during entire statutory period during all of which time it has had an agent resident in state on whom process could be served.

Cited in note (17 L.R.A.(N.S.) 1117) on right of corporation not complying with local laws to defend action.

Distinguished in Williams v. Metropolitan Street R. Co. 68 Kan. 27, 64 L. R. A. 799, footnote p. 794, 74 Pac. 600, holding foreign corporation "out of state" within provision as to running of statute of limitations; Black v. Vermont Marble Co. 1 Cal. App. 721, 82 Pac. 1060, holding under statute foreign corporation not complying with statute cannot defend suit on ground same is barred by statute of limitations.

40 L. R. A. 770, PEOPLE *ex rel.* MOONEY v. HUTCHINSON, 172 Ill. 486, 50 N. E. 599.

Exhaustion of power by exercise.

Followed and explained in People *ex rel.* Heffernan v. Carlock, 198 Ill. 153, 65 N. E. 109, sustaining validity of reapportionment after Federal census, irrespective of whether ten years elapsed after apportionment under preceding census.

Cited in footnote to Harmison v. Jefferson County, 42 L. R. A. 591, which holds void, second change in apportionment of delegates to house of delegates between two censuses.

Cited in note (1 L.R.A.(N.S.) 490) on constitutional command to enact law as implied prohibition against further legislation on same subject.

Distinguished in Whipple v. People, 87 Ill. App. 149, holding power to divide town into road district not exhausted by exercise.

Constitutional law.

Cited in Bratsch v. People, 195 Ill. 167, 62 N. E. 895, holding that special provision for appeals to specified court in certain cases controls general provision for uniformity of jurisdiction among courts of same grade.

— Presumption as to validity.

Cited in People v. Joyce, 246 Ill. 130, 92 N. E. 607, 20 Ann. Cas. 472, holding that presumption is always in favor of constitutionality of statute; People v. McBride, 234 Ill. 165, 123 Am. St. Rep. 82, 84 N. E. 865, 14 Ann. Cas. 994, on presumption in favor of validity of a statute.

— Exclusiveness of constitutional methods.

Cited in State ex rel. Frich v. Stark County, 14 N. D. 374, 103 N. W. 913, holding constitutional provision prescribing mode of erecting new counties prohibiting other method of exercising power.

— Division of powers of government.

Cited in State ex rel. Thompson v. Neble, 82 Neb. 279, 19 L.R.A.(N.S.) 587, 117 N. W. 723, holding it an improper delegation to judiciary to empower court to appoint park commissioners with plenary powers for city.

When mandamus lies.

Cited in People *ex rel.* Hillel Lodge, No. 72, I. O. B. B. v. Rose, 207 Ill. 375, 69 N. E. 762 (dissenting opinion), as to whether mandamus is proper remedy to test constitutionality of statute.

40 L. R. A. 776, GAVIN v. CURTIN, 171 Ill. 640, 49 N. E. 523.

Jurisdiction of equity to protect estates.

Followed in Baldrige v. Coffey, 184 Ill. 76, 56 N. E. 411, sustaining power of equity to decree sale of trust property and distribution of proceeds, to protect interests of life tenant and remaindermen; Marsh v. Reed, 184 Ill. 271, 56 N. E. 306, sustaining jurisdiction of equity to authorize trustee to execute lease for longer period than that fixed by testator's will, where necessary to compliance with object of supporting his wife and children; Johns v. Johns, 172 Ill. 480, 50 N. E. 337, sustaining jurisdiction of equity to break in upon trust by ordering real estate sold and converted into money.

Cited in Los Angeles County v. Winans, 13 Cal. App. 245, 109 Pac. 640, holding that contingent interest of unborn remaindermen is sufficiently protected by virtual representation in judicial proceedings affecting their interests; Pennington v. Metropolitan Museum of Art, 65 N. J. Eq. 24, 55 Atl. 468, which holds court of equity may decree change of management of trust with consent of residuary beneficiary contrary to provisions of will where such provision cannot be carried out; Lenow v. Arrington, 111 Tenn. 733, 69 S. W. 314, upholding decree of equity selling trust property where will does not prohibit sale and it is for interest of all concerned; Johnson v. Buck, 220 Ill. 236, 77 N. E. 163, holding equity may, in order to preserve a trust estate, decree its conversion contrary to will; Denegre v. Walker, 114 Ill. App. 240; Denegre v. Walker, 214 Ill. 118, 105 Am. St. Rep. 98, 73 N. E. 409, 2 Ann. Cas. 787,—sustaining power of court of equity to decree that trustees make a ninety-nine year lease where they are authorized to manage the trust estate and all adult parties in interest consent and it is for best interests of estate to do so; Re Hubbell, 135 Iowa, 660, 13 L.R.A.(N.S.) 507, 113 N. W. 512, 14 Ann. Cas. 640, holding lease of trust property likely to extend beyond trust period under power in will to contract only as to its use, invalid unless necessary to effectuate trust; Wardner v. Seventh Day Baptist Memorial Board, 232 Ill. 615, 122 Am. St. Rep. 138, 83

N. E. 1077, on right of court of equity to decree sale of property contrary to provision of will.

Cited in note (8 L.R.A.(N.S.) 62) on inherent powers of courts of equity as to divestiture of estates of persons not in being.

Distinguished in Ruggles v. Tyson, 104 Wis. 507, 48 L. R. A. 812, 79 N. W. 766, holding power of equity to change trust scheme by sale of realty does not extend further than interposition for preservation of the property.

Effect of decree upon unborn children.

Cited in Ridley v. Halliday, 106 Tenn. 611, 53 L. R. A. 479, footnote p. 477, 82 Am. St. Rep. 902, 61 S. W. 1025, holding sale of realty binding on unborn remaindermen; Thompson v. Adams, 205 Ill. 559, 69 N. E. 1, holding decree in will case in which testator's only grandchild is defendant, as to interest grandchildren take under will, binding on any other grandchildren subsequently born; Springs v. Scott, 132 N. C. 557, 44 S. E. 116, sustaining power of court on petition of life tenant and trustee and such remaindermen as are in being, to order sale of land, and bind unborn remaindermen; Phinizy v. Wallace, 136 Ga. 530, 71 S. E. 896, on effect of decree in equity for sale of property upon interests of unborn persons.

Cited in footnote to Harrison v. Turnbull, 41 L. R. A. 703, which holds unborn heirs bound by decree in action to establish claims against estate to which living heirs of same class are parties.

Cited in notes (8 L.R.A.(N.S.) 50, 52, 57) on devestiture of estates of persons not in being; (97 Am. St. Rep. 764) on judgments against persons not in being.

Moot questions.

Cited in Lonergan v. Goodman, 241 Ill. 203, 89 N. E. 349, which holds equity will not decide moot question for benefit of litigants when no real controversy between them.

40 L. R. A. 781, ILLINOIS STEEL CO. v. MANN, 170 Ill. 200, 62 Am. St. Rep. 370, 48 N. E. 417.

Later appeal in 197 Ill. 186, 64 N. E. 328, Affirming 100 Ill. App. 367.

Assumption of risk.

Followed in Webster Mfg. Co. v. Nisbett, 105 Ill. App. 265; Illinois C. R. Co. v. North, 97 Ill. App. 128; Donley v. Dougherty, 174 Ill. 584, 51 N. E. 714, — denying that employee assumes risk by remaining at dangerous employment for reasonable time to permit employer to fulfil promise to repair; Nelson v. Shaw, 102 Wis. 278, 78 N. W. 417, holding that employee may rely upon employer's promise to repair defect in private road before he returns.

Cited in Pardridge v. Gilbride, 98 Ill. App. 137, holding that evidence of employer's promise to repair defect causing injury will, if credited, support finding of non-assumption of risk therefrom; Kinmundy v. Anderson, 103 Ill. App. 461, holding that employee assumes risk by continuing use of defective appliance, after notice to shut down plant if he considers operation dangerous; Shickle, H. & H. Iron Co. v. Glon, 106 Ill. App. 648, holding risk assumed by servant continuing in employment after lapse of reasonable time after master's unfulfilled promise to remedy defect; Detroit Crude-Oil Co. v. Grable, 36 C. C. A. 101, 94 Fed. 80, denying recovery by employee for injury from patent defect of which he knows as well as, or better than, his employer; Rice v. Eureka Paper Co. 174 N. Y. 392, 62 L. R. A. 614, 95 Am. St. Rep. 585, 66 N. E. 979, holding employee complaining of defective condition of machine which employer promises to repair when mill shut down "the fore part" of the next week, still within protection of

such promise on Wednesday of that week; Alcorn v. Chicago, B. & Q. R. Co. 158 Ill. App. 334, holding that master is not bound to point out to servant defects or dangers which are apparent, open and visible; Enema v. MacGowan-Finnegan Foundry & Mach. Co. 158 Ill. App. 640, holding that servant assumes risk notwithstanding master's promise to repair appliance, where he continues to use defective appliance after reasonable time to make repairs has elapsed; American Tobacco Co. v. Adams, 137 Ky. 426, 125 S. W. 1067, holding that servant assumes risk of unsafe place to work, although master promised to make place safe, where he continues to work although no repairs were made; Lynn v. Omaha Packing Co. 88 Neb. 727, 130 N. W. 425, holding that where master has expressly promised to repair defect servant does not assume risk, within such period of time after promise as would be reasonably allowed for its performance; Balkwill v. Becker, 131 Ill. App. 226, holding servant operating defective machine for unreasonable time after notifying foreman of its condition, assumes risk; Harte v. Fraser, 130 Ill. App. 500, holding engineer working in engine room for several weeks assumes risk of falling into catch basin in corner of engine room; Dauchy Iron Works v. Nevin, 130 Ill. App. 479, holding experienced structural iron worker assumed risk of defective runway which he advised foreman to repair; Gunning System v. Lapointe, 212 Ill. 279, 72 N. E. 393, holding sign painter working three days on defective scaffold after notifying foreman to put brace thereon assumed risk of scaffold breaking; Hester v. Savannah Electric Co. 130 Ga. 454, 60 S. E. 1045, holding motorman overexerting himself on defective brake after notifying foreman assumed additional risk; Montgomery Coal Co. v. Barringer, 218 Ill. 333, 75 N. E. 900, holding servant having knowledge of hole in floor of coal chute assumes risk of coal falling on him while working beneath; Elgin, J. & E. R. Co. v. Myers, 226 Ill. 365, 80 N. E. 897, holding experienced carpenter working for several months with defective circular saw assumes risk incident thereto; Daily v. Fiberloid Co. 186 Mass. 320, 71 N. E. 554, holding fireman trucking ashes on defective runway four days after notifying foreman of defect assumes risk incident thereto; Andrecsik v. New Jersey Tube Co. 73 N. J. L. 674, 4 L.R.A.(N.S.) 918, 63 Atl. 719, 9 Ann. Cas. 1006, holding servant assumes risk of defective machine where he continues to operate same after time master definitely promised to repair it; Brouseau v. Kellogg Switchboard & Supply Co. 158 Mich. 321, 27 L.R.A.(N.S.) 1058, 122 N. W. 620 (dissenting opinion), on assumption of risk by servant of defects after notification of master, also citing annotation on this point; Heathcock v. Milwaukee-Blatteville Lead & Zinc Min. Co. 128 Wis. 54, 107 N. W. 463, on what constitutes a reasonable time for which a servant is entitled to remain in service after promise of master to repair.

Cited in footnotes to Stager v. Troy Laundry Co. 53 L. R. A. 459, which holds risk of hand passing under guard rails into rollers not assumed, as matter of law, by servant operating mangle in laundry; Albrecht v. Chicago & N. W. R. Co. 53 L. R. A. 653, which holds risk of injury from absence of shield on glass indicating oil supply assumed by fireman leaving station knowing engineer has not kept promise to fix it; Neeley v. Southwestern Cotton Seed Oil Co. 64 L. R. A. 145, which holds employee not warranted in continuing work on master's promise to repair defective appliance, after direct or indirect revocation of such promise; Rice v. Eureka Paper Co. 62 L.R.A. 611, which holds risk of defective machine not assumed by servant on Wednesday of week during fore part of which master agreed to repair same.

Cited in notes (47 L.R.A. 186, 190) on volenti non fit injuria as defense to actions by injured servants; (4 L.R.A.(N.S.) 914) on effect of master's failure

to repair defects within time promised where servant continues work; (22 L.R.A.(N.S.) 472) on effect of promise to repair at definite time to suspend doctrine of assumed risk during interval; (25 L.R.A.(N.S.) 1179) on liability of master for breach of promise to remedy conditions, to furnish other appliances, where already reasonably safe; (27 L.R.A.(N.S.) 1052, 1055) on assumption of risk of defect in simple tool which master has promised to repair or replace; (28 L.R.A.(N.S.) 1215) on servant's assumption of risks from master's negligence; (29 L.R.A.(N.S.) 597) on effect of promise to repair where danger is great and imminent; (17 Eng. Rul. Cas. 240) on assumption of risks by employee.

Annotation in 40 L. R. A. 781, referred to with approval in Dempsey v. Sawyer, 95 Me. 302, 49 Atl. 1035, holding that employee may reassume risk from defective machinery by continuing employment pending promised removal of defect; Maryland Steel Co. v. Engleman, 101 Md. 683, 61 Atl. 314, on liability of master to servant after notice of defective machinery.

Distinguished in Olney v. Boston & M. R. Co. 71 N. H. 434, 52 Atl. 1097, holding engineer relying upon master's promise to repair, and then attempting to make urgent repairs while locomotive in motion, not chargeable with negligence as matter of law.

— Question for jury.

Cited in Eligh v. Goldie, 143 Mich. 598, 107 N. W. 316, holding question of whether servant operating defective machine for reasonable time after promise of master to repair assumes risk is for jury.

40 L. R. A. 799, PERHAM v. PORTLAND GENERAL ELECTRIC CO. 33 Or. 451, 72 Am. St. Rep. 730, 53 Pac. 14.

Right of action for death.

Cited in Schleiger v. Northern Terminal Co. 43 Or. 9, 72 Pac. 324, holding statutory right of action to parent for death of minor child not exclusive of right of action of personal representative under prior statute: Gregory v. Southern P. Co. 157 Fed. 115, holding action for death by wrongful act is a distinct action independent of the wrong to decedent on which he surviving could sue: The General Foy, 175 Fed. 591, holding same and that libel in admiralty might lie to enforce the right.

— Proof of persons damaged.

Cited in Southern P. Co. v. Wilson, 10 Ariz. 167, 85 Pac. 401, holding under statute giving personal representative of deceased right of action for death by wrongful act, administrator may bring action without proving existence of beneficiaries or damages sustained by them; Jennings v. Alaska Treadwell Gold Min. Co. 95 C. C. A. 388, 170 Fed. 148, adopting Oregon rule in construing Alaska Code and holding proof of a family which suffered loss by the killing not essential; Jacksonville Electric Co. v. Bowden, 54 Fla. 464, 15 L.R.A.(N.S.) 453, 45 So. 755, holding under statute giving administrator right to sue if other mentioned persons do not exist the administrator's right to recover "such damages as the person suing may have sustained" means the value of decedent's prospective earnings to his estate.

Care required of electric companies.

Followed without special discussion in Wehner v. Lagerfelt, 27 Tex. Civ. App. 524, 66 S. W. 221.

Cited in Griffith v. New England Teleph. & Teleg. Co. 72 Vt. 444, 52 L. R. A. 920, 48 Atl. 643, holding telephone company deemed, in absence of contract, to

have undertaken to possess and exercise knowledge and skill necessary to protect subscribers from lightning conducted over its wires: Runyan v. Kanawha Water & Light Co. 68 W. Va. 616, 35 L.R.A.(N.S.) 435, 71 S. E. 259, holding that electric light and power company is bound to use high degree of care to keep its wires safely insulated at places where persons may be lawfully in close proximity to them; Trout v. Laclede Gaslight Co. 151 Mo. App. 223, 132 S. W. 58, holding that electric light company and telephone company jointly using poles, are each bound to exercise highest degree of care in insulating their high voltage wires; Le Dow v. Oklahoma Gas & Electric Co. 28 Okla. 29, 119 Pac. 250, holding that degree of care to prevent injury to others required to be exercised by making business of handling and selling electricity, must be commensurate with danger, and injury which may follow as consequence of neglect; Will v. Edison Electric Light Co. 19 Lanc. L. Rev. 339, holding that recovery could be had for death of painter who while at work upon building came in contact with uninsulated electric light wire and was killed; Commonwealth Electric Co. v. Melville, 210 Ill. 78, 70 N. E. 1052; Gentzkow v. Portland R. Co. 54 Or. 121, 135 Am. St. Rep. 821, 102 Pac. 614; Parsons v. Charleston Consol. R. Gas & Electric Co. 69 S. C. 308, 104 Am. St. Rep. 800, 48 S. E. 284,—holding care that electric company must use in preventing contact with wires is commensurate with the danger; Thornburg v. City & E. G. R. Co. 65 W. Va. 384, 64 S. E 358, holding whether electric company exercised the care required of it in protecting wires from contact is a question for the jury.

Cited in notes (77 Am. St. Rep. 29) on diligence required when human life is involved; (100 Am. St. Rep. 517, 520, 522) on duties and liabilities of electric corporations.

— Insulation.

Approved in Brown v. Edison Electric Illuminating Co. 90 Md. 407, 46 L. R. A. 747, footnote p. 745, 78 Am. St. Rep. 442, 45 Atl. 182, holding electric light company liable for defective insulation of wires strung where persons are liable to come in contact therewith; Geismann v. Missouri-Edison Electric Co. 173 Mo. 678, 73 S. W. 654, holding it electric light company's duty to use every precaution to keep wires so insulated as to prevent injury to one coming in contact with them; Rucker v. Sherman Oil & Cotton Co. 29 Tex. Civ. App. 420, 68 S. W. 818, holding company maintaining electric wires with high voltage over awning, required to use necessary care to prevent injury to persons lawfully on such awning; Knowlton v. Des Moines Edison Light Co. 117 Iowa, 455, 90 N. W. 818, holding use of high degree of diligence and foresight required in construction and maintenance, in safe condition, of lines over which electrical current of 2,500 voltage passes.

Cited in Rowe v. Taylorville Electric Co. 114 Ill. App. 540, holding it electric company's duty to use every precaution to keep wires so insulated as to prevent injury to one coming in contact with them; Eaton v. Weiser, 12 Idaho, 555, 118 Am. St. Rep. 225, 86 Pac. 541, holding city operating electric light plant liable for injury to boy from electric shock caused by sagging wire; Thomas v. Wheeling Electrical Co. 54 W. Va. 400, 46 S. E. 217, holding electric company liable for death of one grasping wire while engaged in work, where wire located only eighteen inches from balcony of theatre; Metropolitan Street R. Co. v. Gilbert, 70 Kan. 266, 78 Pac. 807, 3 Ann. Cas. 256, holding electric railway company liable for injury to one coming in contact with wire on public street charged with electricity from electric company's wires; Winkelman v. Kansas City Electric Light Co. 110 Mo. App. 189, 85 S. W. 99, holding person re-

ceiving shock from wire raises presumption that utmost care was not used in insulating wire.

Cited in footnotes to Moran v. Corliss Steam-Engine Co. 45 L. R. A. 267, which holds employer using defectively insulated wire with slight current liable for injury to employee due to outside contact with dangerous current; Brush Electric Light & Power Co. v. Lefevre, 49 L. R. A. 771, which denies liability for death by uninsulated electric light wire running above awning 16 feet above street.

Liability to injured servants.

Cited in notes (47 L. R. A. 165, 166) on *volenti non fit injuria* as a defense to actions by injured servants; (46 L. R. A. 50, 98, 99) on right of servant to recover damages from persons other than his master for injuries received in performance of duties.

Liability of joint tort feasors.

Cited in Beopple v. Illinois C. R. Co. 104 Tenn. 428, 58 S. W. 231, holding railroad company liable for frightening, by negligent management of one train, team previously prevented from crossing track by other train obstructing crossing.

Contributory negligence as to electric current.

Cited in Mangan v. Hudson River Teleph. Co. 50 Misc. 392, 100 N. Y. Supp. 539, on whether person receiving shock used due care will be determined from all the circumstances.

Presumption of negligence.

Cited in note (113 Am. St. Rep. 1014) on presumption of negligence from happening of accident causing personal injuries.

40 L. R. A. 811, MOONEY v. LUZERNE, 186 Pa. 161, 40 Atl. 311.

Liability for dangerous condition of electric wires.

Cited in Herron v. Pittsburg, 204 Pa. 513, 93 Am. St. Rep. 798, 54 Atl. 311, holding city liable for injury by contact with broken police-call wire lying in street charged with heavy current of electricity from feed wire of electric railway; Emery v. Philadelphia, 208 Pa. 499, 57 Atl. 977, holding city liable for death caused by contact with broken fire alarm wire, lying in public highway though at a little distance from improved part of road; West Conshohocken v. Conshohocken Electric Light & P. Co. 29 Pa. Super. Ct. 11; Union Teleph. Co. v. Greenville, 18 Pa. Dist. R. 935, 36 Pa. Co. Ct. 202,—holding it duty of municipality to inspect condition of telephone wires and protect citizens from contact therewith.

Cited in footnotes to Thomas v. Maysville Gas Co. 53 L. R. A. 147, which requires corporation sending electricity into street railway company's wires to see to their insulation; Boyd v. Portland General Electric Co. 52 L. R. A. 509, which holds want of sufficient assistance to promptly replace wires broken by severe storm not excuse, as matter of law, for delay; Boyd v. Portland General Electric Co. 57 L. R. A. 619, which holds electric light company liable for injury by wire broken during storm; Hebert v. Lake Charles Ice, Light & Waterworks Co. 64 L. R. A. 101, which holds electric light company liable for death of person in street caused by uninsulated wire which burned and fell because of fall of telephone wire negligently strung above it; Perham v. Portland General Electric Co. 40 L. R. A. 799, which holds it negligent to string over bridge dangerous electric wires with which employee must come in contact when making repairs; Brush Electric Light & Power Co. v. Lefevre, 49 L. R. A. 771, which denies liability for death by uninsulated electric light wire running above awning 16 feet above street.

Cited in notes (2 L.R.A.(N.S.) 475) on duty of municipality to inspect electric wires maintained by others in streets; (100 Am. St. Rep. 535) on duties and liabilities of electric corporations.

— For dangers in highways.

Cited in Ackley v. Bradford Twp. 32 Pa. Super. Ct. 492, holding it duty of municipality to protect public from obstructions and defects in public highway.

Cited in note (20 L.R.A.(N.S.) 648, 649) on liability of municipality for defects or obstructions in streets.

40 L. R. A. 812, WILLIAMS v. THACKER COAL & COKE CO. 44 W. Va. 599, 30 S. E. 107.

Employer's liability.

Followed in McMillan v. Middle States Coal & Coke Co. 61 W. Va. 534, 11 L.R.A.(N.S.) 841, 57 S. E. 129; Squilache v. Tidewater Coal & Coke Co. 64 W. Va. 345, 62 S. E. 446; Purkey v. Southern Coal & Transp. Co. 57 W. Va. 597, 50 S. E. 755,—holding mine owner not liable for injury to employee from negligence of examiner required to be employed by statute.

Cited in Dwyer v. Raleigh Coal & Coke Co. 68 W. Va. 742, 70 S. E. 716, holding that miner who disregards judgment of mine foreman that place in which he is working is dangerous and unsafe, cannot hold operator liable as at common law because he accepted his assurance of safety; Davis v. Mabscot Coal & Coke Co. 69 W. Va. 742, 72 S. E. 1030, holding that mine owner is not liable for injury to miners resulting from neglect of mine boss; Bralley v. Tidewater Coal & Coke Co. 66 W. Va. 280, 40 L.R.A.(N.S.) 949, 66 S. E. 684, 19 Ann. Cas. 510, holding that mine boss and fire boss are fellow servants of miner; Fulton v. Wilmington Star Min. Co. 68 L.R.A. 173, 66 C. C. A. 247, 133 Fed. 198 (dissenting opinion), on nonliability of mine owner for negligence of mine examiner required to be employed by statute.

Cited in footnotes to Schmalstieg v. Leavenworth Coal Co. 59 L. R. A. 707, which holds mine owner liable for injury to employee from negligence of fire boss whose employment required by statute; Ellsworth v. Metheney, 51 L. R. A. 389, which holds mine owner required to properly guard electric wire in passage way where miners accustomed to go; Tradewater Coal Co. v. Johnson, 61 L. R. A. 161, which holds master liable for failure of loaders to remove loose coal hanging in mine, rendering it unsafe for other employees; Finn v. Cassidy, 53 L. R. A. 877, which holds safe place not *per se* provided by contractor having employees work in tunnel under foundation of chimney, with knowledge that undisturbed earth was saturated with water; Hanley v. California Bridge & Constr. Co. 47 L. R. A. 597, which denies assumption by servant of risk of caving in of completed part of tunnel; Fulton v. Wilmington Star Min. Co. 68 L.R.A. 168, which holds mine owner not exempted from liability for manager's negligence by fact that statute forbids employment of others than holders of certificates of competency from state examiners.

Cited in notes (51 L.R.A. 536) on vice principalship considered with reference to superior rank of negligent servant; (3 L.R.A.(N.S.) 1107) on master's liability as affected by restrictions upon freedom of selection and superintendence of employees; (40 L.R.A.(N.S.) 948) on liability for negligence of supervising employee employed pursuant to statute; (87 Am. St. Rep. 575, 580, 593) on duty of mine owners to prevent injury to employees.

Distinguished in Wilmington Star Min. Co. v. Fulton, 205 U. S. 72, 51 L. ed. 715, 27 Sup. Ct. Rep. 412, holding mine owner liable for negligence of mine examiner required to be employed by statute where state supreme court has

held mine examiner to be vice principal of mine owner; Henrietta Coal Co. v. Martin, 221 Ill. 466, 77 N. E. 902, holding mine owner liable for injury to miner for failure of certified inspector to furnish props in absence of statute making inspector fellow servant; Donk Bros. Coal & Coke Co. v. Lucas, 127 Ill. App. 62, holding mine owner liable for failure of certified mine examiner to perform duties imposed by statute not making him a fellow servant; Goshorn v. Wheeling Mold & Foundry Co. 65 W. Va. 256, 64 S. E. 22, holding master liable for injuries to servant from breaking of pulley in foundry which machinist failed to repair or replace.

Disapproved in Smith v. Dayton Coal & I. Co. 115 Tenn. 551, 4 L.R.A.(N.S.) 1182, 92 S. W. 62, holding mine owner liable for negligence of mine inspector required to be employed by statute.

40 L. R. A. 815, BETTMAN v. COWLEY, 19 Wash. 207, 53 Pac. 52.

Followed without discussion in Fisher v. Kittinger, 19 Wash. 707, 53 Pac. 1135; First Nat. Bank v. Hatfield, 20 Wash. 224, 54 Pac. 1135; Hyatt v. Lewis, 20 Wash. 305, 55 Pac. 217.

What constitutes impairment of contracts.

Followed in Canadian & A. Mortg. & T. Co. v. Blake, 24 Wash. 103, 85 Am. St. Rep. 946, 63 Pac. 1100, denying validity of statute giving judgment debtor right to possession and profits during redemptive period, as to mortgage given under law giving foreclosure purchaser right of possession on day of sale.

Cited in Palmer v. Laberee, 23 Wash. 411, 63 Pac. 216, holding void, repealing clause in act making unconstitutional restriction upon term of existing lien; Williams v. Packard, 39 Wash. 219, 81 Pac. 710; Meikle v. Cloquet, 44 Wash. 516, 87 Pac. 841; Howard v. Ross, 38 Wash. 628, 80 Pac. 819, 3 Ann. Cas. 1146,—holding statute prohibiting revival of judgments or an action thereon, unconstitutional as to judgment rendered on contract executed prior to enactment of statute; Wooster v. Bateman, 126 Iowa, 557, 102 N. W. 521, on what constitutes a contract within meaning of constitutional provision as to impairment of their obligation.

Cited in footnotes to Peninsular Lead & Color Works v. Union Oil & Paint Co. 42 L. R. A. 331, which holds statute for dissolution of attachment by assignment for creditors within ten days void as to contracts made when right of attachment absolute; Jones v. German Ins. Co. 46 L. R. A. 860, which sustains statute shortening time of insurance company's immunity from suit, without extending period of limitations; Livingston v. Livingston, 61 L. R. A. 800, which holds unchangeable provision for alimony in divorce decree cannot be impaired by subsequent statute empowering courts to modify same; Evans-Snider-Buel Co. v. McFadden, 58 L. R. A. 900, which holds judgments are not contracts within prohibition against impairing obligations; Kirkman v. Bird, 58 L. R. A. 670, which sustains as to prior obligations, statute exempting wages for sixty days preceding levy; Miners' & Merchants' Bank v. Snyder, 68 L.R.A. 313, which holds corporate creditor's contract rights not impaired by statute requiring all creditors to unite in one suit against all stockholders for equitable distribution of liability fund among creditors.

Distinguished in Wilson v. Wold, 21 Wash. 400, 75 Am. St. Rep. 846, 58 Pac. 223, sustaining act entitling judgment debtor to possession and to rents, issues, and profits of realty during redemptive period, as against pre-existing contract; Citizens' Nat. Bank v. Lucas, 26 Wash. 421, 56 L. R. A. 814, 90 Am. St. Rep. 748, 67 Pac. 252, holding domestic judgments within limitation period for actions on judgment or decree of any state or Federal court; Gaffney v. Jones, 39

Wash. 588, 81 Pac. 1058, holding statute prohibiting revival of judgments or an action thereon not unconstitutional as to existing judgments founded on tort.

40 L. R. A. 822, NOBLE v. SEATTLE, 19 Wash. 133, 52 Pac. 1013.

Actions for death by wrongful act.

Reaffirmed in Nesbitt v. Northern P. R. Co. 22 Wash. 699, 61 Pac. 141, sustaining action by mother for damages for death of son over twenty-one years old.

Followed in Dueber v. Northern P. R. Co. 100 Fed. 425, denying administrator's right of action for damages for benefit of one negligently killed; Manning v. Tacoma R. & P. Co. 34 Wash. 407, 75 Pac. 994, holding under statute parent cannot maintain action for death of son by wrongful act.

Approved in Lintz v. Holy Terror Min. Co. 13 S. D. 494, 83 N. W. 570, denying that any right of action for death from wrongful act exists under statute giving such action to widow, heir, or personal representatives, where decedent left neither widow nor children.

Cited in Johnson v. Seattle Electric Co. 39 Wash. 212, 81 Pac. 705, holding under statute widower cannot maintain action for death of widow by wrongful act; Winfree v. Northern P. R. Co. 44 L.R.A.(N.S.) 841, 97 C. C. A. 392, 173 Fed. 67, holding under statute personal representative of unemancipated minor cannot maintain action for benefit of parents for damages resulting from wrongful death; Copeland v. Seattle, 33 Wash. 420, 65 L.R.A. 335, 74 Pac. 582, holding under statute executor of deceased may maintain action for death by wrongful act for benefit of widow where she does not sue.

Cited in footnotes to Marshall v. Macon Sash, Door & Lumber Co. 41 L. R. A. 211, which denies right of action for homicide of stepfather; Hennessy v. Bavarian Brewing Co. 41 L. R. A. 385, which sustains mother's right of action for wrongful death of child, notwithstanding remarriage and stepfather's assumption of parental obligations; Brink v. Wabash R. Co. 53 L. R. A. 811, which denies right to recover for nonperformance of contract to support parent through negligent killing of son.

Cited in note (70 Am. St. Rep. 672) on actions for death of human being.

Distinguished in Peterman v. Northern P. R. Co. 105 Fed. 336, holding mother within statute giving right of action for wrongful death, to "heirs or personal representatives;" Erickson v. Pacific Coast S. S. Co. 96 Fed. 80, sustaining administrator's right of action for wrongful death, under statute authorizing his action where deceased, if living, would have right of action for same cause; Rochester v. Seattle, 67 Wash. 548, 39 L.R.A.(N.S.) 1158, 122 Pac. 23, holding that damages to be recovered by child for wrongful death of father are not limited to those suffered before attaining majority.

Limited in Philby v. Northern P. R. Co. 46 Wash. 174, 9 L.R.A.(N.S.) 1194, 123 Am. St. Rep. 926, 89 Pac. 468, 13 Ann. Cas 742, holding irrespective of statute widower may maintain action for funeral expenses and loss of time resulting from death of wife by wrongful act.

Repeal of statute.

Cited in Robinson v. Baltimore & S. Min. & Reduction Co. 26 Wash. 489, 67 Pac. 274, discussing, without deciding, whether earlier statute repealed by later.

40 L. R. A. 825, SLAUSON v. GOODRICH TRANSP. CO. 99 Wis. 20, 74 N. W. 574.

When ejectment lies.

Cited in footnote to Cahill v. Cahill, 60 L. R. A. 706, which holds possessory rights only will not sustain ejectment without showing legal title.

Distinguished in Cottrell v. Pickering, 32 Utah, 68, 10 L.R.A.(N.S.) 409, 88 Pac. 696, holding erection of house under color of title raises presumption of title in occupant.

Determination on appeal of competency of document.

Cited in Dodge v. O'Dell, 106 Wis. 300, 82 N. W. 135, holding that competency of excluded court records of an estate cannot be determined on appeal when not brought into the record.

40 L. R. A. 829, BECKER v. LA CROSSE, 99 Wis. 414, 67 Am. St. Rep. 874, 75 N. W. 84.

Municipal powers.

Cited in State *ex rel.* Wisconsin Teleph. Co. v. Sheboygan, 111 Wis. 38, 86 N. W. 657, denying that power to regulate use of streets and trade and commerce includes power to prescribe charges and service as condition of placing poles and wires by telephone corporation with charter power therefor; Hoggard v. Monroe, 51 La. Ann. 686, 44 L. R. A. 479, footnote p. 477, 25 So. 349, denying city's liability for negligent operation of ferry without authority; Schneider v. Menasha, 118 Wis. 303, 99 Am. St. Rep. 996, 95 N. W. 94, upholding authority of city to purchase stone quarry just outside corporate limits for use in improving streets; Donable v. Harrisonburg (Switzer v. Harrisonburg) 104 Va. 535, 2 L.R.A.(N.S.) 912, 113 Am. St. Rep. 1056, 52 S. E. 174, 7 Ann. Cas. 519, holding in absence of statute authorizing same city cannot operate stone quarry outside city limits.

Cited in footnote to Oren *ex rel.* Barbour v. Pingree, 46 L. R. A. 407, which holds void, statute empowering city to purchase and operate street railways.

Disapproved in Haeussler v. St. Louis, 205 Mo. 685, 103 S. W. 1034, upholding right of city authorized by statute to erect bridge, to do so even though bridge is across navigable stream and one end is in a foreign state.

Tort liability arising from ultra vires acts.

Cited in Donable v. Harrisonburg, 104 Va. 535, 2 L.R.A.(N.S.) 912, 113 Am. St. Rep. 1056, 52 S. E. 174, 7 Ann. Cas. 519, holding city operating stone quarry outside corporate limits without authorization of statute, not liable for injury to employee from its negligence.

Liability of municipality for defects in streets.

Cited in Hoppe v. Winona, 113 Minn. 260, 33 L.R.A.(N.S.) 453, 129 N. W. 577, Ann. Cas. 1912A, 247, holding that city is liable for injury to person working on bridge connecting two states, caused by improper insulation of electric light and power wires authorized by city to be strung thereon and over which city had control.

Cited in notes (108 Am. St. Rep. 138; 20 L.R.A.(N.S.) 555) on liability of municipality for defects or obstructions in streets.

40 L. R. A. 831, O'BRIEN v. LA CROSSE, 99 Wis. 421, 75 N. W. 81.

Right to physical examination.

Followed in Boelter v. Ross Lumber Co. 103 Wis. 330, 79 N. W. 243, denying right to second X-ray examination of plaintiff after examination lasting two hours or more, during which he was accidentally burned, and examination by two of defendant's medical witnesses.

Cited in South Bend v. Turner, 156 Ind. 427, 54 L. R. A. 400, 83 Am. St. Rep. 200, 60 N. E. 271, holding refusal of order for physical examination in action for personal injuries reversible error, where defendant cannot otherwise determine extent of injury and it can be made without pain or danger; Ottawa

v. Gilliland, 63 Kan. 171, 88 Am. St. Rep. 232, 65 Pac. 252, sustaining power of court to require private examination of unexposed portions of person when, in court's sound discretion, same appears necessary; Murphy v. Southern P. Co. 31 Nev. 142, 101 Pac. 322, 21 Ann. Cas. 502, holding that in action for personal injuries, rulings of trial court in exercise of discretion in granting or denying physical examination of plaintiff will not be disturbed in absence of abuse of discretion; Best v. Columbia Street R. Light & P. Co. 85 S. C. 429, 67 S. E. 1 (dissenting opinion), on power of courts to order physical examination of plaintiff in actions for personal injuries; Western Glass Mfg. Co. v. Schoeninger, 42 Colo. 363, 15 L.R.A.(N.S.) 668, 126 Am. St. Rep. 165, 94 Pac. 342, holding refusal of order for physical examination reversible error where an examination could reveal material facts and person examined would not be injured thereby; Atlantic Coast Line R. Co. v. Dees, 56 Fla. 136, 48 So. 28, refusing to disturb order of trial court denying motion for physical examination in action for personal injuries when no abuse of discretion shown.

Cited in footnotes to Lane v. Spokane Falls & N. R. Co. 46 L. R. A. 153, which sustains power of court to order physical examination of woman by experts in action for personal injuries; Stack v. New York, N. H. & H. R. Co. 52 L. R. A. 328, and Austin & N. W. R. Co. v. Cluck, 64 L. R. A. 494, which deny power in absence of statutory authority to require plaintiff to submit to physical examination; Bagwell v. Atlanta Consol. Street R. Co. 47 L. R. A. 486, which holds action for injury to minor daughter should not be dismissed for her refusal, after attaining majority, to submit to physical examination; State v. Height, 59 L. R. A. 438, which holds unlawful, disclosures by physicians of knowledge as to venereal disease obtained by examination, against his will, of one accused of rape; Atchison, T. & S. F. R. Co. v. Palmore, 64 L.R.A. 90, which sustains right to compel physical examination of injured eyes, though involving use of drugs for dilating pupils; May v. Northern P. R. Co. 70 L.R.A. 111, which denies judicial power at common law to compel plaintiff to submit to physical examination.

Cited in notes (2 L.R.A.(N.S.) 387) on waiver of right to object to physical examination or exhibition of person; (15 L.R.A.(N.S.) 663) on refusal of order for physical examination as abuse of discretion; (68 Am. St. Rep. 244, 248) on physical examination of parties by order of court.

Distinguished in Atchison, T. & S. F. R. Co. v. Palmore, 68 Kan. 554, 64 L. R. A. 94, footnote p. 90, 75 Pac. 509, holding that timely request for physical examination of injured eyes should be granted, though involving use of drugs for dilating pupils.

Criticised in May v. Northern P. R. Co. 32 Mont. 528, 70 L.R.A. 114, 81 Pac. 328, 4 Ann. Cas. 605, holding in absence of statute authorizing same trial court cannot require physical examination of a party in an action for personal injuries.

40 L. R. A. 833, FOSTER v. FIDELITY & C. CO. 99 Wis. 447, 75 N. W. 69.

Time for giving notice of loss or injury.

Cited in Woodmen Acci. Asso. v. Pratt, 62 Neb. 681, 55 L. R. A. 295, footnote p. 291, 89 Am. St. Rep. 777, 87 N. W. 546, holding failure to give notice of injury under stipulation for notice within ten days, excused by derangement of insured; Employers' Liability Assur. Corp. v. Light, Heat & Power Co. 28 Ind. App. 442, 63 N. E. 54, holding that the "immediate medical assistance" for which insurer under employer's liability policy agrees to pay without notice does not extend beyond time necessary for notice to insurer and such further time as

to enable insurer to act; Perpetual Bldg. & L. Asso. v. United States Fidelity & G. Co. 118 Iowa, 736, 92 N. W. 686, holding delay of six or eight days in notifying surety company of employee's defalcation, from which no prejudice resulted, not, as matter of law, violation of condition requiring immediate notice; Cady v. Fidelity & C. Co. 134 Wis. 328, 17 L.R.A.(N.S.) 269, 113 N. W. 967, which holds insurer not released from liability for failure to furnish notice of death within required time by beneficiary not learning of existence of policy within such time; London Guarantee & Acci. Co. v. Siwy, 35 Ind. App. 345, 66 N. E. 481, holding failure to give notice of injury to insurance company until several months thereafter under stipulation in policy for immediate notice of injury to employee, works forfeiture of policy; Aronson v. Frankfort Acci. & Plate Glass Ins. Co. 9 Cal. App. 477, 99 Pac. 537, holding failure to give notice of injury until nine months thereafter under stipulation for immediate notice in employer's liability policy precludes recovery against insurance company of costs of defending damage suit: Knight & J. Co. v. Castle, 172 Ind. 106, 27 L.R.A. (N.S.) 585, 87 N. E. 976, holding notification of surety of defalcation of principal must be alleged and proved in action to recover on bond under stipulation therein that surety be notified of defalcation within ten days thereafter.

Cited in footnotes to Solomon v. Continental F. Ins. Co. 46 L. R. A. 682, which holds notice of loss more than fifty days after fire not insufficient *per se* under policy requiring "immediate notice;" Travelers' Ins. Co. v. Myers, 49 L. R. A. 760, which holds nine months' delay in giving notice of injury fatal to recovery on employers' liability policy; Munz v. Standard Life & Acci. Ins. Co. 62 L. R. A. 485, which holds insurer not released from liability for failure to furnish notice and proofs of death within required time by beneficiary not learning of death or of policy within such time.

Cited in note (18 L.R.A.(N.S.) 107) on validity of policy provision requiring notice of accident or sickness within specified time.

Admissibility of evidence.

Cited in Reisz v. Supreme Council A. L. of H. 103 Wis. 434, 79 N. W. 430, holding admission of evidence of waiver not alleged, not reversible error as against general objection; Order of United Commercial Travelers v. Barnes, 72 Kan. 308, 82 Pac. 1099, 7 Ann. Cas. 809, holding admission of proofs of loss containing insured's statement of his claim without instruction that same were admissible only for purpose of proving compliance with conditions of policy, error.

40 L. R. A. 837, MILWAUKEE COLD STORAGE CO. v. DEXTER, 99 Wis. 214, 74 N. W. 976.

Duties and liabilities of corporate promoters.

Cited in Colton Improv. Co. v. Richter, 26 Misc. 30, 55 N. Y. Supp. 486, denying right of promoter to secret profits as against subscribers to capital stock believing themselves on equal footing with him: Spaulding v. North Milwaukee Town Site Co. 106 Wis. 489, 81 N. W. 1064, denying liability of corporate promotors for unequal profits made without deceit, but holding them liable for secret profits in their subsequent sale to corporation when constituting majority of its directors; Forest Land Co. v. Bjorkquist, 110 Wis. 554, 86 N. W. 183, holding sale to corporation not impeached by mere fact that vendor purchased the property at much lower figure; Pietsch v. Milbrath, 123 Wis. 652, 68 L.R.A. 949, 107 Am. St. Rep. 1017, 101 N. W. 388, holding sale of land to corporation organized for that purpose by promoters for twice the amount they paid for it, fraudulent when concealed from other stockholders; Figge v. Bergenthal, 130 Wis. 615,

109 N. W. 581, holding sale of commodity in which it deals to corporation by stockholder for market price, transaction being entered on books, not fraudulent.

Cited in footnotes to Hayward v. Leeson, 49 L. R. A. 725, which denies right of corporate promoters to remuneration for services, unless voted to them or full statement incorporated in prospectus; Yeiser v. United States Board & Paper Co. 52 L. R. A. 724, which sustains right of corporation to secure cancelation of stock paid for out of secret profits by subscribers from sale of property to corporation; Pietsch v. Milbrath, 68 L.R.A. 945, which holds that promoters of corporation cannot escape liability to take for fraudulent profits in transferring to it property at an excessive value by limiting stock subscription to themselves until the transaction is consummated.

Cited in note (18 L.R.A.(N.S.) 1110, 1113, 1132) on duty and liability of promoters to corporation and its members.

Distinguished in Lomita Land & Water Co. v. Robinson, 154 Cal. 51, 18 L.R.A.(N.S.) 1132, 97 Pac. 10, denying right of promoter of corporation formed to purchase certain property to secretly make profits as against co-subscribers.

Consideration for stock.

Cited in La Crosse Brown Harvest Co. v. Goddard, 114 Wis. 613, 91 N. W. 225, holding that capital stock may be issued for property or labor as well as for cash.

40 L. R. A. 843, STATE *ex rel.* GOEBEL v. CHAMBERLAIN, 99 Wis. 503, 75 N. W. 62.

Publication in foreign language.

Cited in Hyman v. Susemihl, 137 Wis. 301, 118 N. W. 837, holding in absence of statute authorizing same, publication of legal notice in German language, invalid; Bennett v. Baltimore, 106 Md. 493, 68 Atl. 14, 14 Ann. Cas. 419, holding publication of advertisement for bids in one English and one German newspaper insufficient compliance with ordinance requiring publication in two newspapers; Conners v. Lowell, 209 Mass. 119, 95 N. E. 412, Ann. Cas. 1912B, 627, holding that general public notice required by statute to be published in newspaper must be printed in English language and in newspaper printed in that language.

40 L. R. A. 845, ERB v. GERMAN-AMERICAN INS. CO. 98 Iowa, 606, 67 N. W. 583.

Public policy as affecting insurance contracts.

Cited in footnote to Trenton Pass. R. Co. v. Guarantors' Liability Indemnity Co. 44 L. R. A. 213, which sustains contract to indemnify carrier against loss from injuries to passenger.

— Unlawful use of property insured.

Reaffirmed on subsequent appeal in 99 Iowa, 733, 69 N. W. 261.

Cited in Petty v. Mutual F. Ins. Co. 111 Iowa, 360, 82 N. W. 767, holding insurance on personalty or realty used in liquor business not avoided by insured's noncompliance with liquor laws; Insurance Co. of N. A. v. Evans, 64 Kan. 775, 68 Pac. 623, holding insurance on stock of drugs including some intoxicating liquors, not invalidated by fact that some illegal sales of liquor were made; Kellogg v. German-American Ins. Co. 133 Mo. App. 401, 113 S. W. 663, holding insurance on stock of drugs including intoxicating liquors, not invalidated by fact that illegal sales of liquor were made.

Cited in note (31 L.R.A.(N.S.) 874) on validity of insurance on intoxicating liquors.

What constitutes change of interest within policy.

Cited in Pringle v. Des Moines Ins. Co. 107 Iowa, 746, 77 N. W. 521, holding policy not avoided by executory contract to sell, which is to stand as bond for deed with provision for liquidated damages in case of breach, and where no payment has been made or possession delivered; Home Mut. Ins. Co. v. Tomkies, 96 Tex. 191, 71 S. W. 814, Affirming 30 Tex. Civ. App. 406, 71 S. W. 812, holding executory contract to convey insured property, without payment of consideration or change of possession, not change in interest or title; House v. Security F. Ins. Co. 145 Iowa, 466, 121 N. W. 509, holding that mere option contract for sale of property upon which insured building is situated, is not such change in title as will avoid policy; Garner v. Milwaukee Mechanics' Ins. Co. 73 Kan. 132, 4 L.R.A.(N.S.) 651, 117 Am. St. Rep. 460, 84 Pac. 717, 9 Ann. Cas. 459, holding policy not avoided by executory contract to sell by owner where consideration fully paid but no transfer made; Swank v. Farmers' Ins. Co. 126 Iowa, 551, 102 N. W. 429, holding policy not avoided by giving option to purchase conditioned on would-be purchaser negotiating loan; Excelsior Foundry Co. v. Western Assur. Co. 135 Mich. 472, 98 N. W. 9, 1 Ann. Cas. 707, holding reassignment of part paid contract on property insured, payment of part consideration therefor and delivery of bill of sale to third party to be delivered to purchaser upon full payment a change in interest invalidating policy.

Cited in footnotes to Arkansas F. Ins. Co. v. Wilson, 48 L. R. A. 510, which holds policy not affected by mere agreement to buy premises, definite only as to price; Farmers' & M. Ins. Co. v. Jensen, 44 L. R. A. 861, which holds policy void by conveyance to wife of insured through third person.

Attorney's remark as prejudicial error.

Cited in Mackerall v. Omaha & St. L. R. Co. 111 Iowa, 550, 82 N. W. 975, holding attorney's improper statement in argument not prejudicial where it is promptly reproved, and withdrawn.

Effect of insured's inadvertent misstatement.

Cited in Huston v. State Ins. Co. 100 Iowa, 405, 69 N. W. 674, holding policy not avoided by insured's misstatement at examination under oath after loss, under stipulation to submit to such examination; Dalton v. Milwaukee Mechanics' Ins. Co. 126 Iowa, 386, 102 N. W. 120, holding policy not avoided by false statements in proof of loss unless shown to have been fraudulently made and that damage resulted.

Cited in note (32 L.R.A.(N.S.) 456) on effect of false swearing in proofs of loss.

Correctness of instructions.

Cited in Cronk v. Wabash R. Co. 123 Iowa, 355, 98 N. W. 884, holding refusal of instruction on question of damages not involved in pleadings or proof not erroneous.

40 L. R. A. 851, NORTH POINT CONSOL. IRRIG. CO. v. UTAH & S. L. CANAL CO. 16 Utah, 246, 67 Am. St. Rep. 607, 52 Pac. 168.

Application for mandamus to compel district judge to make and sign findings, conclusions, and decree, in State v. Norrell, 17 Utah, 9, 53 Pac. 610.

Later appeal in 23 Utah, 199, 63 Pac. 812.

Corporate charter and powers.

Cited in Gitzhoffen v. Sisters of Holy Cross Hospital Asso. 32 Utah, 58, 8 L.R.A.(N.S.) 1166, 88 Pac. 691, holding evidence by corporation aliunde articles of incorporation, inadmissible to show it was organized for charitable purposes;

Stack v. Detour Lumber & Cedar Co. 151 Mich. 24, 16 L.R.A.(N.S.) 611, 114 N. W. 876, 14 Ann. Cas. 112; on whether corporation may do things not authorized by its charter.

Liability of irrigation company for damage by surplus water.

Approved in Lisonbee v. Monroe Irrig. Co. 18 Utah, 348, 72 Am. St. Rep. 784, 54 Pac. 1009, holding irrigation company liable for injury from inadequate and improperly maintained surplus ditch.

Rights in flowage of surface water.

Cited in footnotes to Franklin v. Durgee, 58 L. R. A. 112, which denies right to fill depressions in land, casting surface water back on highway to its injury; Brandenberg v. Zeigler, 55 L. R. A. 414, which denies owner's right to drain surface water from pond on neighbor's land by cutting through natural rim of basin; Todd v. York County, 66 L.R.A. 561, which holds that owner's right to discharge surface water from premises does not permit him to collect it in volume and by means of artificial channel discharge it on another's land contrary to natural course of drainage; Baldwin v. Ohio Township, 67 L.R.A. 642, which sustains right of one through whose lands natural water course flows to accumulate surface waters in such stream as against lower riparian owner; Ginter v. St. Mark's Church, 69 L.R.A. 621, which holds owners of improved property adjacent to sewer required to connect gutters and spouts on buildings therewith as against owners of premises adjoining alley on which water otherwise falls.

Appropriation from ditch.

Cited in MacRae v. Small, 48 Or. 145, 85 Pac. 503, holding appropriation of water from another's ditch without his consent not foundation of right to appropriate same.

Public nuisances.

Cited in Kewanee v. Otley, 204 Ill. 412, 68 N. E. 388, holding pollution of stream by city sewage a continuing rather than a permanent nuisance, so that judgment at law for damages by riparian owner is no bar to suit to enjoin nuisance.

Cited in notes (53 L.R.A. 892, 896) on prescriptive to maintain public nuisances; (107 Am. St. Rep. 201, 218) on what are public nuisances.

— Pollution of stream.

Cited in footnote to McKay v. Ward, 46 L. R. A. 623, which sustains personal liability for pollution of stream by discharge from strawboard works, though business skilfully conducted.

Cited in notes (1 L.R.A.(N.S.) 752) on validity of statute prohibiting pollution of water, for protection of fisheries; (25 L.R.A.(N.S.) 590) on prescriptive right to pollute stream.

Jurisdiction on appeal in equity cases.

Followed in Schroeder v. Pratt, 21 Utah, 185, 60 Pac. 512, holding that although appeal in equity case carries up questions of both law and fact, findings will not be disturbed unless clearly unsustained.

Cited in Sandberg v. Victor Gold & Silver Min. Co. 24 Utah, 27, 66 Pac. 360, holding that findings which are inconsistent and against pleadings and preponderance of evidence, will be set aside on appeal and new ones rendered; Clawson v. Wallace, 16 Utah, 308, 52 Pac. 9, holding that judgment supported by preponderance of evidence will be sustained, although evidentiary and additional findings conflict with general findings and justify decree for appellant.

Cited in note (40 L. R. A. 470) on injunctions by municipalities against nuisances in water and water courses.

40 L. R. A. 861, KNAPP v. CONNECTICUT MUT. L. INS. CO. 29 C. C. A. 171, 56 U. S. App. 452, 85 Fed. 329.

Liability under purchase subject to mortgage.

Cited in footnote to McKay v. Ward, 46 L. R. A. 623, which sustains personal liability of purchaser agreeing to pay mortgage debt, though mortgagor not liable.

Right to subrogation.

Cited in Brown & H. Co. v. Ligon, 92 Fed. 858, sustaining right of subcontractors to be subrogated to rights of insolvent sureties upon contractor's bond, in bond taken by sureties to indemnify against loss or liability; Watson v. National Life & Trust Co. 88 C. C. A. 380, 162 Fed. 13, holding policy holders may in absence of novation join all insurance companies as defendants to secure accounting of trust fund where original company transferred its assets to second company and second to a third and third to a fourth.

Equitable assumption of debt.

Cited in Gamble v. Rural Independent School Dist. 76 C. C. A. 539, 146 Fed. 119, holding bona fide purchaser before maturity of negotiable bonds of school district which is subsequently subdivided may enforce payment from new districts in equity.

41 L.R.A.

L. R. A. CASES AS AUTHORITIES.

CASES IN 41 L. R. A.

41 L. R. A. 33, WALKOWSKI v. PENOKEE & G. CONSOL. MINES, 115 Mich. 629, 73 N. W. 895.

Master's duty in selection of servants.

Cited in Southern P. Co. v. Hetzer, 1 L.R.A.(N.S.) 291, 68 C. C. A. 26, 135 Fed. 275, holding that it is the duty of a master to employ competent servants, but when he has performed this duty, his duty is done, and he may rely upon the presumption that the servant will do his duty, until he has notice or knowledge to the contrary; Seccombe v. Detroit Electric R. Co. 133 Mich. 177, 94 N. W. 747, holding that the presumption is that the master was not negligent in hiring or retaining an incompetent servant, and without proof of negligence in either, he is not liable; Wilkinson v. Kanawha & H. Coal & Coke Co. 64 W. Va. 99, 20 L.R.A.(N.S.) 335, 61 S. E. 875, holding that the burden is upon the one alleging incompetency, to prove that a boy over fourteen years of age is incompetent in the capacity in which he was employed.

Cited in note (87 Am. St. Rep. 561, 563, 569, 570) on duty of mine owners to provide competent employees.

Annotation in 41 L. R. A. 33, referred to particularly in Bell v. Globe Lumber Co. 107 La. 734, 31 So. 994, holding railway company liable for negligence of engineer employed without due care.

Distinguished in Layzell v. J. H. Somers Coal Co. 156 Mich. 271, 117 N. W. 179, holding that under the statute regulating the operation of cages in mine hoists, the defense of assumption of risk, and negligence of fellow servants is not available where the injury occurs through failure to employ a competent cage operator.

Duty of warning employees.

Cited in note (44 L. R. A. 34) on duty of master to instruct and warn servant as to perils of employment.

Distinguished in Fleming v. Northern Tissue Paper Mill, 135 Wis. 174, 15 L.R.A.(N.S.) 709, 114 N. W. 841, holding that where the master has notice of an infirmity in a machine, it is his duty to warn an inexperienced servant directed to work at the machine, of the danger though the machine itself may be in good repair.

Duty of observing rules of employment.

Cited in note (43 L. R. A. 306, 320) on duty of master and servant as to rules promulgated for safe conduct of business.

Assumption of risk.

Cited in notes (49 L. R. A. 34) on contributory negligence in entering or remaining in employment; (47 L. R. A. 165) on *volenti non fit injuria*, as defense to actions by injured servants.

Burden of explaining accident.

Cited in footnote to Spees v. Boggs, 52 L. R. A. 933, which holds employer not bound to explain cause of elevator injuring employee.

Violation of statutory duty.

Cited in notes (57 L. R. A. 836) on statutory liability of employers for defects in condition of their plant; (48 L. R. A. 71) on liability of employer for injuries received by servants owing to want of blocking at switches.

Who are fellow servants.

Cited in Hartnett v. Onosso Sugar Co. 147 Mich. 655, 111 N. W. 457, holding that where the plaintiff was injured through the negligence of the person assisting him in repairing an anchor hoisting device, the injury resulted from the act of a fellow servant for which the master was not liable.

Cited in footnote to Wellston Coal Co. v. Smith, 55 L. R. A. 99, which holds miner intrusted with duties of mine boss not fellow servant of other miners.

Cited in notes (50 L. R. A. 435, 436) on what servants are deemed to be in same common employment, apart from statutes, where no questions as to vice principalship arise; (54 L. R. A. 52, 55, 75, 102, 166) on vice principalship as determined with reference to character of act which caused injury; (51 L. R. A. 568) on vice principalship considered with reference to superior rank of negligent servant.

Action by servant against third party.

Cited in note (46 L. R. A. 45, 50) on right of servant to recover damages from persons other than his master for injuries received in performance of duties.

Evidence of incompetency of servant.

Cited in notes (14 L.R.A.(N.S.) 757, 758, 759, 773) on evidence of specific instances to prove character of servant; (20 L.R.A.(N.S.) 331) as to whether incompetency to perform duties of employment may be inferred from minority alone; (33 L.R.A.(N.S.) 751) on evidence of reputation to show incompetency of servant or master's knowledge thereof.

Master's duty to inspect appliances.

Cited in footnotes to Twombly v. Consolidated Electric Light Co. 64 L.R.A. 551, which holds it master's duty to inspect and repair ladder furnished for use of servant; Rincicotti v. John J. O'Brien Contracting Co. 69 L.R.A. 936, which denies master's power to relieve himself of duty to make reasonable inspection of appliances used to aid servants in their work by delegating duty to competent employees.

41 L. R. A. 154, KIDD v. BATES, 120 Ala. 79, 74 Am. St. Rep. 17, 23 So. 735.

Qualifications of executors.

Approved on later appeal in 124 Ala. 673, 27 So. 491, sustaining dissolution of injunction against coexecutor on unsubstantiated charges of fraud.

Cited in Re Van Vleck, 123 Iowa, 90, 98 N. W. 557, holding court not bound to appoint executor nominated in will, where he has converted part of property to his own use, and otherwise placed himself in hostility to provisions of will;

Crommelin v. Raoull, 169 Ala. 415, 53 So. 745, holding that grounds of disqualification of person as administrator contained in section 2508 of Code of 1907, are exclusive; Clark v. Patterson, 214 Ill. 544, 105 Am. St. Rep. 127, 73 N. E. 806, Affirming 114 Ill. App. 318, holding that the fact that the executrix had maintained illicit sexual relations with the testator for many years, does not disqualify her from acting, though it may cause friction between her and her co-executor; Breen v. Kehoe, 142 Mich. 62, 1 L.R.A.(N.S.) 352, 113 Am. St. Rep. 558, 105 N. W. 28, holding that unless provided otherwise by statute, indebtedness to the testator, does not disqualify an executor.

Cited in note (113 Am. St. Rep. 562, 563) on right of nonresident to act as executor or administrator.

Construction of devise.

Approved in Barr v. Weaver, 132 Ala. 218, 31 So. 488, holding devise of "such portion as entitled to under laws" measured by statute of dower and descent.

41 L. R. A. 157, PEOPLE v. SEARCEY, 121 Cal. 1, 53 Pac. 359.

Failure to prove statements in opening address as grounds for reversal.

Cited in State v. Boone, 65 Wash. 343, 118 Pac. 46, holding that statement of prosecuting attorney in opening address on trial for embezzlement of $22,000 that he expected to prove embezzlement of $15,333, and others not covered by indictment is not ground for new trial where no evidence thereof was offered; Ossenkop v. State, 86 Neb. 546, 126 N. W. 72, holding that statements in good faith of facts not afterward proved, made by the prosecuting attorney in his opening address, are not grounds for reversal.

Review of exercise of discretion, on appeal.

Cited in Searle v. Roman Catholic Bishop, 203 Mass. 500, 25 L.R.A.(N.S.) 996, 89 N. E. 809, 17 Ann. Cas. 340, holding that the appellate court will not review an exercise of discretion by the trial court determining whether a person shall sit upon a jury.

Comparison of footprints.

Cited in note (94 Am. St. Rep. 343) on comparison of footprints.

41 L. R. A. 159, CUTLER v. ROYAL INS. CO. 70 Conn. 566, 40 Atl. 529.

Avoidance of policy for other insurance.

Cited in Woolford v. Phenix Ins. Co. 190 Mass. 235, 76 N. E. 722, holding that a clause in an insurance policy providing that eighty per cent insurance shall be maintained, is not so inconsistent with another clause providing that the policy shall be void if additional insurance is taken without consent, so as to avoid or waive the latter; Rudy v. Safety Mut. F. Ins. Co. 24 Lanc. L. Rev. 285. holding that "eighty per cent clause" attached to fire insurance policy does not give implied authority to procure additional insurance, and waive stipulation forbidding same.

Cited in footnote to L'Engle v. Scottish Union & N. Ins. Co. 67 L.R.A. 581, which holds other concurrent insurance for $2,500, permitted by clause to that effect in policy for same amount, though another indorsement slip states insurable interest to be $2,500.

Cited in note (1 Brit. Rul. Cas. 54) on void or inoperative policies as breach of condition against other insurance on property.

41 L. R. A. 162, PILLSBURY-WASHBURN FLOUR MILLS CO. v. EAGLE, 30 C. C. A. 386, 58 U. S. App. 490, 86 Fed. 608.

Injunction against trade names.

Approved in Heller & M. Co. v. Shaver, 102 Fed. 888, and Shaver v. Heller &

M. Co. 65 L. R. A. 881, 48 C. C. A. 53, 108 Fed. 826, sustaining injunction against use of term "American," designating washing compound, for unfair competition; California Fruit Canners' Asso. v. Myer, 104 Fed. 83, granting injunction against use of word "California" in designating fruit grown elsewhere; Atwater v. Castner, 32 C. C. A. 80, 50 U. S. App. 394, 88 Fed. 645, sustaining preliminary injunction restraining use of geographic name as trademark, where locality gained its name from trade using it; Colgate v. Adams, 88 Fed. 900, granting injunction restraining use of name "Cashmere" in designating soap manufactured by another; La Republique Francaise v. Saratoga Vichy Springs Co. 65 L. R. A. 832, 46 C. C. A. 420, 107 Fed. 461, granting injunction against use of geographic name "Vichy" in designating mineral waters artificially produced elsewhere; La Republique Francaise v. Schultz, 42 C. C. A. 235, 102 Fed. 155, holding use of geographical name "Vichy (Grand Grille)" for artificial mineral water, unfair competition; Illinois Watch Case Co. v. Elgin Nat. Watch Co. 35 C. C. A. 240, 94 Fed. 669, refusing injunction restraining use of geographic name "Elgin" as trademark, without intention to defraud; Williams v. Mitchell, 45 C. C. A. 268, 106 Fed. 171, holding injunction proper to restrain use of descriptive name "Carrons" when used for deception; Draper v. Sherrett, 116 Fed. 208, granting injunction against use of words "French Tissue," designating medicinal paper, when used in unfair competition; Russia Cement Co. v. Katzenstein, 109 Fed. 316, granting injunction restraining use of trade name by retailer in designating inferior article manufactured by same company.

Cited in American Washboard Co. v. Saginaw Mfg. Co. 50 L. R. A. 615, 43 C. C. A. 239, 103 Fed. 286, denying injunction against use of word "Aluminum," where no injury shown; Bauer v. Siegert, 56 C. C. A. 490, 120 Fed. 84, holding geographical name cannot be usurped by manufacturer, who so dresses his goods as to palm them off for those of another manufacturer having established reputation under same name; Chickering v. Chickering & Sons, 56 C. C. A. 479, 120 Fed. 73, holding one may not use own name to designate goods in manner calculated to confuse them with those of another manufacturer having established reputation; Computing Cheese Cutter Co. v. Dunn, 45 Ind. App. 23, 88 N. E. 93, holding that use of trade name "Anderson Cheese Cutter Company" cannot ordinarily be restrained; John T. Dyer Quarry Co. v. Schuylkill Stone Co. 185 Fed. 569, holding that no one can by adoption of purely descriptive name or geographical name which carried with it nature or quality of natural product there yielded exclude others from truthfully describing or employing such terms; Wolf Bros. & Co. v. Hamilton-Brown Shoe Co. 91 C. C. A. 363, 165 Fed. 415; Trinidad Asphalt Mfg. Co. v. Standard Paint Co. 90 C. C. A. 195, 163 Fed. 989,—holding that the use of a geographical name as a trade mark for the purpose of filching the trade of another, will be enjoined; Dyment v. Lewis, 144 Iowa, 518, 26 L.R.A.(N.S.) 86, 123 N. W. 244, holding that a geographical name could become by continuous use by one manufacturer, so connected with his goods that its use by another would be unfair competition, and would be restrained; Pabst Brewing Co. v. Ekers, Rap. Jud. Quebec 20 C. S. 25, holding that the use of a geographical name as a trade mark will be enjoined where used to work a fraud in disposing of the goods as those of another; R. J. Reynolds Tobacco Co. v. Allen Bros. Tobacco Co. 151 Fed. 830; American Wire Co. v. Kohlman, 158 Fed. 832; Buzby v. Davis, 80 C. C. A. 163, 150 Fed. 278, 10 Ann. Cas. 68,—on the use of geographical names as unfair competition; Rice-Stix Dry Goods Co. v. J. A. Scriven Co. 91 C. C. A. 475, 165 Fed. 655 (dissenting opinion), on what constitutes unfair competition; Mellwood Distilling Co. v. Harper, 167 Fed. 395, holding that the court would enjoin the use

of a label so similar to that used by another manufacturer so as to deceive the public and amount to unfair competition; International Silver Co. v. Rogers, 72 N. J. Eq. 936, 129 Am. St. Rep. 722, 67 Atl. 105, holding that one may not use his own name so as to enable him to pass manufactured articles as the product of another person of the same name, which has acquired a well known reputation.

Cited in footnotes to Fuller v. Huff, 51 L.R.A. 332, which sustains right to enjoin use of term "health food" for foods previously known as "sanitarium foods;" Kipling v. G. P. Putnam's Sons, 65 L.R.A. 873, which holds merely placing a design on the covers of an edition of an author's works without registering it as a trademark or giving notice that it is such does not protect it from use by others; Shaver v. Heller & M. Co. 65 L.R.A. 878, which sustains right to injunction against unfair use of names "American Ball Blue" and "American Wash Blue" under which a large and lucrative trade has been built up.

Cited in notes (26 L.R.A.(N.S.) 80, 81) on right to protection in use of geographical name; (45 L. ed. U. S. 372, 374, 376, 377) on trademark in geographical name.

Distinguished in Anheuser-Busch Brewing Asso. v. Fred Miller Brewing Co. 87 Fed. 865, granting injunction restraining use of geographical name when adopted for unfair competition; Saxlehner v. Wagner, 85 C. C. A. 321, 157 Fed. 747, on the use of geographical name as unfair competition.

Enjoining use of distinctive trade bottle.

Approved in Van Hoboken v. Mohns, 112 Fed. 530, granting injunction against refilling distinctive gin bottles with inferior article; Charles E. Hires Co. v. Consumers' Co. 41 C. C. A. 74, 100 Fed. 812, granting injunction restraining use of peculiar bottle, for deception.

Cited in footnote to La Republique Francaise v. Saratoga Vichy Springs Co. 65 L.R.A. 830, which holds conspicuous use of word "Vichy" and inconspicuous use of word "Saratoga" on bottle of water from Saratoga spring unfair competition with bottled waters from Vichy in France.

Parties to actions.

Cited in Louisville & N. R. Co. v. Smith, 63 C. C. A. 7, 128 Fed. 7, holding railroad company having right of action of equitable nature against number of land owners interfering in same manner with right of way entitled to have right determined as to all in one suit.

41 L. R. A. 175, COMMERCIAL BANK v. CHESHIRE PROVIDENT INST. 59 Kan. 361.

Acts ultra vires.

Approved in Ward v. Joslin, 186 U. S. 149, 46 L. ed. 1098, 22 Sup. Ct. Rep. 807, Affirming 44 C. C. A. 458, 105 Fed. 226, holding *ultra vires*, guaranty of paper by loan and trust company not in due course of business; Morisette v. Howard, 62 Kan. 467, 63 Pac. 756, holding corporation may dispose of property with view of discontinuing, when necessary, stockholders consenting thereto.

41 L. R. A. 177, STATE v. GRIFFIN, 69 N. H. 1, 76 Am. St. Rep. 139, 39 Atl. 260.

Legislative police regulations.

Approved in State v. Dow, 70 N. H. 288, 53 L. R. A. 316, 47 Atl. 734, sustaining statute prohibiting trout fishing for trade purposes; Gooch v. Exeter, 70 N. H. 414, 85 Am. St. Rep. 637, 48 Atl. 1100, sustaining statute creating town board of police commissioners authorized to employ officers and fix pay; State

v. Aldrich, 70 N. H. 392, 85 Am. St. Rep. 631, 47 Atl. 602, sustaining statute prohibiting bicycle riding on sidewalks by persons over twelve years of age.

Cited in State v. Cohen, 73 N. H. 546, 63 Atl. 928, sustaining statute providing for the licensing and regulation of junk dealers; State v. Roberts, 74 N. H. 478, 16 L.R.A.(N.S.) 1116, 69 Atl. 722, sustaining statute providing for the licensing of the sale of intoxicating liquors, and prohibiting their sale without a license regardless of the purposes for which sold; Durham v. Eno Cotton Mills, 141 N. C. 644, 7 L.R.A.(N.S.) 334, 54 S. E. 453, sustaining statute prohibiting the discharging of any sewage into any stream from which a public water supply is obtained, regardless of the distance from the source of such supply; Wyatt v. State Board, 74 N. H. 563, 70 Atl. 387, as citing a case on what constitutes the police power.

Cited in note (78 Am. St. Rep. 269) on acts which legislature may declare criminal.

— Recovery of damages for injury incidental thereto.

Cited in Lawrence v. White, 131 Ga. 851, 19 L.R.A.(N.S.) 972, 63 S. E. 631, 15 Ann. Cas. 1097, on the incidental injury from police regulations.

Generality of application of statutes.

Cited in Thompson v. Kidder, 74 N. H. 97, 65 Atl. 392, 12 Ann. Cas. 948, holding that a statute imposing an inheritance tax, but which exempts certain persons because of relationship to the decedent, is not void because not a general law; Canaan v. Enfield Village Fire Dist. 74 N. H. 532, 70 Atl. 250, holding that the establishment of a fire district was for a public purpose though the convenience therefrom was limited to those residing within the district; Opinion of Justices, 73 N. H. 632, 63 Atl. 505, 6 Ann. Cas. 689, sustaining statute providing for the incorporation of a society for the promotion of horse racing, on the grounds that it was not for the purpose of inducing betting upon the results.

Liability for polluting stream.

Cited in State v. Morse, 84 Vt. 399, 34 L.R.A.(N.S.) 195, 80 Atl. 189, holding that prohibition of bathing in ponds, from which municipal water supply is taken, is within police power of state.

Cited in footnotes to Weston Paper Co. v. Pope, 56 L. R. A. 899, which sustains liability for pollution of stream by discharge from strawboard works, though business skilfully conducted; People v. Hulbert, 64 L. R. A. 265, which sustains right of upper riparian owner to bathe in lake from which municipality takes its water supply.

Cited in notes (7 L.R.A.(N.S.) 321) on power of legislature to forbid pollution of source of municipal water supply; (11 L.R.A.(N.S.) 1163, 1164) on protection from pollution of source of municipal water supply.

41 L. R. A. 185, LUFKIN RULE CO. v. FRINGELI, 57 Ohio St. 596, 63 Am. St. Rep. 736, 49 N. E. 1030.

Contracts or combinations in restraint of trade.

Cited in Jones Cold Store Door Co. v. Jones, 108 Md. 445, 129 Am. St. Rep. 446, 70 Atl. 88, holding void as an unreasonable restraint of trade a contract for the assignment of patents, providing that for five years the inventor would not patent and dispose of any devices along the same line of invention; United States Teleph. Co. v. Central Union Teleph. Co. 171 Fed. 139, holding void as an unreasonable restraint, a contract providing that the local telephone in consideration of the right to connect with a long distance company, would not connect

with any other long distance company for a period of ninety-nine years; Gage v State, 1 Ohio C. C. N. S. 224, 24 Ohio C. C. 727, holding an organization to have been organized for the purpose of preventing competition in the sale and to maintain a graduated figure for the sale of coal was not in unlawful restraint of trade; Kevil v. Standard Oil Co. 8 Ohio N. P. 313, 11 Ohio S. & C. P. Dec. 118, holding a contract by a corporation to give a person engaged in a similar line of business employment if he would discontinue his business was not invalid as in restraint of trade; Standard Distilling & Distributing Co. v. Brock, 5 Ohio N. P. N. S. 390, 17 Ohio S. & C. P. Dec. 605, holding a contract between a distiller and a liquor dealer by which the dealer becomes the exclusive agent of the distiller and agrees to manufacture no spirits or alcohol except as required in making of whisky at distillery was not invalid as being in restraint of trade; United States Teleph. Co. v. Middlepoint Home Teleph. Co. 13 Ohio C. C. N. S. 344, 32 Ohio C. C. 23, holding valid, contract for exclusive interchange of business between local and long distance telephone companies.

Cited in footnotes to Clark v. Needham, 51 L. R. A. 785, which holds void, lease of manufacturing machinery with agreement against lessor engaging in business for five years; Tuscaloosa Ice Mfg. Co. v. Williams, 50 L. R. A. 175, which holds void, contract by owner of ice machine to abandon manufacture of ice in certain town for five years, giving other party monopoly of business; Anchor Electric Co. v. Hawks, 41 L. R. A. 189, which sustains contract by officers of different corporations not to engage for five years in any competing business; Trenton Potteries Co. v. Oliphant, 46 L. R. A. 255, which sustains vendor's agreement not to engage in competitive business for fifty years within United States, except specified states and territories; Swigert v. Tilden, 63 L. R. A. 608, which sustains contract by seller of good will of business not to be connected with competing business for ten years; Bancroft v. Union Embossing Co. 64 L. R. A. 298, which sustains contract by one selling right to manufacture and sell machine invented by him to make, or transfer to others right to make, such machines; Steichen v. Fehleisen, 51 L. R. A. 412, which holds individual partners not bound by firm agreement not to re-engage in certain business for specified period; Pohlman v. Dawson, 54 L. R. A. 913, which holds agreement on sale of business, not to engage in barber business in any manner, violated by working as employee in other shop; Bancroft v. Union Embossing Co. 64 L.R.A. 298, which holds contract by seller of right to manufacture and sell patented machine not to engage in making same nor grant right to do so to others; Eugene Dietzgen Co. v. Kokosky, 66 L.R.A. 503, which sustains right to injunction against member of former partnership agreeing on sale of business not to engage directly or indirectly in competitive business within specified city for designated period from continuing in rival business into which he entered in violation of such agreement; Keene Syndicate v. Wichita Gas, Electric Light & P. Co. 67 L.R.A. 61, which holds void lease by corporation generating electricity to rival company with agreement not to engage in business for ten years.

Cited in notes in 74 Am. St. Rep. 238, 247, 249, 269, on combinations constituting unlawful trusts; 52 L. ed. U. S. 868, on validity of agreement not to compete, ancillary to sale or lease of property, as affected by covenantee's purpose to procure a monopoly; (15 L.R.A.(N.S.) 849) on validity of agreement not to compete, ancillary to sale or lease, as affected by covenantee's purpose to procure monopoly; (24 L.R.A.(N.S.) 915, 918, 924) on validity of agreement in restraint of trade, ancillary to sale of business or profession, as affected by territorial scope.

41 L. R. A. 189, ANCHOR ELECTRIC CO. v. HAWKS, 171 Mass. 101, 68 Am. St. Rep. 403, 50 N. E. 509.

Contracts in restraint of trade.

Approved in Garst v. Harris, 177 Mass. 74, 58 N. E. 174, sustaining contract prohibiting sale of proprietary medicine by retailer below stipulated price; Harrison v. Glucose Sugar Ref. Co. 58 L. R. A. 919, 53 C. C. A. 489, 116 Fed. 309, granting injunction restraining violation of covenant not to engage in competing business for five years within 1,500 miles; National Enameling & Stamping Co. v. Haberman, 120 Fed. 417, sustaining contract in restraint of competition, unlimited as to time and covering entire country; Bancroft v. Union Embossing Co. 72 N. H. 406, 64 L. R. A. 300, footnote p. 298, 57 Atl. 97, upholding validity of contract of inventor not to engage for twenty years in business of manufacturing machine sold, where customers limited and scattered; Swigert v. Tilden, 121 Iowa, 658, 63 L. R. A. 612, 100 Am. St. Rep. 374, 97 N. W. 82, holding agreement of vendor of shirt factory not to engage in same business within limited territory for ten years, not invalid; Trentman v. Wahrenburg, 30 Ind. App. 313, 65 N. E. 1057, holding agreement of dealer in building material, upon sale of business, not to engage in same business in county, nor purchase commodity of other persons than vendee, for five years, reasonable restriction.

Cited in Eureka Laundry Co. v. Long, 146 Wis. 210, 35 L.R.A.(N.S.) 122, 131 N. W. 412, holding that agreement as condition to obtaining employment on laundry route, not to solicit business from customers on that route for one's self or rival of employer, for two years after term of employment expires is enforceable; New York Bank Note Co. v. Kidder Press Mfg. Co. 192 Mass. 403, 78 N. E. 463, holding that a contract for the sale of a printing press for a particular purpose, which provided that the seller should not sell other presses to be used for the same purpose was not invalid as in restraint of trade; United Shoe Machinery Co. v. Kimball, 193 Mass. 358, 79 N. E. 790, holding that a contract for the sale of a business which provided that the seller should not engage in the same business for fifteen years, was not void as in restraint of trade, where more than half of the consideration paid was for the good will of the business; Bradford v. Montgomery Furniture Co. 115 Tenn. 632, 9 L.R.A. (N.S.) 986, 92 S. W. 1104, holding that a contract for the sale of the good will of a business, which restricts the rights of the sellers to again engage in business, is not invalid as a restraint on trade; My Laundry Co. v. Schmeling, 129 Wis. 606, 109 N. W. 540, holding valid a contract in connection with the sale of a laundry business, not to engage in such business within the city for the term of five years; Marshall Engine Co. v. New Marshall Engine Co. 203 Mass. 424, 89 N. E. 548, holding that an agreement never to again engage in a certain business, upon its sale, is valid if necessary to protect the purchaser in what he bought; Union Mills v. Harder, 191 N. Y. 492, 84 N. E. 387, on the effect of limitations of time upon contracts in restraint of trade; Turner v. Abbott, 116 Tenn. 728, 6 L.R.A.(N.S.) 896, 94 S. W. 64, 8 Ann. Cas. 150, holding that an agreement by a dentist upon engaging in business, that at the termination of the agreement, he would not engage in the same business in competition with his employer, was not invalid as in restraint of trade.

Cited in footnotes to Lufkin Rule Co. v. Fringeli, 41 L. R. A. 185, which holds void, agreement by seller not to engage in same business for twenty-five years in United States; Tuscaloosa Ice Mfg. Co. v. Williams, 50 L. R. A. 175, which holds void, contract by owner of ice machine to abandon manufacture of ice in certain town for five years, giving other party monopoly of business; Clark v. Needham, 51 L. R. A. 785, which holds void, lease of manufacturing machinery

with agreement against lessor engaging in business for five years; Trenton Potteries Co. v. Oliphant, 46 L. R. A. 255, which sustains vendor's agreement not to engage in competitive business for fifty years within United States, except specified states and territories; Swigert v. Tilden, 63 L. R. A. 608, which sustains contract by seller of good will of business not to be connected with competing business for ten years; Bancroft v. Union Embossing Co. 64 L. R. A. 298, which sustains contract by one selling right to manufacture and sell machine invented by him to make, or transfer to others right to make, such machines; Pohlman v. Dawson, 54 L. R. A. 913, which holds agreement on sale of business, not to engage in barber business in any manner, violated by working as employee in other shop; Steichen v. Fehleisen, 51 L. R. A. 412, which holds individual partners not bound by firm agreement not to re-engage in certain business for specified period; Bancroft v. Union Embossing Co. 64 L.R.A. 298, which holds contract by seller of right to manufacture and sell patented machine not to engage in making same nor grant right to do so to others; Eugene Dietzgen Co. v. Kokosky, 66 L.R.A. 503, which sustains right to injunction against member of former partnership agreeing on sale of business not to engage directly or indirectly in competitive business within specified city for designated period from continuing in rival business into which he entered in violation of such agreement; Keene Syndicate v. Wichita Gas, E. L. & P. Co. 67 L.R.A. 61, which holds void lease by corporation generating electricity to rival company with agreement not to engage in business for ten years.

Cited in notes (24 L.R.A.(N.S.) 921, 922, 925) on validity of agreement in restraint of trade, ancillary to sale of business or profession, as affected by territorial scope; (74 Am. St. Rep. 238, 245) on combinations constituting unlawful trusts.

Enforcement of negative covenants.

Cited in Butterick Pub. Co. v. Fisher, 203 Mass. 130, 133 Am. St. Rep. 283, 89 N. E. 189, holding that specific performance of a negative covenant will not be refused because it is in kind allied with an affirmative covenant which would not be enforced in equity.

41 L. R. A. 193, YOUNG v. NEW YORK, N. H. & H. R. CO. 171 Mass. 33, 50 N. E. 455.

What constitutes passenger.

Cited in Pere Marquette R. Co. v. Strange, 171 Ind. 165, 20 L.R.A.(N.S.) 1046, 84 N. E. 819, holding that one having purchased a ticket to take passage upon one of the defendant's trains, was while upon the premises of the defendant company for the purposes of boarding a train, a passenger.

Cited in footnotes to Exton v. Central R. Co. 56 L. R. A. 509, which holds purchaser of ticket a passenger while using depot for purpose of journey; Phillips v. Southern R. Co. 45 L. R. A. 163, which holds one coming to station with intent to take next train, a passenger; Keator v. Scranton Traction Co. 44 L. R. A. 546, which holds woman with transfer ticket, injured by breaking of trolley pole while she is approaching car, a passenger; Chicago & E. I. R. Co. v. Jennings, 54 L. R. A. 827, which holds one with ticket, crossing tracks on highway to board train on further track, not a passenger; Illinois C. R. Co. v. Laloge, 62 L. R. A. 405, which holds intending passenger resorting to station unreasonable time before train's departure not entitled to protection as passenger from assaults of strangers.

Rights of passengers.

Cited in footnotes to Chesapeake & O. R. Co. v. King, 49 L.R.A. 102, which

sustains alighting passenger's right to presume against dangerous operation of trains; Duchemin v. Boston Elev. R. Co. 66 L.R.A. 980, which holds that street car company does not owe to person approaching car to enter it as passenger same high degree of care with respect to defects in car that it owes to passengers actually on board.

Contributory negligence.

Cited in Judge v. Elkins, 183 Mass. 230, 66 N. E. 708, holding person negligent in walking upon track in front of stationary electric coal car, which, if he had looked, he might have seen was about to start; Dimauro v. Linwood Street R. Co. 200 Mass. 151, 85 N. E. 894, holding that it was not evidence of gross negligence for a motorman to run an electric car at the rate of five miles an hour past a team which was near the track unloading gravel, where the accident would not have occurred but for the act of the person injured.

Negligence of railroad company.

Cited in Savageau v. Boston & M. R. Co. 210 Mass. 168, 96 N. E. 67, holding that duty of railroad to provide suitable platform for safety and accommodation of passengers, is commensurate with nature of carrier's undertaking; Dixon v. Great Falls & O. D. R. Co. 38 App. D. C. 597, holding that question of negligence of railroad in not better protecting approach to depot was for jury where passenger was injured by being pushed from unguarded platform; Hale v. New York, N. H. & H. R. Co. 190 Mass. 85, 76 N. E. 656, holding the railroad company liable for the death of a person engaged in loading a car, where the car was not provided with a proper brake so as to prevent it from moving while being loaded.

Cited in note (32 L.R.A.(N.S.) 476) on liability of carrier for injury to passenger by crowd at station or stopping place.

41 L. R. A. 194, STANDARD LIFE & ACCI. INS. CO. v. CARROLL, 30 C. C. A. 253, 58 U. S. App. 76, 86 Fed. 567.

What constitutes extra hazard.

Cited in footnotes to Wildey Casualty Co. v. Sheppard, 47 L. R. A. 650, which holds barber not engaged in more hazardous occupation while hunting rabbits as incident to daily life; Berliner v. Travelers' Ins. Co. 41 L. R. A. 467, which holds riding on locomotive by invitation will not prevent being passenger within accident policy.

Evidence; application for insurance.

Approved in National Acci. Soc. v. Dolph, 38 C. C. A. 2, 94 Fed. 744, holding accident insurance contract not within statute against admissibility of application or by-law in evidence.

Cited in Snyder v. Globe Mut. Live Stock Ins. Co. 38 Pa. Super Ct. 630, 11 North Co. Rep. 132, holding that an act requiring the application and bylaws to be attached to a policy of insurance in order to make such admissible in evidence does not apply to policies issued by a live stock insurance company.

Distinguished in Zimmer v. Central Acci. Ins. Co. 207 Pa. 475, 56 Atl. 1003, holding policy against loss of life by accident is life policy within act excluding evidence of application, unless attached to policy.

41 L. R. A. 196, SPIER v. BAKER, 120 Cal. 370, 52 Pac. 659.

Statutes; sufficiency of title.

Cited in note (79 Am. St. Rep. 467) as to when title of statute embraces only one subject, and what may be included thereunder.

Distinguished in People v. Linda Vista Irrig. District, 128 Cal. 485, 61 Pac. 86, holding title of irrigation statute sufficient to include provision for ascertaining validity of organization of district contemplating issue of bonds.

Legislative regulation of primaries.

Approved in Britton v. Election Comrs. 129 Cal. 340, 61 Pac. 1125, holding unconstitutional, statute interfering with free choice of delegates by political party.

Cited in Ladd v. Holmes, 40 Or. 180, 91 Am. St. Rep. 457, 66 Pac. 714, sustaining statute requiring primary elections for selection of delegates to nominating conventions; Ladd v. Holmes, 40 Or. 188, 91 Am. St. Rep. 457, 66 Pac. 714, sustaining statute imposing restrictions upon right to vote at party primaries; State v. Cole, 156 N. C. 622, 72 S. E. 221, holding that statute providing for primary system for election to public office is constitutional; State ex rel. McGrael v. Phelps, 144 Wis. 41, 35 L.R.A.(N.S.) 370, 128 N. W. 1041 (dissenting opinion), on validity of statute restricting right to elect delegates to political convention of party; Katz v. Fitzgerald, 152 Cal. 436, 93 Pac. 112, sustaining primary election law which provided that it should not apply to political parties not polling over three per cent of the vote; State ex rel. Labauve v. Michel, 121 La. 392, 46 So. 430, holding that a primary law which provided that only members of the several political parties should vote for their respective candidates, was valid; Johnson v. Grand Forks County, 16 N. D. 368, 125 Am. St. Rep. 662, 113 N. W. 1071, holding that a primary election was an election within the meaning of the constitution regulating the qualifications of voters; Solon v. State, 54 Tex. Crim. Rep. 293, 114 S. W. 349 (dissenting opinion on rehearing), on the legislative control of the right of suffrage.

Cited in notes (18 L.R.A.(N.S.) 412) on "primary elections" as within constitution or statute relating to elections generally; (22 L.R.A.(N.S.) 1138, 1141, 1145) on constitutionality of primary election laws.

Disapproved in Riter v. Douglass, 32 Nev. 416, 109 Pac. 444; Ledgerwood v. Pitts, 122 Tenn. 595, 125 S. W. 1036,—holding that primary elections are not "elections" in sense of suffrage and election provisions of constitution, and laws therefor may be enacted.

Strict construction of grant of franchise.

Distinguished in Madera Waterworks v. Madera, 185 Fed. 288, holding that public grant of franchise, whether by constitution, statute, or municipal ordinance, is to be strictly construed in favor of public, and nothing passes by implication.

41 L. R. A. 200, CHANNON v. SANFORD CO. 70 Conn. 573, 66 Am. St. Rep. 133, 40 Atl. 462.

Duty to furnish safe place and implements.

Cited in McBeath v. Rawle, 192 Ill. 629, 61 N. E. 847, sustaining recovery for death of workman by scaffold breaking; Roche v. Llewellyn Iron Works Co. 140 Cal. 570, 74 Pac. 147, holding foundry company sending servant to premises of electric company to roll tubes for defective boiler entitled to assume boiler without defect making it dangerous place to work when steam turned off; Wilson v. Valley Improv. Co. 69 W. Va. 785, 45 L.R.A.(N.S.) 271, 73 S. E. 64; Lindgren v. William Bros. Mfg. Co. 112 Minn. 189, 127 N. W. 626,—holding that master is not ordinarily responsible for injuries sustained by employee, caused solely by unsafe place of work, which is owned and controlled by third persons; Marshall v. Dalton Paper Mills, 82 Vt. 501, 24 L.R.A.(N.S.) 132, 74 Atl. 108, holding that the master was required to furnish a safe place for the servant to

work in, and this applied to the running board of a machine at which the servant worked; Robinson v. St. Johnsbury & L. C. R. Co. 80 Vt. 138, 9 L.R.A. (N.S.) 1253, 66 Atl. 814, 12 Ann. Cas. 1060, holding that the doctrine of furnishing the servant a safe place in which to work, did not apply to an express messenger whose duties required him to work on cars over which the express company had no control; Long v. John Stephenson Co. 73 N. J. L. 188, 63 Atl. 910, holding that where the deceased, a car repairer, had been sent by the defendant company to repair trucks in the sheds of a trolley company, and while there was injured because of the dangerous place in which he had to work, the defendant was not liable where it had no control over the place in which the servant worked; Loehring v. Westlake Constr. Co. 118 Mo. App. 181, 94 S. W. 747, holding that where the servant had gone to a lower floor for his own convenience in performing the work and there was nothing to show that the master knew that he was there, the master was not liable for injuries.

Cited in footnote to Gagnon v. Dana, 41 L. R. A. 389, which denies liability of gratuitous lender of brackets for injury to borrower's servants from unknown defect.

Distinguished in Cavanaugh v. Windsor Cut Stone Corp. 80 Conn. 590, 69 Atl. 345, holding that where the servant was killed while standing where he had been ordered to leave, the master was not liable; McBeath v. Rawle, 192 Ill. 629, 69 L.R.A. 700, 61 N. E. 847, holding that the master was liable for injuries to the servant by the falling of a scaffold, in the absence of a showing that the servant's contract of employment was made with reference to a custom prevalent that the brick-layers built the scaffold for both themselves and stone setters, of whom the servant was one.

Who liable as master.

Cited in Andrus v. Bradley-Alderson Co. 117 Mo. App. 326, 93 S. W. 872, holding that the landlord was liable for injuries to a servant of one of the tenants because of a defective gate on the elevator, where the tenants all used the elevator.

Cited in footnotes to Stewart v. California Improv. Co. 52 L. R. A. 205, which holds owner of steam roller liable for engineer's neglect to warn travelers, though roller hired by city; Swackhamer v. Johnson, 54 L. R. A. 625, which holds hirer of workmen furnished to third person not liable for their trespass in cutting stranger's timber.

Who are fellow servants.

Cited in footnote to Murray v. Dwight, 48 L. R. A. 673, which holds servant of truckman unloading goods at warehouse not fellow servant of warehouseman's servants.

Cited in note (75 Am. St. Rep. 632) on who is a vice-principal.

41 L. R. A. 204, CHAMBERLIN'S APPEAL, 70 Conn. 363, 39 Atl. 734.

Jurisdiction of probate courts.

Approved in Caron v. Old Reliable Gold Min. Co. 12 N. M. 224, 78 Pac. 63, 6 Ann. Cas. 874, holding that a probate court has not jurisdiction to determine contested claims of title to property of an estate as between it and a stranger.

Cited in Wilson v. Warner, 84 Conn. 565, 80 Atl. 718, holding that neither court of probate nor superior court on appeal are empowered to determine disputed questions of title to real estate; Beach's Appeal, 76 Conn. 124, 55 Atl. 596, holding that a probate court can determine contested titles to estates of decedents, only so far as is necessary to the jurisdiction in appointing an ad-

ministrator; Colburn's Appeal, 76 Conn. 380, 56 Atl. 608, holding that in an application under the statute to grant administration of the estate after the time limited by the statute, the probate court could determine whether the claim upon which the application was based was an existing and an available one.

Construction of wills by probate courts.

Approved in Mack's Appeal, 71 Conn. 129, 41 Atl. 242, holding probate courts may determine validity of bequests, only as incident to order of distribution; Eliot's Appeal, 74 Conn. 601, 51 Atl. 558, holding that in absence of objection to form of proceeding in probate court to determine validity of devise, reasons of appeal from decree of that court would be given effect of complaint in equitable action.

Cited in Beardsley's Appeal, 77 Conn. 708, 60 Atl. 664, holding that the probate court is bound to appoint a testamentary trustee unless the bequest provided for was so plainly invalid and inoperative that no ground for claiming the contrary could be asserted which was worthy of serious consideration.

Title of administrator de bonis non.

Cited in Ives v. Beecher, 75 Conn. 154, 52 Atl. 746, holding executor or administrator *de bonis non* necessary party to suit to foreclose lien of judgment rendered in favor of predecessor in title.

Cited in notes in (108 Am. St. Rep. 426) on action by administrator de bonis non for recovery of specific property; (112 Am. St. Rep. 729) on nature of executor's title.

Completion of administration of estate.

Cited in Bristol Sav. Bank v. Holley, 77 Conn. 227, 58 Atl. 691, holding that the administration of an estate is never complete until all the assets have been turned over to those rightfully entitled to them.

Appointment of administrator de bonis non.

Cited in note (108 Am. St. Rep. 415) on appointment of administrator de bonis non.

41 L. R. A. 208, MOORE v. DISTRICT OF COLUMBIA, 12 App. D. C. 537.

Reasonableness of ordinance or regulation.

Approved in District of Columbia v. Hazel, 16 App. D. C. 287, holding apportionment of cab stands presumed reasonable, subject to proof to contrary.

Bicycle law.

Cited in note (47 L. R. A. 289, 292) on bicycle law.

41 L. R. A. 211, MARSHALL v. MACON SASH, DOOR & LUMBER CO. 103 Ga. 725, 68 Am. St. Rep. 140, 30 S. E. 571.

Parent's action for death of child.

Cited in Robinson v. Georgia R. & Bkg. Co. 117 Ga. 169, 60 L. R. A. 556, 97 Am. St. Rep. 156, 43 S. E. 452, holding statute giving mother right of action for homicide of child will not support action for death of illegitimate child; Fuller v. Inman, 10 Ga. App. 685, 74 S. E. 287, holding that mother may recover under statute for wrongful death of child only when it is shown that child contributed materially to her support.

Cited in footnotes to Brink v. Wabash R. Co. 53 L. R. A. 811, which denies right to recover for nonperformance of contract to support parent, through negligent killing of son; Hennessy v. Bavarian Brewing Co. 41 L. R. A. 385, which sus-

tains mother's right of action for wrongful death of child notwithstanding remarriage and stepfather's assumption of parental obligations.

Actions for death of human being.

Cited in note (70 Am. St. Rep. 673) on actions for death of human being.

41 L. R. A. 212, STATE *ex rel.* BURROUGHS v. WEBSTER, 150 Ind. 607, 50 N. E. 750.

Statutes regulating practice of medicine.

Approved in Ferner v. State, 151 Ind. 251, 51 N. E. 360, sustaining statute creating board of dental examiners, though not providing appeal; People v. Reetz, 127 Mich. 89, 86 N. W. 396, sustaining statute regulating practice of medicine; Bragg v. State, 134 Ala. 182, 58 L. R. A. 931, 32 So. 767, upholding constitutionality of statute prohibiting practice of medicine without certificate of qualification from board of medical examiners; State v. Wilcox, 64 Kan. 792, 68 Pac. 634, upholding constitutionality of statute regulating practice of medicine, surgery, and osteopathy; Reetz v. Michigan, 188 U. S. 506, 47 L. ed. 565, 23 Sup. Ct. Rep. 390, upholding power of state to make reasonable provisions for determining qualifications of those engaging in practice of medicine, and to punish violation of such statutes; Parks v. State, 159 Ind. 221, 59 L. R. A. 195, 64 N. E. 862, upholding validity of statute regulating practice of medicine, which in effect prohibits one from practising magnetic healing; Curryer v. Oliver, 27 Ind. App. 426, 60 N. E. 364, sustaining action for revocation of physician's license; Parks v. State, 159 Ind. 221, 59 L. R. A. 195, 64 N. E. 862, sustaining statute requiring license of persons holding themselves out as healers or medical practitioners; Bragg v. State, 134 Ala. 182, 58 L. R. A. 931, 32 So. 767, sustaining statute forbidding practice of medicine without license from medical examiners; State Bd. of Health v. Roy, 22 R. I. 542, 48 Atl. 802, sustaining statute permitting state board to refuse or revoke physician's certificate; Meffert v. State Bd. of Medical Registration, 66 Kan. 715, 72 Pac. 247, holding board of medical examiners does not perform judicial functions in trial of charges against physician.

Cited in State ex rel. Barnett v. State Bd. of Medical Registration, 173 Ind. 709, 91 N. E. 338, holding that under statute state board of medical examination is required to pass upon certain questions of moral fitness of applicant and from its decision therein appeal lies to circuit or superior court; Melville v. State, 173 Ind. 358, 89 N. E. 490, holding that legislature has constitutional power to provide for licensing of physicians; State Medical Board v. McCrary, 95 Ark. 515, 30 L.R.A.(N.S.) 786, 130 S. W. 544, Ann. Cas. 1912 A, 631, holding that judicial proceedings are not necessary to revocation of license to practice medicine, in order to avoid conflict with provision of constitution against depriving one of property without due process of law; State ex rel. Crandall v. McIntosh, 205 Mo. 615, 103 S. W. 1078, sustaining statute regulating the practice of dentistry and requiring license and examination; Territory v. Newman, 13 N. M. 103, 68 L.R.A. 785, 79 Pac. 706, sustaining statute providing for the regulation and licensing of the practice of medicine as not being class legislation.

Cited in footnotes to State v. Wilson, 52 L. R. A. 679, which holds one prosecuted for unlawful practice of medicine required to prove compliance with statute; Scholle v. State, 50 L. R. A. 411, which sustains statute requiring license for physicians, except certain classes of persons; Mathews v. Murphy, 54 L. R. A. 415, which holds void, statute authorizing state health board to revoke physician's license for unprofessional conduct, without fixing standard; State *ex rel.* Kel-

Hogg v. Currans, 56 L. R. A. 253, which sustains requirement of examination of graduate of foreign medical college not required of graduates of college in state; State v. Bair, 51 L. R. A. 776, which sustains statute requiring examination before state board of examiners practise for five years, or certificate from medical school, as condition to right to practise medicine; Ex parte Gerino, 66 L.R.A. 249, which sustains validity of statute fixing standard of preparation required of applicants for license to practice medicine, though under provisions of law such standard may vary from time to time and may be fixed by requirements which schools teaching particular system of medicine require of their pupils.

Cited in note (1 L.R.A.(N.S.) 811) on power to revoke physician's license.

Jurisdiction of appeal from medical examiners.

Approved in *Re* Coffin, 152 Ind. 440, 53 N. E. 458, holding circuit court proper tribunal of appeal from decision of state board of medical examiners refusing to license.

Cited in State ex rel. Gattan v. District Ct. 39 Mont. 136, 101 Pac. 961, holding that the statutes providing for an appeal from the decision of the board of medical examiners, a writ of review will not lie to annul the judgment of the district court affirming a decision of the board.

Separation of powers.

Cited in Ellis v. Steuben County, 153 Ind. 92, 54 N. E. 382, holding statute requiring exercise of judgment by county surveyor in re-allotment of county drains not unconstitutional as imposing judicial functions on ministerial officers; Kennedy v. State Bd. of Registration, 145 Mich. 246, 108 N. W. 730, 9 Ann. Cas. 125; Spurgeon v. Rhodes, 167 Ind. 11, 78 N. E. 228,—sustaining statute providing for the revocation of a license of a physician to practice medicine, by the board of medical examiners, as not being a delegation of judicial powers; Stone v. Fritts, 169 Ind. 366, 15 L.R.A.(N.S.) 1149, 82 N. E. 792, 14 Ann. Cas. 295, holding that the revocation of teacher's certificate by the county superintendent for specified causes is not a delegation of judicial powers to a ministerial officer; Indianapolis v. State, 172 Ind. 479, 88 N. E. 687, holding that a statute providing for reassessment in case the property owner petitioned the circuit court to appoint a commission to determine the reasonableness of the assessment, was not a delegation of judicial powers to the commission; State ex rel. Milwaukee Medical College v. Chittenden, 127 Wis. 503, 107 N. W. 500, holding that the power of the state board of dental examiners to determine the reputability of colleges, is not a judicial power, but a quasi-judicial one; Meffert v. State Bd. of Medical Registration (Meffert v. Packer) 66 Kan. 715, 1 L.R.A.(N.S.) 815, 72 Pac. 247, holding that the state board of medical examiners is not a judicial body, but merely an administrative one.

Class legislation.

Distinguished in Dixon v. Poe, 159 Ind. 498, 60 L. R. A. 310, 95 Am. St. Rep. 309, 65 N. E. 518, holding statute prohibiting issue of checks or tokens, by merchants to coal miners which may be payable otherwise than in money, invalid as class legislation.

License to engage in profession as creating vested right.

Cited in note (8 L.R.A.(N.S.) 1273) on license to engage in profession or occupation as creating vested right.

Right of appeal from action of boards.

Cited in Board of Finance v. State, 173 Ind. 57, 89 N. E. 367, holding that town board of finance is not judicial body, but statutes providing for appeals

therefrom are valid, because such provision is convenient way of bringing question before judicial tribunal.

41 L. R. A. 219, NEAF v. PALMER, 103 Ky. 496, 45 S. W. 506.

Injunction for suppression of criminal acts.

Cited in Campbell v. Jackman Bros. 140 Iowa, 484, 27 L.R.A.(N.S.) 292, 118 N. W. 755, holding that injunction will not lie to restrain the doing of an immoral or criminal act, not connected with the violation of private rights; State ex rel. Crow v. Canty, 207 Mo. 455, 15 L.R.A.(N.S.) 753, 123 Am. St. Rep. 393, 105 S. W. 1078, 10 Ann. Cas. 787, holding that a court of equity has the authority to enjoin and abate the maintenance of an arena for the holding of bull fights; Ingersoll v. Rousseau, 35 Wash. 99, 76 Pac. 513, 1 Ann. Cas. 35, holding that equity had jurisdiction to enjoin the maintenance of a bawdy house where the legal remedies of criminal prosecution are insufficient to protect the owner of adjoining property.

Cited in footnotes to Blagen v. Smith, 44 L. R. A. 522, which sustains right to injunction against maintenance of house of ill fame; Weakley v. Page, 46 L. R. A. 552, which sustains right of person specially injured to have house of ill fame abated as nuisance; State v. O'Leary, 52 L. R. A. 299, which denies state's right to injunction to suppress gambling house.

Cited in notes (3 L.R.A.(N.S.) 623) on injunction against commission of crime when property right involved; (11 L.R.A.(N.S.) 1061) on right of neighbors to enjoin maintenance of bawdyhouse.

Distinguished in Com. v. McGovern, 116 Ky. 237, 66 L.R.A. 287, 75 S. W. 261, holding that under the statute a court of equity would enjoin the holding of a prize fight which is in itself a criminal act.

Enjoining prosecution under ordinance.

Cited in footnote to Paulk v. Sycamore, 41 L. R. A. 772, which denies injunction against prosecution for violation of statute or ordinance.

41 L. R. A. 219, KNAUER v. LOUISVILLE, 20 Ky. L. Rep. 193, 45 S. W. 510, 46 S. W. 701.

Ordinances relating to removal of bodies of dead animals.

Cited in Kellam v. Newark, 79 N. J. L. 368, 75 Atl. 548, holding that ordinance prohibiting owner of dead animal to skin same or transport it through streets without license from mayor is void; Campbell v. District of Columbia, 19 App. D. C. 139, holding that death of domestic animal does not terminate owner's property in it, and municipal authorities cannot arbitrarily deprive him of his property by giving it to another; Richmond v. Caruthers, 103 Va. 777, 70 L.R.A. 1007, 50 S. E. 265, 2 Ann. Cas. 495, holding that an ordinance which deprived the owner of a dead animal of his property in such body immediately upon the death of the animal, was invalid though done for the purpose of protecting public health.

Cited in footnote to Richmond v. Caruthers, 70 L.R.A. 1005, which denies right of city to deprive owner of dead animal of his property right in carcass by giving public contractors exclusive right to dispose thereof before it becomes a nuisance.

Cited in notes (9 L.R.A.(N.S.) 1197) on ordinances as to disposal of dead animals; (21 L.R.A.(N.S.) 833) on power of municipality to grant exclusive right for removal of substances inimical to health.

41 L. R. A. 222, FARMERS' LOAN & T. CO. v. KILLINGER, 46 Neb. 677, 65 N. W. 790.

Followed without discussion in Baker v. Killinger, 46 Neb. 682, 65 N. W. 791.

Effect of opening judgment.

Cited in McAnulty v. National Life Asso. 6 Lack. Legal News, 129, holding opening of default judgment against corporation does not vacate it so as to bar further prosecution of action, where corporation dissolved since entry of default; Brown v. Curtiss, 155 Mo. App. 381, 137 S. W. 24, holding that where court which erroneously set aside judgment had jurisdiction, its action was binding upon parties until reversed by appellate court and its reinstatement did not restore lien on land as of date of original judgment.

41 L. R. A. 228, PEOPLE *ex rel.* NEW ENGLAND DRESSED MEAT & WOOL CO. v. ROBERTS, 155 N. Y. 408, 50 N. E. 53.

Followed without discussion in People *ex rel.* Schwarzschild & S. Co. v. Roberts, 156 N. Y. 690, 50 N. E. 1121.

What constitutes manufacturing.

Approved in People *ex rel.* L. E. Waterman Co. v. Morgan, 48 App. Div. 400, 63 N. Y. Supp. 76, holding domestic corporation exempt from taxation as manufacturer when producing fountain pen from purchased parts; Hernischel v. Texas Drug Co. 26 Tex. Civ. App. 4, 61 S. W. 419, holding wholesale drug company engaged in bottling drugs purchased not "factory" within ordinance requiring fire escapes; *Re* White Star Laundry Co. 117 Fed. 571, holding laundry not within statute giving Federal courts jurisdiction, for adjudication of bankruptcy over corporations "engaged principally in manufacturing," etc.; People *ex rel.* Eastern Bermudez Asphalt Paving Co. v. Morgan, 61 App. Div. 379, 70 N. Y. Supp. 516 (dissenting opinion), majority holding corporation exempt from taxation as manufacturing when producing paving compound from asphalt, sand, etc.

Cited in Re Hudson River Electric Power Co. 173 Fed. 941, holding that a corporation engaged in manufacturing gas for lighting purposes, and the furnishing of electricity for the same purpose, is not engaged in manufacturing within the meaning of the bankruptcy statutes.

Cited in footnote to Columbia Iron Works v. National Lead Co. 64 L. R. A. 645, which holds building, sale, and repairing of vessels employed in commerce within statute permitting institution of bankruptcy proceedings against corporations engaged principally in manufacturing and mercantile pursuits.

Distinguished in Re Troy Steam Laundering Co. 132 Fed. 268, holding that a laundry company engaged in the washing of collars and cuffs for manufacturers before such articles are offered for sale, is engaged in manufacturing within the meaning of the bankruptcy law.

Taxation of capital stock and franchises.

Cited in notes (57 L.R.A. 45, 107) on taxation of corporate franchises in United States; (58 L.R.A. 549, 587, 604) on taxation of capital stock of corporations in United States; (64 L. R. A. 40, 55, 65) on taxation of manufacturing corporations in United States.

Assessment of property for purposes of taxation.

Approved in People *ex rel.* Journeay & B. Co. v. Roberts, 37 App. Div. 3, 55 N. Y. Supp. 317, holding that comptroller cannot arbitrarily reject testimony as to value of foreign corporation's assets in determining tax; Rockefeller v. Taylor, 28 Misc. 462, 59 N. Y. Supp. 1038, holding that town assessors may properly incur expense of defending assessment when attacked.

Cited in People *ex rel.* Eckerson v. Zundel, 157 N. Y. 518, 52 N. E. 570, holding assessors not bound by judgment against predecessors on former assessment.

Interpretation of official duty.

Cited in People *ex rel.* State Charities v. New York Soc. for Prevention of Cruelty to children, 161 N. Y. 271, 55 N. E. 1063, dissenting opinion by Martin, J., who holds public officers not relieved from plain duty by predecessor's erroneous interpretation.

Acts of public officers as res judicata as to their successors.

Cited in Harriman v. Yonkers, 181 N. Y. 27, 73 N. E. 493, holding that the act of the common council in fixing the district to be taxed for the opening of a street, does not bind a future council in determining the district to be taxed for the improvement of such street; People ex rel. Niagara Falls Hydraulic Power & Mfg. Co. v. State Tax Comrs. 65 Misc. 217, 119 N. Y. Supp. 925, holding that assessments adjudicated by the courts are binding upon the assessors in future valuation of the same property, but not so as to valuations made by assessors themselves; Moore v. McGuire, 142 Fed. 807, holding that the acquiescence of Mississippi in the taxing of the lands in dispute by Arkansas, did not estop the former from claiming the lands as within its territory.

41 L. R. A. 231, PEOPLE *ex rel.* BRODERICK v. MORTON, 156 N. Y. 136, 66 Am. St. Rep. 547, 50 N. E. 791.

Application denied on second mandamus to reinstate in *Re* Broderick, 25 Misc. 536, 56 N. Y. Supp. 99.

Judicial supervision of acts of state officials.

Referred to in State *ex rel.* Higdon v. Jelks, 138 Ala. 122, 35 So. 60, for discussion of question whether courts have right by mandamus to compel action by governor in any case.

Approved in People *ex rel.* Smith v. Hoffman, 166 N. Y. 476, 54 L. R. A. 601, 60 N. E. 187, holding governor not proper party to certiorari to review determination of military board of examination; Hartigan v. West Virginia University, 49 W. Va. 17, 38 S. E. 698, holding courts cannot review action of state board of regents removing professor.

Cited in State *ex rel.* State Pub. Co. v. Smith, 23 Mont. 49, 57 Pac. 449, holding mandamus lies against governor to control exercise of ministerial duty; State *ex rel.* Trauger v. Nash, 66 Ohio St. 617, 64 N. E. 558, sustaining mandamus compelling governor to perform ministerial act, though not controlling discretion in performance thereof; State ex rel. Atty. Gen. v. Huston, 27 Okla. 612, 34 L.R.A.(N.S.) 385, 113 Pac. 190, holding that district courts have no jurisdiction to control action of governor, even in ministerial acts; Rice v. The Governor (Rice v. Draper) 207 Mass. 578, 32 L.R.A.(N.S.) 357, 93 N. E. 821, holding that mandamus will not lie to compel governor to pay over money which has been placed in his hands by federal government to be paid to officers who served under federal government in war; Merritt v. Kraft, 71 Misc. 496, 129 N. Y. Supp. 636, holding that mandamus does not lie to compel governor to perform ministerial duty, which arises out of his duties as ex officio member of board of public officers; State ex rel. Rawlinson v. Ansel, 76 S. C. 407, 57 S. E. 185, 11 Ann. Cas. 613, holding that the Supreme Court could compel the Governor to transmit to it the record on which he based his act in removing a certain public official.

Cited in notes (6 L.R.A.(N.S.) 769) on mandamus to governor; (19 L.R.A. (N.S.)52, 53, 83) on mandamus to restore to office one illegally removed.

Coercing judicial action.

Approved in Gough v. Satterlee, 32 App. Div. 39, 52 N. Y. Supp. 492, holding private individuals cannot by contract require courts to decide irrelevant issues; *Re* Atty. Gen. 32 Misc. 8, 66 N. Y. Supp. 129, holding expression "order shall be granted" means "may be," as legislature cannot coerce judicial action.

Cited in *Re* Davies, 168 N. Y. 102, 56 L. R. A. 860, 61 N. E. 118, sustaining statute requiring granting of attorney general's application for order of examination "to secure" testimony.

Abatement of mandamus by change of officers.

Cited in People *ex rel.* Cunliffe v. Cram, 30 Misc. 564, 63 N. Y. Supp. 1027, holding mandamus proceeding not abated by appointment of new dock board; People *ex rel.* Hatch v. Lantry, 88 App. Div. 584, 85 N. Y. Supp. 193, Reversing 40 Misc. 429, 82 N. Y. Supp. 261, holding where mandamus proceedings against head of municipal department, for reinstatement of employee, is abated by retirement of defendant, successor in office cannot be substituted as defendant before further demand for reinstatement; People ex rel. La Chicotte v. Best, 187 N. Y. 4, 116 Am. St. Rep. 586, 79 N. E. 890, 10 Ann. Cas. 58, holding that mandamus proceedings against a public official to compel the performance of a certain duty, was not abated by the resignation of the official, but should be continued against his successor in office.

Distinguished in People ex rel. Lazarus v. Coleman, 99 App. Div. 91, 91 N. Y. Supp. 432, holding that the mandamus proceedings against a fire board to compel the reinstatement of the relator, was not abated by the expiration of the term of office of one of the members.

Jurisdiction in mandamus.

Cited in note (58 L. R. A. 866) on original jurisdiction of court of last resort in mandamus case.

41 L. R. A. 240, GRIFFIN v. GOLDSBORO WATER CO. 122 N. C. 206, 30 S. E. 319.

Discrimination by public service companies.

Cited in Mobile v. Bienville Water Supply Co. 130 Ala. 385, 30 So. 445, granting injunction preventing discriminations in terms and rates for water service; Wiemer v. Louisville Water Co. 130 Fed. 252, holding water company cannot refuse to furnish water to person engaged in street sprinkling, on ground that he is not inhabitant of city; Snell v. Clinton Electric Light, H. & P. Co. 196 Ill. 631, 58 L. R. A. 286, 89 Am. St. Rep. 341, 63 N. E. 1082, holding lighting company cannot make discriminations in conditions for supplying electricity; Snell v. Clinton Electric Light, H. & P. Co. 196 Ill. 631, 58 L. R. A. 286, 89 Am. St. Rep. 341, 63 N. E. 1082, holding electric lighting company charging consumer for "transformer," when same furnished free to other patrons, guilty of unjust discrimination; Solomon v. Wilmington Sewerage Co. 133 N. C. 150, 45 S. E. 536, refusing to dissolve before trial, special injunction against sewer corporation threatening to cut plaintiff's connection, in default of payment of unreasonable and discriminative rates; Steinman v. Edison Electric Illuminating Co. 26 Lanc. L. Rev. 180, holding that mere fact that charge for electricity to one customer is higher than to another is not necessarily unfair and unjust discrimination; Horner v. Oxford Water & Electric Co. 153 N. C. 539, 138 Am. St. Rep. 681, 69 S. E. 607, holding that public service electric company operated in town is subject to reasonable regulation and control, and municipality has power to fix upon maximum indiscriminative rate, having due regard for reasonable profits of company; Jones v. North Georgia Electric Co. 125 Ga. 628, 6 L.R.A.

(N.S.) 128, 54 S. E. 85, 5 Ann. Cas. 122, on duty of a public service corporation to serve all alike; Soloman v. Wilmington Sewerage Co. 142 N. C. 449, 6 L.R.A. (N.S.) 397, 55 S. E. 300, on the duty of a public service corporation to serve the public at a reasonable compensation; Bradford v. Citizens Teleph. Co. 161 Mich. 390, 126 N. W. 444, holding that the charging of new subscribers a higher rate for the identical telephone service that is furnished to old subscribers is a discrimination; Gordon v. Doran, 100 Minn. 351, 8 L.R.A.(N.S.) 1053, 111 N. W. 272, holding that a municipal waterboard cannot refuse to furnish water for a purpose which it has recognized as legitimate by furnishing water to others for the same purpose, and refuse to furnish it to another; Woodruff v. East Orange, 71 N. J. Eq. 432, 64 Atl. 466, holding that a municipal water rate charged boarding house keepers based upon meter measurements, was not discriminatory where it amounted per capita to about the same as the fixed rate charged ordinary residents; Woodbury v. Tampa Water Works Co. 57 Fla. 258, 21 L.R.A.(N.S.) 1041, 49 So. 559, on the duty of water company to furnish service without discrimination; Kerz v. Galena Water Co. 139 Ill. App. 605; State ex rel. Ferguson v. Birmingham Waterworks Co. 164 Ala. 591, 27 L.R.A.(N.S.) 676, 137 Am. St. Rep. 69, 51 So. 354, 20 Ann. Cas. 951,—holding that a water company is a public service corporation which must serve all without discrimination; Steinman v. Edison Electric Illuminating Co. 17 Pa. Dist. R. 462, 24 Lanc. L. Rev. 334, holding same as to an electric light company furnishing electricity for lighting purposes; Minnesota Canal & Power Co. v. Koochiching Co. 97 Minn. 450, 5 L.R.A.(N.S.) 648, 107 N. W. 405, 7 Ann. Cas. 1182, holding that corporations organized for the purpose of furnishing electricity to the public for lighting purposes, are public service corporations subject to public control, and bound to serve the public without discrimination; Mt. Vernon v. New York Interurban Water Co. 115 App. Div. 660, 101 N. Y. Supp. 232, holding contract between city and water company binding on water company in so far as rates fixed were maximum but denying right of city to litigate reasonableness of "minimum" rates to private consumers.

Cited in notes (15 L.R.A.(N.S.) 764) on right to question reasonableness of statutory rate for gas; (27 L.R.A.(N.S.) 674) on discrimination in rates of water or light company; (46 L. ed. U. S. 593, on contract exemptions from legislative power to fix tolls, rates, or prices.

Disapproved in Griffith v. Vicksburg Waterworks Co. 88 Miss. 386, 40 So. 1011, 8 Ann. Cas. 1130, holding that a water company which accepts a charter by which a maximum rate is fixed, may bind its consumers by rates which are lower than the maximum rates.

Cited as disapproved in Vicksburg v. Vicksburg Waterworks Co. 206 U. S. 509, 51 L. ed. 1161, 27 Sup. Ct. Rep. 762, on the right of water company to fix rates within the maximum fixed by ordinance.

Duties of public service corporations.

Cited in Minnesota Canal & P. Co. v. Pratt, 101 Minn. 214, 11 L.R.A.(N.S.) 111, 112 N. W. 395, holding that by accepting its charter, a corporation for the purpose of furnishing electricity to the public agreed to be subject to public control, and to serve the public as its duty required it; Yadkin River Power Co. v. Whitney Co. 150 N. C. 32, 63 S. E. 188, holding that a corporation organized for the purpose of furnishing electricity to the public, accepted its charter subject to the rights of the legislature to change it according to the constitution.

Actions for breach of municipal contract.

Approved in Gorrell v. Greensboro Water Supply Co. 124 N. C. 334, 46 L. R.

A. 516, 70 Am. St. Rep. 598, 32 S. E. 720, sustaining action by citizen damaged by fire through breach of municipal contract for water supply; Guardian Trust & D. Co. v. Greensboro Water Supply Co. 115 Fed. 190, holding citizen may sue in tort or on contract when damaged by breach of municipal contract for water supply.

Cited in note (61 L. R. A. 114) on establishment and regulation of municipal water supply.

Evidence of value of water works plant.

Cited in Kennebec Water District v. Waterville, 97 Me. 207, 60 L. R. A. 864, 54 Atl. 6, holding, upon condemnation proceedings to acquire plant of water company, proof of actual cost of the property, with allowance for depreciation, is competent evidence of present value.

41 L. R. A. 243, BINGHAM SCHOOL v. GRAY, 122 N. C. 699, 30 S. E. 304.

Use of personal name in trade.

Cited in footnotes to Lamb Knit-Goods Co. v. Lamb Glove & Mitten Co. 44 L. R. A. 841, which denies right to use own name so as to deceive public as to business rightfully engaged in by another; Nolan Bros. Shoe Co. v. Nolan, 53 L. R. A. 384, which sustains right of one using family name as trade name to prevent deceptive use of name by other member of same family; Ranft v. Reimers, 60 L.R.A. 291, which holds seller of good will of business entitled to resume business under own name.

— Corporate name.

Cited in Blackwell's Durham Tobacco Co. v. American Tobacco Co. 145 N. C. 375, 59 S. E. 123, holding that where a foreign and a domestic corporation both have the same name, the latter cannot enjoin the use of the name by the former, unless the rights of the latter were in existence at the time the foreign corporation committed the acts; Blackwell's Durham Tobacco Co. v. American Tobacco Co. 144 N. C. 369, 9 L.R.A.(N.S.) 277, 57 S. E. 5, on the sufficiency of a complaint for the use of a corporate name by another corporation.

Injunction against use of similar name in different locality.

Cited in note (35 L.R.A.(N.S.) 256) on right to enjoin use of similar name in different locality.

41 L. R. A. 246, STATE v. SOUTHERN R. CO. 122 N. C. 1052, 30 S. E. 133.

Later appeal in 126 N. C. 1073, 35 S. E. 619, dismissing appeal for lack of jurisdiction.

Followed without discussion in State v. Raleigh & A. Air Line R. Co. 122 N. C. 1074, 30 S. E. 1005.

Discrimination by carriers.

Cited in State v. Southern R. Co. 125 N. C. 670, 34 S. E. 527, sustaining statute making it indictable offense to furnish free transportation; McNeill v. Durham & C. R. Co. 135 N. C. 720, 67 L. R. A. 229, 47 S. E. 765 (dissenting opinion), majority reversing 132 N. C. 513, 95 Am. St. Rep. 641, 44 S. E. 34, and holding pass issued to editor in exchange for advertising within statute imposing penalty for "unjust discrimination," and that person riding thereon not passenger for hire; McNeill v. Durham & C. R. Co. 132 N. C. 513, 67 L.R.A. 229, 95 Am. St. Rep. 641, 44 S. E. 34, holding that a contract whereby a railroad company issued an annual pass to a newspaper editor in consideration that he publish their time table in his paper for a year, is a discrimination under the anti-pass law; McNeill v. Durham & C. R. Co. 135 N. C. 720, 67 L.R.A. 245, 47 S. E.

765 (dissenting opinion), on what constitutes discrimination as between passengers.

Cited in footnote to Laurel Cotton Mills v. Gulf & S. I. R. Co. 66 L.R.A. 453, which holds contract between carrier and manufacturer to maintain same rates on goods shipped by him between competitive points as are maintained from other points where same factories are located not a forbidden discrimination.

Granting of free passes by carriers.

Cited in John v. Northern P. R. Co. 42 Mont. 38, 32 L.R.A.(N.S.) 94, 111 Pac. 632, holding that giving of passes by railroad companies, even to employees of other railroad companies, is prohibited by constitutional provision against discrimination in rates; Hill v. Atlantic & N. C. R. Co. 143 N. C. 605, 9 L.R.A.(N.S.) 634, 55 S. E. 854 (dissenting opinion), on the granting of passes.

Right of court to apply the law to the facts in criminal trials.

Cited in State v. Seaboard Air Line R. Co. 145 N. C. 573, 59 S. E. 1048 (dissenting opinion), on province of court and jury in criminal trials.

Criminal pleadings.

Cited in Kaye v. United States, 100 C. C. A. 567, 177 Fed. 150, holding that by allegations as to intent the pleader could not inject into an offense an element which was not an element of the offense as contained in the statute.

41 L. R. A. 252, WELLS-STONE MERCANTILE CO. v. GROVER, 7 N. D. 460, 75 N. W. 911.

Liability of trustee.

Cited in Scott v. Jones, 9 N. D. 551, 84 N. W. 479, holding trustee not liable for loss under terms of trust deed; Wells-Stone Mercantile Co. v. Aultman, M. & Co. 9 N. D. 522, 84 N. W. 375, holding that trustee may require beneficiaries to refund dividends to reimburse himself for necessary expenses.

41 L. R. A. 258, ARNEGAARD v. ARNEGAARD, 7 N. D. 475, 75 N. W. 797.

Validity of antenuptial conveyances.

Cited in Ward v. Ward, 63 Ohio St. 127, 51 L. R. A. 859, footnote p. 858, 81 Am. St. Rep. 621, 57 N. E. 1095, holding second wife's right to dower not defeated by fraudulent antenuptial conveyance to sons by former marriage; Wilson v. Wilson, 32 Utah, 178, 89 Pac. 643, holding that an ante-nuptial conveyance of lands by the husband will be treated as void as against the wife where made without her knowledge.

Cited in note (103 Am. St. Rep. 421) on antenuptial conveyance in fraud of intended wife.

Disapproved in Daniher v. Daniher, 201 Ill. 494, 66 N. E. 239, holding conveyance of land on eve of marriage, without knowledge of prospective spouse, only prima facie evidence of fraud.

Probate court trying title to land.

Approved in Gjerstadengen v. Van Duzen, 7 N. D. 616, 66 Am. St. Rep. 679, 76 N. W. 233, holding void, order for sale of lands of third party for payment of decedent's debts.

Cited in Walker v. Ehresman, 79 Neb. 780, 113 N. W. 218, holding that the county court in disposing of an estate has not jurisdiction to determine title to land by adjudging it to the devisees.

Delivery in escrow.

Cited in Grilley v. Atkins, 78 Conn. 385, 4 L.R.A.(N.S.) 820, 112 Am. St. Rep. 152, 62 Atl. 337, holding that a delivery to a third person for the grantee,

by which the grantee accepts the delivery, and the grantor relinquishes all rights and title, is irrevocable and cannot be recalled or modified without the consent of the grantee; Hulet v. Northern P. R. Co. 14 N. D. 213, 103 N. W. 628, holding where the father purchased and paid for land, directing the grantor to give him the deed, naming his daughter as the grantee, a delivery to the father passed title immediately to the daughter, though she never received the deed; Rowley v. Bowyer, 75 N. J. Eq. 84, 71 Atl. 398, holding that delivery of deed by grantor to third person to be held and delivered to grantee upon death of grantor will operate as valid delivery.

Cited in footnote to Daggett v. Simonds, 46 L. R. A. 332, which sustains right of one to whom note delivered in escrow to be delivered on payee's death, to deliver same on happening of condition.

Cited in notes (54 L. R. A. 869, 872, 882, 910) on delivery of deed to third person, or record, or delivery for record, by grantor; (18 L.R.A.(N.S.) 1175) on effect of destruction or cancelation, or redelivery to grantor for that purpose, of delivered but unrecorded deed.

41 L. R. A. 268, SLATER v. GUNN, 170 Mass. 509, 49 N. E. 1017.

Injunction against trespass.

Cited in Providence, F. R. & N. S. B. Co. v. Fall River, 183 Mass. 543, 67 N. E. 647, granting injunction against threatened trespasses by railroad company upon abutting property during removal of grade crossing under legislative mandate, and awarding damages for injuries suffered; Kirby v. Union P. R. Co. 51 Colo. 520, 119 Pac. 1042, holding that in case of constantly recurring wrong, and to avoid multiplicity of actions, and irreparable injury, equity may grant injunctive relief; O'Brien v. Murphy, 189 Mass. 357, 75 N. E. 700, holding that where the trespass is continuous and annoying and interferes with the free use of the property a court of equity will enjoin its continuance; Bitterman v. Louisville & N. R. Co. 207 U. S. 227, 52 L. ed. 184, 28 Sup. Ct. Rep. 91, 12 Ann. Cas. 693, on the enforcement of a rule of conduct by injunction against trespass.

Cited in notes (13 L.R.A.(N.S.) 176) on injunction against repeated trespass; (99 Am. St. Rep. 738) on injunction against trespass on realty.

Proof of dedication.

Approved in Lightcap v. North Judson, 154 Ind. 46, 55 N. E. 952, holding offer of owner and acceptance by proper authorities necessary to establish highway dedication; Clark v. Hull, 184 Mass. 167, 68 N. E. 60, upholding verdict in favor of public way by prescription or dedication, where it was supported by ancient records, and testimony of old men as to existence of road, and to its use from time immemorial.

Cited in footnote to California Nav. & Improv. Co. v. Union Transp. Co. 46 L. R. A. 825, which holds public use as landing place of shore of navigable waters outside municipality not included in dedication for highway.

Title to lands under great ponds.

Cited in Butler v. Atty. Gen. 195 Mass. 83, 8 L.R.A.(N.S.) 1049, 80 N. E. 688, holding that the title to lands under great ponds is in the public, or the state unless granted otherwise by the state.

41 L. R. A. 275, ROBERTS v. WINTON, 100 Tenn. 484, 45 S. W. 673.

Law governing insurance contracts.

Approved in Coverdale v. Royal Arcanum, 193 Ill. 106, 61 N. E. 915, holding

law of country or state where contract made governs its construction and validity.

Cited in Haas v. Mutual L. Ins. Co. 90 Neb. 819, 134 N. W. 937, holding that laws of state where application is made and where premium is paid and policy delivered governs as to construction of life insurance policy.

Cited in footnotes to Cravens v. New York L. Ins. Co. 53 L. R. A. 305, which holds life policies of foreign company taking effect on delivery and collection of premium governed by law of state of delivery, notwithstanding provision in policy; Swing v. Munson, 58 L. R. A. 223, which holds insurance contract, valid where made, not enforceable in state where property located whose laws directly violated.

Cited in note (63 L. R. A. 862) on conflict of laws as to contracts of insurance.

Rights of creditors in insurance.

Cited in footnotes to Morris v. Georgia Loan, Sav. & Bkg. Co. 46 L. R. A. 506, which holds creditor taking assignment of policy entitled to retain from proceeds sufficient to pay debt and advances only; Williams v. Donough, 56 L. R. A. 766, which holds void, statute exempting proceeds of fraternal benefit certificate from liability for debts; Sternberg v. Levy, 53 L. R. A. 438, which sustains right as against creditors to procure with exempt wages, insurance for sister and her children, constituting family.

Denied in Lehman v. Gunn, 124 Ala. 220, 51 L. R. A. 115, footnote p. 112, 82 Am. St. Rep. 159, 27 So. 475, holding proceeds of policy taken out by insolvent as gift for parents, subject to creditor's claims.

41 L. R. A. 278, WILLCOX v. HINES, 100 Tenn. 538, 66 Am. St. Rep. 770, 46 S. W. 297.

Landlord's liability for defective premises.

Approved in Thum Bros. v. Rhodes, 12 Colo. App. 249, 55 Pac. 264, holding landlord liable for damage from defects unknown to tenant without equal means of knowledge; Moore v. Parker, 63 Kan. 55, 53 L. R. A. 781, footnote p. 778, 64 Pac. 975, holding landlord liable for failure to inform tenant of known defective or dangerous condition.

Cited in Rhoades v. Seidel, 139 Mich. 610, 102 N. W. 1025, holding that the landlord's liability to a tenant for injuries because of defects existing at the time the premises are leased, extends only to defects of which the landlord has knowledge or should have known, and which are not open to the observation of the tenant; Barron v. Liedloff, 95 Minn. 476, 104 N. W. 289, holding that the landlord is liable for injuries if he attempts to make repairs and fails to make them safe; Douglas v. Marsh, 141 Mich. 214, 104 N. W. 624, as to what nonfeasance of the landlord is actionable.

Cited in footnotes to Texas Loan Agency v. Fleming, 44 L. R. A. 279, which denies liability of landlord for injury to persons stepping out of unguarded door opening into space, while lessee in possession; Smith v. State, 51 L. R. A. 772, which denies landlord's liability for injury to subtenant's child from defective balustrade on porch; Thompson v. Clemens, 60 L. R. A. 581, which denies landlord's liability for injury to member of tenant's family from failure to keep agreement to make repairs; Davis v. Smith, 66 L.R.A. 478, which holds landlord not liable for damages to tenant or member of his family through sickness due to breach of covenant to repair.

Cited in notes (11 L.R.A.(N.S.) 508) on right of tenant to recover for injuries received through landlord's breach of contract to repair; (34 L.R.A. (N.S.) 799, 800, 801, 802, 803) on liability of landlord for injury to tenants

from defects in premises; (86 Am. St. Rep. 515) on liability of property owner for nuisance which he did not create; (92 Am. St. Rep. 510, 512, 515, 518, 519) on liability to third persons of lessors of real or personal property.

Distinguished in Brady v. Klein, 62 L. R. A. 911, holding landlord not liable for injury caused by defect in premises not constituting nuisance.

Disapproved in O'Malley v. Twenty-five Associates, 178 Mass. 559, 60 N. E. 387, holding landlord liable only for failure to disclose actually known hidden defects, in absence of warranty or misrepresentation; Franklin v. Tracy, 25 Ky. L. Rep. 1412, 63 L. R. A. 652, 77 S. W. 1113, holding landlord not liable for injury to lessee's property from latent defect in premises, of which he had no actual knowledge.

41 L. R. A. 284, STATE *ex rel.* BETHELL v. KILVINGTON, 100 Tenn. 227, 45 S. W. 433.

Habeas corpus to recover child.

Cited in footnotes to State *ex rel.* Lasserre v. Michel, 54 L. R. A. 927, which holds habeas corpus by husband against wife for custody of child not a "suit" within statutory prohibition; Prieto v. St. Alphonsus Convent of Mercy, 47 L. R. A. 656, which authorizes release by habeas corpus of minor entering convent without parent's consent.

Right of state to detain minor child in state institution.

Cited in Re Sharp, 15 Idaho, 28, 18 L.R.A.(N.S.) 894, 96 Pac. 563, sustaining statute providing for the detention of a minor in a State Industrial School, as being done with due process of law, though there be no trial by jury; Mill v. Brown, 31 Utah, 480, 120 Am. St. Rep. 935, 88 Pac. 609, holding same as to statute providing for the creation of a juvenile court with jurisdiction to provide for the care of delinquent children.

Power of state over delinquent children.

Cited in Hunt v. Wayne Circuit Judges, 142 Mich. 115, 3 L.R.A.(N.S.) 574, 105 N. W. 531, 7 Ann. Cas. 821, on the power of the state over delinquent children.

Cited in note (120 Am. St. Rep. 953, 960) on constitutionality of statutes concerning reformatories and juvenile courts.

Parental custody of child.

Cited in note (88 Am. St. Rep. 870) on contracts for transfer of parental custody and responsibility.

41 L. R. A. 287, SCHAEFER v. FOND DU LAC, 99 Wis. 333, 74 N. W. 810.

Later appeal in 104 Wis. 39, 80 N. W. 59, as to application of statute of limitations.

Conditions to statutory rights of action.

Approved in Relyea v. Tomahawk Paper & Pulp Co. 102 Wis. 305, 72 Am. St. Rep. 878, 78 N. W. 412, holding statutory rights may be granted on conditions which may be changed, or benefits thereunder entirely taken away; Byington v. Merrill, 112 Wis. 220, 88 N. W. 26, sustaining statute exempting municipality from liability unless accumulation of snow and ice existed three weeks continuously; Devine v. Fond du Lac, 113 Wis. 67, 88 N. W. 913, holding right of action against city for sidewalk injuries dependent upon return of unsatisfied execution against lot owner; Morrison v. Eau Claire, 115 Wis. 546, 95 Am. St. Rep. 955, 92 N. W. 280, holding complaint setting up good cause of action against city for injury from *débris* on sidewalk, insufficient on demurrer, where filing of claim with city clerk and appeal from disallowance not alleged.

Liability of city for injuries through defective sidewalks.

Cited in Block v. Fond du Lac, 141 Wis. 87, 123 N. W. 654, holding that under the city charter, the city is liable for injuries through defective sidewalks only in case the injured party fails to collect a judgment against the owner of the premises in front of which the walk was located.

Effect on surety of judgment against principal.

Cited in note (40 L.R.A.(N.S.) 727) on effect upon surety of judgment against principal.

41 L. R. A. 291, MASON v. STATE, 58 Ohio St. 30, 50 N. E. 6.

Bribery at elections.

Approved in State ex rel. Crow v. Towns, 153 Mo. 104, 54 S. W. 552, awarding writ of ouster against candidate for county clerk when promising deputyship to secure nominating votes.

Cited in footnotes to State *ex rel.* Crow v. Bland, 41 L. R. A. 297, which holds payments and promises to induce withdrawal of candidate and indorsement by his party of other candidate not bribery of voters; Baum v. State, 55 L. R. A. 250, which authorizes disfranchisement for bribery at election.

Power to review election contest.

Cited in footnote to Taylor v. Beckham, 49 L. R. A. 258, which denies power of court to review legislative determination of contest as to office of governor.

Corrupt Practices Act.

Cited in State v. Russell, 8 Ohio N. P. 59, 10 Ohio S. & C. P. Dec. 264, holding unconstitutional the Corrupt Practices Act so far as it applies to the election of members of the Federal Congress.

Right of property in public offices.

Cited in Re Legislative Salaries, 33 Pa. Co. Ct. 179, 16 Pa. Dist. R. 438, holding that a person can have no property in a public office not in the prospective fees thereof.

Powers of the legislature.

Cited in Davies v. State, 6 Ohio C. C. N. S. 423, 27 Ohio C. C. 598, holding that the powers of the legislature are not limited except as provided by the constitution and the mention of institutions for the blind does not by implication limit the power of the legislature to provide for the blind in other ways.

Right to jury in quo warranto.

Cited in note (24 L.R.A.(N.S.) 642) on right to jury in quo warranto.

41 L. R. A. 297, STATE *ex rel.* CROW v. BLAND, 144 Mo. 534, 46 S. W. 440.

Bribery at elections.

Cited in footnotes to Mason v. State, 41 L. R. A. 291, which sustains ousting of person from office under corrupt practices act; Baum v. State, 55 L. R. A. 250, which authorizes disfranchisement for bribery at election.

Distinguished in State ex rel. Brady v. Bates, 102 Minn. 110, 112 N. W. 1026, 12 Ann. Cas. 105, holding that the affidavit of expenditures under the Corrupt Practices Act, need not include expenditures made before filing of intention to become a candidate.

Strict construction of penal laws.

Cited in State *ex rel.* Crow v. Firemen's Fund Ins. Co. 152 Mo. 41, 45 L. R. A. 375, 52 S. W. 595, holding determination of existence of trust on circumstantial evidence not violative of strict construction of penal statute; Dooley v. Jackson, 104 Mo. App. 32, 78 S. W. 330, holding that a statute providing that a bet

upon the result of an election was gaming and prohibited, was a penal statute and should be strictly construed, so as to apply only to elections provided for by the constitution and not primary elections.

Jurisdiction over remedial writs.

Cited in State *ex rel.* Crow v. Towns, 153 Mo. 106, 54 S. W. 552, sustaining original jurisdiction of supreme court over ouster proceedings; State ex rel. Young v. Kent, 96 Minn. 265, 1 L.R.A.(N.S.) 832, 104 N. W. 948, 6 Ann. Cas. 905, holding that the Attorney General as the chief law officer of the state, may upon his own motion have issued a writ of quo warranto to have the franchise of a municipal corporation annulled, and upon the filing of the information the Supreme Court will determine whether the writ should issue from that court or a lower court.

Pleading; reversible error.

Approved in State *ex rel.* Ziegenhein v. Thompson, 149 Mo. 445, 51 S. W. 98, holding judgment reversible where petition fails to state cause of action unless cured by statute of jeofails.

41 L. R. A. 305, OGDEN CITY v. BEAR LAKE & RIVER WATERWORKS & IRRIG. CO. 16 Utah, 440, 52 Pac. 697.

Orders not appealable.

Cited in Popp v. Daisy Gold Min. Co. 22 Utah. 463, 63 Pac. 185, denying right of appeal from interlocutory order appointing receiver *pendente lite; Re* Williamson, 26 Utah, 52, 72 Pac. 2, holding order directing sale of real estate by executor not final order from which appeal may be taken; Sacramento Valley Irrig. Co. v. Lee, 15 N. M. 572, 113 Pac. 834, holding that decree granting injunction and appointing receiver for insolvent corporation is final decree and appealable.

Municipal control over water works.

Cited in Knoxville v. Knoxville Water Co. 107 Tenn. 675, 61 L. R. A. 895, 64 S. W. 1075, sustaining ordinance reducing rates of water corporation below charges under prior one; Knoxville v. Knoxville Water Co. 107 Tenn. 647, 61 L. R. A. 895, 64 S. W. 1075, holding municipal contract with water company as to rates does not prevent city imposing change of rates within term of contract, where police and general powers of city reserved; Lake County Water & Light Co. v. Walsh, 160 Ind. 41, 98 Am. St. Rep. 264, 65 N. E. 530, denying power of city to dispose of water works and electric light plant without special authority of legislature.

Cited in note (61 L. R. A. 119) on establishment and regulation of municipal water supply.

Powers of public corporation.

Cited in Pioneer Invest. & T. Co. v. Board of Education, 35 Utah, 11, 136 Am. St. Rep. 1016, 99 Pac. 150, holding that public corporation may hold property in private as well as in governmental capacity.

Appointment of receiver.

Cited in notes (72 Am. St. Rep. 30) as to when appointment of receiver is proper; (118 Am. St. Rep. 206) as to when and at whose instance a receiver of a corporation may be appointed.

41 L. R. A. 311, HAGUE v. NEPHI IRRIG. CO. 16 Utah, 421, 67 Am. St. Rep. 634, 52 Pac. 765.

Right of water appropriation.

Approved in Manning v. Fife, 17 Utah, 238, 54 Pac. 111, holding appropriated

water not needed must remain or go back into stream for subsequent appropriators; Handy Ditch Co. v. Louden Irrig. Canal Co. 27 Colo. 518, 62 Pac. 847, holding that appropriator may change place of diversion provided other appropriators are not injuriously affected; Elliot v. Whitmore, 23 Utah, 353, 90 Am. St. Rep. 700, 65 Pac. 70, holding slight diversion of waters of creek at irregular intervals, for few acres of land, does not give right to enjoin appropriation of entire waters by another, when latter's use is reasonably necessary, and for beneficial purpose.

Right to change point of diversion.

Cited in Head v. Hale, 38 Mont. 308, 100 Pac. 222, holding that a person entitled to the use of water may change the point of diversion or may use it for other purposes than that for which originally appropriated, provided that other parties are not injured thereby.

41 L. R. A. 316, THURSTON v. BURNETT & B. D. FARMERS' MUT. F. INS. CO. 98 Wis. 476, 74 N. W. 131.

Forfeiture of policy for change in use of property.

Cited in footnote to Adair v. Southern Mut. Ins. Co. 45 L. R. A. 204, which denies forfeiture of policy from mere temporary change in use of property without materially increasing risk.

Construction of contracts.

Cited in Zohrlaut v. Mengelberg, 144 Wis. 576, 124 N. W. 247, holding that when plain language is used in such connection as to leave no room to say reasonably that parties may have intended either of two meanings, apparent meaning of words must govern.

41 L. R. A. 318, CORBETT v. SPRING GARDEN INS. CO. 155 N. Y. 389, 50 N. E. 282.

What constitutes total loss.

Approved in Devitt v. Providence Washington Ins. Co. 61 App. Div. 398, 70 N. Y. Supp. 654, holding constructive total loss established when cost of salvage exceeds value of property saved; Liverpool & L. & G. Ins. Co. v. Heckman, 64 Kan. 396, 67 Pac. 879, holding "total loss" means such destruction of property as deprives it of the character in which it was insured, although some portion of building remains; Nortwestern Mut. L. Ins. Co. v. Rochester German Ins. Co. 85 Minn. 58, 56 L. R. A. 108, 88 N. W. 265, holding "total loss" of building not occurring if remnant remains reasonably adapted for use.

Cited in Spring Garden Ins. Co. v. Amusement Syndicate Co. 102 C. C. A. 29, 178 Fed. 526, on what constitutes a total loss; Paris Dry Goods Co. v. Spring Valley Water Co. 10 Cal. App. 219, 101 Pac. 678, on what constitutes a total destruction within the terms of a lease providing for adjustment of rent.

Cited in footnote to Thuringia Ins. Co. v. Malott, 55 L. R. A. 277, which holds total loss to be such injury as destroys identity and specific character of building, as such.

Cited in note (56 L. R. A. 790, 793) on constructive total loss of insured building.

Distinguished in McCready v. Hartford F. Ins. Co. 61 App. Div. 586, 70 N. Y. Supp. 778, holding total loss not established when remnant of structure justifies rebuilding.

41 L. R. A. 321, RED WING v. GUPTIL, 72 Minn. 259, 71 Am. St. Rep. 485, 75 N. W. 234.

Abatement of public nuisance.

Cited in footnotes to St. Louis v. Galt, 63 L. R. A. 778, which sustains ordinance requiring cutting of weeds on city lots; State v. Hyman, 64 L. R. A. 637, which holds prohibition against use of room in tenement or dwelling house for manufacture of clothing, except by immediate member of family, within police power.

Cited in notes (42 L.R.A. 825) on injunctions by municipalities against nuisances on highways and streets; (51 L.R.A. 657, 660) on right of municipality to maintain suit to enjoin or abate nuisance.

41 L. R. A. 331, LOUISVILLE & N. R. CO. v. NASH, 118 Ala. 477, 72 Am. St. Rep. 181, 23 So. 825.

Effect of judgment against garnishee.

Cited in footnote to Balk v. Harris, 45 L. R. A. 257, which holds debtor garnished outside of state not protected in paying debt after returning to domicil.

Cited in note (47 L. R. A. 134) on effect of judgment against garnishee to merge or satisfy liability of principal debtor.

Garnishment proceedings against nonresidents.

Approved in Louisville & N. R. Co. v. Steiner, 128 Ala. 354, 30 So. 741, holding garnishment not applicable to debt of foreign corporation neither made nor performed within state; Central R. Co. v. Brinson, 109 Ga. 355, 77 Am. St. Rep. 382, 34 S. E. 597, holding debt subject to garnishment is one due and payable at creditor's domicil; Kress v. Porter, 132 Ala. 581, 31 So. 377, holding situs of property levied on determines validity of attachment against nonresident neither served nor appearing; Boyle v. Musser-Sauntry Land, Logging & Mfg. Co. 88 Minn. 464, 97 Am. St. Rep. 538, 93 N. W. 520, holding judgment not subject to attachment by garnishment in court of another state having no jurisdiction of judgment creditor, and referring particularly to annotation in 41 L. R. A. 331; Stewart v. Northern Assur. Co. 45 W. Va. 742, 44 L. R. A. 105, footnote p. 101, 32 S. E. 218, which holds judgment against garnishee on contract utterly void at domicil of nonresident debtor not personally served, no protection.

Cited in Bristol v. Brent, 38 Utah, 70, 110 Pac. 356, holding that debt that may be enforced in any jurisdiction by person against debtor may also be attached by garnishment in any jurisdiction where debtor may be found; Shuttleworth & Co. v. Marx & Co. 159 Ala. 422, 49 So. 83, holding that the courts of a state acquire jurisdiction over the res, by service upon the debtor within the state, though the creditor be a non-resident, if such creditor could have sued the debtor within the state; Sweeney v. Tritsch, 151 Ala. 245, 44 So. 184, holding that a personal judgment against a non-resident for the excess was void where based upon a service of summons by publication; McShane v. Knox, 103 Minn. 270, 20 L.R.A.(N.S.) 272, 114 N. W. 955, holding that the courts of the state have jurisdiction to entertain garnishment proceedings against a nonresident, where both the defendant and the garnishee were served with process while within the state.

Cited in footnotes to Pennsylvania R. Co. v. Rogers, 62 L. R. A. 178, which holds nonresident summoned as garnishee while temporarily within state not subject to further proceedings unless he has property within state; Swedish American Nat. Bank v. Bleecker, 42 L. R. A. 283, which denies jurisdiction of garnishment of foreign insurance company for loss occurring in other state, where defendant served by publication, and company by service on insurance commis-

sioner; Tootle v. Coleman, 57 L. R. A. 120, which holds right to garnish debtor not limited to situs of chose in action; Strause Bros. v. Ætna Ins. Co. 48 L. R. A. 452, which holds debt of insurance company for loss in other state without situs, where company has agent, for garnishment purposes, in third state; Hawley v. Hurd, 52 L. R. A. 195, which sustains discrimination between banks in and out of state as to attachment of negotiable paper; National Broadway Bank v. Sampson, 66 L.R.A. 606, which holds liability of nonresident to nonresident corporation not subject to attachment within state when debtor is temporarily within jurisdiction as situs of debt is at place of residence either of debtor or of creditor.

Cited in notes (67 L.R.A. 211, 218, 222) as to where debt garnishable; (69 Am. St. Rep. 117, 119, 122) on situs of debts for purposes of garnishment and of property in transit in hands of carriers; (44 L. ed. U. S. 212) on garnishment of debt due to nonresident.

Distinguished in Planters' Chemical & Oil Co. v. A. Waller & Co. 160 Ala. 222, 135 Am. St. Rep. 93, 49 So. 89, holding that a debt due a non-resident upon a contract made within the state with a domestic corporation, is subject to seizure by garnishment in the hands of the corporation.

What constitutes due process.

Cited in Harvey v. Thompson, 128 Ga. 152, 9 L.R.A.(N.S.) 768, 119 Am. St. Rep. 373, 57 S. E. 104, sustaining statute providing the situs of debts due nonresidents, for the purpose of garnishment, attachment and otherwise, is due process of law.

Cited in note (50 L. R. A. 581) on what service of process is sufficient to constitute due process of law.

Jurisdiction of courts over foreign causes of actions.

Followed in Dozier Lumber Co. v. Smith Isburg Lumber Co. 145 Ala. 320, 39 So. 714, holding that the courts of one state are without jurisdiction of a cause of action arising in another state between two foreign corporations.

Attack on jurisdiction of foreign court.

Cited in note (103 Am. St. Rep. 308, 310) on attack on jurisdiction of foreign court over person of defendant.

41 L. R. A. 333, KANSAS CITY, P. & G. R. CO. v. STATE, 65 Ark. 363, 67 Am. St. Rep. 933, 46 S. W. 421.

Carrier's liability for loss of baggage.

Cited in footnote to Illinois C. R. Co. v. Matthews, 60 L. R. A. 846, which holds carrier liable for loss of or damage to samples in possession of traveling salesman, checked as baggage.

What is baggage.

Cited in St. Louis, I. M. & S. R. Co. v. Miller, 103 Ark. 37, 39 L.R.A.(N.S.) 638, 145 S. W. 889, holding that bed linen and other articles designed for use in his business by one moving from one locality to another to engage in hotel business cannot be carried by him as baggage at carrier's risk; Little Rock & H. S. W. R. Co. v. Record, 74 Ark. 130, 109 Am. St. Rep. 67, 85 S. W. 421, holding that a charge to the effect that baggage was whatever a passenger carried with him for the purposes of the journey, was proper when applied as to whether shot guns were baggage when carried for the purposes of hunting; Kansas City S. R. Co. v. Skinner, 88 Ark. 191, 21 L.R.A.(N.S.) 851, 113 S. W. 1019, holding to the same effect as to the charge; Choctaw, O. & G. R. Co. v.

Zwirtz, 13 Okla. 419, 73 Pac. 941, holding that merchandise intended for business purposes is not properly included as baggage.

Cited in footnote to Yazoo & M. V. R. Co. v. Blackmar, 67 L.R.A. 646, which holds papers of employer pertaining to business of an insurance agent not baggage of the latter.

41 L. R. A. 335, SAN FRANCISCO v. GROTE, 120 Cal. 59, 65 Am. St. Rep. 155, 52 Pac. 127.

Right of ejectment.

Approved in Fresno Street R. Co. v. Southern P. R. Co. 135 Cal. 203, 67 Pac. 773, holding right of ejectment not sustained by proof of right of way over highway, based upon mere incorporeal franchise or easement under grant of county board of supervisors; Southern P. Co. v. Hyatt, 132 Cal. 246, 54 L. R. A. 526, 64 Pac. 272, holding ejectment lies against wrongful possession of any part of railroad company's right of way.

Cited in footnotes to Cahill v. Cahill, 60 L. R. A. 706, which holds possessory rights only will not sustain ejectment without showing legal title; Bork v. United New Jersey R. & Canal Co. 64 L. R. A. 836, which sustains right of owner to maintain ejectment against steam railroad constructed in street without legislative authority.

Cited in notes (66 L.R.A. 40) on ejectment to recover right of way; (11 L.R.A.(N.S.) 130) on ejectment for public easement.

What constitutes dedication.

Cited in Los Angeles v. Kysor, 125 Cal. 465, 58 Pac. 90, holding dedication for park not established by designation on recorded map, in absence of acceptance; Cordano v. Wright, 159 Cal. 620, 115 Pac. 227, Ann. Cas. 1912 C, 1044, holding that homestead property cannot be dedicated for use as highway except by instrument to that effect executed and acknowledged by both husband and wife; Hailey v. Riley, 14 Idaho, 495, 17 L.R.A.(N.S.) 91, 95 Pac. 686, holding that facts which merely have a tendency to prove dedication which are not inconsistent with the permissive use of the land are not sufficient to show dedication.

Cited in note (129 Am. St. Rep. 576, 582) on what constitutes dedication to, and acceptance of, a public street.

Distinguished in Colegrove Water Co. v. Hollywood, 151 Cal. 431, 13 L.R.A. (N.S.) 909, 90 Pac. 1053, where the question was as to right of abutting owner, being the owner of the fee over which the street passes, to lay water pipes in the street so long as he does not interfere with the public's rights in the use of the street.

Conveyance of homestead by one spouse.

Cited in notes (27 L.R.A.(N.S.) 963) on power to create easements in homestead without wife's consent; (95 Am. St. Rep. 919) on effect of conveyance or encumbrance of homestead by one spouse only.

41 L. R. A. 337, INDIANAPOLIS v. NAVIN, 151 Ind. 139, 156, 51 N. E. 80, 47 N. E. 525.

Public control of public utilities.

Approved in Coverdale v. Edwards, 155 Ind. 381, 58 N. E. 495, sustaining right of municipality to impose restrictions upon use and duration of lighting franchise.

Cited in Kinsey v. Union Traction Co. 169 Ind. 631, 81 N. E. 922, (dissenting opinion), on the right of city to control entry of interurban railway into

the city; Southern Indiana R. Co. v. Railroad Commission, 172 Ind. 122, 87 N. E. 966, holding that railroad rates and charges are subject to reasonable control by the state.

Cited in footnotes to Pingree v. Michigan C. R. Co. 53 L. R. A. 274, which denies power of legislature to fix rates of carrier upon which previous legislature conferred exclusive power to fix its rates; *Re* Janvrin, 47 L. R. A. 319, which sustains action empowering court to fix maximum water rates on petition of party aggrieved; State *ex rel.* Bump v. Omaha & C. B. R. & Bridge Co. 52 L. R. A. 315, which holds void, ordinance requiring sale of tickets to residents of city as condition of extending street railway franchise.

Cited in notes (50 L.R.A. 144) on privilege of using streets as a contract within constitutional provision against impairing obligation of contracts; (46 L. ed. U. S. 594, 595) on contract exemptions from legislative power to fix tolls, rates, or prices.

Population as basis of classification.

Approved in Campbell v. Indianapolis, 155 Ind. 203, 57 N. E. 920, sustaining statute concerning schools in cities of 100,000 inhabitants, though but one such when adopted; Ladd v. Holmes, 40 Or. 175, 91 Am. St. Rep. 457, 66 Pac. 714, sustaining law regulating primaries in cities having 10,000 inhabitants at "last state or Federal census;" Harmon v. Madison County, 153 Ind. 72, 54 N. E. 105, sustaining statute making salaries dependent upon amounts turned into county treasury, though not graded directly according to population.

Cited in Strange v. Grant County, 173 Ind. 645, 91 N. E. 242, holding that legislature has constitutional right to classify cities by population, in providing for their government; Bumb v. Evansville, 168 Ind. 274, 80 N. E. 625, holding that a statute providing a charter for cities having or which shall thereafter have over 50,000 inhabitants and not more than 100,000 was not invalid as a special law.

Cited in footnote to Longview v. Crawfordsville, 68 L.R.A. 623, which holds void classification of cities for purpose of legislation so as to make particular law conferring power to annex territory applicable to those having population between six and seven thousand.

Exercise of legislative discretion.

Cited in Carolina Grocery Co. v. Burnet, 61 S. C. 211, 58 L. R. A. 689, 39 S. E. 381, holding applicability of general law judicial, and not legislative, question; *Re* Bank of Commerce, 153 Ind. 462, 47 L. R. A. 491, 53 N. E. 950, holding neither local nor general law subject of legislative judgment when involving powers expressly withdrawn; State *ex rel.* Lewis v. Smith, 158 Ind. 577, 63 L. R. A. 131, 63 N. E. 25, referring to force attaching to construction of Constitution by session of legislature having in its personnel a considerable number of members of constitutional convention.

Disapproved in State v. Hammond, 66 S. C. 223, 44 S. E. 797, holding it to be judicial question whether general law can be made applicable to particular subject of legislation.

What constitutes local or special legislation.

Approved in Schneck v. Jeffersonville, 152 Ind. 226, 52 N. E. 212, sustaining act legalizing city bonds as not local or special legislation; Owen County v. Spangler, 159 Ind. 579, 65 N. E. 743, holding act making statute limiting authority to issue bonds for improvement of highway inapplicable to counties having population between 15,000 and 15,050, within constitutional provision prohibiting local or special highway legislation; Smith v. Indianapolis Street R. Co. 158 Ind. 435,

63 N. E. 849, holding act authorizing certain city to contract with street railway for extension of rights and franchises not violation of constitutional requirement that corporations be organized under general laws.

Cited in Smith v. Hamilton County, 173 Ind. 370, 90 N. E. 881, holding that law that applies in same way to all parts of state where similar conditions prevail is general law.

Cited in note (93 Am. St. Rep. 109, 112) on constitutional inhibition against special legislation where general law can be made applicable.

Distinguished in Rushville v. Hayes, 162 Ind. 204, 70 N. E. 134, holding that a classification of cities where there was a difference of only five inhabitants between the maximum and the minimum of the class, was invalid as violative of the constitution providing against special legislation; Longview v. Crawfordsville, 164 Ind. 120, 68 L.R.A. 626, 73 N. E. 78, 3 Ann. Cas. 496, holding that a statute providing for the annexation of a town to a city, which has a population between 6,000 and 7,000 is a special law, and unconstitutional.

— Class legislation.

Cited in Johnson County v. Johnson, 173 Ind. 87, 89 N. E. 590, holding that classification in tax laws must be based upon natural reasons inhering in subject matter; Chicago, I. & L. R. Co. v. Railroad Commission, 173 Ind. 477, 90 N. E. 1011, holding that exception in statute regulating railroad rates, of interurban railroads, is valid classification; State v. Barrett, 172 Ind. 181, 87 N. E. 7, sustaining statute regulating the building of tracks to coal mines, excepting certain veins of coal from the provisions of the act; State v. Fraternal K. & L. 35 Wash. 345, 77 Pac. 500, sustaining statute providing certain rates of assessments for fraternal insurance societies organized after the passage of the act, but not those organized before.

Conflicts between state and Federal decisions.

Approved in *Re* Morgan, 26 Colo. 440, 47 L. R. A. 62, 77 Am. St. Rep. 269, 58 Pac. 1071, holding state courts may disregard Federal decree sustaining statute, when validity under state Constitution questioned; Central Trust Co. v. Citizens' Street R. Co. 82 Fed. 5, holding Federal courts not bound by state decisions where controversy involves Federal and contractual questions.

Validity of act creating office.

Cited in Roth v. State, 158 Ind. 266, 63 N. E. 460, holding office of policeman not within constitutional provision prohibiting legislature creating office with longer term than four years.

Practical construction.

Cited in Spaulding v. Mott, 167 Ind. 64, 76 N. E. 620, holding that a contemporaneous construction of a legislative act for twenty-eight years should be given effect in construing a subsequent statute upon the same subject.

41 L. R. A. 345, SNYDER v. FT. MADISON STREET R. CO. 105 Iowa, 284, 75 N. W. 179.

Electric railway as additional servitude.

Cited in Peck v. Schnectady R. Co. 170 N. Y. 312, 63 N. E. 357 (dissenting opinion), majority holding added burden imposed upon property rights in use of street by electric railway; Longnecker v. Wichita R. & Light Co. 80 Kan. 419, 102 Pac. 492, holding that the abutting owner could object to the laying of street railway tracks upon the side of the street nearest his land, where there was no reason for not placing them in the center of the street.

Cited in footnotes to La Crosse City R. Co. v. Higbee, 51 L.R.A. 923, which

holds electric street railroad pole in city street not additional burden: Mordhurst v. Fort Wayne & S. W. Traction Co. 66 L.R.A. 106, which holds operation of interurban railway by electric power upon T. rails through city street with authority to carry passengers, baggage, mail, and light express matter running no more than two cars in train not an additional servitude on street.

Cited in notes (25 L.R.A.(N.S.) 1271) on right of abutter to damages for special injuries where street railway not considered additional burden; (106 Am. St. Rep. 244, 246) on what are additional servitudes in highways.

Pleading foreign statutes.

Approved in Green v. Equitable Mut. L. & Endowment Asso. 105 Iowa, 635, 75 N. W. 635, holding foreign statutes need not be pleaded when merely evidence of ultimate facts.

Obstructions in streets as nuisances.

Cited in Perry v. Castner, 124 Iowa, 393, 66 L.R.A. 163, 100 N. W. 84, 2 Ann. Cas. 363, holding that the maintenance of a stairway from the defendant's basement, so close to the line between his land and that of the plaintiff so that persons using the same used the sidewalk in front of the plaintiff's land, it constituted a nuisance which should be removed.

Right to mandatory injunction.

Cited in footnote to Allen v. Stowell, 68 L.R.A. 223, which sustains right to mandatory injunction to compel removal of dams wrongfully diverting water onto plaintiff's property so as to destroy trees and cut gulches.

41 L. R. A. 349, WERNER v. WERNER, 59 Kan. 399, 68 Am. St. Rep. 372, 53 Pac. 127.

Annulment of bigamous marriage.

Cited in Carter v. Rinker, 174 Fed. 884, on the disqualification to enter marriage contract because of former spouse living, as affecting right to recover for breach of promise to marry.

— Division of property.

Cited in Coats v. Coats, 160 Cal. 677, 36 L.R.A.(N.S.) 848, 118 Pac. 441, holding that judgment annulling marriage does not estop one of parties from subsequently maintaining action to establish rights in community property if question was not raised or decided in annulment action; Buckley v. Buckley, 50 Wash. 218, 126 Am. St. Rep. 900, 96 Pac. 1079, holding that where the wife aided the husband in the accumulation of property, the court may in the action to annul the marriage on the ground that the man had another wife living, divide the property thus accumulated as it would in an action for divorce.

Cited in notes (36 L.R.A.(N.S.) 844) on division of property upon annulment of marriage: (68 Am. St. Rep. 375; 96 Am. St. Rep. 273) on compelling division of property accumulated during void marriage.

Alimony in annulment suits.

Cited in notes (5 L.R.A.(N.S.) 767) on power, upon annulling marriage, to require man to provide for support of woman or child; (96 Am. St. Rep. 269) on effect of void marriage as to alimony; (102 Am. St. Rep. 710) on power of courts to create and enforce liens to secure payment of alimony.

41 L. R. A. 351, ALLEN v. PERRINE, 103 Ky. 516, 45 S. W. 500.

Enforcement of lien of taxes.

Distinguished in Alexander v. Aud, 121 Ky. 114, 88 S. W. 1103, holding that

failure to distrain personal property for taxes, does not render the sale of the land for the taxes, void.

41 L. R. A. 353, ROSE v. ROSE, 104 Ky. 48, 84 Am. St. Rep. 430, 46 S. W. 524.

Referred to for history of case in Deposit Bank v. Rose, 113 Ky. 948, 69 S. W. 967.

Legislation affecting vested rights.

Approved in Mitchell v. Violett, 104 Ky. 81, 47 S. W. 195, holding vested right of curtesy initiate not devested by subsequent legislation; Phillips v. Farley, 112 Ky. 839, 66 S. W. 1006, upholding power of legislature to take away husband's estate by the curtesy in wife's realty before birth of child; Mundo v. Anderson, 109 Ky. 149, 58 S. W. 520, holding married woman, awarded right by judgment to deal with own property as if single, may be bound as husband's surety, notwithstanding prohibition of married woman's act.

Cited in Reade v. DeLea, 14 N. M. 457, 95 Pac. 131, to the point that under common law system dower was mere expectancy during husband's lifetime, and constituted no vested right, being subject to legislative limitation at any time; Fowler v. Fowler, 138 Ky. 332, 127 S. W. 1014, holding that where marriage took place prior to Weissinger Act husband acquired absolute title to personalty of wife when reduced to possession, and right to rents and profits of real estate; McFarland v. Hatchett, 118 Ky. 424, 80 S. W. 1185, holding that if the grantee took a fee simple estate in the land, the deed being made before the passage of the Married Women's Act, the husband was entitled to an estate by curtesy in the land at her death.

Cited in footnote to Gladney v. Sydnor, 60 L. R. A. 880, which holds right to convey or encumber homestead without wife's co-operation, a vested one which cannot be destroyed by legislature.

Cited in note (112 Am. St. Rep. 595) on right of legislature to abolish tenancy by the curtesy.

Distinguished in Bennett v. Bennett, 134 Ky. 451, 120 S. W. 372, holding that the statute relative to the rights of the husband in the wife's estate, applied to a case where the husband had acquired no vested rights prior to the passage of the act.

Explained in Helm v. Board, 114 Ky. 293, 70 S. W. 679, holding that a statute providing that the wife should not be endowed of land which the husband transferred after marriage for the satisfaction of a lien created before marriage, does not apply to dower which is still inchoate.

41 L. R. A. 362, HAGGETT v. HURLEY, 91 Me. 542, 40 Atl. 561.

Contracts between husband and wife.

Approved in Pinkham v. Pinkham, 95 Me. 73, 85 Am. St. Rep. 392, 49 Atl. 48, holding wife cannot release dower right during coverture, under statutes permitting contracts with husband.

Cited in Steward v. Church, 108 Me. 85, 79 Atl. 11, holding that where husband and wife are living on farm which husband is working, fact that title to farm is in wife does not show that he was carrying farm as her agent and does not make her liable as partner for articles purchased by him.

Cited in footnote to Morrison v. Dickey, 69 L.R.A. 87, which holds that a subpartnership may exist between husband and wife in reference to profits of a business in which the husband is a partner.

Distinguished in Peaks v. Hutchinson, 96 Me. 533, 53 Atl. 38, sustaining con-

tract between husband and wife whereby former retains title to stable erected on latter's land.

Disapproved in Hoagland v. Henderson, 119 Iowa, 728, 61 L. R. A. 759, footnote p. 756, 97 Am. St. Rep. 335, 94 N. W. 247, holding that husband and wife have power to enter into contract of copartnership with each other.

Rights of married woman under Married Women's Act.

Cited in Wright v. Holmes, 100 Me. 512, 3 L.R.A.(N.S.) 772, 62 Atl. 507, 4 Ann. Cas. 583, holding that under the Married Women's Act, a married woman may dispose of her personal property so as to deprive the husband of his distributive share after her death.

41 L. R. A. 367, CASTLEMAN v. TEMPLEMAN, 87 Md. 546, 67 Am. St. Rep. 363, 40 Atl. 275.

Rights of foreign receivers.

Approved in Stockley v. Thomas, 89 Md. 666, 43 Atl. 766, denying receivership for insolvent foreign insurance corporation when only asset within state consists of unenforceable assessments; Barley v. Gittings, 15 App. D. C. 439, holding foreign receiver may be permitted to sue or intervene as matter of privilege; Small v. Smith, 14 S. D. 623, 86 Am. St. Rep. 807, 86 N. W. 649, permitting foreign receiver of foreign corporation to sue for assets, no rights of resident creditors intervening.

Cited in Southern Bldg. & L. Asso. v. Price, 88 Md. 164, 42 L. R. A. 208, 41 Atl. 53, holding creditor may proceed by attachment notwithstanding appointment of foreign receiver; Linville v. Hadden, 88 Md. 598, 43 L. R. A. 224, 41 Atl. 1097, holding creditor of foreign corporation may proceed by attachment, excepting as to citizens of state appointing receiver.

Cited in notes (4 L.R.A.(N.S.) 825) on power of receiver to sue out of jurisdiction of appointment; (33 L.R.A.(N.S.) 897) on right of receiver to enforce stockholders' liability outside of state of incorporation; (71 Am. St. Rep. 355) on recovery of assets by foreign receivers; (47 L. ed. U. S. 380) on right of receiver to enforce liability of corporate stockholder outside state of appointment.

Decree against corporation as binding stockholders not parties to the action.

Cited in Collins v. Welch, 141 Mich. 677, 105 N. W. 31, holding that the stockholder is bound by a decree of a court of equity levying an assessment upon the members of mutual insurance company, though he was not a party to the proceedings; Verner v. Simpson, 68 S. C. 460, 47 S. E. 729, holding that a judgment against a corporation binds the stockholders with respect to corporate affairs.

Cited in notes (33 L.R.A.(N.S.) 910) on conclusiveness of order of assessment in domicil of corporation; (97 Am. St. Rep. 468) on effect as against stockholders of judgment against corporation; (103 Am. St. Rep. 328) on foreign judgments against corporations.

41 L. R. A. 371, CARLSON v. ST. LOUIS RIVER DAM & IMPROV. CO. 73 Minn. 128, 72 Am. St. Rep. 610, 75 N. W. 1044.

Navigable logging streams.

Cited in Kamm v. Normand, 50 Or. 12, 11 L.R.A.(N.S.) 292, 126 Am. St. Rep. 698, 91 Pac. 448, holding that a stream in order to be navigable, must be floatable in its natural state at ordinary recurring winter freshets long enough to make it useful for some purpose of trade or agriculture.

Use of streams for floating logs.

Approved in Gravel v. Little Falls Improv. & Nav. Co. 74 Minn. 419, 77 N. W. 217, holding public right of navigation does not permit erections necessarily producing "log jams" and overflow of lands; Charnley v. Shawano Water Power & River Improv. Co. 109 Wis. 569, 53 L. R. A. 902, 85 N. W. 507, holding lawful, unauthorized dam erected by riparian owner without injuring stream used for floating logs, and referring particularly to annotation in 41 L. R. A. 371; Smith v. Atkins, 110 Ky. 123, 53 L. R. A. 791, footnote p. 790, 96 Am. St. Rep. 424, 60 S. W. 930, denying right of one navigating stream to fasten booms to trees on bank.

Cited in footnotes to Brewster v. J. & J. Rogers Co. 58 L. R. A. 495, which denies right to discharge water stored along stream to aid drive of logs, so as to overflow banks to injury of riparian owners; Nester v. Diamond Match Co. 52 L. R. A. 950, which holds one running logs down streams estopped to maintain action for obstruction by one whose booms and dams used.

Cited in notes (41 L.R.A. 494, 497) on liability for injuries to riparian owner by running logs in stream; (42 L.R.A. 318) on what waters are navigable; (22 L.R.A.(N.S.) 549) on rights and duties between those maintaining dam and those using floatable stream; (28 L.R.A.(N.S.) 147) on relative rights and duties of users of stream for logs and for navigation; (31 L.R.A.(N.S.) 1133) on delaying run of logs as proximate cause of loss from high water, wind, or other similar cause; (35 L.R.A.(N.S.) 827) on liability for injuries to riparian owners by running logs; (35 L.R.A.(N.S.) 834) on right to impound water for floating logs; (38 L.R.A.(N.S.) 114) on relative rights and duties of those maintaining bridges across streams and those floating logs therein.

Liability for damming stream.

Cited in note (59 L.R.A. 827, 829) on liability for damming back water of stream.

Injunction against trespass on realty.

Cited in note (99 Am. St. Rep. 738) on injunction against trespass on realty.

41 L. R. A. 379, DEVLIN v. DALTON, 171 Mass. 338, 50 N. E. 632.

When certiorari lies.

Approved in Sears v. Worcester, 180 Mass. 289, 62 N. E. 269, denying certiorari to quash levy of assessment exceeding adjudged betterment by half a cent.

Cited in Cook v. Civil Service Commission, 160 Cal. 596, 117 Pac. 663, holding that action of civil service commissions is not reviewable by certiorari.

Cited in footnote to People *ex rel.* Smith v. Hoffman, 54 L. R. A. 597, which holds military examining board a judicial body whose determination is reviewable by certiorari.

41 L. R. A. 381, LILLIBRIDGE v. McCANN, 117 Mich. 84, 72 Am. St. Rep. 553, 75 N. W. 288.

Inferences to be drawn by jurors.

Cited in Chicago, M. & St. P. R. Co. v. Moore, 23 L.R.A.(N.S.) 966, 92 C. C. A. 357, 166 Fed. 667, holding that jurors may apply matters of common knowledge or their own observation and experience, to the evidence or the facts in hand; O'Donnell v. Lange, 162 Mich. 656, 127 N. W. 691, Ann. Cas. 1912 A, 847, holding that manner of accident and circumstances surrounding it may warrant inference or presumption of negligence.

Cited in note (37 L.R.A.(N.S.) 793, 804) on right of jurors to act on own knowledge.

Liability for unforeseen consequences.

Cited in footnotes to Texas & P. R. Co. v. Carlin, 60 L. R. A. 462, which sustains liability for negligence likely to produce injury, though particular injury not anticipated; Hoffman v. King, 46 L. R. A. 672, which denies liability of one negligently starting fire, for damage to lands of remote proprietors to which fire spreads; Osborne v. Van Dyke, 54 L. R. A. 367, which holds one unlawfully beating another liable for injury by unintentional blow on bystander.

Proximate cause of fire.

Cited in footnote to Owen v. Cook, 47 L. R. A. 646, which holds one starting back fire to protect own property not liable for loss which would have resulted from original fire.

Cited in note (20 L.R.A.(N.S.) 92) on wind as proximate cause of fire.

Liability for spread of fire to adjoining property.

Cited in note (123 Am. St. Rep. 577) on liability of land owner for spread of fire to adjoining property.

41 L. R. A. 385, ZACKERY v. MOBILE & O. R. CO. 75 Miss. 746, 65 Am. St. Rep. 617, 23 So. 434.

Carrier's duty to blind passenger.

Cited in Wilson v. Detroit United R. Co. 167 Mich. 118, 132 N. W. 762, holding that whether street railway company is bound to accept as passenger blind man, unaccompanied, depends on his capacity to travel alone and to take care of himself; Illinois C. R. Co. v. Smith, 85 Miss. 356, 70 L.R.A. 643, 107 Am. St. Rep. 293, 37 So. 643, holding that a railroad company was liable for arbitrarily refusing to sell a ticket to a blind person, where it knew that he was able to travel alone.

Cited in footnotes to Southern R. Co. v. Hobbs, 63 L. R. A. 68, which holds carrier liable to partially blind passenger carried beyond her station without having reasonable opportunity to alight, despite conductor's promise to assist her; Illinois Central R. Co. v. Smith, 70 L.R.A. 642, which holds carrier not liable for failure to receive as passenger unattended blind person in absence of notice of his competency to travel unattended.

Cited in notes (107 Am. St. Rep. 301; 26 L.R.A.(N.S.) 173) on duty to accept blind person as passenger.

41 L. R. A. 385, HENNESSY v. BAVARIAN BREWING CO. 145 Mo. 104, 68 Am. St. Rep. 554, 46 S. W. 966.

Statutory rights of action for personal injury.

Cited in Cole v. Mayne, 122 Fed. 840, holding that under statute giving right of action to widow and lineal heirs, for death of minor, children cannot maintain suit for death of father, if latter leaves widow; Boyd v. Missouri P. R. Co. 236 Mo. 85, 139 S. W. 561, holding that statute (sec. 5425, R. S. 1909), providing for cause of action for wrongful death is not only penal statute but compensatory or remedial as well; Strode v. St. Louis Transit Co. 197 Mo. 626, 95 S. W. 851, 7 Ann. Cas. 1084, holding that the children may maintain an action for the death of the father, under either law providing for damages for death by wrongful act, or by the act of a servant of a railway company, even though the father prior to his death executed a release of damages for the injury; Matlock v. Williamsville, G. & St. L. R. Co. 198 Mo. 499, 115 Am. St. Rep. 481, 95 S. W.

849, holding that the right of the father to recover for the death of his son under statute providing for recovery of damages because of death through act of servants of railroad company, is not affected, by the fact that the father had emancipated his son; Millar v. St. Louis Transit Co. 216 Mo. 105, 115 S. W. 521, on the right of the widow to sue for death of husband by wrongful act of another; O'Hara v. Laclede Gas Light Co. 131 Mo. App. 447, 110 S. W. 642, on the measure of damages for the death of a child, in action by mother under the statute for death by wrongful act: Bates v. Sylvester, 205 Mo. 501, 11 L.R.A.(N.S.) 1160, 120 Am. St. Rep. 761, 104 S. W. 73, 12 Ann. Cas. 457, holding that the right of the widow to sue for the death of the husband by wrongful act, does not survive the death of the wrongdoer, and the action cannot be maintained against his administrator; Bellamy v. Whitsell, 123 Mo. App. 614, 100 S. W. 514, holding that in suing for the death of their child by the wrongful act of another, the parents need not allege that he was their servant, but their right of action is the same as he would have had for injuries if he had lived.

Cited in footnotes to McGarr v. National & P. Worsted Mills, 60 L. R. A. 122, which holds mother caring for family entitled to sue for loss from negligent injuries to minor child; Brink v. Wabash R. Co. 53 L. R. A. 811, which denies right to recover for nonperformance of contract to support parent, through negligent killing of son.

Cited in note (70 Am. St. Rep. 673, 677, 682) on action for death of human being.

Distinguished in Sharp v. National Biscuit Co. 179 Mo. 558, 78 S. W. 787, holding measure of damages for killing of minor child is compensation for net loss of services, comfort, society, and love of child.

— Parties to action.

Cited in Clark v. Kansas City, St. L. & C. R. Co. 219 Mo. 539, 118 S. W. 40, holding that under the statute providing for the recovery of damages for the death of an unmarried minor, by the wrongful act of a railroad company, both parents must bring the action if both are living, though they have been divorced: Franklin v. Butcher, 144 Mo. App. 667, 129 S. W. 428, holding that after the death of the father, the mother is entitled to the wages of a minor son, so that she may maintain an action for loss of services if he is injured through the negligence of another.

Distinguished in Eickhoff v. Sedalia, W. & S. W. R. Co. 106 Mo. App. 545, 80 S. W. 966, holding that a step father was entitled to sue for the loss of the child's services, though the mother furnished him with clothes and he collected his own wages.

Right to recover at common law for death by wrongful act.

Cited in Gilkeson v. Missouri P. R. Co. 222 Mo. 185, 24 L.R.A.(N.S.) 850, 121 S. W. 138, 17 Ann. Cas. 763, holding that administrator had no right to sue at common law, for the death of his intestate by wrongful act of another: Casey v. St. Louis Transit Co. 116 Mo. App. 241, 91 S. W. 419, holding that a statute providing for a forfeiture of $5,000 in case of death by wrongful act, was in derogation of the common law, and should be strictly construed.

Effect of appellate court decisions.

Approved in Bealey v. Smith, 158 Mo. 522, 81 Am. St. Rep. 317, 59 S. W. 984, holding circuit court bound by decision of court of appeals unless facts essentially differ on retrial; Paddock v. Missouri P. R. Co. 155 Mo. 534, 56 S. W. 453; State *ex rel.* Funkhouser v. Spencer, 166 Mo. 275, 65 S. W. 981; Brummell v. Harris, 162 Mo. 403, 63 S. W. 497,—holding circuit court bound by de-

cision of court of appeals on retrial of same cause; Paddock v. Missouri P. R. Co. 155 Mo. 534, 56 S. W. 453, holding supreme court not bound by decision of Kansas City court of appeals upon appeal after retrial.

Cited in Sedalia v. Donohue, 190 Mo. 415, 89 S. W. 386, 4 Ann. Cas. 89, holding that the decision of the Kansas City Court of Appeals is not binding upon the supreme court; Sykes v. Citizens' Nat. Bank, 78 Kan. 694, 19 L.R.A. (N.S.) 674, 98 Pac. 206, holding that the decisions of the Kansas City Court of Appeals is not binding upon the courts of Kansas, as fixing the law of the state of Missouri.

Cited in footnote to Illinois C. R. Co. v. Benz, 58 L. R. A. 691, which holds decision on reversal and remanding of action for personal injuries removed to Federal court, not law of case if action dismissed and new one begun.

Amount in dispute as determining jurisdiction.

Approved in Kane v. Kane, 146 Mo. 607, 48 S. W. 446, holding supreme court without appellate jurisdiction where judgment for defendant on petition not demanding specific amount.

Cited in Ferguson v. Comfort, 159 Mo. App. 32, 139 S. W. 218, holding that court will determine jurisdiction of appeal by reference to amount claimed in petition, where judgment in replevin is for defendant and plaintiff appeals therefrom; Cherry v. Cherry, 150 Mo. App. 418, 130 S. W. 494, holding that to determine appellate jurisdiction of case, court will not be controlled by mere colorable amount in controversy but may look to whole record to ascertain amount; Vanderberg v. Kansas City, M. Gas. Co. 199 Mo. 460, 97 S. W. 908, on consideration of the amount in dispute for the purpose of determining the jurisdiction between the supreme court and the appellate courts.

41 L. R. A. 389, GAGNON v. DANA, 69 N. H. 264, 76 Am. St. Rep. 170, 39 Atl. 982.

When relation of master and servant exists.

Cited in Stevens v. United Gas & Electric Co. 73 N. H. 175, 70 L.R.A. 127, 60 Atl. 848 (dissenting opinion), on the existence of the relationship of master and servant; Clark v. St. Louis & S. R. Co. 234 Mo. 425, 137 S. W. 583, to the point that contractor's servant should not be permitted to maintain action against owner of premises merely because he is such servant, unless contractor could have maintained action if he had been injured.

Cited in footnotes to Stewart v. California Improv. Co. 52 L. R. A. 205, which holds owner of steam roller liable for engineer's neglect to warn travelers, though roller hired by city; Murray v. Dwight, 48 L. R. A. 673, which holds servant of truckman unloading goods at warehouse not fellow servant of warehouseman's servants.

What constitutes waiver of exception.

Approved in Burnham v. Concord R. Co. 69 N. H. 282, 45 Atl. 563, holding exception to refusal of nonsuit for deficiency of evidence waived by proceeding with trial, if either party subsequently supplies deficiency.

Liability of lender for injuries due to unsafe condition of chattel.

Cited in note (12 L.R.A.(N.S.) 632) on responsibility of lender for injuries due to unsafe condition of chattel.

41 L. R. A. 391, BERG v. PARSONS, 156 N. Y. 109, 66 Am. St. Rep. 542, 50 N. E. 957.

Liability for independent contractor's negligence.

Followed in Schulhofer v. Mulhare, 50 Misc. 658, 99 N. Y. Supp. 489, hold-

ing that landowner was not liable for injuries to adjoining land through the negligence of the independent contractor in making an excavation.

Approved in Hauser v. Metropolitan Street R. Co. 27 Misc. 539, 58 N. Y. Supp. 286, holding company not liable for injury to horse falling through street excavation improperly guarded by independent contractor; Burke v. Ireland, 166 N. Y. 314, 59 N. E. 914, Reversing 47 App. Div. 444, 62 N. Y. Supp. 453, holding owner not liable for collapse of building erected under competent supervising architect and contractor; Uppington v. New York, 165 N. Y. 233, 53 L. R. A. 555, footnote p. 551, 59 N. E. 91, denying city's liability for failure to select best possible route or adopt best possible plan for sewer.

Cited in Deyo v. Kingston Consol. R. Co. 94 App. Div. 581, 88 N. Y. Supp. 487, holding railroad company contracting with fireworks manufacturer for exhibition not liable as master for negligence of latter's employee; Duerr v. Consolidated Gas Co. 86 App. Div. 23, 83 N. Y. Supp. 714, holding owner liable for act of independent contractor done under direction of former's engineer; Hoff v. Shockley, 122 Iowa, 726, 64 L. R. A. 541, footnote p. 538, 101 Am. St. Rep. 289, 98 N. W. 573, holding property owner not liable for injuries to traveler by obstructions placed in street, without danger signals, by independent contractor for construction of building; Hesketh v. New York C. & H. R. R. Co. 37 App. Div. 89, 55 N. Y. Supp. 898 (dissenting opinion), majority holding company bound to utmost care in using new signal device erected by construction company; Haselo v. State, 73 Misc. 533, 131 N. Y. Supp. 26, holding that where state could not make improvement without injury to adjoining property, its duty not to injure cannot be escaped by delegating work to independent contractor; Blumquist v. Snare & Tr. Co. 135 App. Div. 710, 119 N. Y. Supp. 728, on the liability of the master for injuries to servant by negligence of an independent contractor; Coolidge v. State, 114 N. Y. Supp. 553, 61 Misc. 41, on the liability for the negligence of the independent contractor; Kelly v. New York, 106 App. Div. 581, 94 N. Y. Supp. 872, holding that city was not liable for negligence of an independent contractor in allowing surface waters to accumulate in the excavation; Frank v. Rome, 125 App. Div. 143, 109 N. Y. Supp. 247, holding that the city was not liable for the negligence of an independent contractor engaged in cleaning the streets, in failing to turn off the hydrant to prevent the water flowing upon the plaintiff's land.

Cited in footnotes to Boomer v. Wilbur, 53 L.R.A. 172, which denies owner's liability for injury by fall of bricks through negligence of independent contractor repairing chimney; Hoff v. Shockley, 64 L.R.A. 538, which holds property owner not liable for injuries to traveler due to obstructions placed by an independent contractor in front of his property without danger signals.

Cited in notes (65 L.R.A. 645) on general rules as to absence of liability of employer for torts of independent contractor; (65 L.R.A. 745, 748, 752) on liability for acts of independent contractor where injury is direct result of work contracted for; (66 L.R.A. 943, 951) on liability for injuries occurring in performance of work by independent contractor where employer's own act is a proximate cause; (76 Am. St. Rep. 402, 421) on liability for negligence and torts of independent contractors.

Distinguished in Deming v. Terminal R. Co. 169 N. Y. 12, 88 Am. St. Rep. 521, 61 N. E. 983, Affirming 49 App. Div. 496, 63 N. Y. Supp. 615, holding company liable for independent contractor's failure to properly guard or light embankment in highway; O'Rourke v. Feist, 42 App. Div. 137, 59 N. Y. Supp. 157, Affirming 24 Misc. 762, 53 N. Y. Supp. 1110, holding apartment-house owner liable for damage from rain while independent contractor repairing roof; Duerr v. Con-

solidated Gas Co. 86 App. Div. 21, 83 N. Y. Supp. 714, intimating, without deciding, that owner making artificial accumulation of water is liable for damage from its precipitation upon premises of another in unnatural manner; Mehler v. Fisch, 65 Misc. 550, 120 N. Y. Supp. 807, holding that if the defendant supervised the work, he was liable for the negligence of the independent contractor in doing the work.

Liability for injury by blasting.

Cited in Sullivan v. Dunham, 161 N. Y. 299, 47 L. R. A. 720, 76 Am. St. Rep. 274, 55 N. E. 923, holding owner liable for death of traveler injured on highway by blast upon abutting premises.

Cited in footnote to Smith v. Day, 49 L. R. A. 108, which holds assumption of risk from blasting near by, assumed by one going to sleep on boat at wharf.

Negligence in guarding excavation.

Approved in Dwyer v. McLaughlin, 31 Misc. 512, 64 N. Y. Supp. 380, holding question of negligence in guarding excavation, for jury.

41 L. R. A. 395, SCHENCK v. BARNES, 156 N. Y. 316, 50 N. E. 967.

Rights of creditors in trust property.

Approved in *Re* Baudouine, 96 Fed. 538, holding surplus income of trust subject to creditor's claims when without directions for accumulation.

Cited in Raymond v. Harris, 84 App. Div. 548, 82 N. Y. Supp. 689, holding beneficiary under trust created by herself may make valid mortgage upon interest; Marshall v. United States Trust Co. 42 Misc. 310, 86 N. Y. Supp. 617, upholding creditor's right to follow debtor's life estate in mortgaged property, after trustee's purchase at foreclosure sale with trust fund, net income of which was payable to debtor; Bateman v. Hunt, 46 Misc. 351, 94 N. Y. Supp. 861, holding that a voluntary trust created for the person's own benefit is void and fraudulent as to existing or subsequent creditors; Hackley v. Littell, 150 Mich. 114, 113 N. W. 787, holding that under the statute one may not create a trust, of which he reserves the beneficial interest, so as to put his property beyond the reach of subsequent creditors; Ward v. Marie, 73 N. J. Eq. 523, 68 Atl. 1084, on the creation of spendthrift trusts; Kene v. Hill, 102 App. Div. 371, 92 N. Y. Supp. 805, holding that an answer in an action to enforce the rights of creditors against a voluntary trust, that the beneficial interest was insufficient to support the beneficiary, is frivolous; Newton v. Jay, 107 App. Div. 467, 95 N. Y. Supp. 413, 35 N. Y. Civ. Proc. Rep. 100, holding that the beneficiary's interest in a voluntary trust is assignable absolutely or as security; Newton v. Hunt, 134 App. Div. 330, 119 N. Y. Supp. 3, Affirming 59 Misc. 636, 112 N. Y. Supp. 573, holding that the mortgagee of the children's interest in the trust, secured a lien upon the income payable to the settlor, where the latter placed her property in trust, the income to be paid to herself for life and the principal to be paid to her children.

Cited in footnotes to Scott v. Keane, 42 L. R. A. 359, which holds trust by conveyance and reconveyance for grantor's benefit void as against his creditors; Seymour v. McAvoy, 41 L. R. A. 544, which sustains right of author of trust to make beneficiary's interest unassignable and free from creditors' claims; Murphy v. Delano, 55 L. R. A. 727, which holds income of spendthrift trust not within reach of creditors by void agreement of trustees to pay certain portion of income absolutely to beneficiary; Re Qua v. Graham, 52 L. R. A. 641, which holds annuity in wife's will in lieu of other interest, accepted by husband, not trust beyond reach of creditors; Hutchinson v. Maxwell, 57 L. R. A. 384, which denies power to create equitable life estate free from debts of beneficiary.

Cited in note (12 L.R.A.(N.S.) 371) on right, as against subsequent creditors, to create trust to pay income to settlor for life, and thereafter to heirs or devisees.

Distinguished in Ullman v. Cameron, 92 App. Div. 94, 87 N. Y. Supp. 148, holding testamentary trust giving beneficiary right to principal fund upon contingency named entitles creditor to subject property to payment of debt of beneficiary.

Review by court of appeals.

Approved in Steinway v. von Bernuth, 167 N. Y. 499, 60 N. E. 757, and Coatsworth v. Lehigh Valley R. Co. 156 N. Y. 459, 51 N. E. 301, holding court of appeals cannot review abstract questions.

Cited in Blaschko v. Wurster, 156 N. Y. 446, 51 N. E. 303 (concurring opinion), holding certified questions on appeal should be material to controversy.

Right to make gifts of property.

Cited in Huntington v. Kneeland, 102 App. Div. 285, 92 N. Y. Supp. 944, holding that a person being solvent he could give away all his property, real and personal, to such of his blood relatives as he saw fit.

Indestructibility of a trust.

Cited in Baltes v. Union Trust Co. 180 N. Y. 186, 72 N. E. 1005, on the indestructibility of a trust.

41 L. R. A. 399, GREENLEE v. SOUTHERN R. CO. 122 N. C. 977, 65 Am. St. Rep. 734, 30 S. E. 115.

Master's duty as to safety of appliances.

Approved in Elmore v. Seaboard Air Line R. Co. 132 N. C. 875, 44 S. E. 620, on Second Rehearing, Reversing First Rehearing, 131 N. C. 573, 42 S. E. 989, Affirming Original Opinion, 130 N. C. 506, 41 S. E. 786, and holding that where law requires railroad to use automatic coupler, allowing same to be out of repair for unreasonable time is continuing negligence, and cuts off defense of contributory negligence; Lloyd v. Hanes, 126 N. C. 362, 35 S. E. 611, holding it negligence *per se* for employer not to furnish approved safety appliances in general use; Harden v. North Carolina R. Co. 129 N. C. 355, 55 L. R. A. 785, footnote p. 784, 85 Am. St. Rep. 747, 40 S. E. 184, holding owner of interstate railroad liable for injury to employee from use of old style couplers; Troxler v. Southern R. Co. 124 N. C. 191, 44 L. R. A. 314, footnote p. 313, 70 Am. St. Rep. 580, 32 S. E. 550, holding failure to furnish automatic car coupler for freight cars continuing negligence; Fleming v. Southern R. Co. 131 N. C. 479, 42 S. E. 905, denying that May, 1898, is time fixed as beginning of liability of railroad companies for injuries to employees through failure to equip cars with automatic couplers.

Cited in Hairston v. United States Leather Co. 143 N. C. 515, 55 S. E. 847, 10 Ann. Cas. 698, holding that a failure of a manufacturing establishment to provide automatic couplings for cars used by them upon a short line railway maintained in connection with the plant, was negligence; Gerringer v. North Carolina R. Co. 146 N. C. 36, 59 S. E. 152, on the same point; Liles v. Fosburg Lumber Co. 142 N. C. 42, 54 S. E. 795, on the failure to provide proper appliances as the proximate cause of injury.

Cited in footnote to Chicago, M. & St. P. R. Co. v. Voelker, 70 L.R.A. 264, which holds it actionable negligence for railroad company to permit use of car whose coupler is so defective that it cannot be prepared for use without going between drawbars of cars using both hands and consuming extra amount of time.

Cited in notes (6 L.R.A.(N.S.) 499) on standard of master's duty as to selection between different styles or makes of appliances; (16 L.R.A.(N.S.) 133) on furnishing servant article in general use as measure of master's duty; (98 Am. St. Rep. 294) on liability to servant for injuries due to defective machinery and appliances.

Distinguished in Hicks v. Naomi Falls Mfg. Co. 138 N. C. 335, 50 S. E. 703, holding that the defense of contributory negligence is available in an action for injuries to a servant because of improper appliances furnished by the master.

What constitutes assumption of risk.

Cited in Coley v. North Carolina R. Co. 129 N. C. 415, 57 L. R. A. 843, 40 S. E. 195, holding use of machinery obviously defective no bar to recovery unless amounting to reckless indifference; Davis Coal Co. v. Polland, 158 Ind. 618, 92 Am. St. Rep. 319, 62 N. E. 492, holding employee continuing work does not assume risks arising from master's omission to furnish statutory appliances; Walker v. Carolina C. R. Co. 135 N. C. 741, 47 S. E. 675, and Orr v. Southern Bell Teleph. & Teleg. Co. 132 N. C. 693, 44 S. E. 401, holding that master's failure to furnish reasonably safe appliances is continuing negligence, and servant injured in attempting to perform work with tool furnished does not assume risk; Ausley v. American Tobacco Co. 130 N. C. 40, 40 S. E. 819 (dissenting opinion), majority holding risk assumed by undertaking work with knowledge of defective machinery; Coley v. North Carolina R. Co. 128 N. C. 537, 57 L. R. A. 824, 39 S. E. 43, holding doctrine of "assumption of risk" of defective appliance inapplicable to engineer by statute; Britt v. Carolina & N. R. Co. 144 N. C. 256, 56 S. E. 910, holding that if the servant notified the master of the defective condition of the chain and received a promise to repair the same, he does not assume the risk of injury, but a recovery for injury may be defeated by his contributory negligence in using the defective appliance; Hall v. West & S. Mill Co. 39 Wash. 451, 81 Pac. 915, 4 Ann. Cas. 587, holding that a factory hand working where the master has failed to provide guards for dangerous machinery, does not assume the risk of injury because of such unguarded condition, and will not be guilty of contributory negligence; Pressly v. Dover Yarn Mills, 138 N. C. 423, 51 S. E. 69, on the assumption of risk.

Cited in note (6 L.R.A.(N.S.) 985) on assumption of risk of master's breach of statutory duty.

— Contributory negligence.

Cited in Rolin v. R. J. Reynolds Tobacco Co. 141 N. C. 314, 7 L.R.A.(N.S.) 342, 53 S. E. 891, 8 Ann. Cas. 638, holding that the employment of a child under twelve years of age in a tobacco factory in violation of the child labor law, is prima facie evidence of negligence, and a child so young is presumed incapable of contributory negligence.

Continuing negligence.

Cited in Ruffin v. Atlantic & N. C. R. Co. 142 N. C. 126, 55 S. E. 86, sustaining a charge that it was continuing negligence for the railroad company to fail to provide lights on the wharf during the time of unloading the passengers, where it was also stated that there could be no recovery unless such failure was the proximate cause.

Failure to provide latest improved appliances as negligence.

Cited in Stewart v. Raleigh & A. Air Line R. Co. 141 N. C. 275, 53 S. E. 877, holding that it was proper to refuse to charge that it was not negligence to fail to use the "block system" of railway signals, where such was the latest improved system to prevent collisions; Horton v. Forest City Teleph. Co. 141

N. C. 468, 54 S. E. 299 (dissenting opinion); Stewart v. Raleigh & A. Air Line R. Co. 137 N. C. 694, 50 S. E. 312,—on the failure to use the latest improved appliances as negligence; Phillips v. Salem Iron Works, 146 N. C. 217, 59 S. E. 660, holding that plaintiff was entitled to an instruction that if the defendant failed to use an improved and a safer method, it was negligent; Bottoms v. Seaboard Air Line R. Co. 136 N. C. 473, 49 S. E. 348, holding that it is not the duty of the railroad company to equip its engines with the latest improved spark arresters but only with those approved appliances as are in general use.

Distinguished in Dermid v. Southern R. Co. 148 N. C. 193, 61 S. E. 657, holding that where the failure to provide safety couplings was not the proximate cause of the death, the principle as to the failure to use approved appliances, was not applicable.

41 L. R. A. 403, MOBILE & O. R. CO. v. POSTAL TELEG. CABLE CO. 101 Tenn. 62, 46 S. W. 571.

Exercise of right of eminent domain.

Approved in Ryan v. Louisville & N. Terminal Co. 102 Tenn. 119, 45 L. R. A. 307, 50 S. W. 744, holding company chartered to facilitate public convenience, etc., charged with public use authorizing exercise of right of eminent domain; Postal Teleg. Cable Co. v. Chicago, I. & L. R. Co. 30 Ind. App. 660, 66 N. E. 919, holding telegraph company authorized to exercise power of eminent domain may acquire right of way along railroad right of way, if use shown not inconsistent with that of railroad.

Cited in footnotes to Ft. Worth & R. G. R. Co. v. Southwestern Teleg. & Teleph. Co. 60 L. R. A. 145, which sustains right to condemn telegraph line over railroad right of way; Diamond Jo Line Steamers v. Davenport, 54 L. R. A. 859, which authorizes condemnation for public wharf of land used by carrier as landing place; Denver Power & Irrig. Co. v. Colorado & S. R. Co. 60 L. R. A. 383, which denies power of reservoir company to condemn land devoted to purpose of railroad unless public necessity requires; Cleveland, C. C. & St. L. R. Co. v. Ohio Postal Teleg. Co. 62 L.R.A. 941, which holds determination that practical uses of railroad right of way will not be interfered with by appropriation of part thereof by magnetic telegraph company prerequisite to such appropriation; Western U. Teleg. Co. v. Pennsylvania Co. 68 L.R.A. 968, which denies right of either party to terminate without other's consent contract for maintenance on railroad right of way of telegraph line at joint expense and for joint use.

Distinguished in Memphis State Line R. Co. v. Forest Hill Cemetery Co. 116 Tenn. 415, 94 S. W. 69, holding that a railroad corporation cannot under the statute condemn a right of way through a cemetery.

Damages on condemnation of telegraph right of way.

Cited in Mobile & O. R. Co. v. Postal Teleg. Cable Co. 76 Miss. 746, 45 L. R. A. 226, 26 So. 370, holding diminution by use is measure of damages on condemnation of right of way for telegraph line; Mobile & O. R. Co. v. Postal Teleg. Cable Co. 120 Ala. 36, 24 So. 408, holding that railroad company entitled to nominal damages only, for the taking of part of its unused right of way for use by a telgraph company; Atlantic Coast Line R. Co. v. Postal Teleg.-Cable Co. 120 Ga. 281, 48 S. E. 15, 1 Ann. Cas. 734, holding that the measure of damages where telegraph company takes part of right of way of railroad company, is the value of the land actually taken, and the extent to which the railroad right of way is diminished by the telegraph line; St. Louis, I. M. & S. R. Co. v. Cape Girardeau Bell Teleph. Co. 134 Mo. App. 412, 114 S. W. 586, holding

that the placing of a telephone line upon the right of way of a railroad company does not impose an additional servitude upon the land.

Cited in note (26 L.R.A.(N.S.) 192, 194) on measure of damages for right of way for telegraph or telephone line.

Distinguished in Cleveland, C. C. & St. L. R. Co. v. Ohio Postal Teleg. Cable Co. 68 Ohio St. 306, 62 L. R. A. 946, footnote p. 941, 67 N. E. 890, holding measure of damage for taking part of railroad right of way for telegraph is decrease in value in use of right of way for railroad purposes.

Legislative journals as affecting validity of statutes.

Cited in Home Teleg. Co. v. Nashville, 118 Tenn. 7, 101 S. W. 770, 11 Ann. Cas. 824, holding that the failure of the legislative journal to show that the bill was signed in open session by the speakers of their respective houses, does not affect the validity of the statute, which bears the signatures of both speakers, and of the governor.

41 L. R. A. 407, STATE *ex rel.* RICHARDS v. ARMSTRONG, 17 Utah, 166, 53 Pac. 981.

41 L. R. A. 410, ANDERSON v. INLAND TELEPH. & TELEG. CO. 19 Wash. 575, 53 Pac. 657.

Liability for injury from electric wires.

Approved in Jackson & Suburban Street R. Co. v. Simmons, 107 Tenn. 405, 64 S. W. 705, holding that telephone lineman must exercise active diligence to discover defective insulation; Wagner v. Portland, 40 Or. 404, 67 Pac. 300, holding omission to adopt suitable rules for removal of cut electric wires, with view to keeping place to work safe, not in itself negligence.

Cited in Shore v. Spokane & I. Empire R. Co. 57 Wash. 218, 106 Pac. 753, holding that one who was engaged in putting up a trolley wire, assumed the risk of injuries from the wire slipping, and which he knew was likely to happen at any time.

Cited in footnotes to Mitchell v. Raleigh Electric Co. 55 L. R. A. 398, which sustains telephone company employee's right to presume that electric light wires properly insulated; Boyd v. Portland General Electric Co. 52 L. R. A. 509, which holds want of sufficient assistance to promptly replace wires broken by severe storm not excuse, as matter of law, for delay.

Distinguished in Barto v. Iowa Teleph. Co. 126 Iowa, 245, 106 Am. St. Rep. 347, 101 N. W. 876, holding that where the lineman was not supplied with tools for testing wires, he was not chargeable with knowledge of the condition so as to prevent a recovery for injuries received because of touching a wire which had become highly charged; Drown v. New England Teleph. & Teleg. Co. 80 Vt. 15, 66 Atl. 801, holding that a telephone lineman did not assume risk of injury by close proximity to electric light wires, unless the danger was so obvious that he would be taken to have known of the danger.

Safety of place and tools, and assumption of risk.

Cited in Waterman v. Skokomish Timber Co. 65 Wash. 239, 118 Pac. 36, holding that boatman assumes risks, where it appears that he was skilled in navigation of river and knew capacity of boat better than any one else, and that it was leaky, and made no complaint; Smith v. Hecla Min. Co. 38 Wash. 460, 80 Pac. 779, holding that a "mucker" in a mine could not recover for injuries received by falling stones and ore, where it was part of his duty to remove such loose material and the injury resulted from his failure to protect himself against the falling stones; Tham v. Stebb Shipping Co. 39 Wash. 273, 81 Pac.

711, holding that the master was not liable for injuries to servant, where the dangers were incident to the employment and open and obvious to both the servant and the master; Lee v. Northern P. R. Co. 39 Wash. 393, 81 Pac. 834, holding that where the plaintiff protested against the doing of an act because he thought that it was a dangerous one, but upon being assured that it was safe, went ahead and did it, he could not recover for injuries received, where the danger was obvious; Miller v. Moran Bros. Co. 39 Wash. 636, 1 L.R.A.(N.S.) 287, 109 Am. St. Rep. 917, 81 Pac. 1089, holding that where the servant has equal facilities with the master to ascertain the dangers of the place furnished him to work in, and knows the condition of the surroundings, the master is not liable for injuries sustained by working therein; Bundy v. Union Iron Works, 46 Wash. 236, 89 Pac. 545, holding that servant was guilty of contributory negligence so as to preclude recovery where he chose the most dangerous way of performing a duty, which if done in the other way would not have been dangerous; Withiam v. Tenino Stone Quarries, 48 Wash. 128, 92 Pac. 900, holding that if the danger is not so apparent and imminent that a man of ordinary prudence and intelligence would have refused to obey the master's command, the servant who is injured in obeying the command is not negligent; Woelflen v. Lewiston-Clarkston Co. 49 Wash. 413, 95 Pac. 493, holding that a servant could not recover for injuries received because of the dangerous condition of the working place, where it was the duty of the servant to ascertain the condition of the place, or where such condition was known to him.

Distinguished in Johnson v. Tacoma Mill Co. 22 Wash. 92, 60 Pac. 53, holding carpenter making repairs in mill entitled to recover for injury from stepping into barrel of hot water having top level with ground; Morton v. Moran Bros. Co. 30 Wash. 368, 70 Pac. 968, holding master liable for injury to land laborer stepping into hole in lower deck of vessel while descending ladder to make repairs, where foreman knew of danger, but failed to give warning; Goldthorpe v. Clark-Nickerson Lumber Co. 31 Wash. 473, 71 Pac. 1091, holding employee using defective appliance under orders from vice principal does not assume risk, where danger not apparent; McDannald v. Washington & C. River R. Co. 31 Wash. 590, 72 Pac. 481, holding conductor thrown against cattle guard in dangerous proximity to track did not assume risk, where danger not known to him; Doyle v. Great Northern R. Co. 43 Wash. 562, 86 Pac. 861, holding that where the fireman on a train was overcome by gas while passing through a tunnel, he did not assume the risk of injury though he knew that his engine had been recoaled with poorer coal, where the engineer in charge of the train assured him that there was no danger; King v. Griffiths-Sprague Stevedoring Co. 45 Wash. 427, 88 Pac. 759, holding that a longshoresman did not assume the risk of injury while fixing a lower hatch where he knew that the upper hatch might be unsafe, but he had no authority to fix it without orders from his foreman; Hoseth v. Preston Mill Co. 55 Wash. 421, 104 Pac. 612, holding that the master was liable for the negligence of his vice-principal who had charge of the work, whereby the servant was injured; Harris v. Brown's Bay Logging Co. 57 Wash. 11, 106 Pac. 152, holding that the question of the plaintiff's negligence was for the jury, where the evidence showed that he was injured while standing near the railroad track, by being struck by a skid which had been placed dangerously near to a passing train; Gentzkow v. Portland R. Co. 54 Or. 128, 135 Am. St. Rep. 821, 102 Pac. 614, holding that where contributory negligence of the plaintiff is urged as a ground for nonsuit or for judgment in favor of the defendant, it must appear that the plaintiff had knowledge of the danger, or that it was such that ordinarily prudent men would acquire such knowledge.

Reversal of verdict of jury on appeal.

Cited in Woolf v. Washington R. & Nav. Co. 37 Wash. 506, 79 Pac. 997, holding that verdicts which are contrary to the evidence and to the instructions of the court, may be set aside by the supreme court upon appeal.

41 L. R. A. 414, NORFOLK & W. R. CO. v. PINNACLE COAL CO. 44 W. Va. 574, 30 S. E. 196.

Effect of exceeding statutory jurisdiction.

Approved in Hall v. Vernon, 47 W. Va. 301, 49 L. R. A. 467, 81 Am. St. Rep. 791, 34 S. E. 764, holding void, decree of partition of oil and gas owned by co-owners by assignment of gas and oil under sections of surface; Ritchie v. Sayers, 100 Fed. 530, holding void, decree of sale by court having jurisdiction of cause, rendered without requiring statutory bond.

Writ of prohibition.

Approved in Hassinger v. Holt, 47 W. Va. 351, 34 S. E. 728, granting prohibition against judicial interference with ministerial duty of board of education; Board of Education v. Holt, 51 W. Va. 437, 41 S. E. 337, granting prohibition restraining enforcement of injunction against exercise of lawful powers by board of education; Simmons v. Thomasson, 50 W. Va. 660, 41 S. E. 335, granting prohibition preventing enforcement of default judgment rendered without notice or appearance; Yates v. Taylor County Court, 47 W. Va. 383, 35 S. E. 24, granting prohibition restraining enforcement of judgment upon appeal from judgment by justice without jurisdiction; Charleston v. Beller, 45 W. Va. 50, 30 S. E. 152, granting prohibition preventing enforcement of unauthorized judgment for costs.

Cited in Hartigan v. West Virginia University, 49 W. Va. 49, 38 S. E. 698 (dissenting opinion), majority denying writ of prohibition preventing execution of resolution removing professor; St. Marys v. Woods, 67 W. Va. 112, 67 S. E. 176, 21 Ann. Cas. 164, holding that where circuit court has no jurisdiction to act in proceeding to amend city charter, writ of prohibition lies against court; McWhorter v. Dorr, 57 W. Va. 609, 110 Am. St. Rep. 815, 50 S. E. 838, holding that prohibition would not lie to prevent a member of a special tribunal organized under the statute, for the purpose of trying an election contest, from acting; State ex rel. Morley v. Godfrey, 54 W. Va. 60, 46 S. E. 185, on the prevention of the enforcement of an erroneous judgment by writ of prohibition; Grafton v. Holt, 58 W. Va. 188, 52 S. E. 21, 6 Ann. Cas. 403, holding that prohibition will not lie to prevent the enforcement of a temporary injunction, which was granted by a judge who was disqualified because of interest.

Cited in notes (51 L.R.A. 71, 109) on superintending control and supervisory jurisdiction of superior over inferior or subordinate tribunals; (111 Am. St. Rep. 955) on writ of prohibition.

Distinguished in Ward v. Evans, 49 W. Va. 186, 38 S. E. 524, denying prohibition for error of judgment by justice having jurisdiction, though amount too small for appeal; King v. Doolittle, 51 W. Va. 95, 41 S. E. 145, denying prohibition where full remedy supplied by right of appeal.

Jurisdiction of justice of peace.

Cited in First Nat. Bank v. Kittle, 69 W. Va. 173, 37 L.R.A.(N.S.) 703, 71 S. E. 109, Ann. Cas. 1912D, 113, on jurisdiction of justice of peace of action on note against maker and sureties.

Repeal of statutes by implication.

Cited in Grant v. Baltimore & O. R. Co. 66 W. Va. 177, 66 S. E. 709, holding

that later statute, covering whole subject-matter of earlier one, not purporting to amend it, works repeal of earlier act by implication, even though two acts are not repugnant in usual sense of term.

41 L. R. A. 419, STACY v. LABELLE, 99 Wis. 520, 67 Am. St. Rep. 879, 75 N. W. 60.

41 L. R. A. 422, CINCINNATI, H. & D. R. CO. v. BOWLING GREEN, 57 Ohio St. 336, 49 N. E. 121.

Followed without discussion in Railway Co. v. Clyde, 65 Ohio St. 572, 63 N. E. 1132.

Regulation of public service corporations.

Cited in Madison v. Madison Gas & Electric Co. 129 Wis. 267, 8 L.R.A. (N.S.) 529, 116 Am. St. Rep. 944, 108 N. W. 65, 9 Ann. Cas. 819, holding that the courts may determine whether a rate is a reasonable one or not, but the power to fix the rates is a legislative function.

Police power generally.

Cited in Board of Education v. Sawyer, 7 Ohio N. P. N. S. 410, 19 Ohio S. & C. P. Dec. 9, holding statutes providing for the inspection of school houses and regulations for the protection against fire therein were constitutional.

Compelling railroad to light track.

Approved in Cleveland, C. C. & St. L. R. Co. v. St. Bernard, 15 Ohio C. C. 594, sustaining statute authorizing municipality to require lighting of railroad tracks; Cleveland, C. C. & St. L. R. Co. v. St. Bernard, 19 Ohio C. C. 300, holding that statute and ordinance contemplates lighting track without reference to location of lamps.

Cited in Cleveland, C. C. & St. L. R. Co. v. St. Bernard, 15 Ohio C. C. 599, holding light required on track must not be of such power as to obscure head light; Chicago, I. & L. Ry. v. Crawfordsville, 164 Ind. 76, 72 N. E. 1025, sustaining an ordinance requiring the lighting of tracks within the city, on such nights as the moon does not furnish sufficient light; Chicago, I. & L. R. Co. v. Salem, 166 Ind. 77, 76 N. E. 631, holding an ordinance invalid because of indefiniteness which required the railroad to light its tracks with lights, which shall not be required to be otherwise than the same as those maintained by the town, and to give such light and service as the town maintains.

Cited in notes (19 L.R.A.(N.S.) 658) on compelling railroad to light tracks in cities; (36 L.R.A.(N.S.) 1081) on duty of railroad to light space below elevated tracks.

Duties of public service corporations.

Cited in Kerz v. Galena Water Co. 139 Ill. App. 605, holding that a water company is a public service corporation and must serve every one without discrimination; Steinman v. Edison Electric Illuminating Co. 17 Pa. Dist. R. 462, 24 Lanc. L. Rev. 334, holding same as to an electric company furnishing electricity for lighting purposes; Steinman v. Edison Electric Illuminating Co. 26 Lanc. L. Rev. 180, holding that mere fact that charge for electricity to one customer is higher than to another is not necessarily unfair and unjust discrimination.

Cited in note (27 L.R.A.(N.S.) 674) on discrimination in rates of water or light company.

Duties of electric light companies.

Cited in Snell v. Clinton Electric Light, H. & P. Co. 196 Ill. 631, 58 L.R.A.

286, footnote p. 284, 89 Am. St. Rep. 341, 63 N. E. 1082, denying right to require, as condition of furnishing electricity to building wired by third person, payment for transformer furnished free from building wired by company; Steinman v. Edison Electric Illuminating Co. 26 Lanc. L. Rev. 180, holding it duty of electric light company to furnish customers without discrimination.

What constitutes a public use.

Cited in Minnesota Canal & P. Co. v. Pratt, 101 Minn. 214, 11 L.R.A.(N.S.) 105, 112 N. W. 395; Minnesota Canal & Power Co. v. Koochiching Co. 97 Minn. 450, 5 L.R.A.(N.S.) 638, 107 N. W. 405, 7 Ann. Cas. 1182,—holding that the withdrawing of water from a natural stream for the purpose of generating electricity for power purposes, is a public use, if subject to governmental control; Jones v. North Georgia Electric Co. 125 Ga. 628, 6 L.R.A.(N.S.) 122, 54 S. E. 85, 5 Ann. Cas. 526, on what constitutes a public use within the meaning of statutes as to eminent domain.

41 L. R. A. 428, STATE *ex rel.* SWARTS v. MYLOD, 20 R. I. 632, 40 Atl. 753.

Regulation of practice of medicine.

Cited in State v. Taft, 20 R. I. 645, 40 Atl. 758, holding "metaphysical healing" for reward not within statute requiring registration and license of medical practitioner; Nelson v. State Bd. of Health, 108 Ky. 781, 50 L. R. A. 387, 57 S. W. 501, and Hayden v. State, 81 Miss. 299, 95 Am. St. Rep. 471, 33 So. 653, holding osteopathy not within statute requiring certificate for practising medicine; State v. Beck, 21 R. I. 291, 45 L. R. A. 271, 43 Atl. 366, holding physicians and surgeons exempt from statutory restrictions upon practice of dentistry; Kansas City v. Baird, 92 Mo. App. 210, holding ordinance imposing penalty upon "every physician" treating certain diseases, and failing to report same, not applicable to "Christian Scientist;" State v. Smith, 233 Mo. 262, 33 L.R.A.(N.S.) 185, 135 S. W. 465, holding that removing cause of disease by adjustment of spinal column under system termed "chiropractic" is within statute requiring those who wish to treat sick to secure license; People v. Allcutt, 117 App. Div. 552, 102 N. Y. Supp. 678, holding that defendant was practising medicine in violation of statute, where without license he professed to cure without drugs all diseases and took pay for his services; Bennett v. Ware, 4 Ga. App. 302, 61 S. E. 546, holding that a person who professes to heal the sick, by magic, or supernatural powers, but without the use of medicine, are not physicians within the meaning of the act regulating the practice of medicine; State v. Edmunds, 127 Iowa, 338, 101 N. W. 431, holding that one professing to cure diseases by dieting and exercise is within the meaning of the statute regulating the practice of medicine; State v. Heffernan, 28 R. I. 27, 65 Atl. 284, holding that one who practised dermatology and physical education in the cure of diseases, and the cure of diseases by rubbing the affected parts, and the administration of a certain patent nerve food, was practising medicine within the meaning of the statutes.

Cited in footnotes to Parks v. State, 59 L. R. A. 190, which sustains requirement that magnetic healer procure license; State v. Liffring, 46 L. R. A 334, which denies necessity of certificate from medical board for practice of osteopathy; State v. Biggs, 64 L. R. A. 140, which denies right to require license for treatment of diseases by baths, physical culture, manipulation of muscles, bones, spine, and solar plexus, and advice as to diet; Re First Church of Christ, Scientist, 63 L.R.A. 411, which upholds right to refuse charter to religious society organized to promulgate method of treating disease by prayer; State v. Yegge, 69 L.R.A. 504, which holds license required of ophthalmologist who

prefixes letters "Dr." on sign and on notices in which he undertakes to correct certain diseased conditions by fitting glasses to eyes: State v. Marble, 70 L.R.A. 835, which upholds statute exacting license fee from one giving Christian Science treatment for fee.

Cited in note (98 Am. St. Rep. 752, 753) on practice of Christian Science.

Distinguished in People v. Gordon, 194 Ill. 569, 88 Am. St. Rep. 165, 62 N. E. 858, holding osteopathy or magnetic healing within statute requiring license for practising medicine; State v. Heath, 125 Iowa, 590, 101 N. W. 429, holding that one professing to heal the sick by magnetic powers, is within the statute regulating the practice of medicine.

Medical attendance as necessary sustenance.

Cited in footnote to Justice v. State, 59 L. R. A. 601, which holds refusal to permit administration of medicine to minor children while sick not deprival of necessary sustenance.

41 L. R. A. 432, SMITH v. STATE, 100 Tenn. 494, 46 S. W. 566.

Rights of colored passengers.

Cited in Morrison v. State, 116 Tenn. 549, 95 S. W. 494, sustaining regulation requiring the separation of white and colored persons on street cars.

Cited in footnote to Bowie v. Birmingham R. & Electric Co. 50 L. R. A. 632, which sustains rule of street railway company requiring colored and white passengers to occupy different ends of car.

Cited in note (45 L. ed. U. S. 245) on separate coach acts.

Distinguished in Hart v. State, 100 Md. 614, 60 Atl. 457, holding that a statute providing for the use of separate coaches for white and colored passengers, and providing for punishment in case a person refused to occupy the proper coaches, was a valid regulation if applied to intra-state commerce alone.

Police power.

Approved in Harbison v. Knoxville Iron Co. 103 Tenn. 441, 56 L. R. A. 320, 76 Am. St. Rep. 682, 53 S. W. 955, sustaining statute requiring payment in money of all merchandise or other orders issued for wages; Leeper v. State, 103 Tenn. 532, 48 L. R. A. 174, 53 S. W. 962, sustaining statute enforcing use of uniform text books in public schools.

Validity of statutes providing for the segregation of races.

Cited in Berea College v. Com. 123 Ky. 219, 124 Am. St. Rep. 344, 94 S. W. 623, 13 Ann. Cas. 337, sustaining statute providing for the separation of white and colored persons in schools.

41 L. R. A. 436, SOUTHERN EXP. CO. v. COM. 92 Va. 59, 22 S. E. 809.

Affirmed in 168 U. S. 705, 42 L. ed. 1212, 18 Sup. Ct. Rep. 947.

Cruel or unusual punishments.

Cited in State v. Laredo Ice Co. 96 Tex. 467, 73 S. W. 951, refusing to hold fines imposed by statute for violation of anti-trust law within constitutional prohibition against "excessive" fines; State v. Kight, 106 Minn. 372, 119 N. W. 56, holding that a statute providing a minimum fine for a misdemeanor is not invalid because it fails to provide a maximum, where there is a general statute which provides a maximum fine for misdemeanors; State v. Woodward, 68 W. Va. 68, 30 L.R.A.(N.S.) 1007, 69 S. E. 385, holding that legislature has power to create and define crimes and fix their punishment, so only that such punishment is not cruel or unusual or disproportionate to offense; Re O'Shea, 11 Cal. App. 576, 105 Pac. 776, holding that statute making pool-selling punishable by

imprisonment is not in conflict with constitutional provision against cruel or ususual punishments; State v. Ross, 55 Or. 474, 42 L.R.A.(N.S.) 601, 104 Pac. 596, holding that fine of $576,853.74 for larceny which defendant was unable to pay, although within maximum statute, was cruel and unusual punishment within prohibition of constitution; State v. Griffith, 83 Conn. 4, 74 Atl. 1068, holding that widest latitude is to be given to legislative discretion and judgment in determining amount of fine which is necessary to accomplish object of its imposition; McMahon v. State, 70 Neb. 725, 97 N. W. 1035, holding that a fine of five dollars for each game bird found in the possession of the defendant, is not excessive; State v. Constantino, 76 Vt. 196, 56 Atl. 1101, holding that a fine of $300 for the sale of intoxicating liquors without a license is not excessive.

Cited in notes (35 L. R. A. 563, 564, 577, 579) on cruel and unusual punishments; (45 L.R.A. 137) on effect of excessive sentence; (61 Am. St. Rep. 380) on fines for excessive charges by express companies.

Raising question of constitutionality on appeal.

Approved in Adkins v. Richmond, 98 Va. 92, 47 L. R. A. 584, 81 Am. St. Rep. 702, 34 Atl. 967, holding unconstitutionality of law may be assigned on appeal, though not previously specially pleaded.

Constitutional appropriation of fines.

Cited in State v. Parkins, 63 W. Va. 387, 61 S. E. 337, holding unconstitutional a statute giving fines accruing under the game laws to the game wardens, where the constitution provided that all fines should go to the support of the state public school.

Disapproved in *Ex parte* McMahon, 26 Nev. 246, 66 Pac. 294, holding statute appropriating only portion of fines received under game law to educational purposes not in conflict with constitutional provision setting apart all fines to such use.

Fine defined.

Cited in Com. v. French, 130 Ky. 748, 114 S. W. 255, 17 Ann. Cas. 601, holding that a fine is a pecuniary punishment imposed by a lawful tribunal upon a person convicted of a crime or misdemeanor.

41 L. R. A. 439, UNITED STATES NAT. BANK v. GEER, 53 Neb. 67, 73 N. W. 266.

Effect of a restricted indorsement.

Cited in First Nat. Bank v. Farmers' & M. Bank, 2 Neb. (Unof.) 114, 95 N. W. 1062, holding that an indorsement "for collection" is notice to subsequent holders that the person to whom it was so indorsed was not the owner of the paper.

Parol evidence as to indorsement.

Cited in note (17 L.R.A.(N.S.) 839) on right to show by parol that indorsement unrestricted in form was for collection only.

Title of bank to paper held for collection.

Cited in Antelope County Bank v. Wright, 90 Neb. 622, 133 N. W. 1123, holding that holder of note for collection may maintain action thereon in his own name, if note is duly indorsed in blank by payee named therein.

Cited in notes (7 L.R.A.(N.S.) 700) on title of bank to check on another, credited to depositor; (86 Am. St. Rep. 793) on title of bank to money deposited with or collected by it.

41 L. R. A. 446, KOCHERSPERGER v. DRAKE, 167 Ill. 122, 47 N. E. 321.

Writ of error from United States Supreme Court dismissed in 170 U. S. 303, 42 L. ed. 1046, 18 Sup. Ct. Rep. 942.

Validity of inheritance tax law.

Cited in Walker v. People, 192 Ill. 108, 61 N. E. 489, holding validity of inheritance tax law settled; Dixon v. Ricketts, 26 Utah, 226, 72 Pac. 947, holding inheritance tax, being imposed upon right of succession, and not upon property, is not in conflict with constitutional provision requiring uniformity; Re McKennan, 25 S. D. 381, 33 L.R.A.(N.S.) 615, 126 N. W. 611, holding that succession tax, not being tax on property is not affected by constitutional provision that all taxes shall be uniform upon all real or personal property according to its value in money; Re Magnes, 32 Colo. 533, 77 Pac. 853, holding that the inheritance tax is not within the provision of the constitution regarding uniformity of taxes; Re Touhy, 35 Mont. 437, 90 Pac. 170, holding that the power of the legislature to levy inheritance taxes is not within the constitutional provisions relative to property taxes; Re Macky, 46 Colo. 82, 23 L.R.A.(N.S.) 1212, 102 Pac. 1075, holding that the inheritance tax is an excise and not a tax upon property; Re Benton, 234 Ill. 369, 18 L.R.A.(N.S.) 462, 84 N. E. 1026, 14 Ann. Cas. 107, on the constitutionality of the inheritance tax as applying to gifts causa mortis and gifts inter vivos.

Cited in footnote to Ferry v. Campbell, 50 L.R.A. 92, which holds succcession tax void for want of notice of proceedings to fix amount of tax.

Cited in notes (127 Am. St. Rep. 1045, 1051; 23 Eng. Rul. Cas. 107) on validity of inheritance taxes.

Distinguished in Cook County v. Fairbank, 222 Ill. 587, 78 N. E. 895, holding that a tax upon an estate by the assessment of fees in the probate court, was unconstitutional as being a property tax, and not uniform, and not containing the proper exemptions.

Classification for taxation purposes.

Approved in Billings v. People, 189 Ill. 482, 59 L. R. A. 813, footnote p. 807, 59 N. E. 798, sustaining inheritance tax statute though discriminating between lineal and collateral heirs; Black v. State, 113 Wis. 223, 90 Am. St. Rep. 853, 89 N. W. 522, holding inheritance tax law unconstitutional in discriminating between estates of $10,000 and those of less amount; Billings v. People, 189 Ill. 482, 59 L. R. A. 813, footnote p. 807, 59 N. E. 798, sustaining transfer tax on lineal descendants, to whom life estate given with remainder to lineal descendants, but exempting lineal descendants taking fee.

Cited in Re Fox, 154 Mich. 12, 117 N. W. 558, sustaining an inheritance tax exempting estates to lineal heirs where the amount is under $2,000 but taxing the entire amount if it is over the $2,000; Nunnemacher v. State, 129 Wis. 222, 9 L.R.A.(N.S.) 135, 108 N. W. 627, 9 Ann. Cas. 711; State ex rel. Foot v. Bazille, 97 Minn. 21, 6 L.R.A.(N.S.) 740, 106 N. W. 93, 7 Ann. Cas. 1056,—sustaining statute provided for a graduated inheritance tax; Beals v. State, 139 Wis. 561, 121 N. W. 347 (dissenting opinion), on the same point; Ayres v. Chicago, 239 Ill. 249, 87 N. E. 1073, sustaining a tax upon automobiles carrying two or more passengers.

Cited in footnote to Drew v. Tifft, 47 L. R. A. 525, which requires uniformity and equal application in exemption from inheritance tax.

Cited in notes (60 L.R.A. 340) on constitutional equality in United States in relation to corporate taxation; (6 L.R.A.(N.S.) 734) on classification for purposes of succession tax on basis of amount.

What estates subject to tax.

Approved in Ayers v. Chicago Title & T. Co. 187 Ill. 57, 58 N. E. 318, holding "estates in expectation" subject to inheritance tax; Plummer v. Coler, 178 U. S. 122, 44 L. ed. 1003, 20 Sup. Ct. Rep. 829, sustaining inheritance tax law though property involved consists, wholly or in part, of Federal securities.

Cited in Merrifield v. People, 212 Ill. 404, 72 N. E. 446, holding that where the decedent made deeds of his property three days before he submitted to a surgical operation, from the effects of which he died, there being no consideration for the deeds, they were made in contemplation of death and therefore subject to the inheritance tax.

Right of inheritance.

Approved in Storrs v. St. Luke's Hospital, 180 Ill. 375, 72 Am. St. Rep. 211, 54 N. E. 185, holding that right to file bill contesting will does not pass by descent or inheritance; Chicago Title & T. Co. v. McGlew, 90 Ill. App. 63, holding distribution of estate entirely regulated by statute; Sayles v. Christie, 187 Ill. 432, 58 N. E. 480, sustaining special adoption act giving adopted child right to inherit.

Cited in notes (9 L.R.A.(N.S.) 123) on nature of right to take by will or inheritance; (33 L.R.A.(N.S.) 609) on nature of inheritance tax.

— Regulated by statute.

Cited in National Safe Deposit Co. v. Stead, 250 Ill. 596, 95 N. E. 973, Ann. Cas. 1912 B, 430, holding that right to take property, either real or personal, by inheritance or bequest, is purely statutory right, and state may control devolution of property after death of owner; Re Graves, 242 Ill. 216, 89 N. E. 978; Re Mulford, 217 Ill. 246, 1 L.R.A.(N.S.) 345, 108 Am. St. Rep. 249, 75 N. E. 345, 3 Ann. Cas. 986,—holding that the right to devise or bequeath property by will or to take by inheritance exists only as conferred by law: Re McWhirter, 235 Ill. 611, 85 N. E. 918, holding same, and may be changed at the will of the legislature in its discretion; People v. Griffith, 245 Ill. 536, 92 N. E. 313, holding same, and therefore state can impose conditions upon right to inherit: Selden v. Illinois Trust & Sav. Bank, 239 Ill. 76, 130 Am. St. Rep. 180, 87 N. E. 860, holding same as to wills; North v. Graham, 235 Ill. 184, 18 L.R.A.(N.S.) 629, 126 Am. St. Rep. 189, 85 N. E. 267, holding that all gifts and devises within the state are governed by statute and the common law is not in force; Collins v. Metropolitan L. Ins. Co. 232 Ill. 42, 14 L.R.A.(N.S.) 359, 122 Am. St. Rep. 54, 83 N. E. 542, 13 Ann. Cas. 129, on the rules of descent of the common law being superseded by statutes.

Appellate jurisdiction in inheritance tax cases.

Cited in People v. Sholem, 238 Ill. 206, 87 N. E. 390, holding that the appeal from the county court in reference to inheritance tax cases is to the supreme court and not to the appellate court, whether revenue is directly involved or not.

41 L. R. A. 449, SUPREME COUNCIL, G. S. F. v. CONKLIN, 60 N. J. L. 565, 38 Atl. 659.

Proof of age.

Cited in note (111 Am. St. Rep. 587) on proof of age of person.

41 L. R. A. 457, GLOUCESTER & S. TURNP. CO. v. LEPPEE, 62 N. J. L. 92, 40 Atl. 681.

Bicycle law.

Cited in note (47 L. R. A. 303) on bicycle law.

41 L. R. A. 458, CENTRAL TRUST CO. v. RICHMOND, N. I. & B. R. CO. 15 C. C. A. 273, 31 U. S. App. 675, 68 Fed. 90.

Later appeal in 45 C. C. A. 61, 105 Fed. 804.

What constitutes waiver of lien.

Approved in Ohio Falls Car Mfg. Co. v. Central Trust Co. 18 C. C. A. 390, 37 U. S. App. 523, 71 Fed. 921, holding lien waived by agreement to accept new security in form of note secured by mortgage bonds; Reynolds v. Manhattan Trust Co. 27 C. C. A. 629, 55 U. S. App. 96, 83 Fed. 602, holding lien for labor and material not waived by unperformed promise of payment in any form; Farmers' & M. Nat. Bank v. Taylor, 91 Tex. 82, 40 S. W. 876, holding mechanic's lien not waived by taking note and mortgage without intention of waiving.

Cited in Baumhoff v. St. Louis & K. R. Co. 171 Mo. 129, 94 Am. St. Rep. 770, 71 S. W. 156, holding that where the party contracting to construct an electric railroad agreed to accept bonds and stock in payment, he did not waive his lien for the construction except so far as he received payment; Sprague v. Provident Sav. & Tr. Co. 90 C. C. A. 71, 163 Fed. 453, holding that a clause in the contract waiving any lien as against the holders of bonds issued by the other contracting party, is a valid agreement and the waiver cannot be affected by subsequent acts of the parties.

Cited in footnote to Kirchman v. Standard Oil Co. 52 L. R. A. 318, which holds lienor not estopped to enforce lien by mistaken statement of its payment, without knowledge of other's person's intention to buy property.

Priority of liens.

Separate appeal in Richmond & I. Constr. Co. v. Richmond, N. I. & B. R. Co. 34 L. R. A. 627, 15 C. C. A. 291, 31 U. S. App. 704, 68 Fed. 107, holding subcontractor not entitled to principal contractor's statutory lien notwithstanding owner's consent to substitution.

Approved in Central Trust Co. v. Louisville, St. L. & T. R. Co. 70 Fed. 287, holding statute declaring railroad construction liens prior to others "theretofore or thereafter created," makes such liens superior only to those created after passage.

Cited in Re Bennett, 82 C. C. A. 531, 153 Fed. 677, holding that under state statute a contractor has an inchoate right to a lien until the same is perfected, and is entitled to priority over claims of general creditors in bankruptcy proceedings; Millett v. Swift, 138 Ky. 412, 128 S. W. 312, holding that under amendment to statute, filing of statement of intention to furnish material etc. for railroad, is prerequisite to lien.

Effect of principal contract upon subcontractor's lien.

Approved in Jones v. Great Southern Fireproof Hotel Co. 30 C. C. A. 122, 58 U. S. App. 397, 86 Fed. 384, sustaining statute giving subcontractor lien without regard to amount unpaid principal contractor, limited only by owner's contract price.

Cited in Prince v. Neal-Millard Co. 124 Ga. 888, 53 S. E. 761, 4 Ann. Cas. 615, holding that the subcontractor's lien is independent of the contractor's lien so that where the owner completed the contract after the contractor had abandoned the contract, the subcontractor could enforce his lien unless prevented by statute.

Cited in note (14 L.R.A.(N.S.) 919) on right of owner, as against subcontractor filing lien, to credit for payments to others within time during which they might have filed liens.

Distinguished in Herrell v. Donovan, 7 App. D. C. 338, holding subcontractor's

lien rights dependent upon principal contract and accounts between owner and contractor.

Interest on funds under court's control.

Approved in Jourolmon v. Ewing, 29 C. C. A. 44, 56 U. S. App. 149, 85 Fed. 106, holding interest allowable to date of decree upon fund in court, subject to liens of different privities.

Cited in Solomons v. American Bldg. & L. Asso. 116 Fed. 677, holding lien creditor not entitled to interest after receiver appointed, when paid from general fund.

Nature of sub-contractor's lien.

Cited in Fossett v. Rock Island Lumber & Mfg. Co. 76 Kan. 433, 14 L.R.A. (N.S.) 921, 92 Pac. 833, on the nature of the subcontractors lien.

41 L. R. A. 467, BERLINER v. TRAVELERS' INS. CO. 121 Cal. 458, 66 Am. St. Rep. 49, 53 Pac. 918.

What constitutes passenger.

Cited in Travelers' Ins. Co. v. Austin, 116 Ga. 267, 59 L. R. A. 109, 94 Am. St. Rep. 125, 42 N. E. 522, holding paymaster not entitled to double indemnity as "passenger" when traveling in course of duty.

Cited in notes (22 L.R.A. (N.S.) 1257) on exemption in accident policy against accident on railroad trains; (37 L.R.A. (N.S.) 619) on public conveyance within provision for indemnity in case of injury while riding in public conveyance.

Distinguished in Travelers' Ins. Co. v. Austin, 116 Ga. 267, 59 L. R. A. 109, 94 Am. St. Rep. 125, 42 S. E. 522, holding railroad paymaster not "passenger" within accident policy providing for double indemnity in case of accident while traveling in that relation.

Insurance; extra hazard.

Cited in Thorne v. Casualty Co. 106 Me. 282, 76 Atl. 1106, holding that where insured's occupation is stated as manager of beef company and his duties described as "office duties and traveling only" insurer is liable for injuries received while in refrigerator of plant illustrating to workmen how to do work.

Cited in footnote to Wildey Casualty Co. v. Sheppard, 47 L.R.A. 650, which holds barber not engaged in more hazardous occupation while hunting rabbits as incident to daily life.

Construction of policies.

Cited in Pacific Union Club v. Commercial Union Assur. Co. 12 Cal. App. 513, 107 Pac. 728, holding that exceptions in a policy of insurance must be construed most strongly against the insurer and in favor of the insured; McEvoy v. Security F. Ins. Co. 110 Md. 280, 22 L.R.A. (N.S.) 966, 132 Am. St. Rep. 428, 73 Atl. 157, holding that a contract of insurance should be construed most strictly against the party preparing the contract.

41 L. R. A. 470, COLEMAN, B. & W. CO. v. DANNENBERG CO. 103 Ga. 784, 68 Am. St. Rep. 143, 30 S. E. 639.

What constitutes deception.

Cited in Nolan Bros. Shoe Co. v. Nolan, 131 Cal. 277, 53 L. R. A. 386, 82 Am. St. Rep. 346, 63 Pac. 480, sustaining right to use corporate name, though use of same by individual stockholder for two years prior to incorporation may have deceived public.

Cited in notes (85 Am. St. Rep. 87, 109) on deception in use of trademark; (45 L. ed. U. S. 376) on deceptive use of geographical name.

41 L. R. A. 472, WEBER v. STATE, 58 Ohio St. 616, 51 N. E. 116.

Right to suspend sentence.

Cited in Re Collins, 8 Cal. App. 369, 97 Pac. 188, holding that unless otherwise provided by statute, a court has the power to stay execution for the benefit of the defendant; Scio v. Hollis, 7 Ohio N. P. 283, 10 Ohio S. & C. P. Dec. 103, on the power to suspend sentence and admit to bail; State v. Langum, 112 Minn. 125, 127 N. W. 465, considering but not deciding the power of the courts to suspend sentences in criminal cases.

Cited in footnotes to People *ex rel.* Smith v. Allen, 41 L. R. A. 473, which denies power of court to subsequently sentence prisoner whose sentence indefinitely suspended without recognizance; Neal v. State, 42 L. R. A. 190, which holds void, attempt to suspend execution of sentence after pronouncing it; People *ex rel.* Boenert v. Barrett, 63 L. R. A. 82, which denies court's power to indefinitely suspend sentence after conviction.

Cited in notes (33 L.R.A.(N.S.) 119) on power of court to suspend or stay execution of sentence; (19 L.R.A.(N.S.) 1042) on power to commit after expiration of sentence.

Distinguished in Ex parte Clendenning, 22 Okla. 111, 11 Okla. Crim. Rep. 230, 19 L.R.A.(N.S.) 1041, 97 Pac. 650, holding that where the court did not make an order for a stay of execution of the sentence, where the defendant is discharged from custody by an order of the court, it cannot afterward issue commitment upon such conviction after the lapse of time involved in the sentence.

Denied in Miller v. Evans, 115 Iowa, 103, 56 L.R.A. 102, footnote p. 101, 91 Am. St. Rep. 143, 88 N. W. 198, denying defendant's right to relief for failure to execute mittimus under judgment sentencing to imprisonment on failure to pay fine, until lapse of time of imprisonment.

Disapproved in State v. Abbott, 87 S. C. 468, 33 L.R.A.(N.S.) 112, 70 S. E. 6, holding a circuit court has no power to suspend a sentence on conditions after it is pronounced.

— Revocation of suspension.

Cited in Re Lee, 3 Ohio N. P. N. S. 533, 16 Ohio S. & C. P. Dec. 261, holding that the suspension of sentence could be revoked by a police judge after the passing of the term at which such suspension is made; Schaefer v. State, 7 Ohio C. C. N. S. 292, 27 Ohio C. C. 792, holding that judge may revoke suspension of sentence in a criminal case after the term.

41 L. R. A. 473, PEOPLE *ex rel.* SMITH v. ALLEN, 155 Ill. 61, 39 N. E. 568.

Right to suspend sentence.

Cited in People *ex rel.* Boenert v. Barrett, 202 Ill. 296, 63 L. R. A. 85, 95 Am. St. Rep. 230, 67 N. E. 23, holding suspension of sentence for over two years pending motion for new trial, accused being allowed his liberty meanwhile on own recognizance, deprives court of jurisdiction; *Re* Flint, 25 Utah, 341, 95 Am. St. Rep. 853, 71 Pac. 531, holding jurisdiction over convicted criminal lost by court suspending judgment indefinitely, and discharging defendant from custody; Spencer v. State, 125 Tenn. 69, 38 L.R.A.(N.S.) 681, 140 S. W. 597, holding that court has no power to suspend execution of sentence which has been imposed in criminal case as reformatory measure, to secure future good behavior on part of accused; State v. Hockett, 129 Mo. App. 641, 108 S. W. 599, holding that by an indefinite suspension of sentence after a plea of guilty, the court lost jurisdic-

tion to impose a sentence at the next term, though the suspension was under agreement; State v. Hilton, 151 N. C. 694, 65 S. E. 1011, holding that the court has power to suspend sentence but only upon certain conditions, such as that it must be made with the consent of the accused, for a definite term, upon the payment of costs, etc.; Harris v. Nixon, 27 App. D. C. 100, on the power of a police court to suspend a sentence.

Cited in footnotes to Miller v. Evans, 56 L. R. A. 101, which denies defendant's right to relief for failure to execute mittimus under judgment sentencing to imprisonment on failure to pay fine, until lapse of time of imprisonment: Neal v. State, 42 L. R. A. 190, which holds void, attempt to suspend execution of sentence after pronouncing it; People *ex rel.* Boenert v. Barrett, 63 L. R. A. 82, which denies court's power to indefinitely suspend sentence after conviction; Weber v. State, 41 L. R. A. 472, which sustains power of court to suspend sentence and set aside suspension at any time during term.

Cited in note (33 L.R.A.(N.S.) 114) on power of court to suspend or stay execution of sentence.

Distinguished in Re St. Hilaire, 101 Me. 526, 64 Atl. 882, 8 Ann. Cas. 351, holding that the courts had the power to suspend sentences where justice demanded it; People v. Brewer, 142 Ill. App. 611, holding that the taking of a motion for a new trial in a criminal case under advisement does not oust the court of jurisdiction to impose a sentence at the next term.

41 L. R. A. 475, AUGUSTA v. KIMBALL, 91 Me. 605, 40 Atl. 666.

Taxation of grain in elevators.

Cited in footnote to Minneapolis & N. Elevator Co. v. Traill County, 50 L. R. A. 267, which sustains statute taxing grain in elevators, etc., in proprietor's name.

41 L. R. A. 478, BENEDICK v. POTTS, 88 Md. 52, 40 Atl. 1067.

Proof of negligence.

Cited in Baltimore & O. R. Co. v. State, 101 Md. 368, 61 Atl. 189, holding that in order to recover for personal injuries the plaintiff must show that the injuries are the result of negligence of the defendant and what the negligence was: Baltimore & O. R. Co. v. State, 107 Md. 661, 69 Atl. 439, holding that it is not negligence for a railroad company to run an over due freight train across a street crossing at schedule speed.

— Proximate cause.

Cited in Cumberland & W. Electric R. Co. v. Thompson, 102 Md. 196, 62 Atl 243, holding that the negligence of the defendant was not the proximate cause of the injury, where the plaintiff was injured while standing upon the running board of a car, and was prevented from entering the car because of the crowd ahead of him; Strasburger v. Vogel, 103 Md. 89, 63 Atl. 202, holding that the plaintiff's injury was not the result of the defendant's negligence, where the plaintiff was injured by a brick falling from the chimney upon the defendant's house, but the brick was pushed from place by others on the roof without the permission or knowledge of the defendant; Harris v. Consolidation Coal Co. 111 Md. 224, 73 Atl. 805, holding that the failure of the operators of a coal mine to provide a manway for the miners was not the proximate cause of injury to a minor by the breaking of a compressed air pipe.

Distinguished in Belvedere Bldg. Co. v. Bryan, 103 Md. 532, 64 Atl. 44, holding that the defendant's negligence was not the proximate cause where the in-

jury occurred through the negligence of the person in care of the elevator, and not the defective condition of the elevator itself.

Presumption of negligence from fact of accident.

Approved in Lincoln Traction Co. v. Webb, 73 Neb. 147, 119 Am. St. Rep. 879, 102 N. W. 258, on the doctrine of res ipsa loquitur.

Cited in Kohner v. Capital Traction Co. 22 App. D. C. 186, 62 L. R. A. 876, holding that doctrine of *res ipsa loquitur* means that surrounding circumstances of accident contain, without further proof, sufficient evidence of negligence; State use of Arnold v. Green, 95 Md. 230, 52 Atl. 673, holding no recovery for death from unexplained elevator accident; Western Maryland R. Co. v. State, 95 Md. 652, 53 Atl. 969, holding no presumption of negligence from mere unexplained killing of passenger; Griffen v. Manice, 166 N. Y. 196, 52 L. R. A. 926, 82 Am. St. Rep. 630, 59 N. E. 925, sustaining finding of negligence where death resulted from breaking of elevator weights; Fink v. Slade, 66 App. Div. 110, 72 N. Y. Supp. 821, holding master's negligence not established by employee's injury from unexplained falling of platform on which working; South Baltimore Car Works v. Schaefer, 96 Md. 106, 94 Am. St. Rep. 560, 53 Atl. 665, holding inference of negligence does not arise from breaking of machinery in which there was no visible defect, and in manner never before occurring; Paynter v. Bridgeton & M. Traction Co. 67 N. J. L. 625, 52 Atl. 367, holding fall while alighting from street car not of itself sufficient to raise presumption of negligence of railway company; Lynch v. Ninemire Packing Co. 63 Wash 427, — L.R.A.(N.S.) —, 115 Pac. 838, holding that doctrine of res ipsa loquitur does not apply where vat for rendering tallow exploded and injured employee in charge of it after it had been in use for two and a half years, and cause of explosion could not be ascertained; Houston, E. & W. T. R. Co. v. Roach, 52 Tex. Civ. App. 102, 114 S. W. 418, holding that where passenger was injured by unexplained bursting of steam heating apparatus in car it was proper to submit to jury issue of defendant's negligence; Rice v. Chicago, B. & Q. R. Co. 153 Mo. App. 43, 131 S. W. 374, holding that passenger who shows that train collided with top of fallen tree, and that he was injured in consequence thereof, shows facts from which presumption of negligence arises; De Glopper v. Nashville R. & Light Co. 123 Tenn. 643, 33 L.R.A.(N.S.) 916, 134 S. W. 609, holding that mere fact of injury never raises presumption of negligence; Losie v. Delaware & H. Co. 142 App. Div. 217, 126 N. Y. Supp. 871, holding that doctrine of res ipsa loquitur does not exempt plaintiff from burden of proving negligence affirmatively, or circumstances making negligence legitimate, if not irresistible inference; Morris v. Zimmerman, 138 App. Div. 119, 122 N. Y. Supp. 900 (dissenting opinion), on presumption of negligence as arising from injury to guest in hotel from falling of plaster; Illinois Steel Co. v. Zolnowski, 118 Ill. App. 216, holding that the doctrine of res ipsa loquitur does not apply where the accident was beyond doubt the voluntary and intentional act of some person: Hamilton v. Kansas City S. R. Co. 123 Mo. App. 623, 100 S. W. 671, holding that the doctrine of res ipsa loquitur applies more strongly in favor of a passenger or stranger, than to the case of injury to a servant; Topp v. United R. & Electric Co. 99 Md. 639, 59 Atl. 52, 1 Ann. Cas. 912, holding that presumption of negligence arose where a passenger twice notified the conductor of a suburban car that she wished to alight at a certain platform, but the conductor carried her past, and stopped the car at a dangerous place, whereby she was injured; Chicago Union Traction Co. v. Straud, 114 Ill. App. 480; State use of Charles v. United R. & Electric Co. 101 Md. 186, 60 Atl. 249,—holding that the mere fact that a passenger was thrown from the rear platform of the defendant's car while the same was

passing over a switch, does not raise a presumption of negligence; Stewart & Co. v. Harman, 108 Md. 454, 20 L.R.A.(N.S.) 231, 70 Atl. 333, holding that the falling of glass from a broken window is not presumptive evidence of negligence of the owner of the building in not keeping the window in repair; State to the use of Joyce v. Flannigan, 111 Md. 499, 74 Atl. 818, holding that the presence of gas in a manhole in a trench in which the deceased was working, is not presumptive of negligence; Quisenberry v. Metropolitan Street R. Co. 142 Mo. App. 281, 126 S. W. 182, holding that where the plaintiff's evidence shows that the injury was the result of the deceased's negligence, the doctrine of presumptive negligence does not apply; Wilbur v. Rhode Island Co. 27 R. I. 207, 61 Atl. 601, holding same where person was injured while alighting from a street car, by the foot being caught in the running board; Eaton v. New York C. & H. R. R. Co. 125 App. Div. 57, 109 N. Y. Supp. 419, holding that the doctrine of res ipsa loquitur applied where the plaintiff was injured while standing upon a depot platform by something which projected from a passing train; Edwards v. Manufacturer's Bldg. Co. 27 R. I. 252, 2 L.R.A.(N.S.) 750, 114 Am. St. Rep. 37, 61 Atl. 646, 8 Ann. Cas. 974, holding that the fall of a passenger elevator raises the presumption of negligence in the person operating it; Crowley v. Rochester Fireworks Co. 95 App. Div. 16, 88 N. Y. Supp. 483; Sinkovitz v. Peters Land Co. 5 Ga. App. 793, 64 S. E. 93,—on the doctrine of res ipsa loquitur.

Cited in footnote to Springer v. Ford, 52 L. R. A. 930, which sustains presumption of negligence from injury to passenger by unexplained breaking of elevator appliance.

Cited in notes (6 L.R.A.(N.S.) 343, 362) on res ipsa loquitur, as between master and servant; (13 L.R.A.(N.S.) 603, 618) on presumption of negligence from injury to passenger; (113 Am. St. Rep. 1000, 1001) on presumption of negligence from happening of accident causing personal injuries.

Distinguished in Tall v. Baltimore Steam Packet Co. 90 Md. 257, 47 L. R. A. 123, 44 Atl. 1007, holding carrier not liable for unexpected assault on one passenger by another; Fisher v. New York Dock Co. 91 App. Div. 528, 87 N. Y. Supp. 117, holding collision of cars of dock company with stationary car from which plaintiff was unloading freight, sufficient evidence of negligence to go to jury; Bartle v. Houghton County Street R. Co. 132 Mich. 293, 93 N. W. 620, holding that the jury were not to infer negligence from the mere happening of the accident where a passenger was injured while alighting from the car; McGrath v. St. Louis Transit Co. 197 Mo. 104, 94 S. W. 872, holding that where the inferences are equal that the injury resulted from the defendant's negligence, the doctrine of res ipsa loquitur does not apply.

41 L. R. A. 481, CHICAGO, B. & Q. R. CO. v. STATE, 47 Neb. 549, 53 Am. St. Rep. 557, 66 N. W. 624.

Legislative control of public welfare.

Approved on later appeal in 170 U. S. 57, 42 L. ed. 948, 18 Sup. Ct. Rep. 513, holding public safety justifies legislature in controlling municipal agreement for maintenance of railroad crossing viaduct.

Cited in Chicago v. Jackson, 196 Ill. 503, 63 N. E. 1013, holding that police power may be exercised for public welfare without compensation for individual rights destroyed; Edgerton v. Goldsboro Water Co. 126 N. C. 99, 48 L. R. A. 446, 35 S. E. 243 (dissenting opinion), majority holding maintenance of water works not necessary municipal expense; Union P. R. Co. v. State, 88 Neb. 250, 129 N. W. 290, holding that where city, under power expressly delegated by legisla-

ture, passes ordinance regulating location of stock-yards, regulation stands on same footing as statute: Wolf v. Smith, 149 Ala. 463, 9 L.R.A.(N.S.) 347, 42 So. 824, sustaining statute requiring mine operators to keep on hand bandages, and a stretcher for the aid in caring for injured miners; McConnell v. McKillip, 71 Neb. 721, 65 L.R.A. 615, 115 Am. St. Rep. 614, 99 N. W. 505, 8 Ann. Cas. 898, holding that the state can confiscate property under the guise of exercising the police power, where the property taken was per se unlawful, but not where it is innocent in itself but merely used for unlawful purpose; State v. Pacific Exp. Co. 80 Neb. 830, 18 L.R.A.(N.S.) 668, 115 N. W. 619, holding that the state had the right to control the rates charged by express companies; State v. Redmon, 134 Wis. 111, 14 L.R.A.(N.S.) 237, 126 Am. St. Rep. 1003, 114 N. W. 137, 15 Ann. Cas. 408, holding unconstitutional, statute providing that the upper berths of a sleeping car when unoccupied, should not if the occupant of the lower berth so desired, be made up.

Cited in footnotes to Bailey v. People, 54 L. R. A. 839, which holds void, restriction on number which lodging-house keeper may permit to occupy one room; Bessette v. People, 56 L. R. A. 558, which holds void, requirement that horseshoers practise business for four years, submit to examination, and pay license fee.

Cited in notes (18 L.R.A.(N.S.) 916, 917) on power of municipality to require railroad to repair highway at overhead or underground crossing; (78 Am. St. Rep. 236, 271) on acts which legislature may declare criminal.

What constitutes "due process of law."

Approved in Cummings v. Hyatt, 54 Neb. 44, 74 N. W. 411, sustaining irrigation tax statute as not being a taking of property without "due process of law;" Howard v. Clay County, 54 Neb. 446, 74 N. W. 953, holding no taking without "due process" when opportunity afforded for judicial determination of damages and payment thereof; Hanson v. Krehbiel, 68 Kan. 675, 64 L. R. A. 793, holding remedy by due course of law means reparation for injury, ordered by tribunal having jurisdiction, in due course of procedure, and after fair hearing; August v. Gilmer, 53 W. Va. 67, 44 S. E. 143, holding decision in summary proceeding adjudging title of purchaser at execution sale invalid, and ordering return of property to sheriff, not taking property without due process of law.

Cited in Washington v. Atlantic Coast Line R. Co. 136 Ga. 647, 38 L.R.A. (N.S.) 872, 71 S. E. 1066, sustaining railroad employers' liability act; Lemeux v. Young, 211 U. S. 493, 53 L. ed. 299, 29 Sup. Ct. Rep. 174, Affirming 79 Conn. 442, 20 L.R.A.(N.S.) 165, 129 Am. St. Rep. 193, 65 Atl. 436, 8 A. & E. Ann. Cas. 452, on what constitutes the police power of the state; State ex rel. Minneapolis v. St. Paul, M. & M. R. Co. 98 Minn. 394, 28 L.R.A.(N.S.) 307, 120 Am. St. Rep. 581, 108 N. W. 261, 8 Ann. Cas. 1047, holding that requiring the maintenance of safety gates and devices at highway crossings, is not a taking of private property without due process of law; State ex rel Farmer's Elevator Co. v. Missouri P. R. Co. 81 Neb. 177, 115 N. W. 757, holding that the requiring of railway companies to build and maintain side tracks at certain places is not a taking of property without due process of law; Harriman v. Southern R. Co. 111 Tenn. 549, 82 S. W. 213, sustaining the right of a city to compel a railway company to build bridges over streets and maintain viaducts across the tracks, as not being a taking without due process.

Right to consider wisdom of statute.

Cited in Henley v. State, 98 Tenn. 724, 39 L. R. A. 142, 41 S. W. 352 (dissenting opinion), majority holding courts cannot annul statute for any reason whatever unless violating some constitutional provision.

Cited in footnote to Com. *ex rel.* Elkin v. Moir, 53 L. R. A. 837, which holds wisdom, propriety, justice, or motive for passage not considered in determining validity of statute for government of cities.

Mandamus to enforce corporate duty.

Cited in State *ex rel.* Bridgeton v. Bridgeton & M. Traction Co. 62 N. J. L. 603, 45 L. R. A. 842, 43 Atl. 715, granting mandamus compelling street railway company to maintain line for public benefit, according to franchise; State ex rel. Milwaukee v. Milwaukee Electric R. & Light Co. 144 Wis. 393, 140 Am. St. Rep. 1025, 129 N. W. 623, holding that city has such interest in sprinkling streets as makes it proper for relator in mandamus to compel street railway to comply with ordinance requiring it to sprinkle streets.

Cited in note (125 Am. St. Rep. 514) on duties, performance of which may be compelled by mandamus.

Retroactive statutes.

Cited in Ross v. Lettice, 134 Ga. 868, 68 S. E. 734, holding that a statute is not retroactive because it applies to antecedent facts, but it is if it is intended to affect transaction which occurred, or rights which accrued before it became operative as such, and ascribes to them an essentially different effect; Curwensville v. Huntingdon & C. Teleph. Co. 33 Pa. Co. Ct. 438, 16 Pa. Dist. R. 604, sustaining power of city to impose a license tax upon telephone poles, though passed after granting of franchise to the telephone company.

Judicial notice.

Cited in note (82 Am. St. Rep. 442) on judicial notice of localities of railroads.

41 L. R. A. 487, MALLOY v. NEW YORK REAL ESTATE ASSO. 156 N. Y. 205, 50 N. E. 853.

Liability for elevator accidents.

Cited in Claypool v. Wigmore, 34 Ind. App. 41, 71 N. E. 509, holding where the plaintiff was injured by stepping into an open elevator shaft, that the defendant was not liable, though it was negligent in leaving the shaft open, since the latter's negligence was not the proximate cause of the accident.

Cited in footnote to Gibson v. International Trust Co. 52 L. R. A. 928, which denies liability for injury to passenger from involuntary starting of elevator by conductor grasping mechanism to prevent falling.

Cited in note (15 L.R.A.(N.S.) 404) on liability of owner of elevator to trespassers or licensees.

Distinguished in Weinberger v. Kratzenstein, 71 App. Div. 159, 75 N. Y. Supp. 537, Reversing 35 Misc. 77, 71 N. Y. Supp. 244, holding owner of building liable to person falling into elevator shaft by reason of breaking of defective guard chain; Baker v. Otis Elevator Co. 78 App. Div. 514, 79 N. Y. Supp. 663, holding factory owner not liable for injury to city fireman falling into elevator well while fighting fire in darkness.

41 L. R. A. 490, JONES v. NEW YORK C. & H. R. R. CO. 156 N. Y. 187, 50 N. E. 856.

Carrier's duty towards passengers.

Cited in Gleason v. Metropolitan Street R. Co. 99 App. Div. 211, 90 N. Y. Supp. 1025, holding that the carrier is bound to give the passenger a reasonable opportunity to board a car; Winchell v. New York C. & H. R. R. Co. 121 App. Div. 56, 105 N. Y. Supp. 425, holding that the defendant company was not

liable where the passenger had alighted from the train while it was at a water tank, and boarded it while it was moving, and was thrown off by a sudden movement of the train.

Cited in note (42 L. R. A. 494) on starting car before passenger is seated.

41 L. R. A. 494, COYNE v. MISSISSIPPI & R. RIVER BOOM CO. 72 Minn. 533, 71 Am. St. Rep. 508, 75 N. W. 748.

Right to use stream for floating logs.

Approved in Smith v. Atkins, 110 Ky. 123, 53 L. R. A. 791, footnote p. 790, 96 Am. St. Rep. 424, 60 S. W. 930, denying right of one navigating stream to fasten booms to trees on bank.

Cited in Smith v. Atkins, 110 Ky. 123, 53 L.R.A. 791, 96 Am. St. Rep. 424, 60 S. W. 930, holding person erecting boom across navigable stream not entitled to fasten same to land of riparian owner, and overflow banks to latter's damage; Mandery v. Mississippi & R. River Boom Co. 105 Minn. 7, 116 N. W. 1027, 1135, holding that one floating logs in stream must exercise ordinary care to prevent logs delivered to him from creating jams in the stream and forcing the water onto lands of riparian owner; Hot Springs Lumber & Mfg. Co. v. Revercomb, 106 Va. 188, 9 L.R.A.(N.S.) 899, 55 S. E. 580, holding that one floating logs in stream is liable to riparian owner only for damages resulting from negligence.

Cited in footnotes to Watkins v. Dorris, 54 L. R. A. 199, which holds one floating logs down stream liable to abutter for injuries to land by jams; Brewster v. J. & J. Rogers Co. 58 L. R. A. 495, which denies right to discharge water stored along stream to aid drive of logs, so as to overflow banks to injury of riparian owners.

Cited in notes (64 L.R.A. 983) on liability for injuries caused by attempted exercise of rights of navigation; (70 L.R.A. 276) on use of navigable stream; (35 L.R.A.(N.S.) 824) on liability for injuries to riparian owners by running logs; (35 L.R.A.(N.S.) 834) on right to impound water for floating logs; (23 Eng. Rul. Cas. 164) on riparian owner's right of access.

Liability for consequential injuries.

Cited in Lund v. St. Paul, M. & M. R. Co. 31 Wash. 293, 61 L. R. A. 508, 96 Am. St. Rep. 906, 71 Pac. 1032, holding street railroad company not liable for obstructing street for over one year, under authority of city council, to damage of property owner.

Cited in note (53 L. R. A. 635) on extent of trespasser's liability for consequential injuries resulting from trespass.

41 L. R. A. 498, COM. *ex rel.* SCOTT v. BOARD OF PUBLIC EDUCATION, 187 Pa. 70, 40 Atl. 806.

41 L. R. A. 501, STATE v. COOP, 52 S. C. 508, 30 S. E. 609.

Statutes affecting interstate commerce.

Approved in Laurens v. Elmore, 55 S. C. 479, 45 L. R. A. 250, footnote p. 249, 33 S. E. 560, holding license tax on occupations invalid, as against seller of frames on pictures made in other state.

Cited in footnotes to *Re* Wilson, 48 L. R. A. 417, which holds void as applied to sale of original packages, territorial statute requiring license for sale of coal oil; Adkins v. Richmond, 47 L. R. A. 583, which holds license tax on merchandise brokers void as to brokers selling goods by sample for principal in other state; Williams v. Fears, 50 L. R. A. 685, which sustains license tax on emigrant agent; Brownback v. North Wales, 49 L. R. A. 446, which holds valid as to residents, or-

dinance requiring license for sale of goods on street or by soliciting orders from house to house.

Cited in notes (19 L.R.A.(N.S.) 316) on license or occupation tax on hawkers, peddlers and persons engaged in soliciting orders by sample or otherwise, as violating the commerce clause; (46 L. ed. U. S. 789) on peddlers and drummers as related to interstate commerce; (54 L. ed. U. S. 965) on sale of picture frame as incidental to transaction protected by the commerce clause.

Disapproved in Dozier v. State, 154 Ala. 88, 129 Am. St. Rep. 51, 46 So. 9, holding that where the agent took order for enlarging picture frames, the same to be delivered unframed but the order containing an agreement that all pictures were to be delivered in appropriate frames at factory prices, the sale of the frames was intra-state commerce, though made without the state.

What constitutes peddler.

Cited in Chicago Portrait Co. v. Macon, 147 Fed. 970, holding that under an identical contract with the same company as in the leading case, the person selling the picture frames was not a peddler; State v. Ivey, 73 S. C. 287, 53 S. E. 428, holding that one is not a hawker or peddler within the meaning of the statute, who takes orders for medicines taking in payment a note, the medicines to be delivered by another person.

Cited in footnote to State v. Wells, 48 L. R. A. 99, which holds one soliciting orders for goods and carrying goods to fill previous sales, not a peddler.

Disapproved in State v. Looney, 214 Mo. 225, 29 L.R.A.(N.S.) 415, 97 S. W. 934, holding that one selling pictures and frames under a contract identical with the one set forth in the leading case, was a peddler within the meaning of the statute requiring a license for peddlers.

41 L. R. A. 503, CHESTERFIELD v. RATLIFF, 52 S. C. 563, 30 S. E. 593.

Reasonableness as question for jury.

Cited in Farmer v. Sellers, 89 S. C. 498, 72 S. E. 224, holding that it was proper to submit to jury issue whether delay of forty-eight days in executing search warrant was unreasonable.

41 L. R. A. 504, *Re* CHRISTENSEN, 17 Utah, 412, 70 Am. St. Rep. 794, 53 Pac. 1003.

Validity of divorce decree.

Cited on later appeal in 23 Utah, 209, 63 Pac. 896, as being the law of the case.

Effect of invalid judgment.

Cited in Davidson v. Wampler, 29 Mont. 70, 74 Pac. 82, holding that a judgment or decree which is void when rendered, for want of jurisdiction can never acquire validity by any subsequent act, and no rights can be acquired under it.

Proof of sanity by non-expert witnesses.

Cited in Weber v. Della Mountain Min. Co. 14 Idaho, 414, 94 Pac. 441, holding that the competency or sanity of a person at a given time as to a particular transaction may be proven by laymen or nonexpert witnesses; Bothwell v. State, 71 Neb. 753, 99 N. W. 669, holding that the sanity of a person accused of crime may be shown by non-expert witnesses but only where such witnesses have showed the proper qualifications on which to base their opinions.

Validity of curative acts.

Cited in Helming v. Forrester, 87 Neb. 441, 127 N. W. 373, holding that "curative act" which attempts to take away property rights already vested is void.

41 L. R. A. 511, RICHMOND & A. R. CO. v. R. A. PATTERSON TOBACCO CO. 92 Va. 670, 24 S. E. 261.

Affirmed in 169 U. S. 311, 42 L. ed. 759, 18 Sup. Ct. Rep. 335.

Carrier's liability for loss beyond line.

Approved in Norfolk & W. R. Co. v. Reeves, 97 Va. 292, 33 S. E. 606, holding that common carriers may limit liability to damages from negligence prior to delivery to connecting carrier; Central R. Co. v. Murphey, 116 Ga. 868, 60 L. R. A. 820, 43 S. E. 265, upholding validity of statute imposing liability for loss of freight upon initial carrier failing to trace same within thirty days after request therefor.

Annotation approved in Norfolk & W. R. Co. v. Wilkinson, 106 Va. 780, 56 S. E. 808, holding that where the goods were delayed in transportation, the initial carrier was liable in the absence of a showing that the delay occurred beyond its line.

Cited in footnotes to Union State Bank v. Fremont, E. & M. Valley R. Co. 59 L. R. A. 939, which sustains initial carrier's right to limit liability to own line; Taffe v. Oregon R. & Nav. Co. 58 L. R. A. 187, which denies initial carrier's liability under bill of lading beyond own line; Courteen v. Kanawha Despatch, 55 L. R. A. 182, which denies carrier's liability for accidental destruction of property while in warehouse on pier, awaiting arrival of vessel of connecting carrier; St. Louis, I. M. & S. R. Co. v. Collidge, 67 L.R.A. 555, which holds that delay by initial carrier in transporting goods liable to injury by climate renders it liable for damage to goods delivered to consignee in damaged condition, unless it shows that such delay did not produce the injury in whole or part, notwithstanding delay of connecting carrier; Kansas City F. S. & M. R. Co. v. Washington, 69 L.R.A. 65, which holds initial carrier checking baggage to destination on through ticket liable for loss on connecting line.

Cited in notes (63 L.R.A. 530) on conflict of laws as to carrier's contracts; (31 L.R.A.(N.S.) 27) on liability of connecting carrier for loss beyond own line; (55 L. ed. U. S. 169) on validity of statutes regulating liability of connecting carrier for loss beyond its own line.

Statutes affecting interstate commerce.

Approved in Lacey v. Palmer, 93 Va. 170, 31 L. R. A. 826, 57 Am. St. Rep. 795, 24 Atl. 930, sustaining statute prohibiting pool selling on races in another state.

Cited in note (7 L.R.A.(N.S.) 390) on state statutes regulating liability of carriers as to shipments over connecting lines as interference with interstate commerce.

Limitation of carrier's liability in bills of lading.

Cited in note (88 Am. St. Rep. 132, 134) on limitation of carrier's liability in bills of lading.

41 L. R. A. 515, STATE *ex rel.* GRINSFELDER v. SPOKANE STREET R. CO. 19 Wash. 518, 67 Am. St. Rep. 739, 53 Pac. 719.

Mandamus to compel performance of public duty.

Cited in State ex rel. Marion v. Marion Light & Heating Co. 174 Ind. 628, 92 N. E. 731, holding that corporation which accepts franchise imposing duty to furnish heat and light to city and inhabitants, in consideration of rights conferred, may be compelled by mandate to perform such duty; State ex rel. Ellis v. Atlantic Coast Line R. Co. 53 Fla. 674, 13 L.R.A.(N.S.) 328, 44 So. 213, 12 Ann. Cas. 359, holding that mandamus will issue to compel a carrier to perform a duty imposed by its charter, by statute, or raised by implication of law from the nature of its

public duty; Jacquelin v. Erie R. Co. 69 N. J. Eq. 445, 61 Atl. 18, holding that the rights of the public in the operation of a railway system, are enforceable by mandamus.

Cited in note (125 Am. St. Rep. 514) on duties, performance of which may be compelled by mandamus.

Distinguished in State ex rel. Hawes v. Brewer, 39 Wash. 68, 109 Am. St. Rep. 858, 80 Pac. 1001, 4 Ann. Cas. 197, holding that mandamus will not lie to compel the performance of an indenfiite public duty, by a public official.

Compelling operation of street railway line.

Cited in footnotes to State *ex rel.* Bridgeton v. Bridgeton & M. Traction Co. 45 L. R. A. 837, which holds street railway company's duty to operate road enforceable by mandamus; State *ex rel.* Knight v. Helena Power & Light Co. 44 L. R. A. 692, which denies power to compel operation of abandoned street railway line.

Distinguished in Amesbury v. Citizens Electric Street R. Co. 199 Mass. 400, 19 L.R.A.(N.S.) 870, 85 N. E. 419, holding that under the statute organizing the company the street railway company had a right to discontinue its line in dispute.

Lot owner's right of action against street railway.

Distinguished in Schwede v. Hemrich Bros. Brewing Co. 29 Wash. 26, 69 Pac. 362, holding abutting lot owner entitled to sue for injunction against unlawful construction of railroad in street.

Contracts against public policy.

Cited in Paige v. Schenectady R. Co. 178 N. Y. 115, 70 N. E. 213, holding that any contract whereby a carrier seeks or is disabled, to perform its duty to the public, is void as against public policy.

Right of carrier to discontinue its service.

Cited in Kakeldy v. Columbia & P. S. R. Co. 37 Wash. 679, 80 Pac. 205, holding that a carrier owes duties to the public which it can not evade or discontinue.

Cited in note (19 L.R.A.(N.S.) 867) on right of street railway to discontinue line.

Estoppel of city by acquiescence.

Cited in Forster v. Raznik, 46 Wash. 696, 91 Pac. 252, holding that where the parties had retained open adverse possession of a strip of land claimed as a public alley, for twenty years, and had paid taxes upon the same, and had erected a permanent building thereon because the city council had disclaimed all right thereto the city was estopped to claim it.

41 L. R. A. 520, JOHNSON v. VAN WYCK, 4 App. D. C. 294.

Validity of champertous contracts.

Approved in Campbell v. Dexter, 17 App. D. C. 463, setting aside champertous assignment upon repayment of money advanced; Peck v. Heurich, 167 U. S. 630, 42 L. ed. 305, 17 Sup. Ct. Rep. 927, holding void for champerty, agreement to prosecute suit to recover land in consideration of proportion of recovery.

Cited in Roller v. Murray, 107 Va. 531, 59 S. E. 421, as to a contract with an attorney being champertous, where he pays all expenses of litigation for a share in the amount recovered.

Cited in footnote to Irwin v. Curie, 58 L. R. A. 830, which sustains right of person placing demands in attorney's hands to recover agreed compensation, though statute forbids such agreements.

Cited in note (83 Am. St. Rep. 168, 171) on contracts between attorneys and clients.

Right of third persons to take advantage of champerty.

Cited in note (35 L.R.A.(N.S.) 516) on right of third persons to take advantage of champerty.

41 L. R. A. 530, STATE v. THORNTON, 10 S. D. 349, 73 N. W. 196.

Burden of proving alibi.

Approved in People v. Winters, 125 Cal. 328, 57 Pac. 1067, holding erroneous instruction as to proof of alibi cured by charging that defendant is entitled to benefit of reasonable doubt.

Cited in State v. McClellan, 23 Mont. 538, 75 Am. St. Rep. 558, 59 Pac. 924, holding erroneous instruction as to proof of alibi not cured by charging that defendant is entitled to benefit of reasonable doubt; Wilburn v. Territory, 10 N. M. 406, 62 Pac. 968, 14 Am. Crim. Rep. 500; McDuffee v. State, 55 Fla. 130, 46 So. 721,—holding that the burden of providing an alibi is upon the defense to the extent of raising a reasonable doubt.

Examination of witnesses not named in the indictment.

Cited in State v. Cambron, 20 S. D. 289, 105 N. W. 241, holding that the right of the state to examine witnesses upon a prosecution for a felony, whose names did not appear upon the indictment, rests in the discretion of the court dependent upon the intentional withholding of the names from the defendant.

41 L. R. A. 544, SEYMOUR v. McAVOY, 121 Cal. 438, 53 Pac. 946.

Rights of creditors in trust funds.

Cited in Mason v. Rhode Island Hospital Trust Co. 78 Conn. 85, 61 Atl. 57, 3 Ann. Cas. 586, holding that a valid spendthrift trust could be created which would be beyond the reach of creditors; Merchants Nat. Bank v. Crist, 140 Iowa, 313, 23 L.R.A.(N.S.) 529, 132 Am. St. Rep. 267, 118 N. W. 394, holding that creditors cannot deprive the beneficiary under a spendthrift trust of the support provided for him so long as it is in accordance with his station in life; Mattison v. Mattison, 53 Or. 260, 133 Am. St. Rep. 829, 100 Pac. 4, 18 Ann. Cas. 218, holding that a spendthrift trust may be created by implication where such is the intention of the testator as gathered from his whole will.

Cited in footnotes to Scott v. Keane, 42 L. R. A. 359, which holds trust by conveyance and reconveyance for grantor's benefit void as against his creditors; Re Qua v. Graham, 52 L. R. A. 641, which holds annuity in wife's will in lieu of other interests, accepted by husband, not trust beyond reach of creditors; Murphy v. Delano, 55 L. R. A. 727, which holds income of spendthrift trust not within reach of creditors by void agreement of trustees to pay certain portion of income absolutely to beneficiary; Hutchinson v. Maxwell, 57 L. R. A. 384, which denies power to create equitable life estate free from debts of beneficiary.

41 L. R. A. 548, MASON v. McLEOD, 57 Kan. 105, 57 Am. St. Rep. 327, 45 Pac. 76.

Statutory regulation of patent-right notes.

Followed in Allen v. Riley, 203 U. S. 352, 51 L. ed. 217, 27 Sup. Ct. Rep. 95, 8 Ann. Cas. 137, Affirming 71 Kan. 379, 114 Am. St. Rep. 481, 80 Pac. 952, 6 Ann. Cas. 158, sustaining same statute as that questioned in the leading case as to notes given in sale of patent rights.

Approved in Eclipse Wind Engine Co. v. Zimmerman Mfg. Co. 16 Ind. App. 500, 44 N. E. 1115, and State v. Cook, 107 Tenn. 506, 62 L. R. A. 176, 64 S. W.

720, sustaining statute regulating form and negotiability of notes given for patent rights; State v. Cook, 107 Tenn. 499, 62 L. R. A. 176, footnote p. 174, 64 S. W. 720, holding statute requiring notes for patent rights to so state on their faces, within police power.

Cited in Pinney v. First Nat. Bank, 68 Kan. 227, 75 Pac. 119, 1 Ann. Cas. 331, holding under the same statute that a note failing to state that it was given in consideration for the sale of a patent right, was void; Nyhart v. Kubach, 76 Kan. 158, 90 Pac. 796, holding same as to notes given in consideration of the right to sell a patented article within a certain territory; Union County Nat. Bank v. Ozan Lumber Co. 127 Fed. 208, Affirmed on another ground in 76 C. C. A. 218, 145 Fed. 346, 7 Ann. Cas. 390, holding that a statute which provided for the invalidity of notes given in consideration for the sale of patented articles unless they stated on their face for what they were given, was unconstitutional where it was not applied to regular dealers, and also citing annotation on this point; John Woods & Sons v. Carl, 75 Ark. 334, 87 S. W. 621, 3 Ann. Cas. 423, holding that a statute providing that notes given in consideration of the sale of a patent right, were void unless they stated upon their face for what they were given, is not repugnant to the constitution of the United States providing for the regulation of patents by Congress; Ratcliff v. Wichita Union Stock-Yards Co. 74 Kan. 17, 6 L.R.A.(N.S.) 839, 118 Am. St. Rep. 298, 86 Pac. 150, 10 Ann. Cas. 1016, on the police regulations as to the business of dealing in patents.

Cited in footnote to State v. Cook, 62 L.R.A. 174, which upholds statute requiring notes for patent rights to so state on their faces.

Cited in note (114 Am. St. Rep. 488) on requirement of notes given for patent rights.

Distinguished in Ozan Lumber Co. v. Union County Nat. Bank, 76 C. C. A. 218, 145 Fed. 346, 7 Ann. Cas. 390, Affirming 127 Fed. 208, holding that a statute which provided that notes given in payment for the sale of patented articles shall be void unless they stated upon their face such fact, was void as discriminating against patented articles.

Rights under prohibited contracts.

Approved in Stansfield v. Kunz, 62 Kan. 801, 64 Pac. 614, holding that illegal contract for sale of intoxicants may be rescinded and advances recovered by vendee before consummation.

Cited in Michener v. Watts, — Ind. —, 36 L.R.A.(N.S.) 142, 96 N. E. 127, holding that vendee having no notice of violation of statute may recover back money paid for interest in patent right which was sold without filing copy of letters as required by statute; Becker v. Wilcox, 81 Neb. 480, 16 L.R.A. (N.S.) 575, 129 Am. St. Rep. 690, 116 N. W. 160, holding that the consideration paid for a lottery ticket may be recovered under a statute passed for the benefit of such vendee; Latham Mercantile & C. Co. v. Harrod, 71 Kan. 569, 81 Pac. 214, holding that the insured could recover the premium paid to the insurance agent upon a policy issued by a company which was not licensed to do business within the state and which policies were prohibited by statute, where the insurance company became insolvent.

Cited in notes (12 L.R.A.(N.S.) 618, 621) on contracts in business which it is misdemeanor to transact; (113 Am. St. Rep. 727) on rule of pari delicto.

41 L. R. A. 551, FORD v. STATE, 85 Md. 465, 60 Am. St. Rep. 337, 37 Atl. 172.

Exercise of police power.

Cited in *Ex parte* McClain, 134 Cal. 113, 54 L. R. A. 780, footnote p. 779, 86 Am. St. Rep. 243, 66 Pac. 69, sustaining city's right to make mere possession of

lottery ticket a misdemeanor; State v. Hyman, 64 L. R. A. 645, upholding validity of statute prohibiting use of room in tenement for manufacture of clothing, except by members of family and under permit; Re Yun Quong, 159 Cal. 512, 114 Pac. 835, Ann. Cas. 1912C, 969, holding that act which permits use of opium under all proper circumstances, while otherwise prohibiting its possession, is valid police regulation; Downs v. Swann, 111 Md. 61, 23 L.R.A.(N.S.) 742, 134 Am. St. Rep. 586, 73 Atl. 653, sustaining right of police officers to take measurement of persons accused of crime, for the purpose of identification though such persons have not as yet been convicted of any crime.

Cited in footnotes to Bailey v. People, 54 L. R. A. 839, which holds void, restriction on number which lodging-house keeper may permit to occupy one room; People v. Adams, 63 L. R. A. 406, which sustains statute making possession of papers used in playing policy, penal offense; McConnell v. McKillip, 65 L.R.A. 611, which holds void statute authorizing game warden to seize and forfeit to state without hearing all guns, dogs, decoys, fishing tackle, etc. used by unlicensed person hunting or fishing.

Cited in note (78 Am. St. Rep. 237, 256) on acts which legislature may declare criminal.

41 L. R. A. 554, CANANDAIGUA v. FOSTER, 156 N. Y. 354, 66 Am. St. Rep. 575, 50 N. E. 971.

Followed without discussion in Doepfner v. Michaelis, 74 C. C. A. 680, 144 Fed. 1021.

Right of landowner to encroach upon street in the use of his premises.

Cited in Sautter v. Utica City Nat. Bank, 119 App. Div. 905, 104 N. Y. Supp. 1139, Affirming 45 Misc. 21, 90 N. Y. Supp. 838 (dissenting opinion), on the right of an abutting owner to encroach upon the street in connection with the use of his premises.

Cited in footnote to Perry v. Castner, 66 L.R.A. 161, which denies right of abutting owner even with city's consent to construct area to reach basement on sidewalk so that approach to and from it is in front of neighbor's property.

— Duty to use reasonable care to prevent injuries.

Cited in New York v. Corn, 133 App. Div. 4, 117 N. Y. Supp. 514, holding that the primary duty rests upon the abutting property owner in using parts of the streets, to use reasonable care to see that such use will not result in injury to pedestrians using the street; Devine v. National Wall Paper Co. 95 App. Div. 196, 88 N. Y. Supp. 704, holding that the duty of a person constructing an area way in front of a building, to use reasonable care to provide against accidents to persons using the streets, applies as well to the duty to repair as to the duty to safely construct.

— Liability of landowner for injuries to pedestrians through such use.

Cited in Mullins v. Siegel-Cooper Co. 95 App. Div. 237, 88 N. Y. Supp. 737, holding landowner liable for injuries resulting from a sidewalk made defective by acts of independent contractor employed by him in constructing the building upon his land; Gelof v. Morgenroth, 130 App. Div. 19, 114 N. Y. Supp. 293, holding the landlord liable for injuries to a pedestrian by stepping through a defective grating, where the landlord was in possession of the greater part of the building; Seattle v. Puget Sound Improv. Co. 47 Wash. 27, 12 L.R.A. (N.S.) 955, 125 Am. St. Rep. 884, 91 Pac. 255, 14 Ann. Cas. 1045, holding that a city could recover from the owner of the abutting premises for injuries to a pedestrian through the defective condition of a trap door placed in the

sidewalk, where the city has been obliged to pay a judgment against it for such injuries.

Duty of landlord to repair premises.

Cited in Faron v. Jones, 49 Misc. 48, 96 N. Y. Supp. 316, holding that the landlord was not bound to replace or pay for the replacement of, an engine which broke down in the ordinary use in connection with the use of the building, where there was no covenant on the part of the landlord to repair.

Lessor's liability for injuries from defective premises.

Approved in Brogan v. Hanan, 55 App. Div. 93, 66 N. Y. Supp. 1066, holding landlord and tenant jointly liable to person falling down unguarded basement steps.

Cited in Curran v. Flammer, 49 App. Div. 297, 62 N. Y. Supp. 1061, holding landlord not liable to person falling through sidewalk grating in front of leased premises; West Chicago Masonic Asso. v. Cohn, 192 Ill. 217, 55 L. R. A. 239, footnote p. 235, 85 Am. St. Rep. 327, 61 N. E. 439, Reversing 94 Ill. App. 336, denying landlord's liability for injury by defective condition of coalhole in sidewalk; Leaux v. New York, 87 App. Div. 404, 84 N. Y. Supp. 514, holding lessor not liable for injury to tenant's servant from fall into sewer defectively covered, where premises in proper condition at beginning of term; Weaver Mercantile Co. v. Thurmond, 68 W. Va. 536, 33 L.R.A.(N.S.) 1065, 70 S. E. 126, holding that if landlord have on his premises water tank which supplies water to several houses occupied by several tenants, he is bound to prevent water from escaping and injuring property of adjoining owner; Spoar v. Spokane Turn-verein, 64 Wash. 213, 116 Pac. 627, holding that owner of leased premises is not liable to one visiting exhibition therein, for injuries caused by snow and ice on outside stairway landing, where tenant has full control of premises and they were free from snow and ice when rented; Delaney v. New York Polyclinic Medical School, 69 Misc. 626, 126 N. Y. Supp. 94, holding that one who purchases premises occupied by tenant is not liable for nuisance existing thereon from failure of tenant to make repairs in absence of notice of dangerous condition; Uggla v. Brokaw, 117 App. Div. 590, 102 N. Y. Supp. 857, holding that although the landlord has lawfully parted with the entire possession of the building and the tenant has been in the exclusive possession thereof, landlord would be liable for injuries to a pedestrian upon the street if he leased the premises with a nuisance thereon which caused the injury; Jones v. Brumme, 120 App. Div. 495, 104 N. Y. Supp. 1038, holding that the landlord was not liable for injuries to third persons from defective condition of the premises where the tenant was in possession under a lease which did not provide for repairs by the landlord.

Cited in footnotes to Gardner v. Rhodes, 57 L. R. A. 749, which denies landlord's liability for fall on ice which tenant permits to accumulate on sidewalk; Barrett v. Lake Ontario Beach Improv. Co. 61 L. R. A. 829, which sustains owner's liability for insufficiency of railing of leased toboggan slide; Langenbaugh v. Anderson, 62 L. R. A. 948, which denies liability of lessor of lot for production of oil or gas therefrom, for injury to adjoining owner's property through escape of oil by lessee's negligence.

Cited in notes (86 Am. St. Rep. 517) on liability of property owner for nuisance which he did not create: (92 Am. St. Rep. 529, 542–545) on liability to third persons of lessors of real or personal property.

Presumption of authority to use sidewalk for benefit of abutting premises.

Cited in Hart v. McKenna, 106 App. Div. 223, 94 N. Y. Supp. 216, holding

that a coal hole placed and maintained in a sidewalk for a period of over twenty years, will be presumed to have been placed there with permission of the proper authorities.

Liability for injuring sidewalk.

Approved in Parish v. Baird, 160 N. Y. 307, 54 N. E. 724, holding abutting owner may recover damages for material injury to sidewalk.

Municipal liability for using space under street.

Cited in note (61 L. R. A. 585, 591) on liability of municipality for injuries to travelers caused by persons using space under street.

Right of municipality to indemnity from tort-feasor.

Cited in notes (12 L.R.A.(N.S.) 951) on right of municipality to indemnity from owner or occupant of abutting property for damages recovered for defect in street; (40 L.R.A.(N.S.) 1166, 1172) on right of municipality to indemnity or contribution from one for whose tort it is held liable.

41 L. R. A. 557, TRAVELERS' INS. CO. v. FRICKE, 99 Wis. 367, 74 N. W. 372, 78 N. W. 407.

Rights of licensees.

Cited in State *ex rel.* Fidelity & C. Co. v. Fricke, 102 Wis. 116, 77 N. W. 732, holding foreign accident insurance companies required to pay license fee imposed upon life companies and additional fee for accident business; State v. Chicago & N. W. R. Co. 128 Wis. 497, 108 N. W. 594, holding that there is no difference between the right of the state to place conditions upon a foreign corporation doing business within the state, and a domestic one.

Cited in footnotes to Bankers' L. Ins. Co. v. Howland, 57 L. R. A. 374, which denies insurance commissioners' power to question foreign company's mode of computing reserve set forth in statement for license; Wallace v. Reno, 63 L. R. A. 338, which authorizes revocation of liquor license by legislature or municipal officers, with or without notice to licensee.

Taxation of corporate franchises.

Cited in note (57 L. R. A. 72) on taxation of corporate franchises in United States.

Right of foreign corporation to plead statute of limitations.

Cited in State v. National Acci. Soc. 103 Wis. 217, 79 N. W. 220, holding foreign insurance corporation not entitled to benefit of statute of limitations; Burns v. White Swan Min. Co. 35 Or. 308, 57 Pac. 637, holding foreign corporation "person without state," entitled to plead statute of limitations; Williams v. Metropolitan Street R. Co. 68 Kan. 27, 64 L. R. A. 799, footnote p. 794, 74 Pac. 600, holding foreign corporation "out of state," within provision as to running of statute of limitations.

Cited in footnotes to Williams v. Metropolitan Street R. Co. 64 L.R.A. 794, denying right of foreign corporation to avail itself of advantage of statute of limitations; Colonial & U. S. Mortg. Co. v. Northwest Thresher Co. 70 L.R.A. 814, which holds bar of limitations available to foreign corporation which has complied with laws of state and has regularly done business in state during entire statutory period during all of which time it has had an agent resident in state on whom process could be served.

Disapproved in Colonial & U. S. Mortg. Co. v. Northwest Thresher Co. 14 N. D. 153, 70 L.R.A. 817, 116 Am. St. Rep. 642, 103 N. W. 915, 8 Ann. Cas. 1160, holding that a foreign corporation which has been admitted to do business

within the state and has complied with the laws regulating such admission, may avail itself of the defense of the statute of limitations.

Practical construction of statutes and contracts.

Cited in State *ex rel.* Fidelity & C. Co. v. Fricke, 102 Wis. 112, 77 N. W. 732, denying mandamus to compel issuance of corporation license without payment of certain arrearages, notwithstanding practical construction of statute by state officers that same not required; State v. National Acci. Soc. 103 Wis. 219, 79 N. W. 220 (dissenting opinion), majority holding insurance company liable in action of assumpsit for license fees for past years, not then exacted because of misconstruction of statute by state officers; Hurley Water Co. v. Vaughn, 115 Wis. 475, 91 N. W. 971, holding, where construction of water works statute is in doubt, practical construction given to it for twenty years is important; Hart v. Hart, 117 Wis. 654, 94 N. W. 890, refusing to charge partnership with taxes and insurance on property belonging to member of firm according to understanding of such member, where contract to contrary perfectly plain.

Interest upon litigated claims.

Approved in Laycock v. Parker, 103 Wis. 188, 79 N. W. 327, holding interest allowable on claim from time of demand before action.

Right of state to impose taxes other than property taxes.

Cited in Munnemacher v. State, 129 Wis. 205, 9 L.R.A.(N.S.) 128, 108 N. W. 627, 9 Ann. Cas. 711, sustaining inheritance tax law.

41 L. R. A. 563, SELLECK v. JANESVILLE, 100 Wis. 157, 69 Am. St. Rep. 906, 75 N. W. 975.

Convening of court at places other than county seat.

Cited in Bell v. Jarvis, 98 Minn. 111, 107 N. W. 547, 8 Ann. Cas. 938, holding that the district courts of the state have no authority to convene at places other than the county seat for the trial of issues of fact, except where so authorized by statute or by consent of the parties.

Physical exhibition of injury.

Approved in Arkansas River Packet Co. v. Hobbs, 105 Tenn. 35, 58 S. W. 278, holding proper, exhibition and exercise of injured limb before jury two years after accident.

Weeping of parties in presence of jury as grounds for reversal.

Cited in Chicago, B. & Q. R. Co. v. Krayenbuhl, 70 Neb. 770, 98 N. W. 44, holding objection not well taken, where based upon the weeping of the plaintiff during the argument of his counsel.

Hypothetical questions to medical experts.

Approved in Crouse v. Chicago & N. W. R. Co. 102 Wis. 204, 78 N. W. 446, holding proper question as to cause of condition described in detail; Werner v. Chicago & N. W. R. Co. 105 Wis. 309, 81 N. W. 416, holding proper, question based upon assumed truth of all facts in evidence.

Cited in Lyon v. Grand Rapids. 121 Wis. 618, 99 N. W. 311, holding that it was proper to allow expert witness to give his opinion as to the cause of a particular diseased condition of the plaintiff's foot, where it was to be based upon the assumption that the plaintiff had testified truthfully.

Distinguished in Schaidler v. Chicago & N. W. R. Co. 102 Wis. 570, 78 N. W. 732, holding improper, question as to cause of death without revealing pre-existent disease.

Aggravation of injury.

Approved in Selleck v. Janesville, 104 Wis. 579, 47 L. R. A. 694, 76 Am. St.

Rep. 892, 80 N. W. 944, holding husband's recovery for wife's injury not barred by mistakes of reputable physicians carefully selected; Arkansas River Packet Co. v. Hobbs, 105 Tenn. 45, 58 S. W. 278, holding full duty of lessening damages discharged when using ordinary care, though without medical advice; Elliott v. Kansas City, 174 Mo. 567, 74 S. W. 617, and Joliet v. Le Pla, 109 Ill. App. 340, holding aggravation of injury by treatment of unskilful physician no defense, when plaintiff used ordinary care in selection.

Cited in footnote to Texas & P. R. Co. v. White, 62 L. R. A. 90, which denies liability of person causing injury for aggravation due to injured person's neglect to obtain necessary surgical assistance.

— Injury aggravated by existing disease.

Cited in footnotes to Maguire v. Sheehan, 59 L.R.A. 496, which sustains liability for entire injury through negligence, though shock brought on delirium tremens, retarding recovery; Chicago City R. Co. v. Saxby, 68 L.R.A. 164, which sustains right of injured person to recover for tuberculous condition of knee resulting from injury, notwithstanding fact that tuberculosis was organic and mistakes in treatment.

41 L. R. A. 566, AITKEN v. WELLS RIVER, 70 Vt. 308, 67 Am. St. Rep. 672, 40 Atl. 829.

Liability of municipality for negligence in performance of governmental duties.

Cited in Carty v. Winooski, 78 Vt. 109, 2 L.R.A.(N.S.) 95, 62 Atl. 45, 6 Ann. Cas. 436, holding that the defendant town was not liable for the death of a person committed to the village jail, though the village trustees were negligent in maintaining the same.

Cited in note (108 Am. St. Rep. 140) as to what municipal corporations are answerable for injuries due to defects in streets and other public places.

Exercise of power of eminent domain.

Cited in note (102 Am. St. Rep. 812) on uses for which power of eminent domain cannot be exercised.

41 L. R. A. 569, ELLERBEE v. STATE, 75 Miss. 522, 22 So. 950.

Temporary absence of judge.

Approved in Durden v. People, 192 Ill. 497, 55 L. R. A. 241, footnote p. 240, 61 N. E. 317, holding change of judge during trial without consent of accused, is mistrial; Slaughter v. United States, 5 Ind. Terr. 248, 82 S. W. 732, holding that the absence of the trial judge from the court room during a part of the time for the argument of a criminal case, vitiates the whole trial.

Cited in Gibson v. State, 76 Miss 140, 23 So. 582, holding judge's absence from trial cannot be reviewed unless excepted to; Kruse v. St. Louis, I. M. & S. R. Co. 97 Ark. 147, 133 S. W. 841, holding that appellant cannot complain because trial judge absented himself from court room during argument of counsel unless his adversary took advantage of such absence to commit some act which operated to appellant's prejudice; State v. Keehn, 85 Kan. 796, 118 Pac. 851, holding that it is not indispensable that verdict in murder case be returned in open court as provided by code of criminal procedure; Stokes v. State, 71 Ark. 115, 71 S. W. 248, holding that the temporary absence of the judge from the court room during the progress of a murder trial, rendered void the whole proceedings, and also citing annotation on this point; Bateson v. State, 46 Tex. Crim. Rep. 43, 80 S. W. 88, holding that the temporary absence of the trial judge during a criminal trial vitiates the whole trial, and also citing annotation on this

point; Skaggs v. State, 88 Ark. 69, 113 S. W. 346, 16 Ann. Cas. 622, on the effect of the temporary absence of the judge from the court room.

Cited in footnote to Horne v. Rogers, 49 L. R. A. 176, which holds judge's absence during trial not prejudicial error.

Cited in note (122 Am. St. Rep. 728) on absence of judge during trial.

Erroneous instruction as reversible error.

Later appeal in 79 Miss. 10, 30 So. 57, reversing criminal conviction for substantial erroneous instructions.

Approved in Owens v. State, 80 Miss. 515, 32 So. 152, holding criminal conviction reversible for vital, substantial errors.

Cited in Lipscomb v. State, 75 Miss. 616, 23 So. 210 (dissenting opinion), majority reversing criminal conviction for material erroneous instruction.

Keeping criminal proceedings above reproach.

Cited in State v. Bland, 9 Idaho, 805, 76 Pac. 780, on the interest of the public in keeping the proceedings of criminal trials above reproach.

41 L. R. A. 575, ZEHREN v. MILWAUKEE ELECTRIC R. & LIGHT CO. 99 Wis. 83, 67 Am. St. Rep. 844, 74 N. W. 538.

What constitutes a commercial railroad.

Cited in Aurora v. Elgin, A. & S. Traction Co. 227 Ill. 496, 118 Am. St. Rep. 284, 81 N. E. 544, holding that an electric railway to carry passengers, freight and mail between two towns is a commercial railway and not a street railway; Devon v. Cincinnati, C. & E. R. Co. 128 Ky. 775, 109 S. W. 361, holding that an electric railroad to be built between two towns and beyond to such other points as may be determined upon, is a commercial railway the same as any steam railroad; Kinsey v. Union Traction Co. 169 Ind. 580, 81 N. E. 922, on the distinction between a street railway and a commercial one.

Additional highway servitudes.

Approved in Krueger v. Wisconsin Teleph. Co. 106 Wis. 103, 50 L. R. A. 302, 81 N. W. 1041, holding telephone line additional servitude which cannot be erected without compensation.

Cited in La Crosse City R. Co. v. Higbee, 107 Wis. 393, 51 L. R. A. 926, 83 N. W. 701, holding electric railway not additional burden upon city street; Allen v. Clausen, 114 Wis. 249, 90 N. W. 181, sustaining injunction by abutting owner against unauthorized laying of street car tracks; Diebold v. Kentucky Traction Co. 63 L. R. A. 640, holding interurban railway not "street railway" within constitutional provision requiring franchise to be sold to lowest bidder, but is "trunk railway;" Manitowoc v. Manitowoc & N. Traction Co. 145 Wis. 22, 140 Am. St. Rep. 1056, 129 N. W. 925, to the point that use of city streets by interurban cars subjected them to additional burden; Younkin v. Milwaukee Light, Heat, & Traction Co. 120 Wis. 483, 98 N. W. 215, holding that an electric railway upon the street does not impose any additional burden; Gosa v. Milwaukee Light, Heat & Traction Co. 134 Wis. 374, 114 N. W. 815, holding that while the building of a streeet railway did not impose any additional servitude, the contrary was true as to an interurban electric road; Schuster v. Milwaukee Electric R. & Light Co. 142 Wis. 581, 126 N. W. 26; Beloit, D. L. & J. R. Co. v. Macloon, 136 Wis. 224, 116 N. W. 897,—on the same point; Abbott v. Milwaukee Light, Heat & Traction Co. 126 Wis. 638, 4 L.R.A.(N.S.) 206, 106 N. W. 523, holding that the use of a street by an interurban street railway company imposes an additional burden upon the street for which the abutting owners are entitled to compensation.

Cited in footnotes to Jaynes v. Omaha Street R. Co. 39 L. R. A. 751, which

holds trolley railway an additional burden on street; Birmingham Traction Co. v. Birmingham R. & Electric Co. 43 L. R. A. 233, which holds electric-motor railway not additional servitude on highway.

Cited in notes (4 L.R.A.(N.S.) 203) on interurban trolley road as additional burden; (15 L.R.A.(N.S.) 532) on damages to abutting owner for right to run interurban cars over street railway; (35 L.R.A.(N.S.) 195) on injunction to protect right of ingress and egress from street; (36 L.R.A.(N.S.) 796) on abutter's right to compensation for railroads in streets; (101 Am. St. Rep. 111) on rights, obligations and remedies of persons over whose land a highway runs; (106 Am. St. Rep. 249) on what are additional servitudes in highways.

Disapproved in Ehret v. Camden & T. R. Co. 60 N. J. Eq. 248, 46 Atl. 578, refusing injunction against construction of electric railway on county highway without compensation to abutting proprietors; Ehret v. Camden & T. R. Co. 61 N. J. Eq. 173, 47 Atl. 562, holding trolley line not additional servitude upon country highway.

Right of eminent domain.

Cited in Younkin v. Milwaukee Light, Heat & Traction Co. 112 Wis. 20, 87 N. W. 861, holding street railways powerless to condemn land prior to statute of 1891, conferring such power.

Transportation of merchandise by street railway company.

Cited in Aurora v. Elgin, A. & S. Traction Co. 128 Ill. App. 84, holding that a street railway may not carry freight or merchandise, and neither may a traction company.

41 L. R. A. 581, MADDOX v. DUNCAN, 143 Mo. 613, 65 Am. St. Rep. 678, 45 S. W. 688.

Parties to action on note.

Approved in Hill v. Combs, 92 Mo. App. 253, holding maker and guarantor cannot be joined in same action without statutory permission; Hill v. Coombs, 93 Mo. App. 267, holding joint action lies against indorsers and guarantors.

Cited in Taney County Bank v. Bray, 141 Mo. App. 694, 125 S. W. 235, holding that where the payee has indorsed a note and guaranteed payment of it, the holder of the note may sue the maker and the payee, jointly.

Cited in footnote to Edgerly v. Lawson, 51 L. R. A. 432, which authorized action against maker by transferee of note after maturity without consideration.

Cited in note (65 Am. St. Rep. 690) on maker and indorser as joint debtor.

Explained in State ex rel. Jackson v. Bradley, 193 Mo. 41, 91 S. W. 483, on who are the proper persons to an action.

Payments affecting statute of limitations.

Approved in Corbyn v. Brokmeyer, 84 Mo. App. 653, holding statute not interrupted as to guarantor by payments of payee and indorser; Regan v. Williams, 88 Mo. App. 585, holding statute not interrupted as to maker by payments of collateral promisor.

Cited in Clinton County use of Township 54 v. Smith, 238 Mo. 129, 37 L.R.A. (N.S.) 280, 141 S. W. 1091, holding that principal and sureties on township school-fund bond are joint promissors and payment of any sum by principal before statute of limitations runs is binding on all alike; Monroe v. Herrington, 110 Mo. App. 511, 85 S. W. 1002, holding that payments not made by the indorser, but by one of the joint makers, does not defer the running of the statute of limitations in his favor from the date of his indorsement; Thompson v. Brown, 121 Mo. App. 528, 97 S. W. 242, holding that a payment by the guaran-

tor will not arrest the running of the statute of limitations in favor of the maker; Regan v. Williams, 185 Mo. 629, 105 Am. St. Rep. 600, 84 S. W. 959, on the running of the statute of limitation as to a surety.

Cited in note (37 L.R.A.(N.S.) 275) on payment or promise by principal as extending limitation period as to surety.

Waiver of statutory privilege.

Approved in Keller v. Home L. Ins. Co. 95 Mo. App. 638, 69 S. W. 612, holding patient may waive privilege of secrecy accorded to professional information.

Cited in Allen v. Burgener, 156 Mo. App. 267, 137 S. W. 616, holding that incorporation in indorsement of note, of guaranty of payment constitutes waiver of notice.

41 L. R. A. 584, FIRST NAT. BANK v. FIRST NAT. BANK, 58 Ohio St. 207, 65 Am. St. Rep. 748, 50 N. E. 723.

Recovery of payments upon forged instruments.

Cited in Woods v. Colony Bank, 114 Ga. 685, 56 L.R.A. 931, footnote p. 929, 40 S. E. 720, holding presumption of drawee knowing drawer's signature, not available to negligent holder; First Nat. Bank v. First Nat. Bank, 68 Ohio St. 48, 67 N. E. 91, holding indorser of negotiable note liable to indorsee compelled to pay same because of forgery of prior indorsement: First Nat. Bank v. Bank of Wyndmere, 15 N. D. 303, 10 L.R.A.(N.S.) 49, 125 Am. St. Rep. 588, 108 N. W. 546, holding that a bank which had paid a check drawn upon it, without discovering that the check was a forgery, may recover the money from the person to whom paid, provided the latter has not been prejudiced by the bank's failure to detect the forgery.

Cited in footnotes to Canadian Bank v. Bingham, 60 L.R.A. 955, which sustains drawee's right to recover amount of forged check payable to fictitious person, from one cashing same on indorsement purporting to be payee's without requiring identification; National Bank v. Berrall, 66 L.R.A. 599, which denies right of bank to recover back as money paid by mistake amount of check paid to bona fide holder presenting check without notice that payment had been stopped.

Cited in note (10 L.R.A.(N.S.) 62, 72) on right of drawee to recover money paid on forged check or draft.

Distinguished in Bank of Williamson v. McDowell County Bank, 66 W. Va. 559, 36 L.R.A.(N.S.) 612, 66 S. E. 761, holding that a bank which has been negligent in cashing a forged check is liable to the drawee bank for money paid thereon unless the drawee has also been negligent.

Indorsement as representation of genuineness of drawer's signature.

Cited in Ford & Co. v. People's Bank, 74 S. C. 185, 10 L.R.A.(N.S.) 63, 114 Am. St. Rep. 986, 54 S. E. 204, 7 Ann. Cas. 744, holding that an unrestricted indorsement of a negotiable instrument, concedes that the signature of the drawee is genuine.

41 L. R. A. 587, JOHNS v. NORTHWESTERN MUT. RELIEF ASSO. 90 Wis. 332, 63 N. W. 276.

Later appeal in 94 Wis. 431, 69 N. W. 160.

Presumption as to death of insured.

Approved in Butero v. Travelers' Acci. Ins. Co. 96 Wis. 541, 65 Am. St. Rep. 61, 71 N. W. 811, denying right of recovery upon policy exempting "intentional injuries," where evidence of homicide preponderates.

Cited in Supreme Tent K. M. W. v. King, 73 C. C. A. 668, 142 Fed. 681, holding that there is a presumption against death by suicide where the cause of death is in doubt, but this presumption may be overcome by reasonable deductions and inferences from the facts established; White v. Prudential Ins. Co. 120 App. Div. 262, 105 N. Y. Supp. 87, holding that the presumption against death by suicide may be overcome by evidence and where no other reasonable inference can be drawn from the evidence, it is the duty of the court to direct a verdict upon the theory of suicide; Thaxton v. Metropolitan L. Ins. Co. 143 N. C. 42, 55 S. E. 419 (dissenting opinion), on the sufficiency of proof of suicide.

Cited in footnotes to Standard Life & Acci. Ins. Co. v. Thornton, 49 L. R. A. 116, which holds accident, not suicide, presumed where sleeping car passenger found dead on track; Boynton v. Equitable Life Assur. Co. 52 L. R. A. 687, which requires insurer, claiming suicide of insured, to exclude every reasonable hypothesis of accidental death; Cox v. Royal Tribe of Joseph, 60 L. R. A. 620, which authorizes consideration of presumption of death from natural causes, in determining cause of death of insured found dead in water; Fidelity & C. Co. v. Freeman, 54 L. R. A. 680, which holds suicide of insured not conclusively shown by evidence; Brignac v. Pacific Mut. L. Ins. Co. 66 L.R.A. 323, which holds that suicidal intent will not be found where facts admit of different construction.

Causes of death within policy.

Cited in Kunse v. Knights of Modern Maccabees, 45 Ind. App. 34, 90 N. E. 89, holding that mutual benefit certificate providing that "no benefit shall be paid in case member commits suicide, within five years, whether sane or insane," does not insure against hanging while insane.

Cited in footnotes to Brown v. Sun L. Ins. Co. 51 L. R. A. 252, which sustains recovery on policy of one whose death caused by taking overdose of morphine; Courtemanche v. Supreme Court, I. O. O. F. 64 L. R. A. 668, which holds accidental death of assured from taking poison to frighten wife into giving him money not within provision that policy does not include assurance against self-destruction.

Explanation of unseen event by inferences from facts proven.

Cited in Kern v. Snider, 76 C. C. A. 201, 145 Fed. 329, holding that an event which no one saw, may be explained sufficiently to sustain a verdict fixing the responsibility, by showing facts from which reasonable inferences may be drawn.

41 L. R. A. 589, SMOOT v. PEOPLE'S PERPETUAL LOAN & BLDG. ASSO. 95 Va. 686, 29 S. E. 746.

Statutory validation of usurious contracts.

Approved in Bosang v. Iron Belt Bldg. & L. Asso. 96 Va. 122, 30 S. E. 440, holding legislature may validate invalid usurious contracts.

Cited in Atlanta Sav. Bank v. Spencer, 107 Ga. 632, 33 S. E. 878, holding unconstitutional, special charter authorizing making of contracts otherwise invalid for usury; Bryan v. Augusta Perpetual Bldg. & L. Co. 104 Va. 613, 52 S. E. 357, holding that it was within the power of the legislature to determine that certain loans, such as those from a building and loan association, will be exempt from the operation of the usury laws.

Cited in footnotes to Iowa Sav. & Loan Asso. v. Heidt, 43 L. R. A. 689, which sustains statute taking away defense of usury; Borrowers' & I. Bldg. Asso. v. Eklund, 52 L. R. A. 637, which requires strict adherence to mode fixed by statute exempting loan associations from usury laws; Cramer v. Southern Ohio L.

& T. Co. 69 L.R.A. 415, which upholds statute empowering loan associations to collect from members such dues, fines, interest, and premium or other assessments although in excess of legal interest as may be provided for in the constitution and by-laws.

Cited in note (26 L.R.A.(N.S.) 1138) on constitutionality of exemption of building and loan associations from general usury laws.

What constitutes usury.

Cited in footnotes to Gray v. Baltimore Bldg. & L. Asso. 54 L. R. A. 217, which holds percentage payable to loan association indefinitely, usurious, though called "premium;" Washington Nat. Bldg. Loan & Invest. Asso. v. Stanley, 58 L. R. A. 816, which holds exaction of monthly premium which, with interest, exceeds legal rate, unauthorized; Pacific States Sav. Loan & Bldg. Co. v. Hill, 56 L. R. A. 163, which holds requirement that borrower bid for stock and pay dues on same, device to cover usury.

What law governs question of usury.

Cited in footnotes to Floyd v. National Loan & Invest. Co. 54 L. R. A. 536, which holds contract with foreign loan association not within exemption of domestic associations as to usury, unless in conformity to local law; National Mut. Bldg. & L. Asso. v. Brahan, 57 L. R. A. 793, which holds usury in loan by foreign loan association to resident, secured by mortgage on land in state, determined by local law.

Liability of officer for shortage in accounts.

Approved in Safe Deposit Bank v. Schuylkill County, 190 Pa. 192, 42 Atl. 539, holding payment to commissioners' clerk having possession of note, to be treated as made to county, although treasurer never received proceeds; Equitable Sav. & Loan Asso. v. Roland, 198 Pa. 649, 48 Atl. 866, holding association not estopped from enforcing security against treasurer by secretary's long concealment of deficit.

Needless elucidation.

Cited in Bradenburg v. Coxe, 228 Pa. 216, 77 Atl. 455, to the point that there are self-evident propositions that are not subject to demonstration and that attempt to elucidate them serves rather to obscure; Com. ex rel. Weiss v. Havard, 17 Lanc. L. Rev. 253, 9 Pa. Dist. R. 493, 6 Lack. L. News, 226, holding that a public official cannot be bound by the rules of the party electing him is a proposition so clear that an attempt to elucidate it, obscures it; Mercersburg College v. Poffenberger, 36 Pa. Super. Ct. 112, 33 Pa. Co. Ct. 158, on the elucidation of principles not obscure.

Validity of curative acts.

Cited in Hurley v. Hurley, 110 Va. 37, 65 S. E. 472, 18 Ann. Cas. 968, holding that test of validity of curative acts is authority of legislature originally to have conferred power on authorized act.

41 L. R. A. 593, BOARD OF EDUCATION v. PURSE, 101 Ga. 422, 65 Am. St. Rep. 312, 28 S. E. 896.

Control of pupils in public schools.

Approved in Samuel Benedict Memorial School v. Bradford, 111 Ga. 802, 36 S. E. 920, holding that school authorities, not courts, must determine suitability of subjects for composition and debate.

Cited in Douglass v. Campbell, 89 Ark. 258, 20 L.R.A.(N.S.) 207, 116 S. W. 211, holding that under the state statute, the directors of any school district may suspend a boy temporarily for being drunk and disorderly within the town,

though the offense was not committed near or at, the school grounds, and also citing annotation on this point; Vermillion v. State, 78 Neb. 111, 110 N. W. 736, 15 Ann. Cas. 401, holding that a school board may under the statute suspend a pupil in the public schools for disobedience, and this without notice or hearing; School Board Dist. No. 18 v. Thompson, 24 Okla. 4, 24 L.R.A.(N.S.) 222, 138 Am. St. Rep. 861, 103 Pac. 1009, 19 Ann. Cas. 861, holding that the school authorities have the power to grade and classify scholars, and prescribe the courses of study, subject to the right of the parent to make a reasonable selection from the prescribed course of study.

Cited in footnotes to Board of Education v. Booth, 53 L.R.A. 787, which denies power of court to review question of guilt or innocence of pupil expelled from school; Baltimore University v. Colton, 64 L.R.A. 108, which denies right of law school to dismiss student for irregularity in attendance, where its custom as understood at time of matriculation permitted such irregularity.

Cited in notes (62 L.R.A. 162) on right of school authorities to control pupils when going to and from school; (3 L.R.A.(N.S.) 497) on power of school authorities over pupils outside school grounds.

Distinguished in Sorrels v. Matthews, 129 Ga. 323, 13 L.R.A.(N.S.) 359, 58 S. E. 819, 12 Ann. Cas. 404, holding that an action will not lie in favor of the father of a child against a teacher for expelling the child from school, unless he has suffered a direct pecuniary loss; State ex rel. Dresser v. School Dist. No. 1, 135 Wis. 625, 16 L.R.A.(N.S.) 732, 128 Am. St. Rep. 1050, 116 N. W. 232, holding that a pupil may be suspended by the board for misconduct though there has been no rule promulgated upon that special conduct.

Right of courts to review actions of school boards.

Cited in Kinzer v. Independent (Kinzer v. Toms), 129 Iowa, 444, 3 L.R.A. (N.S.) 499, 105 N. W. 686, 6 Ann. Cas. 996, holding that the reasonableness of the rules of a school board may be determined in mandamus or other special proceedings by the courts.

41 L. R. A. 609, DENNEHY v. McNULTA, 30 C. C. A. 422, 59 U. S. App. 264, 86 Fed. 825.

Illegality of corporation or combination as defense.

Approved in Harrison v. Glucose Sugar Ref. Co. 58 L. R. A. 919, 53 C. C. A. 488, 116 Fed. 308, holding illegality of corporation no defense to one voluntarily contracting therewith; Connolly v. Union Sewer Pipe Co. 184 U. S. 547, 46 L ed. 685, 22 Sup. Ct. Rep. 431, holding illegality of combine no defense to action for goods purchased.

Cited in International Harvester Co. v. Eaton Circuit Judge (International Harvester Co. v. Smith), 163 Mich. 61, 30 L.R.A.(N.S.) 587, 127 N. W. 695, Ann. Cas. 1912A, 1022, holding that defense that foreign corporation is illegal combination is not available to defendant in action of assumpsit, in transaction untainted by illegality; United States Fire Escape Counterbalance Co. v. Joseph Halsted Co. 195 Fed. 297, holding that assignee of patent holding under assignment made in aid of combination violative of Sherman Anti-Trust Act, may sue in equity infringer of patent who cannot defend by attacking assignee as unlawful combination; Bessire & Co. v. Corn Products Mfg. Co. 47 Ind. App. 304, 94 N. E. 353, holding that answer, in action for goods sold and delivered under contract, that plaintiff had monopoly of such goods and that defendant could not obtain them elsewhere, is bad; Pennsylvania Co. v. Bay, 138 Fed. 208, holding that broker sued to restrain illegal sale of tickets could not urge that complainant railroad was in an unlawful combination to keep up rates; Dr.

Miles Medical Co. v. Platt, 142 Fed. 610, holding violator of trade agreement as to sale of proprietary medicines could not urge that proprietor combined with others unlawfully; Chicago Wall Paper Mills v. General Paper Co. 8 Ann. Cas. 889, 78 C. C. A. 607, 147 Fed. 494, holding sale of goods by an illegal combination was collateral and not within statute making void all contracts in violation of an anti-trust act.

Distinguished in Indiana Mfg. Co. v. Case Threshing Mach. Co. 148 Fed. 23, holding monopolistic nature of licensing and selling agreements between patentee and makers was defense to single license sued for breach of his license.

Illegality of contract as defense.

Approved in Union Cent. L. Ins. Co. v. Berlin, 33 C. C. A. 277, 62 U. S. App. 223, 90 Fed. 782, holding promise to extend note discharged by promisee's failure to perform unlawful condition imposed; Gilbert v. American Surety Co. 61 L. R. A. 257, 57 C. C. A. 623, 121 Fed. 503, holding seller of property in furtherance of illegal combination in restraint of trade cannot set up illegality of contract in action for its enforcement.

Cited in Ballin v. Fourteenth Street Store, 54 Misc. 361, 105 N. Y. Supp. 1028, holding sale of goods not vitiated by fact of illegal agreement by seller to pay bonus to buyer's agent; Camors-McConnell Co. v. McConnell, 140 Fed. 415, holding party to agreement against competition could not repudiate it on the ground that the other party entered into a monopolistic combination.

41 L. R. A. 612, MOZINGO v. ROSS, 150 Ind. 688, 65 Am. St. Rep. 387, 50 N. E. 867.

Limitations as to persons secondarily liable.

Approved in Koontz v. Hammond, 21 Ind. App. 80, 51 N. E. 506, holding that principal's payment of interest will not suspend statute as to surety; McBride v. Ulmer, 30 Ind. App. 157, 65 N. E. 610, holding credit on indebtedness of husband as part payment on debt which creditor was owing former's wife not such payment as would remove bar of statute.

Cited in Balph v. Magaw, 33 Ind. App. 402, 70 N. E. 188, holding limitations not applicable to grantees never within state where suit is brought to reach fraudulent conveyance; Northwest Thresher Co. v. Dahltorp, 104 Minn. 131, 116 N. W. 106, holding payments by a principal debtor did not toll statute as to guarantor.

Cited in notes (37 L.R.A.(N.S.) 274, 275) on payment or promise by principal as extending limitation period as to surety; (104 Am. St. Rep. 754) on right of principals and sureties to plead statute of limitations.

Presumptions as to new promise or payment.

Cited in Park v. Park, 32 Ind. App. 644, 70 N. E. 493, holding it not inferable whether new promise acknowledged debt, it not being set out and no finding being made thereon.

41 L. R. A. 614, LOUISVILLE & N. R. CO. v. WHITLOW, 105 Ky. 1, 43 S. W. 711.

Conflict of laws.

Cited in Baltimore & O. S. W. R. Co. v. Reed, 158 Ind. 28, 56 L. R. A. 470, 92 Am. St. Rep. 293, 62 N. E. 488, holding in action for injury caused by negligence of coemployee in another state, common-law rule presumed to prevail in latter state, in absence of showing to contrary; Dallas v. Illinois C. R. Co. 144 Ky. 740, 139 S. W. 958, holding that law of state where injury occurred controls in action for injury; Louisville & N. R. Co. v. Smith, 135 Ky. 476, 122 N.

W. 806, holding that laws of state wherein personal injury occurred govern question whether punitive damages should be awarded; Illinois C. R. Co. v. Jordan, 117 Ky. 514, 78 S. W. 426, holding law of state where liability was incurred will govern in testing contributory negligence.

Cited in notes (56 L. R. A. 221) on conflict of laws as to action for death or bodily injury; (56 L. R. A. 313) on conflict of laws as to measure of damages.

Disapproved in Dorr Cattle Co. v. Des Moines Nat. Bank, 127 Iowa, 164, 98 N. W. 918, 4 Ann. Cas. 519, holding that the amount recoverable in action for a foreign tort must be controlled by the lex fori.

41 L. R. A. 617, SHEPARD & M. LUMBER CO. v. ELDRIDGE, 171 Mass. 516, 68 Am. St. Rep. 446, 51 N. E. 9.

What constitutes estoppel or negligence as to fraud or forgery.

Approved in Winslow v. Everett Nat. Bank, 171 Mass. 534, 51 N. E. 16, holding negligence in affording opportunity for forging indorsement no defense in action to recover deposit; Scollans v. Rollins, 173 Mass. 281, 73 Am. St. Rep. 284, 53 N. E. 863, holding rightful owner of bond fraudulently pledged by depositary not estopped from asserting title thereto; Dallinger v. Richardson, 176 Mass. 83, 57 N. E. 224, holding executor not estopped from denying testator's residence by statements not relied upon nor so intended; Welch v. Walsh, 177 Mass. 558, 52 L. R. A. 784, 83 Am. St. Rep. 302, 59 N. E. 440, holding lessor not negligent as to guarantor in failing to use diligence in collecting rent.

Cited in Murphy v. Metropolitan Nat. Bank, 191 Mass. 163, 114 Am. St. Rep. 595, 77 N. E. 693, holding drawer of check was not negligent in delivering it to reputable attorney for supposed borrower, where loan was a sham and attorney procured payment on fraudulent personation of payee; Newton Centre Trust Co. v. Stuart, 201 Mass. 294, 87 N. E. 630, holding estoppel not predicable on admission of other signatures not made to induce action on ones in question; Jordan Marsh Co. v. National Shawmut Bank, 201 Mass. 408, 22 L.R.A.(N.S.) 254, 87 N. E. 740, holding it not negligence to make checks to order of supposed seller of goods, so that bank paying on forged indorsement can defend; Kearny v. Metropolitan Trust Co. 110 App. Div. 239, 97 N. Y. Supp. 274, holding borrower of money which passed by check payable to third person might in right of drawer recover from bank which paid on forged indorsement.

Imputation to principal of knowledge of agent.

Cited in Newell v. Hadley, 206 Mass. 356, 29 L.R.A.(N.S.) 920, 92 N. E. 507 (dissenting opinion), on knowledge of agent as imputable to principal where agent is acting in his own interest.

Right of action by holder against drawer.

Cited in note (128 Am. St. Rep. 88) on right of action by holder of check against drawer.

41 L. R. A. 624, STATE *ex rel.* SMYTH v. MOORES, 55 Neb. 480, 76 N. W. 175.

Cited for history of litigation in State *ex rel.* Wright v. Savage, 64 Neb. 695, 90 N. W. 898.

Right of local self-government.

Approved in Ex parte Lewis, 45 Tex. Crim. Rep. 26, — L.R.A.(N.S.) —, 108 Am. St. Rep. 929, 73 S. W. 811, holding statute directing appointment of governing commissioners in city by governor, a violation of the right of local self-government under the constitution.

Cited in State *ex rel.* Rosewater v. Holcomb, 56 Neb. 583, 77 N. W. 1117, de-

nying mandamus compelling governor to conduct trial of charges against fire and police commissioners authorized by void statute; State *ex rel.* White v. Barker, 116 Iowa, 104, 57 L. R. A. 250, 93 Am. St. Rep. 222, 89 N. W. 204, holding municipality has right to establish and control water works without legislative interference; Lexington v. Thompson, 113 Ky. 551, 57 L. R. A. 778, 68 S. W. 477, holding legislature cannot fix salaries of firemen in municipalities; State *ex rel.* Smyth v. Kennedy, 60 Neb. 303, 83 N. W. 87, denying writ of ouster against fire and police commissioners deprived of office by void statute; State *ex rel.* White v. Barker, 116 Iowa, 104, 57 L. R. A. 250, 93 Am. St. Rep. 222, 89 N. W. 204, holding statute authorizing appointment of board of water works trustees for cities of first class by judges of district court, infringement on right of local self-government; McDonald v. Louisville, 113 Ky. 437, 68 S. W. 413, holding amendment to city charter requiring levy of tax to create fund for pensioning members of fire department and families of deceased members, invalid; State ex rel. Haberlan v. Love, 89 Neb. 151, 34 L.R.A.(N.S.) 610, 131 N. W. 196, Ann. Cas. 1912 C, 542, to the point that city in maintaining fire department, exercises private and corporate, rather than governmental power; Ex parte Corliss, 16 N. D. 501, 114 N. W. 962, on police officers being local and not state officers; Ex parte Anderson, 46 Tex. Crim. Rep. 395, 81 S. W. 973, on local self-government as an inherent right.

Cited in footnote to State *ex rel.* McCausland v. Freeman, 47 L. R. A. 67, which sustains statute arbitrarily establishing high school and requiring its maintenance by people of county.

Cited in notes (48 L.R.A. 480) on power of legislature to impose burdens on municipalities and to control their local administration and property; (1 L.R.A.(N.S.) 513) on right of local self-government; legislative regulation of municipal officers; (15 L.R.A.(N.S.) 577) on state control of municipal fire department.

Distinguished in State ex rel. Young v. Robinson, 101 Minn. 283, 20 L.R.A. (N.S.) 1130, 112 N. W. 269, holding state may maintain action for removal of city official for failure to enforce general laws within municipality.

Disapproved in Americus v. Perry, 114 Ga. 879, 57 L. R. A. 234, 40 S. E. 1004, holding right of local self-government within municipalities entirely dependent upon legislative judgment and discretion; Newport v. Horton, 22 R. I. 207, 50 L. R. A. 338, 47 Atl. 312, sustaining statute empowering governor to appoint police commissioners for city.

Overruled in Redell v. Moores, 63 Neb. 225, 55 L. R. A. 744, 93 Am. St. Rep. 431, 88 N. W. 243, holding legislature may empower governor to appoint fire and police commissioners in cities of metropolitan class.

Cited as overruled in State *ex rel.* Wright v. Savage, 64 Neb. 701, 90 N. W. 898, holding that although decision is not law, it is *res judicata* as to right of major's appointees to hold offices of fire and police commissioners; State *ex rel.* Wright v. Savage, 64 Neb. 703, 90 N. W. 898, holding question of legislative power to impose upon governor duty of appointing board of fire and police commissioners for city, regarded as settled; Denver v. Londoner, 33 Colo. 120, 80 Pac. 117, holding law creating board of public works and defining its powers was not invalid as legislative control of municipality; Wulf v. Kansas City, 77 Kan. 368, 94 Pac. 207, holding statute authorizing mayor to appoint a board of park commissioners within legislative power; Davidson v. Hine, 151 Mich. 308, 15 L.R.A.(N.S.) 583, 123 Am. St. Rep. 267, 115 N. W. 246, 14 Ann. Cas. 352 (dissenting opinion), on power of legislature to create local boards of fire and police commissioners to be appointed by the governor; State ex rel. Ken-

nedy v. Broatch, 68 Neb. 689, 110 Am. St. Rep. 477, 94 N. W. 1016, holding act of legislature creating local boards of fire and police commissioners appointed by governor valid.

Powers of legislature.

Cited in State ex rel. Jones v. Sargent, 145 Iowa, 318, 27 L.R.A.(N.S.) 731, 139 Am. St. Rep. 439, 124 N. W. 339 (dissenting opinion), upon the plenary power of the legislature over matters affecting public welfare.

State constitution as restrictive of legislation.

Cited in State ex rel. Slabaugh County v. Vinsonhaler, 74 Neb. 679, 105 N. W. 472, holding enumeration of subjects of taxation is not restriction against tax on inheritances not mentioned in enumerated list; State ex rel. Thompson v. Neble, 82 Neb. 268, 19 L.R.A.(N.S.) 583, 117 N. W. 723, as having occasioned the refusal of judges to make further local appointments under legislative act of a nature similar to that in cited case.

41 L. R. A. 644, PEOPLE v. SHELDON, 156 N. Y. 268, 66 Am. St. Rep. 564, 50 N. E. 840.

Effect of coercion on verdict.

Approved in Twiss v. Lehigh Valley R. Co. 61 App. Div. 288, 70 N. Y. Supp. 241, setting aside verdict reached as result of coercion by trial judge; Hagen v. New York C. & H. R. R. Co. 79 App. Div. 526, 80 N. Y. Supp. 580, holding language of court insisting upon agreement of jury, abuse of discretion; Levinson v. Fipking, 65 Misc. 206, 119 N. Y. Supp. 680, holding coercion for court to threaten with punishment for contempt and to instruct that verdict, if wrong, would be corrected by appellate tribunal.

Cited in People ex rel. Stavile v. Warden, 202 N. Y. 144, 95 N. E. 729, holding that where court arbitrarily discharges jury in criminal case, defendant cannot again be put upon trial for same offense; Sandefur v. Com. 143 Ky. 665, 137 S. W. 504, holding that court should not by threat or entreaty attempt to coerce verdict or exert authority to force agreement; People v. Faber, 199 N. Y. 259, 92 N. E. 674, 20 Ann. Cas. 879, holding that judge presiding at trial must not attempt to coerce or compel jury to agree upon particular verdict or any verdict; State v. Chambers, 9 Idaho, 685, 75 Pac. 279, holding instructions to jury reminding them of expense of trial and repeated admonition to them to agree, grounds for reversal; People v. Koerner, 117 App. Div. 45, 102 N. Y. 93, holding jury not coerced by court ordering them, after a long deliberation, to make a further effort to agree; State v. Place, 20 S. D. 491, 107 N. W. 829, 11 Ann. Cas. 1129, holding it error for judge to state in the presence and hearing of the jury that they would be kept together until agreed.

Cited in note (11 L.R.A.(N.S.) 179) on time allowable for jury to deliberate before mistrial ordered in criminal case.

41 L. R. A. 650, WILLIAMS v. HENDRICKS, 115 Ala. 277, 67 Am. St. Rep. 32, 22 So. 439.

Liability for cutting trees.

Approved in Glenn v. Adams, 129 Ala. 191, 29 So. 836, holding no liability incurred for cutting trees from lands of another under mistaken belief of ownership; Owens v. Fullington, 139 Ala. 663, 33 So. 1014, affirming judgment for defendant in action to recover statutory penalty for cutting trees from lands of another without his consent.

Liability for another's torts.

Approved in Southern R. Co. v. Wildman, 119 Ala. 571, 24 So. 764, holding employer liable for tortious acts of servant done within scope of employment.

Cited in footnote to Shapard v. Hynes, 52 L. R. A. 675, which denies liability for tortious act of former partner.

Cited in notes (51 L.R.A. 464, 472) on liability of partnership for torts; (18 L.R.A.(N.S.) 420) on liability for tort committed by servant with a view to furtherance of master's business, but contrary to express instructions; (85 Am. St. Rep. 373) on liability for misrepresentations indirectly made to complaining party.

Master's liability for criminal acts of servant.

Annotation cited in O'Donnell v. Com. 108 Va. 887, 62 S. E. 373, on criminal and penal liability of principal or master for violation of laws by agent or servant.

Cited in note (20 L.R.A.(N.S.) 321) on criminal responsibility for sale of liquor by partner, servant, or agent.

41 L. R. A. 658, BRYAN v. ADLER, 97 Wis. 124, 65 Am. St. Rep. 99, 72 N. W. 368.

Liability for servant's wrongful acts.

Approved in Bergman v. Hendrickson, 106 Wis. 437, 80 Am. St. Rep. 47, 82 N. W. 304, holding saloonkeeper liable for assault by bartender attempting to enforce payment for liquor; Franklin L. Ins. Co. v. People, 103 Ill. App. 563, holding company jointly liable with agent unlawfully transacting business; Gaertner v. Bues, 109 Wis. 171, 85 N. W. 388, holding landlord not liable in punitive damages for unauthorized or unratified acts of officer executing writ; Rueping v. Chicago & N. W. R. Co. 116 Wis. 630, 96 Am. St. Rep. 1013, 93 N. W. 843, holding recovery of compensatory damages for injury inflicted by servant in performance of duties unauthorized, unless wrongful act directed or subsequently affirmed by master.

Cited in State v. Anderson, 127 La. 1047, 54 So. 344, Ann. Cas. 1912 A, 1103, holding that under statute any person conducting barroom or other place where liquor is sold is criminally liable for sale of liquor to minor regardless of who has made sale, and even though it be made against express instructions of owner of place; Johnston v. Chicago, St. P. M. & O. R. Co. 130 Wis. 500, 110 N. W. 424, holding master liable for unauthorized and unlawful assault and imprisonment by servant in investigating past offense; Pfister v. Milwaukee Free Press Co. 139 Wis. 655, 121 N. W. 938, as to recovery of exemplary damages against principal for wrongful and malicious act of agent not authorized or ratified.

Cited in notes (16 L.R.A.(N.S.) 786; 33 L.R.A.(N.S.) 419) on criminal responsibility for sale of liquor by partner, servant, or agent; (88 Am. St. Rep. 792, 799) on liability of principal for unauthorized acts of agent.

41 L. R. A. 669, HALL v. NORFOLK & W. R. CO. 44 W. Va. 36, 67 Am. St. Rep. 757, 28 S. E. 754.

Liability for servant's wrongful acts.

Cited in State use of Burt v. Allen, 48 W. Va. 161, 50 L. R. A. 287, 86 Am. St. Rep. 29, 35 S. E. 990, holding justice of peace and sureties liable for double value of exempt property sold by special constable under process; State v. Baltimore & O. R. Co. 68 W. Va. 197, 69 S. E. 703, holding that proof of one obstruction only, under indictment against railroad for blocking crossing, without other evidence to show that defendant either authorized or approved it, will not sustain indictment; State v. Baltimore & O. R. Co. 65 W. Va. 604, 64

S. E. 735, holding railroad company not liable for act of its conductor in obstructing crossing by train contrary to company's rules.

Construction of penal statute.

Cited in Van Camp v. Michigan C. R. Co. 137 Mich. 474, 100 N. W. 771 (dissenting opinion), on construction of penal statutes; Diddle v. Continental Casualty Co. 65 W. Va. 177, 22 L.R.A.(N.S.) 788, 63 S. E. 962, holding that the courts will strictly construe a penal statute in violation of universally recognized principle.

41 L. R. A. 677, O'LEARY v. BROOKS ELEVATOR CO. 7 N. D. 554, 75 N. W. 919.

Liability for injury to trespassing children.

Cited in Birmingham R. Light & P. Co. v. Jones, 153 Ala. 166, 45 So. 177, holding action for injury by being run into by motor car will not lie on part of child who was trespasser on track at time of injury, there being no reason to apprehend track was not clear.

Cited in footnotes to Brinkley Car Works Mfg. Co. v. Cooper, 57 L. R. A. 724, which denies liability for injury to six-year-old boy from carelessly walking into pool of hot water; Paolino v. McKendall, 60 L. R. A. 133, which denies duty of occupier of land burning rubbish to guard from fire young children accustomed to play there; Ryan v. Towar, 55 L. R. A. 310, which denies land owner's duty to make premises safe for one attempting to rescue trespassing child caught in water wheel in unused building; Uttermohlen v. Bogg's Run Min. & Mfg. Co. 55 L. R. A. 911, which denies liability of mine owner for injury to trespassing child by cable and pulleys hauling coal cars; Kopplekom v. Colorado Cement Pipe Co. 54 L. R. A. 284, which holds owner of uninclosed city lot liable for injury to young child by toppling over of large cement pipe used by children as plaything; Biggs v. Consolidated Barb-Wire Co. 44 L. R. A. 655, which holds owner liable for maintaining dangerous machinery on private grounds unprotected from visits of trespassing children.

Cited in note (19 L.R.A.(N.S.) 1121) on attractive nuisance.

Liability of infant for torts.

Cited in note (57 L. R. A. 673) on liability of infant for torts.

Duty to trespassers.

Cited in Glaser v. Rothschild, 106 Mo. App. 428, 80 S. W. 332, holding person who visits premises of another on business, at his request is given permission to use water closet and in going to it through dark basement falls into unguarded opening and is injured, cannot recover; Wright v. Minneapolis, St. P. & S. Ste. M. R. Co. 12 N. D. 163, 96 N. W. 324, holding employees of railroad company, in operating train, are not required to keep lookout for trespassing stock; Carr v. Minneapolis, St. P. & S. Ste. M. R. Co. 16 N. D. 226, 112 N. W. 972, approving instructions as to liability of railway company for injury to stock by train, embracing doctrine of last clear chance.

Cited in note (69 L.R.A. 514) on care due to sick, infirm, or helpless persons, with whom no contract relation is sustained.

Actionable negligence.

Cited in Southern R. Co. v. Williams, 143 Ala. 217, 38 So. 1013, conceding that actionable negligence is failure to discharge legal duty to person injured, but holding principal inapplicable where duty exists.

41 L. R. A. 681, KEYS v. PITTSBURG & W. COAL CO. 58 Ohio St. 246, 65 Am. St. Rep. 754, 50 N. E. 911.

Measure of damages for taking ore.

Cited in Sandy River Cannel Coal Co. v. White House Cannel Coal Co. 125 Ky. 285, 101 S. W. 319, holding where wrongful taking of ore from mine is result of honest mistake measure of damages is value of ore as it was in place.

Cited in note (91 Am. St. Rep. 876) on measure of damages for taking of ore by cotenant.

41 L. R. A. 689, STATE v. GARDNER, 58 Ohio St. 599, 65 Am. St. Rep. 785, 51 N. E. 136.

State regulation of trades and professions.

Approved in State v. Gravett, 65 Ohio St. 309, 55 L.R.A. 793, 87 Am. St. Rep. 605, 62 N. E. 325, holding legislature may require established practitioners of osteopathy to conform to reasonable standard of qualifications; State v. Biggs, 133 N. C. 739, 64 L.R.A. 144, 94 Am. St. Rep. 731, 46 S. E. 401, holding statute attempting to confer exclusive right to treat disease upon licensed doctors, not within police power; State ex rel. Winkler v. Benzenberg, 101 Wis. 177, 16 N. W. 345, sustaining statutory provision requiring examination of plumbers as to practical knowledge before issuing license.

Cited in Douglass v. People, 225 Ill. 541, 8 L.R.A.(N.S.) 1116, 116 Am. St. Rep. 762, 80 N. E. 341, holding act requiring examination and license of persons who engage in plumbing business is valid exercise of police power; State v. Marble, 72 Ohio St. 24, 70 L.R.A. 835, 106 Am. St. Rep. 570, 73 N. E. 1063, 2 Ann. Cas. 898, holding right to practise medicine is subject to regulation by state in exercise of police power; State v. Briggs, 45 Or. 374, 77 Pac. 750, 2 Ann. Cas. 424, holding act vesting authority in board of examiners to prescribe qualifications of barber is not delegation of legislative power; Felton v. Atlanta, 4 Ga. App. 185, 61 S. E. 27, holding that the business of plumbing is subject to reasonable regulation in the interest of public health but not in conflict with the rights of the individual to engage in a common labor.

Cited in footnotes to State v. Hyman, 64 L.R.A. 637, which holds prohibition against use of room in tenement or dwelling house for manufacture of clothing, except by immediate member of family, within police power: Schnaier v. Navarre Hotel & Importation Co. 70 L.R.A. 722, which holds void, statute requiring every member of plumbing firm to be registered plumber.

Cited in note (78 Am. St. Rep. 259) on acts as to plumbers which legislature may declare criminal.

Disapproved in State ex rel. Richey v. Smith, 42 Wash. 242, 5 L.R.A.(N.S.) 674, 114 Am. St. Rep. 114, 84 Pac. 851, 7 Ann. Cas. 577, holding act regulating plumbing, requiring plumbers to be examined and licensed cannot be sustained as police or sanitary measure.

Equality of rights and privileges.

Cited in State v. Gantz, 124 La. 542, 24 L.R.A.(N.S.) 1072, 50 So. 524, holding statute requiring master electricians to be examined and licensed, and requiring electrical work, except that of minor importance, to be done by master electricians is unconstitutional because exempting lighting and electric railway companies and department of police and public buildings from its operation: State v. Gravett, 65 Ohio St. 312, 55 L.R.A. 791, 87 Am. St. Rep. 605, 62 N. E. 325, holding statute void in discriminating against osteopaths by requiring longer term of study than is required of physicians; Hibbard v. State, 65 Ohio St. 574, 58 L.R.A. 654, 64 N. E. 109, holding unconstitutional, statute

creating public school teachers' pension fund by deduction of percentage of salaries; French v. Shirley, 7 Ohio N. P. 32, 9 Ohio S. & C. P. Dec. 181, holding invalid, statute authorizing summary seizure and destruction of unlicensed fishing nets; Yensen v. State, 7 Ohio N. P. 23, 9 Ohio S. & C. P. Dec. 168, holding unconstitutional, statute discriminating against small vessels in imposing tax for use of gill nets; State v. Mitchell, 97 Me. 74, 94 Am. St. Rep. 481, 53 Atl. 887, holding statute imposing license tax on peddlers not paying tax of $25 on stock in trade, and exempting those paying such tax, invalid; State v. Smith, 158 Ind. 572, 63 L.R.A. 116, 63 N. E. 25 (dissenting opinion), majority sustaining statute authorizing deduction of mortgages not exceeding $700 from assessed valuation for taxation purposes; Henry v. Campbell, 133 Ga. 886, 27 L.R.A.(N.S.) 283, 67 S. E. 390, 18 Ann. Cas. 178, holding an ordinance whereby the plumbers license of one member of a firm or corporation may cover the entire business but requires license and examination for each individual engaged in plumbing is not equal in its operation and is void; State v. Wright, 53 Or. 349, 21 L.R.A.(N.S.) 349, 100 Pac. 296, holding statute requiring license to peddle certain arbitrarily named commodities is void for inequality; Com. v. Hana, 195 Mass. 267, 11 L.R.A.(N.S.) 799, 122 Am. St. Rep. 251, 81 N. E. 149, 11 Ann. Cas. 514, holding discrimination founded on residence of applicant for license as hawker and peddler or amount of tax paid by him is unconstitutional; Kane v. Erie R. Co. 68 L.R.A. 788, 67 C. C. A. 653, 133 Fed. 686, holding exercise of authority in service affords reasonable ground for classification of railway employees; State v. Ross, 4 Ohio N. P. N. S. 393, 16 Ohio S. & C. P. Dec. 718, on the invalidity of a statute for nonuniformity of operation; Snell v. Cincinnati Street R. Co. 16 Ohio C. C. 707, 9 Ohio C. D. 269 (dissenting opinion), on the unconstitutionality of a statute because of its unequal operation; Mykrantz v. Globe Bldg. & L. Asso. 19 Ohio C. C. 57, 10 Ohio C. D. 254, holding unconstitutional statute exempting building and loan associations from the operation of the usury laws; State v. Hubbard, 22 Ohio C. C. 266, 12 Ohio C. D. 98, holding unconstitutional the statute providing for the creation of a fund to pension teachers by deducting one per cent of teachers' salaries and placing it in the fund, as it is not uniform taxation; Froelich v. Toledo & O. C. R. Co. 5 Ohio C. C. N. S. 15, 24 Ohio C. C. 366, sustaining statute providing that any railroad employee with power to direct or control another is not the fellow servant of an employee having no such power; Klopfter v. Board of Health, 9 Ohio N. P. N. S. 38, 20 Ohio & C. P. Dec. 384, sustaining regulation of board of health requiring all milk to be kept in tightly closed receptacles when offered for sale, except that sold for consumption on the premises or to wholesalers in quantities of two or more gallons; Re Smith, 231 Mo. 120, 132 S. W. 607, sustaining ordinance regulating the plumbing business and requiring licenses from all plumbers in the city; Merz v. Murchison, 11 Ohio C. C. N. S. 460, 30 Ohio C. C. 648, sustaining statute regulating and licensing the practice of medicine; State v. Harmon, 3 Ohio C. C. N. S. 400, 13-23 Ohio C. C. 293, holding unconstitutional the statute providing for the licensing of stationary engineers and exempting those who have been employed as engineers for three years before the act took effect; Baldwin Forging & Tool Co. v. Griffith, 5 Ohio N. P. N. S. 571, holding void, statute limiting number of prison laborers except in industries employing less than fifty free laborers; Wolfe v. Columbus, 10 Ohio N. P. N. S. 201, holding void, sewer tappers ordinance discriminating in favor of master plumbers in business in city ninety days previous thereto; Carr v. State, 175 Ind. 265, 32 L.R.A.(N.S.) 1200, 93 N. E. 1071 (dissenting opinion), on validity of

statute exempting baseball players from operation of Sunday laws while making them applicable to other occupations.

Cited in footnotes to Harrodsburg v. Renfro, 51 L. R. A. 897, which holds void, ordinance imposing greater license fee for sale of liquors on main street of town than elsewhere; Com. use of Titusville v. Clark, 57 L. R. A. 348, which holds void, exemption from license tax of contractors and real-estate dealers, but not others, whose business less than $1,000; Knisely v. Cotterel, 50 L. R. A. 87, which sustains statute fixing different rates of license for retailers, wholesalers, and sellers on board of trade; State v. Garbroski, 56 L. R. A. 570, which holds void, statute exempting veterans from requirement for peddling license.

41 L. R. A. 692, STATE *ex rel.* McCAIN v. METSCHAN, 32 Or. 372, 46 Pac. 791, 53 Pac. 1071.

Amending complaint upon remandment.

Approved in Lieuallen v. Mosgrove, 33 Or. 291, 54 Pac. 664, holding privilege of pleading over must be determined by court below upon remandment for further proceedings; McLeod v. Lloyd, 43 Or. 281, 74 Pac. 491, holding, upon remand of case affirmed on appeal from judgment on demurrer, it is open to trial court whether or not to allow defeated party to plead further.

Actions maintained by state.

Approved in State v. Ohio Oil Co. 150 Ind. 38, 47 L. R. A. 634, 49 N. E. 809, sustaining right of state, as such, to maintain injunction against unlawful escape of natural gas.

Cited in Board of Education v. Territory, 12 Okla. 297, 70 Pac. 792, holding territory may maintain action in equity to prevent misapplication of public funds by officers; State ex rel. Roberts v. Lawrence, 80 Kan. 708, 103 Pac. 839, holding state may maintain action to enjoin county treasurer from making general deposit of public moneys in bank not designated as depositary by county commissioners; State ex rel. Atty. Gen. v. Huston, 27 Okla. 616, 34 L.R.A. (N.S.) 386, 113 Pac. 190, holding that district courts have power to enjoin state officers other than governor from using or applying public funds contrary to law; Territory v. Long Bell Lumber Co. 22 Okla. 910, 99 Pac. 911, holding territory may maintain action to enjoin nuisance in shape of monopoly of lumber, fuel, and grain.

Defect of parties.

Cited in Thompson v. Hibbs, 45 Or. 147, 76 Pac. 778, holding that objection of want of parties is waived unless urged in trial court, and cannot be first made in supreme court; Stewart v. Templeton, 55 Or. 366, 104 Pac. 978, holding that demurrer "that there is defect of parties plaintiff" is sufficient to prevent what is equivalent to demurrer on ground of "misjoinder of parties plaintiff;" Criswell v. Everett School Dist. No. 24, 34 Wash. 433, 75 Pac. 984, holding objection that there is defect of parties is waived by failure to make it by demurrer or answer; Thompson v. Hibbs, 45 Or. 147, 76 Pac. 778, holding that defect of parties is waived if not objected to at trial.

Cited in note (3 L.R.A.(N.S.) 257) as to whether holders are necessary parties to proceedings to invalidate money obligations of county, state or municipal corporations.

41 L. R. A. 695, ROBB v. PENNSYLVANIA CO. FOR INS. ON LIVES & G. A. 186 Pa. 456, 42 W. N. C. 313, 475, 65 Am. St. Rep. 868, 40 Atl. 969, 41 Atl. 49.

Which of two innocent parties must suffer loss.

Approved in Vanderslice v. Royal Ins. Co. 9 Pa. Super. Ct. 237, 43 W. N. C.

384, holding that insurer must suffer loss of payments induced through fraud of third party intrusted with policy; Harvey v. Schuylkill Real Estate, Title Ins. & T. Co. 24 Pa. Co. Ct. 599, holding that use of corporation letterhead by solicitor does not justify belief that he is empowered to act for company in a particular transaction; Googe v. Gaskill, 18 Pa. Super. Ct. 43, holding that loss must be borne by party relying on assignment of mortgage forged by attorney in fact, authorized only to receipt for payments and enter satisfaction of record; Grasselli Chemical Co. v. Biddle Purchasing Co. 22 Pa. Super. Ct. 429, holding principal liable for goods sold and delivered to agent, according to previous dealing, by person without notice of revocation of agency.

Cited in Taylor v. Sartorious, 130 Mo. App. 36, 108 S. W. 1089, holding signers of power of attorney cannot be held for fraud of the attorney who altered it so as to change its sense without authority.

Cited in note (3 L.R.A.(N.S.) 213) on liability for permitting undelivered note to get into circulation.

Stamped or printed signature.

Cited in National Union Bank v. Shearer, 225 Pa. 475, 74 Atl. 351, 17 Ann. Cas. 664, on sufficiency of signature by mere stamp; Philadelphia v. Meighan, 15 Dist. R. 11, holding printed signature valid.

Distinguished in Dollar Sav. Fund & T. Co. v. Pittsburgh Plate Glass Co. 213 Pa. 311, 62 Atl. 916, 5 Ann. Cas. 248, where the case turned upon the forgery of a written signature.

41 L. R. A. 700, HERMAN BROS. v. KATZ BROS. 101 Tenn. 118, 47 S. W. 86.

Insurance; change of possession.

Cited in McClelland v. Greenwich Ins. Co. 107 La. 129, 31 So. 691, holding mere formal seizure by sheriff not such change of possession as invalidates policy; Gordon v. Mechanics & T. Ins. Co. 120 La. 446, 15 L.R.A.(N.S.) 832, 124 Am. St. Rep. 434, 45 So. 384, 14 Ann. Cas. 886, holding voluntary proceedings in bankruptcy by assured did not work forfeiture of policy under clauses as to change of title, where loss occurred before appointment of receiver.

Cited in notes (19 L.R.A.(N.S.) 644) on effect of appointment of receiver for insured on fire insurance; (24 L.R.A.(N.S.) 803) on levy of process upon insured property as change in interest, etc.

Distinguished in Finksbohner v. Glens Falls Ins. Co. 6 Cal. App. 383, 92 Pac. 318, where there was actual transfer of possession, control and equitable ownership of the insured premises under contract of sale.

41 L. R. A. 703, HARRISON v. TURNBULL, 95 Va. 721, 64 Am. St. Rep. 830, 30 S. E. 372.

Judgment against infant.

Cited in Wilson v. Hubbard, 39 Wash. 681, 82 Pac. 154, holding judgment entered against minor upon proper service is not void but voidable only, and continues valid unless attacked within proper period after removal of disability of infancy.

Cited in note (112 Am. St. Rep. 199, 201) on bills by infants to impeach or avoid decrees.

Appeal by infant during minority.

Approved in Seymour v. Alkire, 47 W. Va. 305, 34 S. E. 953, and Lockhart v. Vandyke, 97 Va. 363, 33 S. E. 613, holding that infant aggrieved by adverse decree may sue out writ of error, bill of review, or original bill by next friend, or resort to same remedies within six months after attaining majority.

Collateral attack upon decrees.

Approved in Turnbull v. Mann, 99 Va. 45, 37 S. E. 288, holding decree confirming report of receiver as to delivery of trust note to custodian appointed by court cannot be collaterally questioned in proceeding for discharge of lien because of presumption of payment.

Cited in Parks v. McDaniel, 75 S. C. 11, 117 Am. St. Rep. 878, 54 S. E. 801, holding party assailing payment of judgment by executor has burden of proving claim invalid and judgment result of breach of duty on part of executor.

Effect of decree upon rights of unborn heirs.

Cited in Ammons v. Ammons, 50 W. Va. 406, 40 S. E. 490, holding unborn children standing in same class and having same rights as persons living, deemed before court by representation in proceedings for the sale of their interest in estate; Los Angeles County v. Winans, 13 Cal. App. 245, 109 Pac. 640, holding that contingent interests of unborn child are sufficiently protected by virtual representation in judicial proceedings affecting interests.

Cited in notes (8 L.R.A.(N.S.) 51, 53, 61, 70) on devestiture of estates of persons not in being; (97 Am. St. Rep. 765) on judgments against person not in being; (101 Am. St. Rep. 869) on effect of compulsory partition on persons not in esse.

Same defense by different defendants.

Cited in City Nat. Bank v. Jordon, 139 Iowa, 508, 117 N. W. 758, holding where proffered defense gives to merits of case or to substance of contract sued upon, it may be pleaded by all defendants, or, if pleaded by one of them inures to benefit of all; Brown v. Cornwell, 108 Va. 133, 60 S. E. 623, holding where defense is common to all defendants, demurrer will be considered, though it does not appear upon whose behalf it was filed.

Cited in note (33 L.R.A.(N.S.) 311) on right of one defendant to benefit of other's demurrer.

41 L. R. A. 707, HILLER v. ELLIS, 72 Miss. 701, 18 So. 95.

Overstating preferred claim.

Cited in note (58 Am. St. Rep. 88, 99) on preferences to creditors.

Distinguished in Goodbar Shoe Co. v. Montgomery, 73 Miss. 75, 19 So. 196, holding assignment not invalidated by overstatement of preferred claim, when assignee directed to pay "true" amount due.

Liability for misrepresentations to commercial agencies.

Cited in note (85 Am. St. Rep. 383) on liability for misrepresentations to commercial agencies.

41 L. R. A. 714, MERRILL v. HARRIS, 65 Ark. 355, 67 Am. St. Rep. 929, 46 S. W. 538.

Rights of child in parent's homestead.

Cited in Cherokee Constr. Co. v. Harris, 92 Ark. 266, 135 Am. St. Rep. 177, 122 N. W. 485, on power of probate court to order sale of interest of minors in homestead for their benefit; Gatlin v. Lafon, 95 Ark. 263, 129 S. W. 284, holding that probate court has no power to authorize guardian to exchange lands of his ward for other lands.

Cited in note (56 L. R. A. 62) on rights of child or children in homestead of parent.

41 L. R. A. 718, STATE v. CALDWELL, 50 La. Ann. 666, 69 Am. St. Rep. 465, 23 So. 869.

Constitutional provisions; methods of procedure.

Approved in State v. Cook, 52 La. Ann. 117, 26 So. 751, holding constitutional change of method of drawing petit jury applicable to offense committed before adoption; State v. Marceaux, 50 La. Ann. 1139, 24 So. 611, holding constitutional provision reducing number of trial jurors applicable to one indicted before its adoption.

Cited in State *ex rel.* Sherburne v. Baker, 50 La. Ann. 1248, 69 Am. St. Rep. 472, 24 So. 240, holding constitutional provision for trial without jury inapplicable to offense committed before its adoption.

Cited in footnotes to State v. Vincent, 52 L. R. A. 83, which holds indictment found by less than twenty-three grand jurors demurrable; State v. Kyle, 56 L. R. A. 115, which sustains statute authorizing prosecution by information of crimes already committed.

Overruled in State v. Ardoin, 51 La. Ann. 172, 24 So. 802, holding constitutional provision reducing number of trial jurors invalid as applied to offenses committed before its adoption.

Self-operative constitutional provisions.

Approved in State v. Favre, 51 La. Ann. 437, 25 So. 93, holding self-operative, constitutional provision for indictment by grand jury of twelve persons; Globe Lumber Co. v. Griffeth, 107 La. 623, 31 So. 1010, holding self-operative, constitutional provision as to delay for suspensive appeal.

Cited in Britt v. Caldwell Norton Lumber Co. 129 La. 249, 55 So. 777, holding that article 117 of constitution relating to suspensive appeal is self-executing.

Voluntary confessions.

Cited in note (18 L.R.A.(N.S.) 855) as to when confession voluntary.

41 L. R. A. 720, SUPREME LODGE, O. OF G. C. v. SIMERING, 88 Md. 276, 71 Am. St. Rep. 409, 40 Atl. 723.

Judicial interference with corporate elections.

Approved in Walker v. Johnson, 17 App. D. C. 169, sustaining preliminary injunction against holding corporate election; Garmire v. American Min. Co. 93 Ill. App. 333, sustaining interlocutory injunction against persons acting as directors until title determined by quo warranto.

— Procedure.

Cited in Ward v. Sasscer, 98 Md. 282, 57 Atl. 208, holding mandamus is proper remedy to compel surrender of officers of trustees of incorporated educational institution together with its property.

Possession or income of property pendente lite.

Cited in Baker v. Baker, 108 Md. 272, 129 Am. St. Rep. 439, 70 Atl. 418, on power of court to pass order pendente lite concerning possession of property or receipt of income thereof.

41 L. R. A. 724, PIPER v. NEW YORK C. & H. R. R. CO. 156 N. Y. 224, 66 Am. St. Rep. 559, 50 N. E. 851.

Cited as Reversing 89 Hun, 75, 34 N. Y. Supp. 1072, in Connor v. Metropolitan Street R. Co. 77 App. Div. 389, 79 N. Y. Supp. 294.

Carrier's duty to passenger.

Cited in Koehne v. New York & Q. C. R. Co. 32 App. Div. 422, 52 N. Y. Supp.

1088, holding railroad company bound to exercise very high degree of care and skill in operation of its cars, to avoid injury to passengers; Weill v. New York, 147 App. Div. 638, 132 N. Y. Supp. 609, holding that transportation companies are not liable for risks arising from heedlessness on part of passengers.

Contributory negligence.

Approved in Mearns v. Central R. Co. 163 N. Y. 114, 57 N. E. 292, denying recovery to one injured by stepping from moving train after station called by guard; Brugher v. Buchtenkirch, 167 N. Y. 157, 60 N. E. 420, denying recovery to caller at apartment house, injured while passing along unfamiliar dark hallway; Meinrenken v. New York C. & H. R. R. Co. 81 App. Div. 137, 80 N. Y. Supp. 1074, holding it negligence to stand near track while noise and smoke of one train obscures approach of another; Bentley v. Loverock, 102 Ill. App. 171, denying recovery to licensee falling down elevator shaft in unfamiliar, poorly lighted building; McCarthy v. Emerson, 77 App. Div. 566, 79 N. Y. Supp. 180, holding hod carrier ascending plank without regarding proximity of overhead timbers, guilty of contributory negligence.

Cited in Rohrbacher v. Gillig, 203 N. Y. 418, 96 N. E. 733, holding that person coming into unfamiliar situation where condition of darkness renders use of eyesight ineffective to define his surroundings is not justified in proceeding further without first finding out what may be obstructions to safe passage; Darrow v. The Fair, 118 Ill. App. 669, holding approaching and entering elevator shaft in dark constitutes contributory negligence; Reed v. Manierre, 124 Ill. App. 136, holding person who, while walking about in the dark, fell into elevator shaft guilty of contributory negligence as matter of law; Casey v. Adams, 137 Ill. App. 413, holding same as to person stepping off rear end of express wagon into dark elevator door at place unknown to him; Dailey v. Distler, 115 App. Div. 103, 100 N. Y. Supp. 679, holding guest in hotel who groped along hallway in dark for toilet room and fell down flight of steps guilty of contributory negligence; Lather v. Bammann, 122 App. Div. 16, 106 N. Y. Supp. 790, holding same as to tenant who groped about dark hallway for bathroom door and fell down staircase; Robinson v. Crimmins, 120 App. Div. 254, 104 N. Y. Supp. 1076, holding person who opened door leading off hall in building wherein she was looking for flat to rent, stepped through it into dark, and was precipitated down stairway, assumed risk of injury; Kiernan v. Gutta Percha & Rubber Co. 134 App. Div. 196, 118 N. Y. Supp. 893, holding person who entered pumphouse, dangerous because of unguarded pit therein, when upon opening door, he was met by steam and mist which prevented his seeing danger of unfamiliar place, did not exercise reasonable care; Stack v. New York, C. & H. R. R. Co. 96 App. Div. 579, 89 N. Y. Supp. 112, holding person who attempts to cross railroad track under circumstances such as to distract his attention should proportionately guard and increase his observation; Keller v. Erie R. Co. 98 App. Div. 553, 90 N. Y. Supp. 236, holding that when steam and smoke from one train settle down in front of another approaching train, duty of one about to cross to stop until smoke and steam disappear and render approach of train visible is rendered more insistent; Donnelly v. Katz, 133 App. Div. 908 (dissenting opinion), on contributory negligence.

Cited in note (22 L.R.A.(N.S.) 313) on injury to passenger on platform of vestibuled train.

41 L. R. A. 727, STATE *ex rel.* MONNETT v. ADAMS, 58 Ohio St. 612, 65 Am. St. Rep. 792, 51 N. E. 135.

Civil rights of women.

Cited in footnotes to *Re* Maddox, 55 L. R. A. 298, which denies right of woman

to practise law; Oren v. Abbott, 47 L. R. A. 92, which denies eligibility of woman as prosecuting attorney.

Cited in note (5 L.R.A.(N.S.) 416) on woman as notary.

41 L. R. A. 728, EVANSVILLE v. SENHENN, 151 Ind. 42, 68 Am. St. Rep. 218, 47 N. E. 634, 51 N. E. 88.

Doctrine of imputed negligence.

Approved in McNamara v. Beck, 21 Ind. App. 484, 52 N. E. 707; Chicago G. W. R. Co. v. Kowalski, 34 C. C. A. 4, 92 Fed. 313; Jeffersonville v. McHenry, 22 Ind. App. 15, 53 N. E. 183, — holding parent's negligence not imputable to child suing for own benefit; Warren v. Manchester Street R. Co. 70 N. H. 361, 47 Atl. 735, holding parent's negligence not imputable to child in action by parent as administrator.

Cited in Bias v. Chesapeake & O. R. Co. 46 W. Va. 362, 33 S. E. 240 (dissenting opinion), majority sustaining parent's recovery for killing of child fifteen months old, while trespassing on tracks; Neff v. Cameron, 213 Mo. 362, 18 L.R.A. (N.S.) 324, 127 Am. St. Rep. 606, 111 S. W. 1139, holding negligence of parents in taking child upon sidewalk with knowledge of its defects and in not properly caring for child's injuries not imputable to child.

Cited in notes (18 L.R.A.(N.S.) 320) on contributory negligence of parent or custodian as bar to action by child for negligent injuries; (110 Am. St. Rep. 284) on imputed negligence.

Municipal liability for street obstruction.

Later appeal in 26 Ind. App. 364, 59 N. E. 863, holding municipality bound to overcome presumption that lumber pile on street is unlawful obstruction.

Cited in Anderson v. Fleming, 160 Ind. 599, 67 N. E. 443, holding city liable for injury from fall into excavation across sidewalk, made by independent contractor under contract with city; Prowell v. Waterloo, 144 Iowa, 691, 123 N. W. 346, holding that city is liable for injury caused by defective walk even though defect is result of independent contractor's leaving obstruction in street.

Cited in footnotes to Copeland v. Seattle, 65 L.R.A. 333, which denies liability of city for death of one killed by fall of material from building in process of construction under permit from city; Temby v. Ishpeming, 69 L.R.A. 618, which denies liability of city for injuries to traveler by fall of billboard insecurely fastened by abutting owner.

Cited in notes (103 Am. St. Rep. 281; 20 L.R.A.(N.S.) 689) on liability of municipality for defects or obstructions in streets.

Questions considered on rehearing.

Cited in Powell v. Nevada C. & O. R. Co. 28 Nev. 343, 82 Pac. 96, holding questions not raised on original hearing will not be considered on rehearing.

Cited in note (73 Am. St. Rep. 103) on limitations on doctrine of stare decisis.

Liability for negligence of independent contractors.

Cited in notes (65 L.R.A. 461, 475) as to who are independent contractors; (65 L.R.A. 652) on general rules as to absence of liability of employer for torts of independent contractor; (66 L.R.A. 134) on liability for acts of independent contractor where injuries result from nonperformance of absolute duties of employer; (76 Am. St. Rep. 420) on liability for negligence and torts of independent contractors.

41 L. R. A. 737, BARNARD v. SHIRLEY, 151 Ind. 160, 47 N. E. 671.

Riparian rights.

Cited in Carnes v. Dalton, 56 Or. 606, 110 Pac. 170, holding that tenant in

common in irrigation ditch or water right may sue for unlawful interference therein by another tenant; Straight v. Hover, 79 Ohio St. 276, 22 L.R.A.(N.S.) 284, 87 N. E. 174, on pollution of flowing waters.

Annotation cited in Hazard Powder Co. v. Somersville Mfg. Co. 78 Conn. 177, 121 Am. St. Rep. 144, 61 Atl. 519, holding upper riparian proprietor may detain water for reasonable time and discharge it in reasonable manner in making reasonable use of it for power; Allen v. Thornapple Electric Co. 144 Mich. 374, 115 Am. St. Rep. 453, 108 N. W. 79, holding dam owner liable for damages to land of upper proprietor in times of freshets.

Cited in footnotes to Meng v. Coffey, 60 L. R. A. 910, which requires use by riparian owners of water for irrigation to be reasonable; People v. Hulbert, 64 L. R. A. 265, which sustains right of upper riparian owner to bathe in lake from which municipality takes its water supply; Watkins Land Co. v. Clements, 70 L.R.A. 964, which holds each riparian owner entitled to reasonable use of water from stream for irrigation purposes subject to right of other riparian owners to have natural use of water for cooking and quenching thirst.

Cited in notes (50 L. R. A. 737) on state and Federal ownership of waters; (58 L. R. A. 240) on acquisition of water supply by right of eminent domain; (59 L.R.A. 333) on liability for facilitating evaporation from stream; (15 L.R.A.(N.S.) 238) on care necessary to avoid waste in diverting water from stream; (15 L.R.A.(N.S.) 293) on limitation of unrestricted easement to reasonable use; (22 L.R.A.(N.S.) 392) on right of riparian owner to prevent diversion of flood water; (84 Am. St. Rep. 911) on extent of municipal right to pollute waters.

41 L. R. A. 760, COX v. STATE, 117 Ala. 103, 67 Am. St. Rep. 166, 23 So. 806.

Cohabitation as element of bigamy.

Cited in note (126 Am. St. Rep. 215) on cohabitation as element of crime of bigamy.

Requisites of cohabitation.

Cited in note (124 Am. St. Rep. 113) on requisites of cohabitation.

41 L. R. A. 762, MEYER v. SAN DIEGO, 121 Cal. 102, 66 Am. St. Rep. 22, 53 Pac. 434.

Disqualification of judges.

Approved in Meyer v. San Diego, 121 Cal. 114, 53 Pac. 1128, holding judge owning real estate taxable for city's bonded indebtedness, disqualified to sit in suit to test validity of contract involving creation of bonded debt.

Cited in Adams v. Minor, 121 Cal. 374, 53 Pac. 815, holding judge who is stockholder in bank holding bonds issued by irrigation district, disqualified from sitting in action involving validity of bonds; State *ex rel.* Hart v. Call, 41 Fla. 445, 79 Am. St. Rep. 189, 26 So. 1014, holding tax-paying judge disqualified to sit in suit to declare election establishing school subdistrict illegal, and to restrain assessment and collection of tax for school purposes; State *ex rel.* Schaw v. Noyes, 25 Nev. 49, 56 Pac. 946, holding tax-paying judge not disqualified from sitting in suit to enjoin city executing contract for construction of water works to be paid for with municipal bonds; Brittain v. Monroe County, 214 Pa. 651, 63 Atl. 1076, 6 Ann. Cas. 617, holding fact judge is property owner and taxpayer does not render him "personally interested" in suit wherein county is party defendant; Oak Cliff v. State, 97 Tex. 393, 79 S. W. 1068, holding judge who is property owner and taxpayer of city not disqualified to act in case involving

validity of amendment of city charter authorizing bond issue and levy of tax to pay the debt.

Cited in footnote to First Nat. Bank v. McGuire, 47 L. R. A. 413, which holds judge disqualified to try case in which plaintiff is corporation of which his wife is a shareholder.

Distinguished in Higgins v. San Diego, 126 Cal. 308, 58 Pac. 700, holding possible contingency of such financial situation of city arising as may affect judge as taxpayer not disqualification to sit in action for money demand against city; Los Angeles v. Pomeroy, 133 Cal. 532, 65 Pac. 1049, holding contingency of possible future increase of taxation in city, too remote and indistinct to disqualify judge who is taxpayer; State *ex rel.* Smith v. Pitts, 139 Ala. 156, 36 So. 20, holding judge who has purchased property from alleged lunatic not disqualified from sitting in proceedings of inquisition of lunacy.

— Persons acting in judicial capacity.

Cited in Conant's Appeal, 102 Me. 481, 120 Am. St. Rep. 512, 67 Atl. 564, holding selectman who is petitioner for town way, is disqualified to act upon board of selectmen who locate way; Peirce v. Bangor, 105 Me. 419, 74 Atl. 1039, holding municipal officers cannot act as jurors in condemnation proceedings by city to acquire land for library.

41 L. R. A. 767, MAY v. MAY, 5 App. D. C. 552.

Effect of removal of trustee.

Affirmed in 167 U. S. 318, 42 L. ed. 183, 17 Sup. Ct. Rep. 824, holding upon removal of trustee, surrender of possession and control of trust property follows as necessary incident.

Cited in footnote to Polk v. Linthicum, 69 L.R.A. 920, which holds mere unfriendliness of beneficiary towards trustee not sufficient ground for latter's removal.

41 L. R. A. 772, PAULK v. SYCAMORE, 104 Ga. 24, 69 Am. St. Rep. 128, 30 S. E. 417.

Equitable interference with enforcement of penal statutes.

Approved in O'Brien v. Harris, 105 Ga. 736, 31 S. E. 745, holding that equity cannot enjoin criminal acts not apparently affecting petitioner's property rights; Moultrie v. Patterson, 109 Ga. 373, 34 S. E. 600, denying injunction against enforcement of ordinance imposing penalty for selling meats and fish elsewhere than in city market, when adequate legal remedy exists; Bainbridge v. Reynolds, 111 Ga. 759, 36 S. E. 935, denying injunction against prosecution under penal ordinance; Bainbridge v. Reynolds, 111 Ga. 759, 36 S. E. 935, holding that equity will not consider question of validity of criminal ordinance upon petition for injunction; Cannon v. Merry, 116 Ga. 294, 42 S. E. 274, holding dispensary selling liquors openly under color of lawful authority not subject to abatement by injunction under "blind tiger" statute; Salter v. Columbus, 125 Ga. 97, 54 S. E. 74, holding equity will not enjoin arrest of brewery company's employes for failure to pay municipal license tax, nor enquire into validity of ordinance penal in character.

Cited in Brown v. Birmingham, 140 Ala. 598, 37 So. 173, holding equity will not enjoin prosecution for crime, and it is immaterial that statute or ordinance alleged to be violated is absolutely void; J. W. Kelly & Co. v. Conner, 122 Tenn. 368, 25 L.R.A.(N.S.) 209, 123 S. W. 622, holding that a court of equity cannot enjoin prosecutions under a statute on the grounds that the statute is invalid, until such validity has been determined in an action at law; Georgia R. & Elec-

tric Co. v. Oakland City, 129 Ga. 580, 59 S. E. 296, denying injunction to restrain enforcement of penal ordinance requiring street cars to be stopped at designated points; Rowland v. Road & Revenue Comrs. 133 Ga. 191, 65 S. E. 404, holding equity will not restrain trials for failure to pay commutation tax or do road work, nor, upon petition for injunction in such case, enquire whether recommendation of grand jury puts road law into operation; Shellman v. Saxon, 134 Ga. 33, 27 L.R.A.(N.S.) 454, 67 S. E. 438, denying injunction against enforcement of ordinances as to sale of imitations of spirituous or malt liquors containing more than certain per cent of alcohol; Nims v. Gilmore, 17 Idaho, 615, 107 Pac. 79 holding right of person arrested for violation of local option statute to show it was not adopted affords him plain and adequate remedy; Christian Moerlein Brewing Co. v. Hill, 166 Fed. 150, holding equity will not enjoin state officers from enforcing statute prohibiting sale of intoxicating liquors, and making its violation misdemeanor; Pleasants v. Smith, 90 Miss. 450, 9 L.R.A.(N.S.) 774, 122 Am. St. Rep. 317, 43 So. 475, denying injunction to restrain prosecution of merchant for disturbance of peace by use of megaphone to call attention of public to clearance sale; Tyler v. Story, 44 Tex. Civ. App. 253, 97 S. W. 856, holding equity will not enjoin enforcement of ordinance prohibiting keeping of hogs within one mile of center of public square of city nor inquire into validity of such ordinance in injunction proceeding.

Cited in footnotes to State ex rel. Kenamore v. Wood, 48 L.R.A. 596, which denies right to injunction against enforcing alleged unconstitutional statute for inspection of beer; Arbuckle v. Blackburn, 65 L.R.A. 864, which denies jurisdiction of Federal court to enjoin state food commissioner from proceeding to enforce pure food statute by criminal prosecution.

Cited in notes (2 L.R.A.(N.S.) 632) on injunction against prosecution of criminal or quasi criminal nature; (49 L. ed. (U. S.) 170) on injunction against criminal prosecutions under void municipal ordinances affecting property rights or franchises.

Criminal nature of ordinance prosecutions.

Cited in Barnett v. Atlanta, 109 Ga. 168, 34 S. E. 322, holding prosecution for violation of municipal penal ordinance, criminal case within statutory provision as to time for signing bill of exceptions; Pearson v. Wimbish, 124 Ga. 709, 52 N. E. 751, 4 Ann. Cas. 501, holding violation of municipal ordinance is crime within constitutional provision against slavery or involuntary servitude same as punishment for crime after legal conviction thereof.

41 L. R. A. 775, PEOPLE *ex rel.* AKIN v. KIPLEY, 171 Ill. 44, 49 N. E. 229.

Writ of error dismissed for want of jurisdiction in 170 U. S. 182, 42 L. ed. 998, 18 Sup. Ct. Rep. 550, on ground that no question under Constitution and laws of United States raised by pleadings.

Constitutionality of civil service act.

Followed without special discussion in People *ex rel.* Akin v. Kraus, 171 Ill. 131, 48 N. E. 1052.

Approved in People *ex rel.* Akin v. Loeffler, 175 Ill. 606, 51 N. E. 785, holding civil service act not violative of guaranteed constitutional "privileges and immunities;" Morrison v. People, 196 Ill. 463, 63 N. E. 989, sustaining civil service act authorizing president of county board to appoint civil service commission without consulting county commissioners; Kipley v. Luthardt, 178 Ill. 526, 53 N. E. 74, sustaining validity of civil service act as applied to police department of city of Chicago; People ex rel. Miller v. Chicago, 234 Ill. 418, 84 N. E. 1044, holding statute authorizing civil service commission to appoint of-

ficers or board to hear charges against officer or employee in classified civil service is not unconstitutional.

Cited in State ex rel. Buell v. Frear, 146 Wis. 303, 34 L.R.A.(N.S.) 489, 131 N. W. 832, holding that statutes which limits choice of appointing officer to three persons whose names appear first on eligible list is valid, except as to confidential assistants or laborers.

Cited in notes (34 L.R.A.(N.S.) 481, 482, 483, 484, 486; 79 Am. St. Rep. 560, 564) on constitutionality of civil service laws.

Who within civil service act.

Approved in Brenan v. People, 176 Ill. 623, 52 N. E. 353, holding civil service act applicable to employment under Chicago board of education; People *ex rel.* Akin v. Loeffler, 175 Ill. 598, 51 N. E. 785, holding civil service act applicable to subordinates in Chicago city clerk's office; Atty. Gen. v. Trehy, 178 Mass. 195, 59 N. E. 659, holding almoner v. Chicopee, appointed annually by overseers of poor, subordinate officer subject to civil service rules.

Cited in Chicago v. People, 114 Ill. App. 150, holding city may abolish municipal positions coming within classified service of civil service act without a hearing if it is done in good faith and for substantial reasons; Atty. Gen. v. Tillinghast, 203 Mass. 542, 89 N. E. 1058, 17 Ann. Cas. 449, on construction of civil service law so as that it will not have prospective operation.

Cited in footnote to People *ex rel.* Leary v. Knox, 54 L. R. A. 589, which holds promotion of police officer for personal heroism not prohibited by civil service law.

Distinguished in Sullivan v. Lower, 234 Ill. 25, 84 N. E. 622, holding under statute that order of civil service commission that sidewalk inspector be discharged is properly certified to board of local improvements, and not to commissioner of public works; People ex rel. Plotke v. Lower, 236 Ill. 611, 86 N. E. 577, Affirming 142 Ill. App. 178, 179, holding office of chief smoke inspector created by city council and head of one of principal departments of city government is not included in classified service or subject to provisions of city civil service act.

Judicial interference with proceedings in election contest.

Cited in People *ex rel.* Malley v. Barrett, 203 Ill. 109, 96 Am. St. Rep. 296, 67 N. E. 742, holding right to office not property right entitling *de jure* officer to injunction against production and canvassing of ballots in election contest; Norris v. Cross, 25 Okla. 300, 105 Pac. 1000, holding that mandamus lies to compel secretary of state to file referendum petitions presented to him.

Cited in footnote to Taylor v. Beckham, 49 L. R. A. 258, which denies power of court to review legislative determination of contest as to office of governor.

Delegation of legislative powers.

Cited in Walker v. Towle, 156 Ind. 643, 53 L. R. A. 751, 59 N. E. 20, holding ordinance empowering mayor to require temporary muzzling of dogs under certain circumstances, not delegation of legislative power; State v. Atlantic Coast Line R. Co. 56 Fla. 625, 32 L.R.A.(N.S.) 652, 47 So. 969, holding railroad commission statute does not delegate legislative power to commissioners; State ex rel. Davis v. Evans, 122 Tenn. 192, 122 S. W. 81, holding that statute requiring county superintendents of schools to possess literary and scientific qualification to be evidenced by certificate of state board of education is not unconstitutional as delegation of power.

Cited in footnote to Adams v. Beloit, 47 L. R. A. 441, which sustains option giving specially chartered cities power to adopt provisions of general law.

Construction of statutes.

Cited in People *ex rel.* Krause v. Harrison, 191 Ill. 267, 61 N. E. 99, Affirming

92 Ill. App. 651, holding that statutes will be construed with regard to existing circumstances, contemporaneous conditions, and object and necessity for adoption; Dodge v. Chicago, 201 Ill. 70, 66 N. E. 367, holding provision requiring instruments in general of local improvement board to be signed by president and secretary not applicable to recommendations to city council, where another provision relating to particular subject provided for signatures of majority of board; Deneen v. Unverzagt, 225 Ill. 383, 80 N. E. 321, 8 Ann. Cas. 396, holding act relating to particular subject will prevail over contrary general statute; Eckels v. Maher, 137 Ill. App. 52, holding where statute as to ventilation of water closets contained section which would relate to all water closets, if standing alone, another section relating to exterior water closets controlled as to exterior closets; People v. Russell, 245 Ill. 283, 91 N. E. 1073, on the rule that a statute must be construed with reference to its intended effect.

Special legislation.

Cited in Eckerson v. Des Moines, 137 Iowa, 473, 115 N. W. 177, holding that act is not special merely because at time of its passage there was but one city as limited number of cities having the class qualifications; Eckerson v. Des Moines, 137 Iowa, 473, 115 N. W. 177, holding that statute giving cities of certain population special form of government is not repugnant to provision of constitution because local or special; People ex rel. Springfield v. Edmands, 252 Ill. 118, 96 N. E. 914, holding that statute providing for commission form of government for cities is not invalid because of provision that it is only to become effective in cities which may adopt it by vote; Bryan v. Voss, 143 Ky. 426, 136 S. W. 884, holding that act providing commission form of government is not void because enacted to take effect upon approval of voters of city.

Reasonableness of ordinances.

Cited in footnote to Slaughter v. O'Berry, 48 L. R. A. 442, which holds void, ordinance requiring city to provide materials and labor for making sewer connections to within 3 feet of building.

Right of trial by jury.

Approved in Barclay v. Barclay, 184 Ill. 475, 56 N. E. 821, Affirming 83 Ill. App. 369, holding jury trial not necessary in contempt proceedings for failure to pay alimony; Moore v. Strickling, 46 W. Va. 519, 50 L. R. A. 280, 33 S. E. 274, holding jury trial unnecessary in proceedings to remove public officer for immorality.

Cited in O'Brien v. People, 216 Ill. 370, 108 Am. St. Rep. 219, 75 N. E. 108, 3 Ann. Cas. 966, holding defendants in contempt proceeding not entitled to trial by jury.

Propriety of summary trial.

Cited in People v. Russell, 245 Ill. 283, 91 N. E. 1075, holding offense of petit larceny being punishable as felony can be prosecuted only by indictment.

What constitutes public office.

Cited in Powell v. People, 117 Ill. App. 477, holding office of chief sanitary inspector, not being created by cities and villages act, nor by city council, is mere employment and not an "office" within meaning of that word as used in such act.

— Rights in.

Cited in Kusel v. Chicago, 121 Ill. App. 472; Lindblom v. Blake, 124 Ill. App. 284; Heaney v. Chicago, 117 Ill. App. 413,—holding public office or employment is not "property;" Chicago v. Bullis, 138 Ill. App. 299, on rights of public officer in office; People ex rel. Gersch v. Chicago, 242 Ill. 566, 90 N. E. 259, holding officer

is not deprived of any property right by his removal; Chicago v. Bullis, 124 Ill. App. 15, holding that a police officer has a right to retain office until removed or incapacitated under the lawful regulations of the service.

— Nature and creation.

Cited in State ex rel. Stage v. Mackie, 82 Conn. 401, 26 L.R.A.(N.S.) 663, 74 Atl. 759, holding that since a public office is a public trust involving the exercise of some portion of the sovereign power a municipality cannot create such an office in the absence of authority.

— Appointment.

Cited in State ex rel. Thompson v. Nèble, 82 Neb. 279, 19 L.R.A.(N.S.) 587, 117 N. W. 723, as illustrating the state of the Illinois law as to appointment of municipal officers by judges.

— Removal.

Cited in Kitterman v. Wapello County, 137 Iowa, 279, 115 N. W. 13, holding that veteran serving under civil service law can be removed only after notice and hearing upon charge of incompetency or misconduct; State ex rel. Quintin v. Edwards, 40 Mont. 308, 106 Pac. 695, holding power of city as to reduction of police force extends only to reduction in number for economical reasons and purposes of police laws cannot be defeated by ordinance abolishing police officers to make way for appointments desired by mayor.

Cited in footnote to State ex rel. Mial v. Ellington, 65 L.R.A. 697, which sustains right of legislature to deprive of office during term one appointed to legislative office for definite term.

Contempt of court.

Cited in McIntyre v. People, 227 Ill. 29, 81 N. E. 33, holding act unconstitutional in so far as it authorizes punishment of person for contempt in refusing to appear before notary to have his deposition taken where no order for him so to appear has been entered by court; Kitterman v. Wapello County, 137 Iowa, 279, 115 N. W. 13, holding by analogy where appointment to position of janitor of court house was for indefinite time, fixing of definite term after which another person could be appoined for another definite term was in effect a removal.

41 L. R. A. 792, SUN INS. OFFICE v. VARBLE, 103 Ky. 758, 46 S. W. 486.

What constitutes other insurance.

Distinguished in Home Ins. Co. v. Koob, 113 Ky. 369, 58 L. R. A. 61, 68 S. W. 453, holding policy prohibiting other insurance not violated by mortgagee effecting insurance upon his interest.

Tenant's duty as to repairs.

Cited in Thomas v. Conrad, 114 Ky. 847, 71 S. W. 903, on obligation of tenant to keep premises in repair.

Cited in note (64 L. R. A. 660) on tenant's duty to leave premises in good condition.

41 L. R. A. 794, STONE v. BOSTON & A. R. CO. 171 Mass. 536, 51 N. E. 1.

What constitutes proximate cause.

Approved in Fuchs v. St. Louis, 167 Mo. 648, 57 L. R. A. 145, 67 S. W. 610, holding city not liable for explosion of gases in sewer, caused by contact with lighted candle in connecting cellar; Chattanooga Light & P. Co. v. Hodges, 109 Tenn. 341, 60 L. R. A. 461, 97 Am. St. Rep. 844, 70 S. W. 616, holding employee's

negligence in entering burning building of employer to telephone alarm, proximate cause of death from burning.

Cited in Cleveland, C. C. & St. L. R. Co. v. Powers, 173 Ind. 118, 88 N. E. 1073, holding that proximate cause of injury is decisive cause thereof, and what constitutes such cause is usually question for jury; Emrich Furniture Co. v. Byrnes, 44 Ind. App. 349, 87 N. E. 1042; Valparaiso Lighting Co. v. Letherman, 46 Ind. App. 310, 92 N. E. 346,—holding that master is bound to provide against what is likely to happen in use of appliances, but not against what is remotely or slightly probable; Leroy Art Co. v. Agricola, 169 Ala. 73, 53 So. 145, holding that person occupying store is liable for injury to pedestrian caused by falling of awning while attempt was being made to lower or hoist it, if awning fell because of decayed condition; Fitzgerald v. Worcester & S. Street R. Co. 200 Mass. 109, 19 L.R.A.(N.S.) 242, 85 N. E. 911, holding failure of superintendent to take precautions against verbal order to motorcar conductor being forgotten was proximate cause of collision between cars; Ladd v. New York, N. H. & H. R. Co. 193 Mass. 363, 9 L.R.A.(N.S.) 876, 79 N. E. 742, 9 Ann. Cas. 988, holding defective door of car of railroad company which fell upon and injured teamster might be held proximate cause of his injury, though his employer knew of defect when he sent him to car; People v. Davis, 1 Ill. C. C. 281, holding noncompliance with ordinance requiring theaters to be equipped with fire apparatus proximate cause of death accruing upon breaking out of fire in theater; Snyder v. Colorado Springs & C. C. D. R. Co. 36 Colo. 290, 8 L.R.A.(N.S.) 783, 118 Am. St. Rep. 110, 85 Pac. 686, holding where seated passenger became angry because of being crowded and rose up with such violence as to throw plaintiff from car act of such passenger was proximate cause of plaintiff's injury; P. H. & F. M. Roots Co. v. Meeker, 165 Ind. 137, 73 N. E. 253, holding leaving of cog-wheels uncovered not proximate cause of injury to servant who, either by his own carelessness or by accident, stumbled and threw his hand into the cogs; Mella v. Northern S. S. Co. 162 Fed. 515, holding negligence resulting in dislocated shoulder not proximate cause of death resulting from paralysis of heart, due to unnecessary administration of chloroform at hospital prior to reduction of dislocation; Teis v. Smuggler Min. Co. 15 L.R.A.(N.S.) 898, 85 C. C. A. 478, 158 Fed. 266, holding allowing dangerous quantity of gas to be in mine not proximate cause of breaking of leg of miner, who having been rendered unconscious by the gas was so placed on elevator in taking him to surface that foot projected and was caught in timbers of shaft; Black v. New York, N. H. & H. R. Co. 193 Mass. 451, 7 L.R.A.(N.S.) 151, 79 N. E. 797, 9 Ann. Cas. 485, holding intoxication not proximate cause of intoxicated passenger's injury where employes of railroad company assisted him from car and left him part way up on flight of steps leading to station whence he fell backward striking on his head; Higgins v. Higgins, 188 Mass. 116, 74 N. E. 471, holding furnishing of defective extension ladder not proximate cause of injury of workman thrown to ground when it gave way at place where it had been fastened together with old rope unfit for the purpose by fellow servants; Chicago & E. R. Co. v. Dinius, 170 Ind. 232, 84 N. E. 9, holding failure to properly ballast roadbed of railroad and leaving low places therein not proximate cause of injury of brakeman who slipped from tie, fell into one of such low places, and, being unable to extricate himself, was run over; Home Oil & Gas Co. v. Dabney, 79 Kan. 826, 102 Pac. 488, holding shooting of gas well with nitro-glycerin in evening, leaving same uncapped and unconnected with gas tank and unwatched during the night, was not proximate cause of loss of drilling tools and machinery caused by explosion of flowing oil and gas; Bellino v. Columbus Constr. Co. 188 Mass. 433,

74 N. E. 684, holding leaving of gasoline in barrels in storehouse, not under lock and key, not proximate cause of negligent use thereof by workmen; Glassey v. Worcester Consol. Street R. Co. 185 Mass. 316, 70 N. E. 199, holding leaving of large reel for holding wire on grass within highway, outside traveled portion of highway, not proximate cause of injury of person who was thrown out of carriage, when it was struck by reel which children had rolled down street; The Santa Rita, 173 Fed. 416, holding loss by fire started by independent cause not proximate result of act of steamer in discharging fuel oil into waters of bay near wharf though injury by fire was increased by its being communicated to the floating oil; Multnomah County v. Title Guarantee Co. 50 Or. 524, 80 Pac. 409, holding intervening act of third person will not excuse first wrongdoer if intervening cause and its probable consequences by such as first wrongdoer might have anticipated; Moffatt Commission Co. v. Union P. R. Co. 113 Mo. App. 547, 88 S. W. 117, holding that the possibility of extraordinary flood does not constitute the probable consequences of negligence in transmission of freight; Atchison, T. & S. F. R. Co. v. Calhoun, 213 U. S. 8, 53 L. ed. 674, 29 Sup. Ct. Rep. 321, on proximate cause.

Cited in footnotes to Southern R. Co. v. Webb, 59 L. R. A. 109, which holds negligent jolting of train, hurling passenger through door on track insensible, cause of death by train of other company; Daniels v. New York, N. H. & H. R. Co. 62 L. R. A. 751, which holds death by suicide of one rendered insane by negligent act, not proximate result of the negligent act; Cole v. German Sav. & L. Soc. 63 L. R. A. 416, which holds that negligence of owner of building in permitting hall to be dark does not render him liable for injury to one stepping into elevator well through door pushed open by strange boy, apparently to permit her to enter; Nelson v. Narragansett E. L. Co. 67 L.R.A. 116, which holds placing of electric light close to trolley wire at a curve not proximate cause of injury to one struck by glass falling from globe when broken by trolley leaving wire; Stephenson v. Corder, 69 L.R.A. 246, which holds striking of one horse of heavily loaded team by boy in turning over hitching rail proximate cause of their breaking loose and running over person; Cohn v. May, 69 L.R.A. 800, which holds occupant of lower floors who block stairway liable for injury to tenant of upper floor who is thereby compelled to drop a considerable distance to escape a fire.

Cited in note (15 L.R.A.(N.S.) 537) on liability for escape of dangerous substance stored on premises.

Distinguished in Turner v. Page, 186 Mass. 602, 72 N. E. 329, holding that among natural and probable consequences of letting pair of horses run away, is their swerving to one side or other on account of attempt of person to stop them; Toohy v. McLean, 199 Mass. 471, 85 N. E. 578, holding it may be expected that person will enter elevator in absence of elevator boy and injury of person so entering is probable consequence of negligence in operating leaky plunger elevator, and of negligence of boy in leaving elevator.

Liability for negligence of third party.

Cited in Chandler v. Kansas City Missouri Gas Co. 174 Mo. 329, 62 L. R. A. 477, 97 Am. St. Rep. 570, 73 S. W. 502, holding gas company not liable for injury to ash-pit cleaner falling into hole made by third person under track extending from ash-pit to dump.

Cited in footnotes to Langenbaugh v. Anderson, 62 L. R. A. 948, which denies liability of lessor of lot for production of oil or gas therefrom, for injury to adjoining owner's property through escape of oil by lessee's negligence; Louisville & E. Mail Co. v. Barnes, 64 L. R. A. 574, which holds that negligence of

steamer company does not prevent recovery for death of passenger by drowning while attempting to disembark, from other steamboat company whose negligence was also responsible for his death.

Taking case from jury.

Cited in Lauterer v. Manhattan R. Co. 63 C. C. A. 42, 128 Fed. 544, holding that where, as matter of law, defendant's negligence is not proximate cause of injury, case should be withdrawn from jury; Snyder v. Colorado Springs & C. C. D. R. Co. 36 Colo. 292, 8 L.R.A.(N.S.) 783, 118 Am. St. Rep. 110, 85 Pac. 686, holding where upon all the evidence, court is able to see that resulting injury was not proximate but remote, plaintiff fails to make out case; Glassey v. Worcester Consol. Street R. Co. 185 Mass. 317, 70 N. E. 199; P. H. & F. M. Roots Co. v. Meeker, 165 Ind. 139, 73 N. E. 253,—holding that when facts are undisputed, what constitutes proximate and remote cause becomes question of law for court; Home Oil & Gas Co. v. Dabney, 79 Kan. 828, 102 Pac. 488, holding where facts are undisputed, and court can see resulting injury was not probable but remote court should determine question of proximate cause.

Tort arising while violating statute.

Cited in The Santa Rita, 173 Fed. 416, holding mere violation of statute will not constitute basis of recovery unless such act is proximate cause of injury complained of.

Distinguished in Berdos v. Tremont & S. Mills, 209 Mass. 500, 95 N. S. Mass. 500, 95 N. E. 876, Ann. Cas. 1912B, 797, holding that infant who was employed contrary to statute may establish that his injury resulted from negligence of master by showing violation of statute alone, provided it contributed directly to injury.

41 L. R. A. 800, SMITH v. SMITH, 171 Mass. 404, 68 Am. St. Rep. 440, 50 N. E. 933.

Annulment of marriage for disease and fraud.

Approved in Donnelly v. Strong, 175 Mass. 159, 55 N. E. 892, refusing to annul marriage for wife's concealment of prior marriage, where maintaining illicit relations with petitioner before marriage; Di Lorenzo v. Di Lorenzo, 71 App. Div. 518, 75 N. Y. Supp. 878, denying right to annulment of marriage after parties have lived together eight years, for subsequently discovered falsity of wife's statement, inducing the marriage, that she had been delivered of a child of which husband was the father; Vondal v. Vondal, 175 Mass. 384, 78 Am. St. Rep. 502, 56 N. E. 586, refusing to annul consummated marriage for undisclosed venereal disease existing prior thereto, but curable at time of marriage; Svenson v. Svenson, 178 N. Y. 59, 70 N. E. 120, annulling unconsummated marriage on ground of husband's previous affliction with venereal disease, knowledge of which he fraudulently concealed.

Cited in Lyon v. Lyon, 230 Ill. 371, 13 L.R.A.(N.S.) 1000, 82 N. E. 850, 12 Ann. Cas. 25, holding marriage will not be annulled because wife fraudulently represented she had been cured of epilepsy; Turner v. Turner, 189 Mass. 376, 109 Am. St. Rep. 643, 75 N. E. 612, holding fraudulent representation as to existence of spouse is not ground for nullifying marriage under statute; Grover v. Zook, 44 Wash. 499, 7 L.R.A.(N.S.) 590, 87 Pac. 638, 12 Ann. Cas. 192, holding man not liable for breach of promise to marry woman having tuberculosis, he himself having hereditary taint of same disease.

Cited in footnotes to McMahen v. McMahen, 41 L.R.A. 802, which holds communication of syphilis to wife by husband, who is probably incurable, ground for divorce; Di Lorenzo v. Di Lorenzo, 63 L.R.A. 92, which upholds

right to annul marriage contract procured by fraudulent representations that a child has been born to woman of which the man is the father.

Cited in notes (13 L.R.A.(N.S.) 998) on misrepresentations or concealment as to physical or mental condition as ground for annulling marriage; (79 Am. St. Rep. 373) on annulment of marriage procured by fraud.

Recovery for contracting venereal disease.

Cited in footnote to Deeds v. Strode, 43 L. R. A. 207, which denies right to recover for contracting venereal disease from one with whom married woman lived under marriage void because former husband was living.

41 L. R. A. 802, McMAHEN v. McMAHEN, 186 Pa. 485, 40 Atl. 795.

Cruelty justifying divorce.

Cited in Fitzgerald v. Fitzgerald, 2 Dauphin Co. Rep. 260, granting divorce to wife for cruel and barbarous treatment upon evidence of communication of venereal disease by husband; Baker v. Baker, 195 Pa. 410, 46 Pa. 96, granting divorce to wife for cruel and barbarous treatment upon evidence that venereal disease was contracted by husband subsequent to marriage; Rochelle v. Rochelle, 28 Pa. Co. Ct. 460, holding charges against husband of illicit relations with other women, striking him with broom and milk can, and attempts to choke him, not cruel and barbarous treatment entitling husband to divorce; Gardner v. Gardner, 104 Tenn. 412, 78 Am. St. Rep. 924, 58 S. W. 342, holding compulsion of wife in delicate health to abnormal sexual intercourse constitutes cruel and inhuman treatment entitling her to divorce; Garrett v. Garrett, 11 Del. Co. Rep. 280, holding that divorce upon ground of cruelty should be refused where sickness alleged as being result of cruelty of wife was ascribed to husband's illtreatment; Hexamer v. Hexamer, 42 Pa. Super. Ct. 236, holding that husband will be refused divorce where only grounds alleged were that wife was not good cook, that she had been guilty of five acts of trivial cruelty and that she refused to have unrestrained sexual intercourse with him; Yetter v. Yetter, 45 Pa. Super. Ct. 335, holding that decree requiring husband to support wife will be refused, where husband shows that he separated from her because of her personal violence and that he had offered to resume life with her; Fay v. Fay, 27 Pa. Super. Ct. 333, holding conduct of wife toward husband entitling him to divorce under statute must not only be such as render his constitution intolerable or life burdensome but such as amounts to cruel and barbarous treatment; Rochelle v. Rochelle, 12 Pa. Dist. R. 297, holding fact wife threw condensed milk can at husband, occasioning wound upon his head, struck him with broom, and attempted to choke him does not warrant divorce; Schulze v. Schulze, 33 Pa. Super. Ct. 328, holding evidence insufficient to prove cruel and barbarous treatment of husband by wife; Russell v. Russell, 37 Pa. Super. Ct. 354, holding infliction of personal violence or threat or apprehension thereof do not constitute essential element of cruelty; Kulp v. Kulp, 34 Pa. Co. Ct. 340, holding communication of venereal disease by husband to wife is such indignity to her person as justifies her withdrawal from his house and family; Simon v. Simon, 34 Pa. Super. Ct. 183, holding communication of loathsome disease by husband to wife sufficient to entitle wife to divorce, if proved.

Cited in footnotes to Ring v. Ring, 62 L. R. A. 878, which holds habitual and intemperate use of morphine not cruel treatment entitling wife to divorce; Maddox v. Maddox, 52 L. R. A. 628, which denies right to divorce for cruelty, from failure to provide suitable dwelling house, clothing, and food.

Recovery for contracting venereal disease.

Cited in footnotes to Deeds v. Strode, 43 L. R. A. 207, which denies right to

recover for contracting venereal disease from one with whom married woman lived under marriage void because former husband was living: Smith v. Smith. 41 L. R. A. 800, which authorizes annulment of marriage where husband afflicted with syphilis which is probably incurable.

Disease affecting marriage.

Cited in Grover v. Zook, 44 Wash. 499, 7 L.R.A.(N.S.) 590, 87 Pac. 638, 12 Ann. Cas. 192, holding man having hereditary taint of tuberculosis not liable for breach of promise to marry woman with same disease.

Practice on dismissing master's report.

Cited in Howe v. Howe, 16 Pa. Super. Ct. 195, holding it not good practice for court of common pleas to dismiss exceptions to master's report in divorce suit, without discussing evidence.

41 L. R. A. 805, McHUGH v. McHUGH, 186 Pa. 197, 42 W. N. C. 307, 65 Am. St. Rep. 849, 40 Atl. 410.

Inference from nonproduction of evidence.

Approved in Wills v. Hardcastle, 19 Pa. Super. Ct. 529, and Ginder v. Bachman, 8 Pa. Super. Ct. 410, 43 W. N. C. 122, holding that jury may draw unfavorable inference of fact against party failing to produce material evidence within his control; Wills v. Hardcastle, 8 Del. Co. Rep. 389, holding jury may draw inference unfavorable to party failing to produce oral testimony of friendly witnesses, presumably best informed upon subject under investigation.

Cited in Green v. Brooks, 215 Pa. 496, 64 Atl. 672, holding failure of litigant to call his son, who was present in court, and would have been important and material witness, could he have corroborated litigant might be considered by jury with other facts, but not as conclusive; Shaw v. Lancaster County R. & Light Co. 25 Lanc. L. Rev. 374, holding that nonproduction by party in court of equity of evidence as to facts necessarily within his knowledge justify unfavorable inference.

Presumption from attempt to influence juror.

Cited in Com. v. Brown, 23 Pa. Super. Ct. 502, holding competent to rebut prisoner's evidence of good character by proof, attempts to influence juror who has been or might have been impaneled in his case.

Conduct raising unfavorable inference.

Cited in Dundas's Estate, 213 Pa. 636, 63 Atl. 45, on effect of fabrication of evidence as tending to show guilty party knew his cause was unjust; Power v. Grogan, 232 Pa. 399, 81 Atl. 416, holding that in action of ejectment it is proper to permit witness offered by plaintiff to prove that defendant had offered to pay witness money consideration if she would not take witness stand against defendant.

Cited in note (31 L.R.A.(N.S.) 113) on right to show feigned insanity.

41 L. R. A. 807, GULF, C. & S. F. R. CO. v. BEALL, 91 Tex. 310, 66 Am. St. Rep. 892, 42 S. W. 1054.

Parent's action for child's injuries.

Cited in Sternenberg v Mailhos, 39 C. C. A. 412, 99 Fed. 47, sustaining action by parent for damages from loss of services of minor child negligently killed; Seaboard Air Line R. Co. v. Moseley, 60 Fla. 188, 53 So. 718, holding that under statute action for loss of service of minor child caused by wrongful death should be brought by parent personally.

Cited in footnote to Bagwell v. Atlanta Consol. Street R. Co. 47 L. R. A. 486,

which holds action for injury to minor daughter should not be dismissed for her refusal, after attaining majority, to submit to physical examination.

Cited in notes (18 L.R.A.(N.S.) 316) on parent's common law right of action for loss of services of minor child whose death was caused by negligence; (31 L.R.A.(N.S.) 520) on right of deserted wife to recover for death or injury of child.

Right of action for death of human being.

Cited in notes (70 Am. St. Rep. 670, 671) on statutory right of action for death of human being; (19 L.R.A.(N.S.) 636) on common law right to recover for loss of services or consortium against person negligently causing death of either spouse.

41 L. R. A. 817, MORLEY v. SNOW, 117 Mich. 246, 75 N. W. 466.

Right to eject passenger.

Cited in footnote to Nashville Street R. Co. v. Griffin, 49 L. R. A. 451, which denies authority to eject passenger who, after paying fare inside station, enters car which has stopped just outside station.

Use of automatic collectors on street cars.

Cited in Martin v. Rhode Island Co. 32 R. I. 171, 32 L.R.A.(N.S.) 699, 78 Atl. 548, Ann. Cas. 1912 C, 1283, holding that street railway company may require passengers to insert "fare" in automatic collector brought to them by conductor.

41 L. R. A. 820, CARPENTER v. SNOW, 117 Mich. 489, 72 Am. St. Rep. 576, 76 N. W. 78.

Provision for unborn child.

Cited in footnote to Re Newlin, 68 L.R.A. 464, which holds sufficient provision for unborn child to sustain will made by establishing remainder to be divided among children and a fee to be divided among or held in trust for them on arriving at maturity.

Cited in notes (13 L.R.A.(N.S.) 782) on admissibility of extrinsic circumstances in ascertaining intention of testator as to disinheriting after-born child; (115 Am. St. Rep. 585, 588) on pretermitted heirs.

41 L. R. A. 823, HURT v. FORD, 142 Mo. 283, 44 S. W. 228.

Conditional execution of contract.

Cited in note (45 L. R. A. 346) on conditional execution of contract under parol agreement that it shall not take effect until others have signed it.

Pleading statute of frauds.

Approved in Hillman v. Allen, 145 Mo. 643, 47 S. W. 509, holding that statute of frauds need not be specially pleaded when answer denies agreement relied upon.

Cited in Schmidt v. Rozier, 121 Mo. App. 310, 98 S. W. 791, holding where contract is not admitted, statute is available under general issue, as where defendant appears in case originating before justice of peace, thus raising general issue.

Cited in note (78 Am. St. Rep. 649) as to when and how statute of frauds must be pleaded.

Promise to answer for another's default.

Approved in Hartley v. Sandford, 66 N. J. L. 631, 55 L. R. A. 208, footnote p. 206, 50 Atl. 454, holding void, father's oral promise to reimburse surety for son, if latter fails to pay debt; Gansey v. Orr, 173 Mo. 546, 73 S. W. 477,

holding promise of incorporators to individually indemnify subscriber to stock of corporation in event of failure of enterprise, within statute of frauds.

Cited in note (126 Am. St. Rep. 515) on contract to answer for or pay debt of another within statute of frauds.

Parol evidence to contradict written contract.

Cited in Holmes v. Farris, 97 Mo. App. 313, 71 S. W. 116, holding parol evidence not admissible to show that negotiable promissory note, absolute on its face, is payable only on happening of contingency.

Cited in note (128 Am. St. Rep. 617) on parol evidence of conditions in bills and notes.

Judgment non obstante veredicto.

Cited in Shearer v. Guardian Trust Co. 136 Mo. App. 232, 116 S. W. 456, holding motion for judgment non obstante veredicto is not allowed to defendant and where verdict is in full force it cannot be considered as motion for judgment on pleadings.

Inconsistent defenses.

Cited in Atterbury v. Hendricks, 127 Mo. App. 52, 106 S. W. 111, holding test of whether defenses are inconsistent is whether proof of one defense necessarily disproves the other.

41 L. R. A. 831, DELAWARE, L. & W. R. CO. v. REICH, 61 N. J. L. 635, 68 Am. St. Rep. 727, 40 Atl. 682.

Liability to trespassers and licensees.

Approved in Devoe v. New York, O. & W. R. Co. 63 N. J. L. 278, 43 Atl. 899, holding railway company not liable for death of child struck by train while crossing tracks, though such use of property acquiesced in; Furey v. New York C. & H. R. R. Co. 67 N. J. L. 274, 51 Atl. 505, holding company not liable to person injured by closing of train while attempting to pass through opening between cars; Taylor v. Haddonfield & C. Turnp. Co. 65 N. J. L. 104, 46 Atl. 707, holding company not liable to mere licensee upon highway, injured by horse becoming frightened at electric car; Uthermohlen v. Bogg's Run Co. 50 W. Va. 464, 55 L. R. A. 914, 88 Am. St. Rep. 884, 40 S. E. 410, holding owner not liable for injury to trespassing child by cable and pulley used in operating mines; Savannah, F. & W. R. Co. v. Beavers, 113 Ga. 411, 54 L. R. A. 320, 39 S. E. 82, holding owner of premises not liable for death of child by falling into unguarded excavation while trespassing; Clark v. Northern P. R. Co. 29 Wash. 148, 59 L. R. A. 512, 69 Pac. 636, holding company not liable for death of child killed by train while crossing tracks to more readily reach circus permitted to exhibit upon its adjoining land; Paolino v. McKendall, 60 L. R. A. 135, denying that occupier of land burning rubbish thereon is under obligation to guard children, resorting to premises, against injury from fire; Grant v. Hass, 31 Tex. Civ. App. 692, 75 S. W. 342, holding owner setting spring gun to protect melon patch liable for injury to trespasser going to owner's house to make inquiry; Land v. Fitzgerald, 68 N. J. L. 30, 52 Atl. 229, holding lessor not liable for injury to tenant from fall of chimney from latent defect known to landlord.

Cited in Dierkes v. Hauxhurst Land Co. 80 N. J. L. 371, 34 L.R.A.(N.S.) 694, 79 Atl. 361; Hoberg v. Collins, L. & Co. 80 N. J. L. 431, 31 L.R.A.(N.S.) 1068, 78 Atl. 166,—holding that rule that denies to trespasser duty on part of others to observe care toward him is not changed by fact that he is infant; Bottum v. Hawks, 84 Vt. 383, 35 L.R.A.(N.S.) 447, 79 Atl. 858, Ann. Cas. 1913 A, 1025, holding that one maintaining opening into underground mill race

near highway is not bound to protect it to prevent accidents to children; Tarlucki v. West Jersey & Seashore R. Co. 80 N. J. L. 689, 78 Atl. 149, holding that minor who was injured by coming in contact with third rail of defendant's electric system while trespassing upon right of way, could not recover; Sutton v. West Jersey & Seashore R. Co. 78 N. J. L. 19, 73 Atl. 256, holding railroad not liable for death of boy by coming into contact with third rail on crossing railroad in meadow; Wilmot v. McPadden, 79 Conn. 378, 19 L.R.A.(N.S.) 1111, 65 Atl. 157, holding licensee or trespasser, though but seven and one half years old assumed all risk of danger incident to existing conditions of premises where chimney of house being taken down fell upon him; Friedman v. Snare & T. Co. 71 N. J. L. 618, 70 L.R.A. 154, 108 Am. St. Rep. 764, 61 Atl. 401, 2 Ann. Cas. 497, holding building contractor not liable for injury to child upon whom an iron girder fell while she was playing upon a pile of them placed in street; Briscoe v. Henderson Lighting & P. Co. 148 N. C. 410, 19 L.R.A.(N.S.) 1131, 62 S. E. 600, holding light company operating electrical plant alleged to be attractive to children not liable for injury of child who fell into well of hot water while on company's premises; Davis v. Joslin Mfg. Co. 29 R. I. 110, 69 Atl. 65, holding manufacturing corporation not liable for death of child trespasser drowned in open trench crossed by bridge near its mill; Curtis v. Tenino Stone Quarries, 37 Wash. 362, 79 Pac. 955, holding owner of power house in stone quarry 200 yards from public road not liable for injury sustained by child trespasser who stepped through hole in platform covering machinery; Graves v. Washington Water Power Co. 44 Wash. 687, 11 L.R.A.(N.S.) 457, 87 Pac. 956, holding electric company not liable for injury of boy who took hold of live wire when climbing ladder-like pier on public bridge; Iamurri v. Saginaw City Gas Co. 148 Mich. 52, 111 N. W. 884, on turntable and constructive invitation doctrines; Driscoll v. Clark, 32 Mont 186, 80 Pac. 1, as to unsoundness of turntable doctrine; Walker v. Potomac, F. & P. R. Co. 105 Va. 230, 4 L.R.A.(N.S.) 84, 115 Am. St. Rep. 871, 53 S. E. 113, 8 Ann. Cas. 862, holding railroad company not liable for death of child whose foot was mashed while playing at turntable lockjaw ensuing from which he died; Thompson v. Baltimore & O. R. Co. 218 Pa. 450, 19 L.R.A.(N.S.) 1167, 120 Am. St. Rep. 897, 67 Atl. 768, 11 Ann. Cas. 894, holding railroad company not liable for injury of child sustained while near turntable at which other children were playing by being struck by projecting bar; Wheeling & L. E. R. Co. v. Harvey, 77 Ohio St. 244, 19 L.R.A.(N.S.) 1144, 122 Am. St. Rep. 503, 83 N. E. 66, 11 Ann. Cas. 981, holding railroad company is not liable for injury sustained by child playing at turntable; also that water company is not liable for death of child drowned by falling into reservoir on company's premises where child went to play; Benton v. James Hill Mfg. Co. 26 R. I. 195, 58 Atl. 664, holding manufacturing company not liable for injury of woman trespassing upon its premises when injured by its servant, who threw sharp piece of iron at her when she was standing at window annoying its servants.

Cited in footnotes to Kramer v. Southern R. Co. 52 L. R. A. 359, which denies railroad company's liability for death of child by fall of pile of cross-ties in unused portion of street; George v. Los Angeles R. Co. 46 L. R. A. 829, which denies company's liability to boys hurt while playing with trolley car left in street, after loosening brake; Kopplekom v. Colorado Cement Pipe Co. 54 L. R. A. 284, which holds owner of uninclosed city lot liable for injury to young child by toppling over of large cement pipe used by children as plaything; Biggs v. Consolidated Barb-Wire Co. 44 L. R. A. 655, which holds owner liable for maintaining dangerous machinery on private grounds unprotected from visits of trespassing children; Chicago, B. & Q. R. Co. v. Krayenbuhl, 59 L. R. A. 920, which

holds railroad company liable for injury to child on turntable not guarded or properly fastened.

Cited in notes (4 L.R.A.(N.S.) 82) on liability of railroad for injury to children playing on turntable; (19 L.R.A.(N.S.) 1121) on attractive nuisance; (25 Eng. Rul. Cas. 114) on liability for injury to trespasser by dangerous instrumentalities.

Distinguished in Guinn v. Delaware & A. Teleph. Co. 72 N. J. L. 278, 3 L.R.A. (N.S.) 992, 111 Am. St. Rep. 668, 62 Atl. 412, holding telephone company liable for death of child killed by coming in contact with guy wire of telephone company which broke and fell upon electric light wire, child at time of accident being in field owned by third person across which people traveled without objection.

Disapproved in Edgington v. Burlington, C. R. & N. R. Co. 116 Iowa, 434, 57 L. R. A. 570, footnote p. 561, 90 N. W. 95, holding railroad company liable for injuries to young children by unfastened turntable in unfenced lot near public way; Snare & T. Co. v. Friedman, 40 L.R.A.(N.S.) 375, 94 C. C. A. 369, 169 Fed. 15, holding building contractor liable for injury sustained by chilld who while playing upon pile of iron girders placed in street by contractor was injured through girder falling on her foot.

41 L. R. A. 836, WHALEN v. CONSOLIDATED TRACTION CO. 61 N. J. L. 606, 68 Am. St. Rep. 723, 40 Atl. 645.

Alighting from moving car as negligence.

Approved in Scott v. Bergen County Traction Co. 63 N. J. L. 411, 43 Atl. 1060, holding it not negligence *per se* for passengers to ride upon platform of electric street car, or to go there while awaiting opportunity to alight; Babcock v. Los Angeles Traction Co. 128 Cal. 178, 60 Pac. 780, sustaining recovery by passenger injured by sudden lurching of car after he started to leave, without waiting for it to come to full stop; Hansen v. North Jersey Street R. Co. 64 N. J. L. 696, 46 Atl. 718, holding common carrier negligent in failing to anticipate and avoid injury to passenger alighting from crowded car; Flynn v. Consolidated Traction Co. 64 N. J. L. 377, 45 Atl. 799, holding company not liable for injury to passenger struck by passing vehicle while standing upon running board of moving trolley car, preparatory to alighting.

Cited in Gottlob v. North Jersey Street R. Co. 73 N. J. L. 306, 62 Atl. 1003, holding questions of negligence of street railway company and of contributory negligence of passenger for jury, where motorman started car without signal and before passenger had opportunity to alight; Oakerson v. Atlantic Coast Electric R. Co. 77 N. J. L. 770, 73 Atl. 496, holding questions of negligence and contributory negligence were for jury where passenger was injured by alleged starting of car while alighting from running board.

Negligence in use and operation of cars.

Cited in Dunham v. Public Service Corp. 76 N. J. L. 453, 69 Atl. 1012, holding where carrier accepts passenger on crowded car and he is thrown and injured when about to alight questions of negligence and contributory negligence are for jury; Brackney v. Public Service Corp. 77 N. J. L. 3, 71 Atl. 149, holding act of passenger in riding on front platform of motor car, where he was injured in collision, was not negligence justifying nonsuit or direction of verdict for defendant.

Presumption from fact of accident.

Cited in Dusenbury v. North Hudson County R. Co. 66 N. J. L. 45, 48 Atl. 520, holding prima facie negligence shown by unexplained derailment of car; Dusen-

bury v. North Hudson County R. Co. 66 N. J. L. 46, 48 Atl. 520, holding question whether company exercised that high degree of care imposed upon carriers for safety of passengers, for jury; Faul v. North Jersey Street R. Co. 70 N. J. L. 801, 59 Atl. 148, holding when passenger shows he was injured through act of carrier's servant, which might have been prevented by due care, if carrier proves such care was exercised, negligence cannot be inferred by jury; Paul v. Salt Lake City R. Co. 30 Utah, 49, 83 Pac. 563, holding injury of passenger by sudden start or jerk of car as he is alighting, after car has stopped, in obedience to his request is prima facie evidence of negligence.

Cited in footnotes to Springer v. Ford, 52 L. R. A. 930, which sustains presumption of negligence from injury to passenger by unexplained breaking of elevator appliance; Cassady v. Old Colony Street R. Co. 63 L. R. A. 285, which holds ordinary burning out of fuse in electric car not prima facie evidence of carrier's negligence.

Cited in note (13 L.R.A.(N.S.) 611) on presumption of negligence from injury to passenger.

Distinguished in Paynter v. Bridgeton & M. Traction Co. 67 N. J. L. 624, 52 Atl. 367, holding that throwing of woman from street car by sudden jerk while in act of alighting raises no presumption of negligence.

Duty of carrier of passengers.

Cited in Trussell v. Morris County Traction Co. 79 N. J. L. 535, 30 L.R.A. (N.S.) 352, 77 Atl. 535, holding that electric street car company is bound to exercise high degree of care to carry passengers safely in and upon whatever part of car they ride with express or implied consent of company; Mettler v. Delaware, L. & W. R. Co. 77 N. J. L. 98, 71 Atl. 111, holding railroad company under duty to use high degree of care to protect passenger from danger while on its cars; Thompson v. Green, 98 C. C. A. 621, 174 Fed. 405, holding carrier is required to exercise highest degree of care which reasonably prudent and careful men, would, under the circumstances, exercise to carry passengers safely.

Cited in note (18 L.R.A.(N.S.) 162) on duty of street car company to passenger on running board.

41 L. R. A. 838, PEOPLE *ex rel.* BURBY v. HOWLAND, 155 N. Y. 270, 49 N. E. 775.

Constitutional rights of office.

Approved in People *ex rel.* Ryan v. Washington County, 155 N. Y. 296, 49 N. E. 779, holding unconstitutional, statute which deprives deputy sheriff of right to fees for services rendered in justice's criminal matters; People *ex rel.* Saloom v. Whitney, 32 App. Div. 146, 52 N. Y. Supp. 695, Affirming 24 Misc. 266, 53 N. Y. Supp. 570, sustaining statute depriving justice of peace of criminal jurisdiction in village by conferring same upon police justice therein; People *ex rel.* Holmes v. Lane, 53 App. Div. 535, 65 N. Y. Supp. 1004, holding invalid, statutory provision depriving justice of peace of constitutional powers, by conferring "exclusive" jurisdiction upon police justice; People *ex rel.* Balcom v. Mosher, 45 App. Div. 73, 61 N. Y. Supp. 452, holding invalid statute and rule requiring appointment of person graded highest, as conflicting with appointive power expressly conferred on officers; *Re* Schultes, 33 App. Div. 530, 54 N. Y. Supp. 34, sustaining provisions of Greater New York charter creating municipal court by consolidation of district and justice's court; *Re* Davies, 168 N. Y. 102, 56 L. R. A. 860, 61 N. E. 118, sustaining anti-monopoly act of 1899, requiring justice of supreme court to grant order for preliminary examination of witness to aid attorney general in framing complaint.

Cited in State ex rel. Tolerton v. Gordon, 236 Mo. 166, 139 S. W. 403, holding that legislature has no right to make appropriation for salary of officer and then add proviso that no part of appropriation shall be available so long as present incumbent of office remains in office; Reid v. Stevens, 70 Misc. 180, 126 N. Y. Supp. 379, 2 N. Y. Civ. Proc. Rep. N. S. 144, holding that office of justice of peace of towns is constitutional office which cannot be abolished by legislature.

Cited in footnote to McCulley v. State, 46 L. R. A. 567, which upholds legislative power to abolish existing courts and change counties from one circuit to another.

Distinguished in People ex rel. Slade v. Boice, 63 Misc. 359, 118 N. Y. Supp. 500, holding court of police justice of town is local court of inferior jurisdiction within power of legislature to create.

Questioned in Lee v. State, 143 Ala. 96, 39 So. 366, holding justices of peace do not derive their jurisdiction in criminal matters from the constitution, but it is conferred by statute.

Right of local self-government.

Cited in People *ex rel.* Metropolitan Street R. Co. v. State Tax Comrs. 174 N. Y. 435, 63 L. R. A. 890, 67 N. E. 69, holding local municipal functions cannot be transferred to state officer; People *ex rel.* Devery v. Coler, 173 N. Y. 115, 65 N. E. 956, holding statute conferring upon governor power of removal of city police commissioner, inconsistent with local power of appointment; State *ex rel.* Geake v. Fox, 158 Ind. 140, 56 L. R. A. 899, 63 N. E. 19, holding statute giving governor appointment of members of department of public safety in certain cities, who shall have supervision of fire, police, etc., violates constitutional principle of municipal self-government; *Re* Brenner, 35 Misc. 313, 71 N. Y. Supp. 44, holding that county clerk's duty of making up jury lists and drawing jurors cannot be transferred to commissioner of jurors of Kings county, not elected or appointed in constitutional manner; State *ex rel.* Geake v. Fox, 158 Ind. 140, 56 L. R. A. 899, 63 N. E. 19, holding invalid, statute authorizing governor to appoint board to control municipal fire and police departments; People *ex rel.* Oneida County v. Oneida County, 170 N. Y. 108, 62 N. E. 1092, sustaining legislative appointment of board of commissioners to erect county courthouse; People *ex rel.* Ward v. Scheu, 60 App. Div. 594, 69 N. Y. Supp. 597, holding that legislature may provide for filling vacancy in statutory office of commissioner of public works; Ex parte Anderson, 46 Tex. Crim. Rep. 395, 81 S. W. 973, denying power of legislature to authorize executive to appoint municipal officers.

Delegation of legislative power.

Cited in Kansas City v. Bacon, 147 Mo. 304, 48 S. W. 860 (dissenting opinion), majority sustaining provision of city charter requiring recommendation of park commissioners before municipal council could establish public park, as not being delegation of legislative power; State v. Corvallis & E. R. Co. 59 Or. 456, 117 Pac. 980, holding that while legislature cannot delegate authority to make laws it may direct that application of statute to given district shall depend upon certain conditions to be ascertained in particular manner by particular person.

Implied constitutional limitations upon legislature.

Cited in Williams v. Port Chester, 97 App. Div. 92, 89 N. Y. Supp. 671, on implied limitations upon power of legislature.

41 L. R. A. 846, JEWELERS' MERCANTILE AGENCY v. JEWELERS' WEEKLY PUB. CO. 155 N. Y. 241, 63 Am. St. Rep. 666, 49 N. E. 872.

Property rights in mental labor and secret information.

Approved in Daly v. Walrath, 40 App. Div. 224, 57 N. Y. Supp. 1125, holding

exclusive right to produce play in United States lost by publication thereof in Germany with author's consent; Larrowe-Loisette v. O'Loughlin, 88 Fed. 898, holding right to copyright lost by author's selling books with restrictions against communicating contents; Wright v. Eisle, 86 App. Div. 358, 83 N. Y. Supp. 887, denying that architect has common-law right of property in plans for house after publication, so as to prevent copy by another.

Cited in Vernon Abstract Co. v. Waggoner Title Co. 49 Tex. Civ. App. 148, 107 S. W. 919, holding furnishing or offering to furnish public with abstracts containing certain sheets copied from county records which had been stolen was such publication of sheets as worked deprivation of exclusive right to make copies thereof; Savage v. Hoffman, 159 Fed. 586; Bobbs-Merrill Co. v. Straus, 15 L.R.A.(N.S.) 769, 77 C. C. A. 607, 147 Fed. 19,—holding owner of copyright, upon publication, surrenders his common-law right; Caliga v. Inter Ocean Newspaper Co. 84 C. C. A. 634, 157 Fed. 190, as to what constitutes publication; Stern v. Jerome H. Remick & Co. 175 Fed. 283, holding deposit of two copies of copyrighted song in Library of Congress coupled with unrestricted sale of one copy constitutes publication.

Cited in footnotes to Mifflin v. R. H. White Co. 61 L.R.A. 134, which holds exclusive rights under copyright lost by another permitting publication in magazine of chapters of book, without other than usual notice of magazine publishers; Werckmeister v. American Lithographic Co. 68 L.R.A. 591, which holds exhibition of painting at academy of arts for entry to which a fee is charged not a publication.

Cited in note (51 L. R. A. 358, 374, 375) on common-law rights of authors and others in intellectual productions.

Distinguished in F. W. Dodge Co. v. Construction Information Co. 183 Mass. 65, 60 L. R. A. 811, 97 Am. St. Rep. 412, 66 N. E. 204, holding right to protection against unauthorized use of secret information not lost by furnishing same to subscribers under contract not to disclose it; Chicago Board of Trade v. Hadden-Krull Co. 109 Fed. 706, granting injunction against unauthorized use of quotations by third party, though previously furnished for exclusive use of customer by ticker or blackboard; Werckmeister v. Am. Lith. Co. 134 Fed. 327, holding exhibition of painting in academy where copies are not allowed to be made and where members of academy and exhibitors and their families are entitled to free admission and public is admitted upon payment of fee is not such publication as deprives owner of copyright of his privilege; John D. Park & Sons Co. v. Hartman, 12 L.R.A.(N.S.) 140, 82 C. C. A. 158, 153 Fed. 31, holding contracts concerning articles made under trade secrets are within rules as to restraint of trade.

41 L. R. A. 852, CLEVELAND v. McCANNA, 7 N. D. 455, 66 Am. St. Rep. 670, 75 N. W. 908.

What constitutes de facto officer.

Cited in State ex rel. Bockmeier v. Ely, 16 N. D. 572, 14 L.R.A.(N.S.) 640, 113 N. W. 711, holding official acts of judge illegally appointed valid.

Cited in footnote to Oliver v. Jersey City, 48 L. R. A. 412, which holds unauthorized acceptance of second office does not prevent one being *de facto* officer on continuing performance of duties of first office.

Judgment as set-off.

Approved in Long v. Collins, 15 S. D. 262, 88 N. W. 571, holding judgment for conversion of exempt property not satisfied by another judgment held by defendant as creditor of plaintiff.

Cited in Snow v. West, 37 Utah, 536, 110 Pac. 52, holding that judgment for value of exempt property wrongfully sold was exempt.

Cited in notes (16 L.R.A.(N.S.) 495) on right to set off judgment against another founded upon claim for exempt property or services; (109 Am. St. Rep. 150) on setting off one judgment against another.

41 L. R. A. 854, STATE v. POWELL, 58 Ohio St. 324, 50 N. E. 900.

Statutes prohibiting Sabbath and holiday desecration.

Approved in Breyer v. State, 102 Tenn. 110, 50 S. W. 769, sustaining statute prohibiting barbering under heavier penalty than imposed upon other violations of Sabbath; State v. Sopher, 25 Utah, 327, 60 L.R.A. 471, 95 Am. St. Rep. 845, 71 Pac. 482, upholding statute forbidding barbers to prosecute trade on Sunday, as valid exercise of police power; Scougale v. Sweet, 124 Mich. 320, 82 N. W. 1061, sustaining statute prohibiting Sunday baseball playing as breach of peace; State v. Hogriever, 152 Ind. 660, 45 L.R.A. 509, footnote p. 504, 53 N. E. 921, sustaining statute prohibiting baseball playing on Sunday.

Cited in State v. Penny, 42 Mont. 125, 31 L.R.A.(N.S.) 1155, 111 Pac. 727, sustaining statute prohibiting the keeping open of theatres on Sunday.

Cited in footnote to Watson v. Thomson, 59 L. R. A. 602, which denies city's power to prevent carrying on of lawful avocation on Christmas day.

Cited in notes (78 Am. St. Rep. 237, 264, 265) on validity of Sunday laws; (21 L.R.A.(N.S.) 24) on Sunday baseball as offense.

41 L. R. A. 858, POLLEY v. HICKS, 58 Ohio St. 218, 50 N. E. 809.

Gifts inter vivos.

Approved in Jacobs v. Jolley, 29 Ind. App. 31, 62 N. E. 1028, holding valid gift inter vivos established by voluntary assignment of specific part of deposit upon printed form provided by bank, accompanied by delivery of pass book, though not to become effective until donor's death.

Cited in Miller v. McLean, 11 Ohio C. C. N. S. 490, 31 Ohio C. C. 80, holding that a written assignment is not necessary to complete a gift inter vivos of a note or other evidence of indebtedness; Sutton v. Galbraith, 7 Ohio N. P. N. S. 296, 18 Ohio S. & C. P. Dec. 866, holding that where one sister gave to another sister, bonds reserving the right to interest and to their return if she recovered, if she needed them, is not a gift inter vivos but is one causa mortis if not revoked and the donor dies from the malady from which she was suffering.

Cited in footnote to Murphy v. Bordwell, 52 L. R. A. 849, which holds gift of bank deposit consummated by power of attorney to donee giving right to draw in donor's name.

Transfer of bank deposits.

Cited in Drefahl v. Security Sav. Bank, 132 Iowa, 572, 107 N. W. 179, on transfer of funds in savings bank by delivery of deposit book for that purpose; Phinney v. State, 36 Wash. 244, 68 L.R.A. 119, 78 Pac. 927, holding valid gift causa mortis made where donor drew check for nearly his entire estate and gave it to donee to mail to bank, though bank received it after donor's death.

Cited in note (52 L.R.A. 849) as to delivery of bank book to sustain gift of money in bank.

Distinguished in Varley v. Sims, 100 Minn. 339, 8 L.R.A.(N.S.) 828, 117 Am. St. Rep. 694, 111 N. W. 269, 10 Ann. Cas. 473, holding giving of check for full amount of bank deposit operates as assignment thereof though unaccepted by bank, and rule applies to check made basis of gift causa mortis.

41 L. R. A. 860, HELMAN v. PITTSBURG, C. C. & ST. L. R. CO. 58 Ohio St. 400, 50 N. E. 986.

Action for death by wrongful act.

Cited in Archdeacon v. Cincinnati Gas & Electric Co. 3 Ohio N. P. N. S. 47, 15 Ohio S. & C. P. Dec. 588, holding that the statute giving a right of action for death by wrongful act gives a right and a remedy which did not exist at common law and should be strictly construed and the limitation of time in which the action must be brought is an essential condition of the right of action.

— By administrator.

Cited in Wabash R. Co. v. Fox, 64 Ohio St. 143, 83 Am. St. Rep. 739, 59 N. E. 888, holding that courts of Ohio have no jurisdiction to entertain action by administrator for wrongful death of railroad employee in Indiana.

Admissions of negligence.

Distinguished in Binewicz v. Haglin, 103 Minn. 300, 15 L.R.A.(N.S.) 1096, 115 N. W. 271, 14 Ann. Cas. 225, holding admissions tending to show negligence, though admissible are not given conclusive effect; Mahoning Valley Ry. v. Van Alstine, 77 Ohio St. 415, 14 L.R.A.(N.S.) 893, 83 N. E. 601, as not implying that right of next of kin to sue under statute is a survival of the decedent's right of action for personal injury.

Abatement of action for personal injuries by death of the plaintiff.

Cited in Gallagher v. River Furnace & Dock Co. 2 Ohio N. P. N. S. 665, 15 Ohio S. & C. P. Dec. 793, holding that an action for personal injuries abates upon the death of the plaintiff from the injuries complained of, but may be revived if the death results from other causes.

41 L. R. A. 862, McNAIRY COUNTY v. McCOIN, 101 Tenn. 74, 45 S. W. 1070.

Indemnity for support of insane and indigents.

Approved in *Re* Yturburru, 134 Cal. 569, 66 Pac. 729, sustaining statute making estate of insane person liable for support in state hospital.

Cited in Kaiser v. State, 80 Kan. 372, 24 L.R.A.(N.S.) 299, 102 Pac. 454, as to liability of estate of insane person for expense of his maintenance at public institution, in absence of statute; Tennessee Hospital for the Insane v. McReynolds, 1 Tenn. Ch. App. 362, as to duty of husband to support wife in public charitable institution.

Cited in footnotes to Bon Homme County v. Berndt, 50 L.R.A. 351, which sustains statute making estates of insane persons without heirs in United States dependent thereon for support chargeable with expense of maintenance in hospital; Richardson v. Stuesser, 69 L.R.A. 829, which denies husband's liability for support of his wife at an insane asylum to which she has been removed by due process of law.

Cited in note (55 L. R. A. 576) on liability of alleged pauper, or his estate, to pay for support or gifts obtained on ground of poverty.

L. R. A. CASES AS AUTHORITIES.

CASES IN 42 L. R. A.

42 L. R. A. 33, NORTHWESTERN & P. HYPOTHEEK BANK v. STATE, 18 Wash. 73, 50 Pac. 586.

Claims against decedent or state.

Cited in Barto v. Stewart, 21 Wash. 615, 59 Pac. 480, holding action upon demand against decedent's estate, even if not due or contingent, a claim barred, if not presented within time for presentment of claims against estate.

Cited in footnote to Allen v. State Auditors, 47 L. R. A. 117, which denies power of state auditors to adjust claim of pardoned convict for alleged wrongful imprisonment.

Cited in notes (55 L.R.A. 496) on governor's power to employ counsel for the state; (17 L.R.A.(N.S.) 558) on implied liability of county for interest on its obligations.

Distinguished and explained in Billings v. State, 27 Wash. 291, 67 Pac. 583, denying that misfeasance of officer creates claim against state.

42 L. R. A. 39, HOUSTON v. STATE, 98 Wis. 481, 74 N. W. 111.

Obligations imposed upon state by its consent.

Cited in State *ex rel.* Isenring v. Polacheck, 101 Wis. 430, 77 N. W. 708, denying that state must give bond on appeal in criminal cause under statute making proceedings same as in civil causes.

Liability for destruction of property as health measure.

Cited in New Orleans v. Charouleau, 121 La. 893, 18 L.R.A.(N.S.) 370, 126 Am. St. Rep. 332, 46 So. 911, 15 Ann. Cas. 46, upholding right of city to destroy dairy cows afflicted with tuberculosis without compensation of owner; Lowe v. Conroy, 120 Wis. 159, 66 L.R.A. 911, 102 Am. St. Rep. 983, 97 N. W. 942, 1 Ann. Cas. 341, holding health officer liable for destruction of cattle not afflicted with disease endangering public health but which he supposed were so diseased.

Cited in footnote to Lowe v. Conroy, 66 L.R.A. 907, which holds health officer individually liable for destruction of private property by mistake in attempt to preserve public health.

Cited in note (18 L.R.A.(N.S.) 369) on power to require destruction of diseased domestic animals without making compensation.

Claims against state or municipality.

Cited in footnotes to Michigan Sugar Co. v. Dix, 56 L. R. A. 329, which denies

that engaging in business under inducement of invalid bounty law creates valid claim against state; Robertson v. Blaine County, 47 L. R. A. 459, which holds statutory obligation of new county to pay bonds of old county not governed by ordinary statute of limitations; Hyatt v. Hamilton County, 63 L.R.A. 614, which holds that failure of legislature to provide for compensation of attorney appointed to conduct disbarment proceedings will not absolve county from liability for reasonable compensation.

Cited in notes (42 L.R.A. 35, 51) on what claims constitute valid demands against state; (32 L.R.A.(N.S.) 245) on statute of limitations as defense to action by municipality for injury to property.

42 L. R. A. 72, STATE *ex rel.* ANDREU v. CANFIELD, 40 Fla. 36, 23 So. 591.

Records as notice of appeal.

Cited in State *ex rel.* Burbridge v. Call, 41 Fla. 459, 26 So. 1016, and State *ex rel.* Lamar v. Jacksonville Terminal Co. 41 Fla. 373, 27 So. 225, holding record of notice of appeal sufficient notice to defendant.

—Failure to specify return day.

Cited in Florida Finance Co. v. Hastings, 41 Fla. 470, 27 So. 218, holding entry of appeal fatally defective where return day not specified.

Nature of writ of error.

Cited in Atlantic Coast Line R. Co. v. Benedict Pineapple R. Co. 52 Fla. 172, 42 So. 529, holding writ of error is continuation of original litigation rather than a new action.

Necessity of individual names of parties in writs of error.

Cited in Garrison v. Parsons, 41 Fla. 150, 25 So. 336, holding that names of parties appealing and appealed against must appear in entry of appeal; National Bank v. Newheart, 41 Fla. 471, 27 So. 297, and Continental Nat. Bldg. & L. Asso. v. Miller, 41 Fla. 420, 26 So. 725, denying that parties designated by "*et al.*," can be considered as parties to appeal.

Distinguished in Saddler v. Smith, 54 Fla. 673, 45 So. 718, 14 Ann. Cas. 570, holding use of words "et al." in describing several parties in title of cause on copy of subpœna, sufficient.

Failure to continue proceeding against officer's successor.

Distinguished in State *ex rel.* Williams v. Bloxham, 42 Fla. 504, 28 So. 762, dismissing proceeding by mandamus to compel audit of claim where officer's term expired and his successor was not made party.

Time for amending appeal.

Cited in Lowe v. De Laney, 54 Fla. 481, 44 So. 710, holding amendment of appeal by bringing in new parties appellant will not be allowed after lapse of time prescribed by law for taking appeals.

Continuing jurisdiction.

Cited in White v. White, 65 N. J. Eq. 747, 55 Atl. 739, holding by analogy service outside of state of notice of proceedings for an increase in allowance not an unconstitutional deprivation of property where court has previously obtained jurisdiction and required payment of an allowance.

Pendency of action.

Cited in Pensacola & A. R. Co. v. State, 45 Fla. 89, 110 Am. St. Rep. 67, 33 So. 985, holding that an action cannot be said to have terminated when there is an appeal pending.

Statutory construction.

Cited in State ex rel. Moodie v. Bryan, 50 Fla. 357, 39 So. 929, on when it is proper for courts to declare statutes unconstitutional.

42 L. R. A. 85, SCOTT v. WISWALL, 30 C. C. A. 339, 57 U. S. App. 179, 86 Fed. 671.

Illegal trusts.

Approved in Gilbert v. American Surety Co. 61 L. R. A. 257, 57 C. C. A. 623, 121 Fed. 503, holding vendor of property to combination which he serves as agent for years cannot reclaim property on ground that sale was in restraint of trade.

Cited in Bessire & Co. v. Corn Products Mfg. Co. 47 Ind. App. 309, 94 N. E. 353, holding that answer in action for goods sold and delivered under contract, that plaintiff had monopoly of such goods and that defendant could not obtain them elsewhere, is bad; Dr. Miles Medical Co. v. Platt, 142 Fed. 610, holding illegal combination by plaintiff no defense to an action for infringement of patent.

Cited in notes (64 L.R.A. 713) on illegal trusts under modern anti-trust laws; (53 L. ed. U. S. 487) on right of member of combination offending against modern anti-trust laws to enforce collateral agreements.

Collateral attack.

Cited in Indiana Mfg. Co. v. Case Threshing Mach. Co. 148 Fed. 23, on distinction between direct and collateral attack.

42 L. R. A. 88, NEW YORK L. INS. CO. v. BABCOCK, 104 Ga. 67, 69 Am. St. Rep. 134, 30 S. E. 273.

What constitutes consummation of contract of insurance.

Approved in Harrigan v. Home L. Ins. Co. 128 Cal. 547, 58 Pac. 180, holding policy a binding contract from date of execution and transmission from home office.

Cited in Hardy v. Ætna L. Ins. Co. 154 N. C. 440, 70 S. E. 828, holding that delivery of policy of insurance may be shown by intent of parties, and its physical delivery is not necessary; Lathrop v. Modern Woodmen, 56 Or. 447, 106 Pac. 328, holding that delivery of certificate of benefit society by head office to camp clerk, is not sufficient under by-law which provided that certificate would not be effective until delivered by camp clerk to applicant while in good health; Van-Arsdale-Osborne Brokerage Co. v. Cooper, 28 Okla. 603, 115 Pac. 779, holding that where written application for insurance stipulated that such insurance was to be in force from day of approval of application, and that approval should be evidenced by delivery of policy, contract was complete upon approval of application; Waterloo Lumber Co. v. Des Moines Ins. Co. 150 Iowa, 610, 130 N. W. 147, to the point fire insurance policy ready for delivery before loss occurred might be delivered after loss so as to bind company; Powell v. North State Mut. L. Ins. Co. 153 N. C. 129, 69 S. E. 12, holding that requirement in policy of life insurance that it shall not be effective until delivery thereof, is valid, and delivery must be actual or constructive; Wood v. Brotherhood of American Yoeman, 148 Iowa, 406, 126 N. W. 949, holding that where member of benefit society surrenders certificate for purpose of changing beneficiary's delivery of new certificate is not essential to validity of contract, if certificate contains no new conditions; Todd v. German American Ins. Co. 2 Ga. App. 793, 59 S. E. 94, holding delivery of policy not essential to validity of insurance contract if otherwise consummated; Kilborn v. Prudential Ins. Co. 99 Minn. 179, 108 N. W. 861, holding insurance contract consummated by acceptance of

application by company and deposit of policy in mail directed to agent to deliver to applicant; Hartford F. Ins. Co. v. Whitman, 75 Ohio St. 319, 79 N. E. 459, 9 Ann. Cas. 218, holding acceptance by insurer of terms of policy applied for at discount and unconditional delivery to insured necessary to consummate contract; Robinson v. United States Benev. Soc. 132 Mich. 700, 102 Am. St. Rep. 436, 94 N. W. 211, on whether acceptance of application for insurance providing that contract should be complete when accepted, consummated the contract; Mulligan v. Metropolitan L. Ins. Co. 149 Ill. App. 519, holding receipt of policy by agent in which payment of premium in advance is waived by agreement, tantamount to deliver to insured; New York L. Ins. Co. v. Greenlee, 42 Ind. App. 85, 84 N. E. 1101, holding delivery of policy to agent unconditionally constitutes delivery to insured before payment of premium if prepayment is not made condition precedent; Title Guarantee & Surety Co. v. Bank of Fulton, 89 Ark. 477, 33 L.R.A.(N.S.) 679, 117 S. W. 537, holding acceptance of application for insurance by company and mailing of bond to its agent unconditionally constituted a delivery of bond; Waters v. Security L. & Annuity Co. 144 N. C. 670, 13 L.R.A.(N.S.) 809, 57 S. E. 437, holding physical delivery of policy to applicant prima facie evidence of a completed contract; Neff v. Metropolitan L. Ins. Co. 39 Ind. App. 259, 73 N. E. 1041, holding delivery of policy to agent not delivery to insured where policy provides for prepayment in cash and delivery to insured in good health; Sterling v. Woodmen of the World, 28 Utah, 520, 80 Pac. 375, holding policy requiring signature of agent before delivery not consummated until condition complied with.

Cited in footnote to Summers v. Mutual Life Ins. Co. 66 L.R.A. 812, which holds contract for present insurance not made by applicant giving note for first premium in consideration that a policy shall be issued where his examination is to be made in future and he expressly stipulates that note shall not be negotiated until policy has been delivered and accepted.

Cited in notes (36 L.R.A.(N.S.) 1211) on insurance: effect of delay in passing upon application; (138 Am. St. Rep. 31, 33, 34, 47, 50, 51, 53) on delivery and acceptance of insurance policies.

Distinguished in Oliver v. Mutual L. Ins. Co. 97 Va. 141, 33 S. E. 536, holding payment of first premium and delivery conditions precedent to liability on policy, notwithstanding agent's agreement to contrary; Commonwealth L. Ins. Co. v. Davis, 136 Ky. 344, 124 S. W. 345, holding delivery to agent not delivery to insured where policy provides insured must be in good health at such time and he is ill with pneumonia.

Rights under oral contract to insure.

Cited in footnote to Hicks v. British America Assur. Co. 48 L. R. A. 424, which holds rights of one whose property destroyed after oral contract to insure it, but before policy issued, subject to provisions of standard policy prescribed by law.

Conflict of laws.

Cited in Equitable Life Assur. Soc. v. Perkins, 41 Ind. App. 188, 80 N. E. 682, holding law of New York would govern policy where same was accepted there by company and sent to its agent in Kentucky unconditionally to be delivered to insured.

Cited in notes (63 L.R.A. 841, 844, 846) on conflict of laws as to contracts of insurance; (104 Am. St. Rep. 490) on conflict of laws as to nonforfeiture of insurance policy.

42 L. R. A. 93, RHODES v. MISSOURI SAV. & L. CO. 173 Ill. 621, 50 N. E. 998.

Comity as affecting foreign corporations.

Cited in Harding v. American Glucose Co. 182 Ill. 635, 64 L. R. A. 771, 74 Am. St. Rep. 189, 55 N. E. 577, sustaining power to restrain foreign corporation from transferring realty and other local property to foreign corporation, contrary to trust laws; Floyd v. National Loan & Invest. Co. 49 W. Va. 339, 54 L. R. A. 541, 87 Am. St. Rep. 805, 38 S. E. 653, refusing to enforce for foreign building and loan association, contract which domestic corporation was unauthorized to make; Royal Loan Asso. v. Forter, 68 Kan. 473, 75 Pac. 484, 1 Ann. Cas. 794, holding loan made by Missouri loan association through its agent in Kansas on Kansas land and with persons living there, mortgage note being payable in Kansas, a Kansas contract; Supreme Hive L. M. v. Harrington, 227 Ill. 528, 81 N. E. 533 (dissenting opinion), on rights of foreign corporation to enforce contracts in conflict with local laws.

Cited in footnote to Swing v. Munson, 58 L. R. A. 223, which holds insurance contract, valid where made, not enforceable in state where property located whose laws directly violated.

Distinguished in State ex rel. Atkinson v. Co-operative Homebuilders, 47 Wash. 243, 91 Pac. 953, holding that foreign loan association although amenable to local usury statutes, may be enjoined from doing any business within the state unless it complies with statutory requirements for such associations.

Issue of stock by loan associations.

Cited in Cobe v. Airey, 125 Ill. App. 54, holding company issuing paid up stock not a homestead loan association within meaning of statute; Assets Realization Co. v. Heiden, 117 Ill. App. 466, holding under statute issuance of stock to be fully paid in six years, ultra vires a homestead loan association: Folk v. State Capital Sav. & L. Asso. 214 Pa. 530, 63 Atl. 1013, holding issuance of full-paid stock by loan association valid, if dividends payable out of profits and no preference given to shareholders and if incidental to main business.

Cited in footnote to Sumrall v. Columbia Finance & T. Co. 44 L. R. A. 659, which holds void, issuance of preferred stock by loan association.

Distinguished in Payson v. Iroquois Bldg. & L. Asso. 93 Ill. App. 626, sustaining validity of issuance of paid-up stock participating in profits; Scaife v. Scammon Invest. & Sav. Asso. 71 Kan. 408, 80 Pac. 957, holding issuance of paid up stock by foreign building and loan association does not preclude it from foreclosing mortgage where local statute does not prohibit issuance of paid up stock.

Powers of building and loan association.

Cited in Equitable Bldg. & L. Soc. v. Fritze, 83 Ill. App. 27, denying power of building and loan association to vote compensation to unsalaried officer as manager of agencies.

Construction of loan association contract as to usury.

Followed in Phœnix Loan Asso. v. Stringham, 81 Ill. App. 50, holding foreign building and loan association deriving loaning fund from sale of paid-up stock not within exemption of usury law.

Cited in Coltrane v. Baltimore Bldg. & L. Asso. 110 Fed. 298, holding excessive exactions of interest are to be dealt with as usury; National Mut. Bldg. & L. Asso. v. Burch, 124 Mich. 66, 83 Am. St. Rep. 311, 82 N. W. 837, holding building and loan contract governed by usury law where executed and payments made, although loan paid in state of corporation's domicil.

Cited in footnote to National Mut. Bldg. & L. Asso. v. Brahan, 57 L. R. A. 793, which holds usury in loan by foreign loan association to resident, secured by mortgage on land in state, determined by local law.

42 L. R. A. 98, FLYNN v. FLYNN, 171 Mass. 312, 68 Am. St. Rep. 427, 50 N. E. 650.

Dower and other rights in husband's estate.

Cited in Brownell v. Briggs, 173 Mass. 532, 54 N. E. 251, holding husband's voluntary conveyance without consideration, and not recorded until after death, reserving life estate and power to sell or mortgage, void as to wife; Land v. Shipp, 98 Va. 289, 50 L. R. A. 562, 36 S. E. 391, holding dower not barred by deed of separation releasing all rights in husband's property; Lucas v. Whitacre, 121 Iowa, 252, 96 N. W. 776, holding widow entitled to distributive share in property in which her husband had undivided interest, during coverture, which was lost through adverse possession; Lyford v. Laconia, 75 N. H. 226, 22 L.R.A. (N.S.) 1066, 72 Atl. 1085, to the point that damages are not assessable for inchoate right of dower when land is taken by eminent domain, because such right of dower is not interest in land; Seaman v. Harmon, 192 Mass. 7, 78 N. E. 301, denying wife has dower in land held in trust for husband; Summers v. Sullivan, 39 Mont. 46, 101 Pac. 166, holding married woman need not be made party to proceedings to condemn right of way over husband's lands; Lyford v. Laconia, 75 N. H. 226, 22 L.R.A.(N.S.) 1066, 72 Atl. 1085, holding by analogy one whose interest in land is possibility of reverter upon determinable fee, not entitled to damages for condemnation.

42 L. R. A. 101, QUINN v. CRIMMINGS, 171 Mass. 255, 68 Am. St. Rep. 420, 50 N. E. 624.

Liability for personal injuries.

Cited in Munroe v. Carlisle, 176 Mass. 200, 57 N. E. 332, holding lessor relieved from liability for fall of capstone from window, by lessee's agreement to put and keep in repair; Moret v. George A. Fuller Co. 195 Mass. 124, 80 N. E. 789, holding contractor erecting fence and temporary sidewalk, not liable to pedestrian for injury from protruding board where he had transferred entire control of same to another contractor; Coman v. Alles, 198 Mass. 103, 14 L.R.A.(N.S.) 952, 83 N. E. 1097, holding landlord not liable for injury to pedestrian from falling of ice from dwelling house, where he had rented house in good condition to tenant; Wixon v. Bruce, 187 Mass. 235, 68 L.R.A. 250, 72 N. E. 978, holding tenant of ground floor of building under lease absolving landlord from liability from falling of snow and ice from roof, liable to pedestrian injured by falling ice; Miles v. Janvrin, 196 Mass. 435, 13 L.R.A.(N.S.) 379, 124 Am. St. Rep. 575, 82 N. E. 708, on liability of one agreeing to keep premises in repair for injuries received from failure to do so.

Distinguished in Collins v. Greenfield, 172 Mass. 81, 51 N. E. 454, holding town macadamizing street which might have been left to railroad company to do, liable for negligence of superintendent.

Degree of care required of land owner to prevent injury to others.

Cited in Fitzpatrick v. Welch, 174 Mass. 486, 48 L. R. A. 279, 55 N. E. 178, holding ordinary care not full measure of duty of house owner collecting and discharging rain water on neighbor's land; Ainsworth v. Lakin, 180 Mass. 399, 57 L. R. A. 134, 91 Am. St. Rep. 314, 62 N. E. 746, holding land owner must, so far as possible, prevent injury from fall of fire ruins after reasonable time for investigation.

42 L. R. A. 103, LUNDBERG v. DAVIDSON, 72 Minn. 49, 74 N. W. 1018.

42 L. R. A. 107, RHODE ISLAND HOSPITAL TRUST CO. v. HAYDEN, 20 R. I. 544, 40 Atl. 421.

Definition of easement.

Cited in note (136 Am. St. Rep. 682) on definition of easement.

42 L. R. A. 110, TAYLOR v. WABASH R. CO. (Mo.) 38 S. W. 304.

Carrier's duty to provide suitable accommodations.

Cited in International & G. N. R. Co. v. Davis, 17 Tex. Civ. App. 343, 43 S. W. 540, holding that railroad company must heat car used by United States postal clerk; McCollum v. Southern P. Co. 31 Utah, 507, 88 Pac. 663, holding railroad company liable for injuries to passenger from cold and filthy condition of car and from failure to provide protection from intoxicated persons.

Cited in footnote to Van Anda v. Northern Nav. Co. 55 L. R. A. 544, which denies steamship company's liability for death of passenger from sleeping on wet mattress.

Contributory negligence.

Cited in Southern R. Co. v. Harrington, 166 Ala. 636, 139 Am. St. Rep. 59, 52 So. 57, holding that passenger's failure to protect himself from unnecessary cold or to provide sufficient clothing may or may not constitute contributory negligence.

42 L. R. A. 113, STATE *ex rel.* NATIONAL SUBWAY CO. v. ST. LOUIS, 145 Mo. 551, 46 S. W. 981.

Res judicata.

Cited in Carmody v. Hanick, 85 Mo. App. 666, denying that partners are estopped as between themselves to deny correctness of findings or recitals obtained by firm; Overshiner v. Britton, 169 Mo. 350, 69 S. W. 17, denying *res judicata* where parties were not the same, nor privies in estate, in blood, or representation; Johnson v. Stebbins-Thomson Realty Co. 177 Mo. 604, 76 S. W. 1021, holding voluntary grantee of judgment debtor bound by judgment and precluded from disputing validity of indebtedness on which it is based; Harris v. Silverman, 154 Mo. App. 700, 136 S. W. 23, holding that those who assume right to control or actively participate in trial or its management though not formal parties, will be concluded by judgment; Womach v. St. Joseph, 201 Mo. 479, 10 L.R.A. (N.S.) 144, 100 S. W. 443, holding judgment against wife in action against city for injuries received, not a bar to husband's action for damages arising from same act; Pond v. Huling, 125 Mo. App. 482, 101 S. W. 115, holding judgment in action to cancel tax-bill where defense was ruled badly pleaded, a bar to same defense in action to enforce tax-bill; Jones v. Hubbard, 193 Mo. 165, 90 S. W. 1137, holding purchaser at execution sale after judgment against grantor cannot attack judgment in collateral proceeding; Williams v. Husky, 192 Mo. 551, 90 S. W. 425, holding judgment reforming deed against defendants res adjudicata as to defendants and their privies although privies are not parties.

Cited in footnote to Allred v. Smith, 65 L.R.A. 924, which holds judgment in action quasi in rem binding on the parties only.

Cited in notes (54 L.R.A. 652) on judgment in favor of employee as bar to recovery against employer for employee's act or default; (105 Am. St. Rep. 212, 213) on who are bound by judgment for or against municipality or other governmental body or its officers.

What constitutes privity.

Cited in Withers v. Wabash R. Co. 122 Mo. App. 293, 99 S. W. 34, holding privity of contract exists between railroad company and adjoining proprietor where contract between railroad company's assignor and proprietor was one running with the land; Central Coal & Coke Co. v. Optimo Lead & Zinc Co. 157 Mo. App. 729, 139 S. W. 525, holding that judgment creditors of corporation are privies with corporation and cannot prevent foreclosure of trust deed as violation of statute where corporation could not do so.

Contracts and franchises as to streets.

Cited in Chesapeake & P. Teleph. Co. v. Baltimore City, 89 Md. 722, 44 Atl. 1033 (dissenting opinion), majority sustaining injunction to enforce franchise right to lay conduit in street.

Cited in footnote to Perry v. Castner, 66 L.R.A. 161, which denies right of abutting owner even with city's consent to construct area to reach basement on sidewalk so that approach to and from it is in front of neighbor's property.

Cited in notes (50 L. R. A. 147) on privilege of using streets as a contract, within constitution privision against impairing obligation of contracts; (6 L.R.A. (N.S.) 783) on proper remedy to make available street franchise as against municipality.

Distinguished in State *ex rel.* Belt v. St. Louis, 161 Mo. 385, 61 S. W. 658, denying that city assembly can directly contract for waste-paper boxes on streets, where it cannot so contract for public works.

Title to manhole constructed in street.

Approved in Missouri-Edison Electric Co. v. Weber, 102 Mo. App. 100. 76 S. W. 736, holding electric company has title to manhole constructed by it in street, and may maintain action for injury thereto.

Judicial restraint of municipality.

Cited in State ex rel. Abel v. Gates, 190 Mo. 558, 2 L.R.A.(N.S.) 158, 89 S. W. 881, denying writ of prohibition to prevent circuit court from entertaining jurisdiction of suit to restrain city council from granting franchise on ground of fraud; State ex rel. Garner v. Missouri & K. Teleph. Co. 189 Mo. 100, 88 S. W. 41, holding in absence of power in charter, city cannot fix telephone rates.

Mandamus.

Cited in French v. Jones, 191 Mass. 530, 7 L.R.A.(N.S.) 533, 78 N. E. 118, holding mandamus will issue at instance of owner of rails laid in street to compel superintendent of streets to determine application for license to remove them irrespective of superintendent's desire that rails be not removed; State ex rel. Porter v. Hudson, 226 Mo. 271, 126 S. W. 733, on when mandamus will issue to compel public officials to perform ministerial duties.

Cited in note (58 L. R. A. 842) on original jurisdiction of court of last resort in mandamus case.

Electricity as a public utility.

Cited in Home Teleph. Co. v. Granby & N. Teleph. Co. 147 Mo. App. 227, 126 S. W. 773, holding that while telephone companies are not common carriers in sense that they are insurers they are under obligation to furnish impartial service; State ex rel. Dominick v. Superior Ct. 52 Wash. 202, 21 L.R.A.(N.S.) 453, 100 Pac. 317, holding condemnation of water power to generate electricity to sell to third parties for public lighting and power is a public use; American Teleph. & Teleg. Co. v. St. Louis, I. M. & S. R. Co. 202 Mo. 679, 101 S. W. 576, on whether telegraph company may condemn secondary easement over railroad's right of way; Minnesota Canal & Power Co. v. Koochiching Co. 97 Minn. 450,

5 L.R.A.(N.S.) 648, 107 N. W. 405, 7 Ann. Cas. 1182, on control of state over public service corporations supplying electric power.

42 L. R. A. 129, REYNOLDS v. VAN BEUREN, 155 N. Y. 120, 49 N. E. 763.

Later appeal in 51 App. Div. 633, 64 N. Y. Supp. 724.

Liability to stranger for breach of contract.

Cited in Cochran v. Sess, 168 N. Y. 374, 61 N. E. 639, denying contractor's liability to third party for breach of contract with owner; Wolf v. American Tract Soc. 164 N. Y. 35, 51 L. R. A. 244, footnote p. 241, 58 N. E. 31, denying that contractor's agreement to indemnify owner for injuries in progress of work will support action for injuries by stranger to contract; May v. Ennis, 78 App. Div. 555, 79 N. Y. Supp. 896, holding that covenant to repair in lease does not inure to benefit of stranger injured by its breach.

Distinction between lease and license.

Cited in Goldman v. New York Advertising Co. 29 Misc. 135, 60 N. Y. Supp. 275, holding agreement "leasing" wall of house for advertising purposes not lease; O. J. Gude Co. v. Farley, 28 Misc. 186, 58 N. Y. Supp. 1036, discussing, without deciding, whether agreement for sign on roof is lease or license; Ward v. American Health Food Co. 119 Wis. 23, 96 N. W. 388, holding contract to insert advertising cards in street cars for specified period, one for personal services, and not lease or license; United Merchants' Realty & Imp. Co. v. American Billposting Co. 71 Misc. 458, 128 N. Y. Supp. 666, holding that license is mere authority to use real property and is revocable; Borough Bill Posting Co. v. Levy, 144 App. Div. 789, 129 N. Y. Supp. 740, holding that "license" is permission to do some act or series of acts on land of licensor, without having permanent interest in land; Reeve v. Duryee, 144 App. Div. 648, 129 N. Y. Supp. 748; S. J. Sullivan Advertising Co. v. Goldsticker, 73 Misc. 293, 130 N. Y. Supp. 1021,—holding that instrument permitting use of wall of building for purpose of erecting or fastening thereon metal signs for advertising purposes is not lease but only license; Pocher v. Hall, 50 Misc. 640, 98 N. Y. Supp. 754, holding agreement by owner of building permitting erection and maintenance of bill board on roof, a lease and not a license; United Merchants' Realty & Improv. Co. v. New York Hippodrome, 133 App. Div. 585, 118 N. Y. Supp. 128, Reversing 61 Misc. 312, 113 N. Y. Supp. 740, holding agreement by owner of building permitting maintenance of bill board on roof for term of years at annual rental, reserving right to make improvements, a license and not a lease.

Distinguished in Ryan v. Reagan, 46 App. Div. 592, 62 N. Y. Supp. 39, holding title in issue under allegation of exercise of authority and dominion over wall used for advertising.

Liability of lessees and licensees.

Cited in Schuepbach v. Laclede Gaslight Co. 232 Mo. 612, 135 S. W. 29, to the point that where defendant's servant and plaintiff were both invitees upon third person's premises, defendant is not liable for injury to plaintiff from unguarded trap door where servant was not guilty of negligence; Collier v. Great Northern R. Co. 40 Wash. 643, 82 Pac. 935, holding railroad company using tracks of another not liable for injury caused by defective track; Miles v. Janvrin, 196 Mass. 435, 13 L.R.A.(N.S.) 380, 124 Am. St. Rep. 575, 82 N. E. 708, holding landlord liable for injuries to tenant from failure to repair rented premises as agreed to in lease.

Distinguished in San Filippo v. American Bill Posting Co. 188 N. Y. 516, 81 N. E. 463; San Filippo v. American Bill Posting Co. 112 App. Div. 396, 98 N.

Y. Supp. 661,—holding lessee liable for injuries from fall of bill board when lease gives him right "to maintain" the same.

Liability for falling of object suspended over street.

Cited in Feder v. Friedman, 71 Misc. 135, 128 N. Y. Supp. 6, holding that fact that one walking on street was struck by defendant's sign which fell from fifth story, raises presumption of negligence on part of defendant.

Cited in note (12 L.R.A.(N.S.) 722) on liability for falling of object suspended over street.

42 L. R. A. 132, *Re* HENNEBERGER, 155 N. Y. 420, 50 N. E. 61.

General and local or special laws.

Cited in Kittinger v. Buffalo Traction Co. 160 N. Y. 395, 54 N. E. 1081, holding act to validate and confirm certain consents by authorities of cities of certain classes to construction of street railroads not local; People *ex rel.* Oneida County v. Oneida County, 170 N. Y. 109, 62 N. E. 1092, sustaining act designating specified persons a board of commissioners to erect courthouse; *Re* Pell, 171 N. Y. 59, 57 L. R. A. 545, 89 Am. St. Rep. 791, 63 N. E. 789, holding statute declaring that owners of particular class of property acquired at particular time shall be taxed, special; Central P. R. Co. v. Evans, 111 Fed. 78, denying power of special tribunal to fix valuation of railroad specified by name, under power to determine uniform valuation of all like property; Metz v. Maddox, 121 App. Div. 158, 105 N. Y. Supp. 702, holding act authorizing judicial recount of votes cast for mayor in 1905 in cities of the first class not local; Smith v. Smythe, 132 App. Div. 74, 116 N. Y. Supp. 1071, holding amendment to "Village Law" authorizing villages to maintain lights on streets fourteen feet wide in portion platted as park, not local; St. John v. Andrews Institute, 191 N. Y. 270, 83 N. E. 981, 14 Ann. Cas. 708, holding fact that act to provide for administration of charitable institutions aided particular charity does not make it special law; Smithsonian Inst. v. St. John, 214 U. S. 31, 53 L. ed. 899, 29 Sup. Ct. Rep. 601; Smith v. State, 54 Tex. Crim. Rep. 320, 113 S. W. 289 (dissenting opinion)—on validity of special laws.

Distinguished in People v. Dunn, 157 N. Y. 540, 43 L. R. A. 252, 52 N. E. 572, sustaining generality of act for drawing of jury in each county having 500,000 inhabitants or more.

Determination of validity of statutes.

Cited in People ex rel. Swift v. Luce, 204 N. Y. 498, 97 N. E. 850 (dissenting opinion), on power of courts to inquire into motives of legislature in enactment of laws.

42 L. R. A. 139, FIRST NAT. BANK v. NATIONAL BROADWAY BANK, 156 N. Y. 459, 51 N. E. 398.

Effect of constructive notice of trust.

Approved in Rochester & C. Turnp. Road Co. v. Paviour, 164 N. Y. 288, 52 L. R. A. 799, 58 N. E. 114, holding one taking checks drawn by one as treasurer of corporation in payment of individual debt liable if corporate funds misappropriated.

Cited in Dexter v. Dexter, 43 App. Div. 284, 60 N. Y. Supp. 371 (dissenting opinion), majority sustaining lien of mortgage for personal debt of surviving partner; James Reynolds Elevator Co. v. Merchants' Nat. Bank, 55 App. Div. 5, 67 N. Y. Supp. 397, holding bank receives at its peril, check upon corporation's account to balance its president's individual liability; Spellissy v. Cook & B. Co. 58 App. Div. 285, 68 N. Y. Supp. 995, holding corporation transfer stock in name

of one constructively known to have no beneficial interest, subject to rights of owner; Empire State Surety Co. v. Nelson, 141 App. Div. 851, 126 N. Y. Supp. 453, holding that person who receives check signed special guardian in payment of debt against one who is special guardian is liable to ward as for money had and received; Hickok v. Cowperthwait, 137 App. Div. 96, 122 N. Y. Supp. 78, holding that pledgee who receives stock standing in name of third person as trustee in lieu of pledge returned to debtor by him is charged with notice of having received trust property and receives it at his peril.

Knowledge of violation of trust.

Cited in Anderson v. Daley, 38 App. Div. 511, 56 N. Y. Supp. 511, holding secretary of corporation using funds known to be held by vice president and treasurer in trust, chargeable as trustee *de son tort;* Cohnfeld v. Tanenbaum, 58 App. Div. 313, 68 N. Y. Supp. 1023, Affirming 32 Misc. 564, 67 N. Y. Supp. 335, holding person receiving checks signed by one as guardian, chargeable with fact ascertainable by investigation as to origin of funds; First Nat. Bank v. Robinson, 105 App. Div. 197, 94 N. Y. Supp. 996, holding person accepting bond and mortgage from trustee with actual notice that trustee received no consideration therefor, takes same subject to trustee's right to reclaim; Smith v. Stevenson Brewing Co. 117 App. Div. 695, 102 N. Y. Supp. 672, upholding right of executor to bring suit to set aside conveyance of part of trust estate obtained by fraud of coexecutors and without consideration; Bush v. Halsted, 121 App. Div 541, 106 N. Y. Supp. 133, holding owner may assert title against purchaser of land at judicial sale by assignee for creditor's benefit where purchaser and auctioneer, assignee's attorney, agreed to share profits; Ludington v. Mercantile Nat. Bank, 102 App. Div. 258, 92 N. Y. Supp. 454, holding bank accepting stock of another bank which was part of trust estate in exchange for its own stock under circumstances charging it with notice that trustees did not have power to make exchange, liable to trustees for return of stock; Squire v. Ordemann, 194 N. Y. 397, 87 N. E. 435, holding payee of check given to satisfy individual debt and signed by drawers as executors, upon collection thereof jointly liable with drawers for conversion.

Distinguished in Miles v. Pike Min. Co. 124 Wis. 285, 102 N. W. 555, holding administrator cannot recover monies paid by him in good faith on interest of estate in mine which was expected to require advances to enhance its value.

Collateral attack on trustee's appointment.

Cited in Hughes v. Cuming, 36 App. Div. 306, 55 N. Y. Supp. 256, and Woodbridge v. Bockes, 59 App. Div. 513, 69 N. Y. Supp. 417, denying validity of trustee's appointment to be subject to collateral attack.

Presumption as to foreign law.

Cited in Patton v. Patton, 67 Misc. 406, 123 N. Y. Supp. 329, holding that there is no presumption that statutes of this state are in force in another state; Robb v. Washington & J. College, 185 N. Y. 496, 78 N. E. 359, holding presumption is that common law prevails in sister state; Waters v. Spencer, 44 Misc 17, 89 N. Y. Supp. 693, holding presumption, in absence of proof to contrary, that law of foreign state is same as local law does not extend to statutory law.

Cited in footnote to Aslanian v. Dostumian, 47 L. R. A. 495, which denies presumption that law merchant as to protest of draft prevails in Asiatic Turkey.

Cited in note (67 L.R.A. 51) on how case determined when proper foreign law law not proved.

Statutory restrictions on alienation of property.

Cited in Ransom v. Ransom, 70 Misc. 36, 127 N. Y. Supp. 1027, holding that where, upon death of life beneficiary, income becomes payable to persons entitled to next eventual estate, such income is not inalienable under real property law or personal property law.

42 L. R. A. 147, STEWART v. UNION MUT. L. INS. CO. 155 N. Y. 257, 49 N. E. 876.

Reargument denied in 155 N. Y. 698, 50 N. E. 1122.

Presumption as to foreign law.

Cited in footnote to Aslanian v. Dostumian, 47 L. R. A. 495, which denies presumption that law merchant as to protest of draft prevails in Asiatic Turkey.

Cited in note (67 L.R.A. 51) on how case determined when proper foreign law not proved.

Payment of premium or assessment.

Cited in Penn Mut. L. Ins. Co. v. Norcross, 163 Ind. 394, 72 N. E. 132, which denies company's right to aver nonpayment where it delivers policy to insured and takes note in payment thereof although policy requires payment in cash.

Cited in footnotes to German Ins. Co. v. Shader, 60 L. R. A. 918, which holds provision against liability for loss occurring before premium paid waived by receiving premium after all property destroyed; Kocher v. Supreme Council C. B. L. 52 L. R. A. 861, which denies power of officers of benefit society to waive payment of assessments for death benefits; Union L. Ins. Co. v. Parker, 62 L. R. A. 390, which denies company's right to avoid liability for nonpayment of note for part of first premium taken by agent personally as a matter between him and insured only.

Distinguished in Iles v. Mutual Reserve L. Ins. Co. 50 Wash. 53, 18 L.R.A. (N.S.) 904, 96 Pac. 522, holding failure to pay note given in payment of first premium at maturity nullifies policy containing such provision.

Acts of agent that are binding on insurer.

Cited in Steinbach v. Prudential Ins. Co. 62 App. Div. 138, 70 N. Y. Supp. 809, holding insurer collecting and retaining premiums chargeable with agent's fraud or mistake; Washington L. Ins. Co. v. Menefee, 107 Ky. 249, 53 S. W. 260, and Hewitt v. American Union L. Ins. Co. 34 Misc. 740, 70 N. Y. Supp. 1012, holding insurer bound by credit given by agent for premium, notwithstanding condition to contrary; Russell v. Prudential Ins. Co. 176 N. Y. 184, 98 Am. St. Rep. 656, 68 N. E. 252, Reversing 73 App. Div. 619, 76 N. Y. Supp. 1029, holding insurance company may by contract restrict powers of its general and local agents; Leiser v. St. Paul F. & M. Ins. Co. 20 N. D. 336, 30 L.R.A.(N.S.) 552, 127 N. W. 837 (dissenting opinion), on power of agent to waive conditions of insurance policies; Kilborn v. Prudential Ins. Co. 99 Minn. 180, 108 N. W. 861, holding acceptance of note by agent in payment of premium binding on insurer where insured has no notice of limitation on agent; Ætna L. Ins. Co. v. Fallow, 110 Tenn. 733, 77 S. W. 937, holding extension of credit in payment of premium by general agent binding on insurer; Walsh v. Metropolitan L. Ins. Co. 105 App. Div. 192, 93 N. Y. Supp. 445, holding provision in policy that action must be begun within six months of death of insured, waived by officer of company promising beneficiary that company would pay policy if notified of death of insured as soon as she heard of it.

Cited in footnote to Cole v. Union Cent. L. Ins. Co. 47 L. R. A. 201, which holds credit for part of first premium, extended by general agent, binding on company.

Cited in note (13 L.R.A.(N.S.) 849) on waiver by agent of conditions of policy.

"Settlement."

Cited in Hoar v. Union Mut. L. Ins. Co. 118 App. Div. 424, 103 N. Y. Supp. 1059 (dissenting opinion), on meaning of term "settlement;" Lomax v. Colorado Nat. Bank, 46 Colo. 236, 104 Pac. 85, holding that word "settlement" when used in connection with ascertained debt or liability, means "payment."

42 L. R. A. 152, CAPEHART v. BURRUS, 122 N. C. 119, 29 S. E. 97.
Rehearing denied in 124 N. C. 48, 32 S. E. 378.

42 L. R. A. 155, HASKELL v. DAVIDSON, 91 Me. 488, 64 Am. St. Rep. 254, 40 Atl. 330.

Reward for arrest or conviction.

Cited in Williams v. West Chicago Street R. Co. 94 Ill. App. 389, holding informer not participating in arrest entitled to reward for arrest and conviction; Kinn v. First Nat. Bank, 118 Wis. 543, 99 Am. St. Rep. 1012, 95 N. W. 969, holding one entitled to reward for the "arrest and conviction" of a criminal if he gives the necessary facts to some proper person interested; Elkins v. Wyandotte County, 86 Kan. 310, 46 L.R.A.(N.S.) 662, 120 Pac. 542, holding that citizen is entitled to reward offered under § 6900 of general statutes, if he substantially accomplishes full objects of offer, aided by officers of the law; Foley v. Hoy, 113 Minn. 185, 129 N. W. 215, holding that person having knowledge of reward for arrest and conviction of criminal, who renders services which materially and proximately aid in arrest is entitled to equitable share of reward.

Cited in footnotes to Smitha v. Gentry, 42 L. R. A. 302, which denies right of constable to reward offered for arrest of fugitive in own county; People *ex rel.* Maynard v. Holly, 44 L. R. A. 677, which sustains city's power to offer reward for testimony to secure conviction of incendiaries; Smith v. Vernon County, 70 L.R.A. 59, which holds reward offered for arrest and conviction of felon earned by arresting and delivering him to proper officers and attending as witness at trial resulting in conviction, although prosecution is by county officers instead of claimant.

Criticised in McClaughry v. King, 7 L.R.A.(N.S.) 218, 147 Fed. 465, 8 Ann. Cas. 856, holding mere informer of whereabouts of suspect not entitled to reward for arrest and conviction.

42 L. R. A. 157, NEW YORK, N. H. & H. R. CO. v. SCOVILL, 71 Conn. 136, 71 Am. St. Rep. 159, 41 Atl. 246.

Right to solicit business in carrier's station.

Cited in Donovan v. Pennsylvania Co. 61 L. R. A. 143, footnote p. 140, 57 C. C. A. 364, 120 Fed. 217, holding railroad company may give exclusive right to solicit patrons within its station to one hackman; Hedding v. Gallagher, 72 N. H. 393, 64 L. R. A. 821, footnote p. 811, 57 Atl. 225, sustaining right of railroad company to give to one teamster exclusive right to enter railroad property to solicit privilege of carrying baggage and passengers; New York, N. H. & H. R. Co. v. Bork, 23 R. I. 224, 49 Atl. 965, upholding right of railroad company to exclude from its premises hackmen desiring to solicit patronage; Philadelphia & R. R. Co. v. Godfrey, 19 Montg. Co. L. Rep. 30, 28 Pa. Co. Ct. 328, upholding right of railroad company to prevent hackmen from coming upon depot premises to solicit patronage, although privilege granted to another; State ex rel. Sheets v. Union Depot Co. 71 Ohio St. 391, 68 L.R.A. 797, 73 N. E. 633, 2 Ann.

Cas. 186, holding depot company may give transfer company exclusive right to solicit patrons at designated portion of depot grounds; Philadelphia & R. R. Co. v. Godfrey, 13 Pa. Dist. R. 7, upholding right of railroad company to give sole privilege of soliciting passengers to one hackman.

Cited in footnotes to Hedding v. Gallagher, 64 L.R.A. 811, which sustains right of railroad company to give exclusive right to one teamster to enter on its grounds, if reasonable requirements of passengers are fully met; State ex rel. Sheets v. Union Depot Co. 68 L.R.A. 792, which sustains right of union depot company to grant transfer company exclusive right to use specified part of depot grounds for hacks and vehicles and soliciting patronage of passengers.

Cited in note (16 L.R.A.(N.S.) 778, 780) on right to discriminate between solicitors of patronage at depots, wharves, etc.

Disapproved in Indianapolis Union R. Co. v. Dohn, 153 Ind. 12, 45 L. R. A. 428, 74 Am. St. Rep. 274, 53 N. E. 937, denying railroad's right to grant exclusive privilege of standing hacks on its area, to one hackman.

Injunctive relief.

Cited in Philadelphia & R. R. Co. v. Godfrey, 19 Montg. Co. L. Rep. 131, holding injunction proper remedy to restrain hackmen from entering depot grounds to solicit patronage; Philadelphia & R. R. Co. v. Godfrey, 13 Pa. Dist. R. 8, granting injunction restraining unlicensed hackman from coming on depot grounds.

Cited in footnotes to Cosgrove v. Augusta, 42 L. R. A. 711, which holds ordinance prohibiting hackmen, etc., from entering depot to solicit custom not authorized by general welfare clause in city charter; State v. Reed, 43 L. R. A. 134, which denies railroad company's right to give one hackman exclusive privilege to enter station grounds; Kates v. Atlanta Baggage & Cab Co. 46 L. R. A. 431, which sustains contract giving cab company exclusive privilege of soliciting patronage on trains and in depot; Godbout v. St. Paul Union Depot Co. 47 L. R. A. 532, which authorizes discrimination by carrier between hackmen within, but not outside of, depot; Norfolk & W. R. Co. v. Old Dominion Baggage Transfer Co. 50 L. R. A. 722, which upholds special privileges to baggage transfer company to enter depot to solicit business; Boston & A. R. Co. v. Brown, 52 L. R. A. 418, which holds driver of public carriage entering railroad grounds to get passenger ordering carriage, a trespasser on soliciting other passengers; Pennsylvania Co. v. Chicago, 53 L. R. A. 223, which denies carrier's power to prevent others than lessee occupying hack stands in street.

Cited in notes (13 L.R.A.(N.S.) 176) on injunction against repeated trespass; (99 Am. St. Rep. 740) on injunction against trespass on realty.

42 L. R. A. 161, GOFF v. COUGLE, 118 Mich. 307, 76 N. W. 489.

Boundaries by water.

Cited in Church v. Case, 122 Mich. 555, 81 N. W. 334, holding that island in unmeandered lake passed with patent of upland; Johnson v. Johnson, 14 Idaho, 578, 24 L.R.A.(N.S.) 1249, 95 Pac. 499, holding grantee of land bordering on navigable stream in absence of reservation, takes title to thread of stream subject to easement for public use.

Annotation cited in Bardes v. Herman, 62 Misc. 431, 114 N. Y. Supp. 1098, on rights of riparian owners at common law.

Cited in notes (42 L. R. A. 322) on what waters are navigable, as to question of riparian ownership; (42 L. R. A. 503, 505, 511) on effect of bounding grant on river or tidewater; (52 L. ed. U. S. 882) on government grant bounded by water, as carrying title to islands therein.

Title to land under water.

Cited in footnotes to Shepard's Point Land Co. v. Atlantic Hotel, 61 L. R. A. 937, which holds title to land under tide waters vested in and grantable by state; Illinois C. R. Co. v. Chicago, 53 L. R. A. 408, which denies state's power to grant land under Lake Michigan for private use of railroad company; Watkins v. Dorris, 54 L. R. A. 199, which denies state's title to bed of navigable stream valuable only for floating logs to market during freshet.

Cited in notes (64 L.R.A. 333) on municipal ownership of tide lands; (63 L.R.A. 265) on right of state to grant tide land so as to destroy wharfage right of shore owner; (1 L.R.A.(N.S.) 763) on title to bed of navigable river; (24 L.R.A.(N.S.) 1241) on government grant bounded by nontidal, navigable river as carrying title to land thereunder; (34 L.R.A.(N.S.) 423) on right to obstruct wharf rights in navigable waters for public purposes, without compensation.

Right to fish.

Cited in note (60 L. R. A. 481) on right to fish.

42 L. R. A. 175, MORRIS v. COLUMBUS, 102 Ga. 792, 66 Am. St. Rep. 243, 30 S. E. 850.

Police powers.

Cited in Edgerton v. Goldsboro Water Co. 126 N. C. 99, 48 L. R. A. 446, 35 S. E. 243, dissenting opinion by Clark, J., who holds water for public sanitation and protection of public buildings a necessity, within exercise of police power of municipality to provide; Kirk v. Board of Health, 83 S. C. 391, 23 L.R.A. (N.S.) 1196, 65 S. E. 387, sustaining injunction restraining board of health from isolating one afflicted with anaesthetic leprosy where same not necessary for public protection.

Cited in note (78 Am. St. Rep. 242, 243, 271) on acts which legislature may declare criminal.

Distinguished in Western & A. R. Co. v. Atlanta, 113 Ga. 551, 54 L. R. A. 302, 38 S. E. 996, denying municipal power of summary abatement of particular nuisance without reasonable notice to offending party.

—Compulsory vaccination.

Approved in State v. Hay, 126 N. C. 1002, 49 L. R. A. 589, footnote p. 588, 78 Am. St. Rep. 691, 35 S. E. 459, sustaining power of legislature to authorize county and city authorities to require compulsory vaccination; Blue v. Beach, 155 Ind. 138, 50 L. R. A. 71, footnote p. 64, 80 Am. St. Rep. 195, 56 N. E. 89, holding exclusion of unvaccinated pupils from public schools during smallpox epidemic justified only as public emergency; State *ex rel.* Cox v. Board of Education, 21 Utah, 417, 60 Pac. 1013, and Glover v. Board of Education, 14 S. D. 145, 84 N. W. 761, sustaining power of board of health during smallpox epidemic to suspend pupils refusing to undergo vaccination; Com. v. Pear, 183 Mass. 246, 67 L. R. A. 939, 66 N. E. 719, upholding constitutionality of statute authorizing city board of health to require vaccination under penalty of payment of fine.

Cited in Morgan v. Stewart, 144 N. C. 428, 57 S. E. 149, upholding validity of statute authorizing board of health to make vaccination regulations and imposing penalty on those violating same; Jacobson v. Massachusetts, 197 U. S. 33, 49 L. ed. 652, 25 Sup. Ct. Rep. 358, 3 Ann. Cas. 765, upholding validity of statute authorizing board of health to require all adult persons to be vaccinated as not violating rights under Federal constitution; Viemeister v. White, 179 N. Y. 240, 70 L.R.A. 798, 103 Am. St. Rep. 859, 72 N. E. 97, 1 Ann. Cas. 334,

which holds statute excluding children from public school until vaccinated violates no constitutional right.

Cited in footnotes to Wyatt v. Rome, 42 L.R.A. 180, which denies right of action against city for injury from use of impure vaccine matter by city agents, in enforcing ordinance for compulsory vaccination; Com. v. Pear, 67 L.R.A. 935, which sustains power of legislature to authorize health authorities of municipality to require under penalty all citizens to be vaccinated when considered necessary for the public health; Re Viemeister, 70 L.R.A. 796, which upholds statute requiring vaccination as proper requisite to attendance at public school.

Cited in notes (17 L.R.A.(N.S.) 709) on compulsory vaccination; (49 L. ed. U. S. 644) on constitutionality of compulsory vaccination.

42 L. R. A. 180, WYATT v. ROME, 105 Ga. 312, 70 Am. St. Rep. 41, 31 S. E. 188.

Municipal liability for negligence.

Cited in Dalton v. Wilson, 118 Ga. 101, 98 Am. St. Rep. 101, 44 S. E. 830, holding city not liable for failure to abate nuisance of an open sewer part of which it authorized private citizen to construct for his benefit.

Cited in footnotes to Rhobidas v. Concord, 51 L. R. A. 381, which sustains city's liability for failure to furnish servant reasonably safe place to work; Nicholson v. Detroit, 56 L. R. A. 601, which denies city's liability for death of unwarned employee from smallpox contracted in tearing down smallpox hospital; Bowden v. Kansas City, 66 L.R.A. 181, which holds that city is performing ministerial public duty in maintaining fire station so as to be liable in damages to employee for personal injuries resulting from neglect of city to furnish reasonably safe place to work.

Cited in note (93 Am. St. Rep. 849) on liability of municipality for negligence of officers as to communication of contagious or infectious diseases.

Compulsory vaccination.

Cited in footnotes to Morris v. Columbus, 42 L. R. A. 175, which sustains compulsory vaccination within city limits, where smallpox epidemic; Blue v. Beach, 50 L. R. A. 64, which holds exclusion of unvaccinated pupils from public schools during smallpox epidemic justified only as public emergency.

42 L. R. A. 181, PLUMB v. CHRISTIE, 103 Ga. 686, 30 S. E. 759.

Who may question validity of statute.

Cited in footnote to State *ex rel.* White v. Barker, 57 L. R. A. 244, which holds that superintendent of municipal water works may maintain quo warranto to test validity of statute providing for new superintendent.

Injunction to prevent passage or enforcement of law.

Cited in footnotes to Agua Pura Co. v. Las Vegas, 50 L. R. A. 224, which holds compliance with water company's valid contract not condition to injunctive relief against interference with same by city ordinance; State *ex rel.* Rose v. Superior Court, 48 L. R. A. 819, which denies right to injunction against passage of ordinance creating contract.

Regulation of sale of intoxicating liquors.

Cited in Melton v. Moultrie, 114 Ga. 464, 40 S. E. 302, holding that power to license retailing of spirituous liquors includes power to revoke without refunding fee; Whitley v. State, 134 Ga. 773, 68 S. E. 716, holding law prohibiting manufacture and sale of intoxicating liquors within state, a valid exercise of police power; Sandys v. Williams, 46 Or. 341, 80 Pac. 642, holding ordinance prohibiting sale of intoxicating liquors in private rooms but excepting hotels from its operation, a valid discrimination; Wright v. Macon, 5 Ga. App. 759, 64 S.

E. 807, on whether purchase and sale of intoxicating liquors by citizen is an inalienable right.

Cited in footnotes to De Walt's Appeal, 45 L. R. A. 399, which sustains power of state to regulate sale of liquor and to authorize granting of license; Bennett v. Pulaski, 47 L. R. A. 278, which sustains ordinance for closing saloons between 10 and 4 o'clock at night, and on Sundays, but not requirement for removing curtains on front doors and windows.

Cited in note (15 L.R.A.(N.S.) 947) on constitutional right to prohibit sale of intoxicants.

Public dispensaries.

Followed in Butler v. Merritt, 113 Ga. 241, 38 S. E. 751, as to right to establish public dispensaries and appoint officers thereof.

Cited in Barnesville v. Murphey, 113 Ga. 781, 39 S. E. 413, denying that municipal power to regulate and control sale of intoxicants includes power to establish municipal dispensary; Dispensary Comrs. v. Thornton, 106 Ga. 107, 31 S. E. 733, holding dispensary commissioners not liquor dealers within tax law; Farmville v. Walker, 101 Va. 332, 61 L. R. A. 129, footnote p. 125, 43 S. E. 558, holding legislature may permit town to establish dispensary for exclusive sale of ardent spirits; Chamlee v. Davis, 115 Ga. 270, 41 S. E. 691, holding statute prohibiting sale of intoxicating liquors otherwise than by dispensary under government control, constitutional; Farmville v. Walker, 101 Va. 332, 43 S. E. 358, sustaining validity of statute authorizing municipalities to establish liquor dispensaries although to support same a tax might be necessary; Fowler v. Rome Dispensary, 5 Ga. App. 39, 62 S. E. 660, holding city dispensary for sale of liquors a governmental institution which cannot be sued for illegal sale of whisky to minor; Barker v. State, 118 Ga. 39, 44 S. E. 874, construing act providing for sale of intoxicating liquors only by state dispensary as prohibitory within meaning of penal code prescribing punishment for illegal sale.

Cited in footnotes to Farmville v. Walker, 61 L. R. A. 125, which sustains legislative power to permit town to establish dispensary for exclusive sale of liquor; Lofton v. Collins, 61 L. R. A. 150, which denies municipal authority to organize dispensary by appointing commissioners authorized to sell liquor.

Cited in note (31 L.R.A.(N.S.) 118) on right of municipality to engage in liquor business.

Regulation of practice of dentistry.

Cited in State *ex rel.* Smith v. State Dental Examiners, 31 Wash. 498, 72 Pac. 110, holding title of act to regulate practice of dentistry need not specifically state that it provides for a penalty.

Monopolies.

Cited in White v. Holman, 44 Or. 187, 74 Pac. 933, 1 Ann. Cas. 843, holding statute unconstitutional which creates sailor boarding house commission giving it authority to arbitrarily license only one person.

Cited in note (53 L. R. A. 764) on constitutionality of statute attempting to grant monopoly.

Sufficiency of title to act.

Cited in Hart v. State, 113 Ga. 941, 39 S. E. 321, holding changes in act regulating use of billiard tables and ten-pin alleys germane to general subject-matter of title proposing amendment by making provisions applicable to "pool tables and for other purposes; Stanley v. State, 135 Ga. 864, 70 S. E. 591, holding that act entitled "Act to provide against evils resulting from traffic in certain narcotic drugs and to regulate sale thereof," is not unconstitutional because of in-

sufficient title; State v. Ames, 47 Wash. 331, 92 Pac. 137, holding title of act to establish pilot regulations sufficient to sustain penal clause in the body thereof; Banks v. State, 124 Ga. 16, 2 L.R.A.(N.S.) 1009, 52 S. E. 74, holding words "and for other purposes" in title of act, sufficient to cover provisions germane to general subject-matter; Dallis v. Griffin, 117 Ga. 411, 43 S. E. 758, holding title "to amend an act entitled an act" (describing by title only an existing law, sufficient to cover germane legislation as an amendment to act title of which is thus recited; Coleman v. Board of Education, 131 Ga. 646, 63 S. E. 41, holding title describing act as "local tax for educational purposes" sufficient to include "local tax for public schools" in body of act; Florida E. C. R. Co. v. Hazel, 43 Fla. 267, 99 Am. St. Rep. 114, 31 So. 272, holding title "An act requiring railroad companies to fence their tracks, and providing remedies against them for failure to do so," sufficient to sustain provision thereunder authorizing double damages and attorney's fees for killing of live stock by company not complying with act.

Cited in note (79 Am. St. Rep. 464) as to when title of statute embraces only one subject, and what may be included thereunder.

Repeal of general by special laws.

Cited in O'Brien v. State, 109 Ga. 60, 35 S. E. 112 (dissenting opinion), majority holding act prohibiting sale of intoxicants within specified county unconstitutional where general law permits sale of wines in any county.

Statutory construction.

Cited in Gray v. McLendon, 134 Ga. 260, 67 S. E. 859, refusing to declare statute unconstitutional for reason that it violated spirit of constitution where not repugnant to constitution itself.

42 L. R. A. 188, ATLANTA ACCI. ASSO. v. ALEXANDER, 104 Ga. 709, 30 S. E. 939.

Accidental injury.

Cited in Thornton v. Travelers Ins. Co. 116 Ga. 125, 94 Am. St. Rep. 99, 42 S. E. 287, holding insurance company liable for loss of time, due to accidental fall, although its consequences were aggravated because insured was afflicted with hernia; Hastings v. Travelers' Ins. Co. 190 Fed. 260, holding that death caused by dilation of heart resulting from insured raising and lowering himself repeatedly in and from Morris chair by use of his hands and arms alone; Patterson v. Ocean Acci. & G. Corp. 25 App. D. C. 69, holding accident insurance company liable on policy for death of insured who was ill at time accident occurred where accident was proximate cause of death; Young v. Railway Mail Asso. 126 Mo. App. 344, 103 S. W. 557, holding question whether injury from lifting heavy mail sack to position above head was "accidental" was for jury.

Cited in footnote to Preferred Acci. Ins. Co. v. Robinson, 61 L. R. A. 145, which denies right to recover under accident policy for inflammation of eyes from accidental contact with poison ivy.

Cited in notes (5 L.R.A.(N.S.) 659) as to when death or injury primarily caused by insured's voluntary act, deemed caused by accidental means; (8 L.R.A.(N.S.) 1014) on condition resulting from accident as within restriction of liability in accident policy, for disability arising from such condition; (2 Brit. Rul. Cas. 374) on accident insurance as covering injury from exertion or strain.

Distinguished in Schmid v. Indiana Travelers Acci. Asso. 42 Ind. App. 487, 85 N. E. 1032, holding accident insurance company not liable on policy for

death of insured from heart paralysis caused by carrying luggage upstairs in rare atmosphere.

42 L. R. A. 190, NEAL v. STATE, 104 Ga. 509, 69 Am. St. Rep. 175, 30 S. E. 858.

Suspension of or failure to execute sentence.

Cited in People *ex rel.* Roenert v. Barrett, 202 Ill. 294, 63 L. R. A. 85, footnote p. 82, 95 Am. St. Rep. 230, 67 N. E. 23, holding trial court without jurisdiction to indefinitely suspend sentence after conviction; Miller v. Evans, 115 Iowa, 103, 56 L. R. A. 102, footnote p. 102, 91 Am. St. Rep. 143, 88 N. W. 198, holding courts of Iowa without right to suspend sentence; Miller v. Evans, 115 Iowa, 103, 56 L. R. A. 103, footnote p. 102, 91 Am. St. Rep. 143, 88 N. W. 198, holding failure of sheriff to execute mittimus until after term of sentence expired does not relieve defendant from sentence; Spencer v. State, 125 Tenn. 69, 38 L.R.A.(N.S.) 681, 140 S. W. 597, holding that court cannot suspend execution of sentence imposed to secure future good behavior; Wall v. Jones, 135 Ga. 425, 69 S. E. 548; Daniel v. Persons, 137 Ga. 828, 74 S. E. 260,—holding that court has no power to suspend sentence imposed in criminal case, except as incident to review; State v. Abbott, 87 S. C. 468, 33 L.R.A.(N.S.) 117, 70 S. E. 6, Ann. Cas. 1912 B, 1189, holding that circuit judge has no power to suspend sentence on conditions after it is pronounced; Tanner v. Wiggins, 54 Fla. 212, 45 So. 459, 14 Ann. Cas. 718, which holds trial court without authority to suspend execution of sentence already lawfully imposed; Gordon v. Johnson, 126 Ga. 585, 55 S. E. 489, holding city recorder without authority to suspend execution of sentence already lawfully imposed; State v. Hockett, 129 Mo. App. 642, 108 S. W. 599, holding trial court without jurisdiction to sentence convicted criminals after releasing them for indefinite time; State v. Hilton, 151 N. C. 694, 65 S. E. 1011, holding trial court without jurisdiction to sentence convicted criminal after his release for indefinite time upon payment of costs.

Cited in footnote to People ex rel. Boenert v. Barrett, 63 L.R.A. 82, which denies power of court indefinitely to suspend sentence after conviction, or to release on a parol.

Cited in notes (16 L.R.A.(N.S.) 306) as to whether time prisoner is out on parol or conditional pardon should be deducted from term; (33 L.R.A.(N.S.) 120) on power of court to suspend or stay execution of sentence.

Remittance of punishment.

Cited in Butte & B. Consol. Min. Co. v. Montana Ore Purchasing Co. 158 Fed. 137, holding court without jurisdiction after expiration of term to remit fine of one adjudged guilty of contempt of court who has taken no steps for review of punishment.

42 L. R. A. 194, LYON v. LYON, 102 Ga. 453, 66 Am. St. Rep. 189, 31 S. E. 34.

Right of husband to enter upon land of wife.

Cited in footnote to State v. Jones, 61 L. R. A. 777, which denies right to prosecute for criminal trespass, man entering with intent to reside on land of his wife, which she has forbidden him to enter.

Injunction pending divorce.

Cited in Wells v. Wells, 118 Ga. 814, 45 S. E. 669, holding amendment to petition for injunction to restrain husband from interfering with wife's tenants not demurrable because joined with petition for divorce.

42 L. R. A. 197, RAMSPECK v. PATTILLO, 104 Ga. 772, 69 Am. St. Rep. 197, 30 S. E. 962.

Acting as agent for both parties.

Cited in Phoenix Ins. Co. v. Hamilton, 110 Ga. 17, 35 S. E. 305, denying that insurance agent is agent of both insurer and insured, without their consents; Sessions v. Payne, 113 Ga. 956, 39 S. E. 325, denying that agent to engage attorney can contract to receive portion of professional fees; Williams v. Moore-Gaunt Co. 3 Ga. App. 760, 60 S. E. 372, holding agent secretly acting as agent of both buyer and seller cannot recover commission from either; Gann v. Zettler, 3 Ga. App. 589, 60 S. E. 283, denying agent authorized to sell can act as agent of buyer without informing both parties; Hunter Realty Co. v. Spencer, 21 Okla. 162, 17 L.R.A.(N.S.) 627, 95 Pac. 757, holding contract negotiated by agent acting for both parties and requiring exercise of discretion, voidable in equity at election of either party; Todd v. German American Ins. Co. 2 Ga. App. 799, 59 S. E. 94, holding insurance company bound by policies written by one acting as agent for company and insured where it knew agent was so acting.

Cited in note (9 L.R.A.(N.S.) 1085) on power of agent to bind insurer not knowing his interest in property insured.

Contract by agent to keep property insured.

Cited in Mooney v. Merriam, 77 Kan. 309, 94 Pac. 263, holding insurance agent not liable for failure to write policy when contract indefinite as to subject-matter, and amount and duration of risk.

Cited in footnote to McCabe v. Ætna Ins. Co. 47 L. R. A. 641, which sustains authority of agent of foreign insurance company to orally renew policy issued by him.

Liability of unauthorized agent.

Cited in note (34 L.R.A.(N.S.) 522) on liability of one assuming without authority to contract as agent.

42 L. R. A. 199, BRAUN v. CRAVEN, 175 Ill. 401, 51 N. E. 657.

Actionable negligence.

Cited in Chicago & G. T. R. Co. v. Hoffman, 82 Ill. App. 463, holding failure to ascertain whether anyone wrongfully on train will not create liability for injury of such person jumping therefrom; Western Stone Co. v. Earnshaw, 98 Ill. App. 542, denying liability for injury from heat in ordinary engine shed; Illinois C. R. Co. v. Schumann, 101 Ill. App. 674, denying liability for injury from fire flashing out from boiler while firing with sawdust and shavings; Koch v. Fox, 71 App. Div. 298, 75 N. Y. Supp. 913, discussing, without determining, question of liability for causing injury to insane person; Terminal R. Asso. v. Larkins, 112 Ill. App. 370, holding one liable for consequences which might have been foreseen and expected as result of his conduct; Owens v. Chicago Teleph. Co. 159 Ill. App. 81, holding that in action to recover for injury occasioned by negligent insulation of wires with consequent attraction of lightning, it is essential that physical contact with lightning rather than mere shock as result thereof be shown; Pinkley v. Chicago & E. I. R. Co. 246 Ill. 380, 35 L.R.A.(N.S.) 685, 92 N. E. 896, holding that master can only be held liable for consequences which he might reasonably be expected to anticipate as result of his conduct; Stout v. Strait Coal Co. 157 Ill. App. 82, holding that person charged with negligence is only liable for those consequences which might have been reasonably foreseen and expected as result of act complained of; Illinois C. R. Co. v. Kerr, 125 Ill. App. 369, holding carrier not liable for death of passenger

not proximately resulting from being carried past station wrongfully; Champion Chemical Works v. Postal Teleg.-Cable Co. 123 Ill. App. 24; holding telegraph company not liable for alteration of telegram when it is not shown damages claimed resulted as direct, proximate consequence of act of company; Seith v. Commonwealth Electric Co. 241 Ill. 260, 24 L.R.A.(N.S.) 982, 132 Am. St. Rep. 204, 89 N. E. 425, holding electric company not liable for injury to pedestrian from live wire where policeman struck same, which was lying in street, causing it to touch pedestrian; Rosen v. Big Muddy Coal & Iron Co. 128 Ill. App. 131, holding mine owner not liable for injuries to servant from falling under car that mule backed into, although light and ventilation imperfect; Illinois Steel Co. v. Zolnowski, 118 Ill. App. 215, holding mill company not liable for injury to employee of contractor repairing furnace where negligent act not shown to have been done by owner or his servants; Yunkes v. Latrobe Steel & Coupler Co. 131 Ill. App. 295, holding master not liable for fracturing of servant's arm by work car running into plank on track and bounding off pinning servant's arm against post; Waters-Pierce Oil Co. v. Kinsel, 79 Ark. 616, 96 S. W. 342, holding burden is upon plaintiff to show that the alleged negligence was the proximate cause of the injury and that such injury was the reasonable and probable consequence of the negligence.

Distinguished in Willis Coal & Min. Co. v. Grizzell, 100 Ill. App. 483, sustaining liability for wilful violation of factory act causing injury, whether consequence could have been foreseen or not; Baudler v. People's Gaslight & Coke Co. 108 Ill. App. 192, holding gas company liable to one injured by explosion of gas which leaked from defective main into his cellar.

—Fright.

Followed in West Chicago Street R. Co. v. Liebig, 79 Ill. App. 569, denying liability for mere fright unaccompanied with physical injury, although resulting in bodily ailments.

Applied in Nelson v. Crawford, 122 Mich. 468, 80 Am. St. Rep. 577, 81 N. W. 335, denying liability for uncontemplated injury from fright, without immediate physical injury; Cleveland, C. C. & St. L. R. Co. v. Stewart, 24 Ind. App. 387, 56 N. E. 917, denying liability for injury from fright arising from another's peril; Western U. Teleg. Co. v. Ferguson, 157 Ind. 76, 54 L. R. A. 850, 60 N. E. 674, denying liability for mental anguish from failure promptly to deliver telegram; Gulf, C. & S. F. R. Co. v. Hayter, 93 Tex. 243, 47 L. R. A. 326, 77 Am. St. Rep. 856, 54 S. W. 944, sustaining recovery for injury from fright from wrongful act or omission, where same probable proximate cause.

Cited in Cleveland, C. C. & St. L. R. Co. v. Lindsay, 109 Ill. App. 536, holding obstruction of private crossing by cars on side track not proximate cause of injury to runaway team scared by passing train; McGee v. Vanover, 148 Ky. 742, 147 S. W. 742, holding that wife cannot recover for pain and suffering resulting solely from fright, caused by assault and battery committed upon her husband, in her presence; Miller v. Baltimore & O. S. W. R. Co. 78 Ohio St. 324, 18 L.R.A. (N.S.) 953, 125 Am. St. Rep. 699, 85 N. E. 499, holding damages for physical injuries resulting from fright unaccompanied by contemporaneous physical injury, not recoverable where negligent act not wilful or malicious; Kagy v. Western U. Teleg. Co. 37 Ind. App. 82, 117 Am. St. Rep. 278, 76 N. E. 792, which holds damages for physical injuries resulting from mental suffering caused by negligent failure to deliver telegram, not recoverable; Elgin, A. & S. Traction Co. v. Wilson, 217 Ill. 55, 75 N. E. 436, holding damages recoverable for neurasthenia caused by fright if accompanied by contemporaneous physical injury.

Cited in footnotes to Kline v. Kline, 58 L. R. A. 397, which sustains right to

damages for mental suffering for assault by pointing gun with threat to shoot unless house abandoned; Homans v. Boston Elev. R. Co. 57 L. R. A. 292, which holds carrier liable for nervous shock to passenger from jar to nervous system, accompanying blow; Watkins v. Kaolin Mfg. Co. 60 L. R. A. 617, which sustains right of action for physical injury or disease from fright or nervous shock from negligent acts; Sanderson v. Northern P. R. Co. 60 L. R. A. 403, which denies right to recover for fright resulting in physical injury, but without contemporaneous injury, unless fright proximate result of legal wrong; Smith v. Postal Teleg. Cable Co. 47 L. R. A. 323, which denies liability for sickness due to fright caused by grossly negligent act of one knowing such result would follow; Reed v. Maley, 62 L. R. A. 900, which holds merely soliciting woman to sexual intercourse gives her no right of action.

Cited in notes (53 L.R.A. 634) on extent of trespasser's liability for consequential injuries due to fright; (3 L.R.A.(N.S.) 62) on right to recover for physical injury resulting from fright caused by wrongful act; (77 Am. St. Rep. 862, 863, 864) on fright as element of recoverable damages.

Distinguished in Watson v. Dilts, 116 Iowa, 251, 57 L. R. A. 561, footnote p. 559, 93 Am. St. Rep. 239, 89 N. W. 1068, holding one liable for frightening woman, causing nervous prostration, by stealthily entering her home in nighttime; Illinois C. R. Co. v. Haecker, 110 Ill. App. 106, denying right of recovery from company at whose train a child became frightened and went upon tracks of another company, where she was injured.

— Mental suffering.

Cited in Chicago Consol. Traction Co. v. Schritter, 222 Ill. 368, 78 N. E. 820, holding instruction authorizing damages for mental suffering resulting from physical injuries, proper; Zabron v. Cunard S. S. Co. 151 Iowa, 353, 34 L.R.A. (N.S.) 755, 131 N. W. 18, holding that recovery cannot be had for mental suffering due simply to disappointment in not being received as passenger from foreign port because agent failed to promptly forward ticket.

42 L. R. A. 206, SOUTHERN BLDG. & L. ASSO. v. PRICE, 88 Md. 155, 41 Atl. 53.

Withdrawals from loan associations.

Cited in Preston v. Woodland, 104 Md. 646, 65 Atl. 336, 16 Ann. Cas. 389, holding member of insolvent building association may set off against mortgage debt owed by him, premium, interest and dues paid thereunder and if they equal the mortgage debt with interest, the same is released.

Cited in footnotes to Andrews v. Roanoke Bldg. Asso. & Invest. Co. 49 L. R. A. 659, which holds relation to loan association not severed by withdrawal so as to preclude member applying for receiver.

Distinguished and explained in Coltrane v. Baltimore Bldg. & L. Asso. 110 Fed. 274, denying preference in Indiana of members giving notice of withdrawal over members not giving notice; Cook v. Emmet Perpetual & Mut. Bldg. Asso. 90 Md. 291, 44 Atl. 1022, holding general creditors entitled to preference over withdrawing stockholders in insolvent loan association.

Disapproved in Reddick v. United States Bldg. & Loan Asso. 106 Ky. 108, 49 S. W. 1075, holding withdrawing member from insolvent association not entitled to priority in distribution of the insolvent estate.

Recovery on contracts rendered impossible of further performance.

Cited in Miller v. Cosmic Cement, Tile & Stone Co. 109 Md. 18, 71 Atl. 91, holding one performing services under contract rendered impossible of further performance may recover therefor at contract price; American Towing & Lighter-

ing Co. v. Baker-Whiteley Coal Co. 111 Md. 523, 75 Atl. 341, on whether contract price can be recovered by one before showing he has performed his part of contract.

Cited in note (69 L.R.A. 125, 130) on recovering for services and expenses under running contract with corporation ended by its insolvency and dissolution.

Receivership of insolvent corporations.

Cited in Stockley v. Thomas, 89 Md. 666, 43 Atl. 766, sustaining power of court to appoint receiver of insolvent foreign corporation to take charge of and sell local assets, pay local debts, and turn over balance to foreign receiver; Linville v. Hadden, 88 Md. 598, 43 L. R. A. 224, 41 Atl. 1097, holding that nonresident creditors of corporation may contest receiver's title where not resident of state appointing receiver.

42 L. R. A. 209, MOORE v. JORDAN, 117 N. C. 86, 53 Am. St. Rep. 576, 23 S. E. 259.

Estates to which judgment liens attach.

Cited in note (117 Am. St. Rep. 784) on estates and interests to which judgment liens attach.

42 L. R. A. 214, STEPHENSON v. ELECTION COMRS. 118 Mich. 396, 74 Am. St. Rep. 402, 76 N. W. 914.

Political conventions and committees.

Cited in footnotes to Hutchinson v. Brown, 42 L. R. A. 232, which holds violation of pledges or adoption of fusion plan by members of convention immaterial as to right to have nominations filed with secretary of state; Phillips v. Gallagher, 42 L. R. A. 222, which upholds action of political convention in setting aside vote by which one candidate received majority of ballots, but which was not announced because of incorrect report by tellers of an excess of votes; People *ex rel.* Coffey v. Democratic General Committee, 51 L. R. A. 674, which denies right of county committee to remove member; State ex rel Howells v. Metcalf, 67 L.R.A. 331, which holds that faction of county convention assembling at place designated by chairman and majority of county committee organizing and proceeding to nominate candidates the regular representative of the party.

—Conclusiveness of decisions of.

Followed in Jennings v. Election Comrs. 137 Mich. 721, 100 N. W. 995, holding determination of political convention as to who are its nominees is final in absence of fraud; Potter v. Deuel, 149 Mich. 396, 112 N. W. 1071, holding composition of political committee with approval of party convention will not be disturbed by courts.

Approved in State *ex rel.* Cann v. Moore, 23 Wash. 286, 62 Pac. 769, sustaining finality of decision by political convention as to who is its nominee.

Cited in State ex rel. Cook v. Houser, 122 Wis. 585, 100 N. W. 964, holding decision by national convention of party as to which of two contending factions is regular will not be disturbed by courts; State ex rel. Garn v. Marshall County, 167 Ind. 291, 78 N. E. 1016 (dissenting opinion), on whether decision of political convention as to qualifications of its members is conclusive on the courts.

Cited in footnotes to Davis v. Hambrick, 51 L. R. A. 671, which holds decision of state central committee between bodies claiming to be executive committee of county, conclusive on courts; Moody v. Trimble, 50 L. R. A. 810, which holds decision of dispute between contesting candidates of party for Congress by governing authority in state, conclusive on courts.

Criticised in State ex rel. Howells v. Metcalf, 18 S. D. 414, 67 L.R.A. 339, 100 N. W. 923, holding mandamus will issue to compel county auditor to put name of nominee at regular convention of party on ballot.

42 L. R. A. 222, PHILLIPS v. GALLAGHER, 73 Minn. 528, 76 N. W. 285.

Powers of political convention.

Cited in Jennings v. Election Comrs. 137 Mich. 721, 100 N. W. 995, holding political tribunals final in absence of fraud; Atty. Gen. v. Barry, 74 N. H. 354, 68 Atl. 192, holding that the state committee and the state convention of a political party are its regularly constituted tribunals to determine the membership of the local executive committee in any town.

— As to nominations.

Cited in White v. Sanderson, 74 Minn. 121, 42 L. R. A. 232, 73 Am. St. Rep. 334, 76 N. W. 1021, sustaining authority of political convention to delegate power to nominating committee; *Re* Nash, 36 Misc. 118, 72 N. Y. Supp. 1057, sustaining power of political convention to revoke its nomination; State *ex rel.* Cann v. Moore, 23 Wash. 283, 62 Pac. 769, sustaining finality of decision of political convention as to nominees; State ex rel. Garn v. Marshall County, 167 Ind. 292, 78 N. E. 1016 (dissenting opinion), on the decisions of the party tribunals as to the nomination of candidates as being binding upon the courts.

Conclusiveness of decisions of political convention or committee.

Cited in footnotes to Moody v. Trimble, 50 L. R. A. 810, which holds decision of dispute between contesting candidates of party for Congress by governing authority in state, conclusive on courts; Davis v. Hambrick, 51 L. R. A. 671, which holds decision of state central committee between bodies claiming to be executive committee of county, conclusive on courts.

42 L. R. A. 231, WHITE v. SANDERSON, 74 Minn. 118, 73 Am. St. Rep. 334, 76 N. W. 1021.

Political conventions and committees.

Cited in Re Huffman, 31 Pa. Co. Ct. 378, 36 Pittsb. L. J. N. S. 130, holding a covenantor cannot delegate to a committee of its own body the right to fill vacancies created by a refusal of candidates to accept the nomination of the convention where the rules of the party provide that such vacancies shall be filled by the county committee.

Cited in footnotes to Hutchinson v. Brown, 42 L. R. A. 232, which holds violation of pledges or adoption of fusion plan by members of convention immaterial as to right to have nominations filed with secretary of state; People *ex rel.* Coffey v. Democratic General Committee, 51 L. R. A. 674, which denies right of county committee to remove member; Kearns v. Howley, 42 L. R. A. 235, which denies injunction against adding to or striking from names on roll of political committee.

42 L. R. A. 232, HUTCHINSON v. BROWN, 122 Cal. 189, 54 Pac. 738.

Political conventions and committees.

Approved in State *ex rel.* Wolfe v. Falley, 9 N. D. 457, 83 N. W. 860, denying power of judicial district central committee to prescribe manner in which delegates shall be selected.

Cited in Payne v. Hodgson, 34 Utah, 281, 97 Pac. 132, upholding right of party committee to nominate member of other party as its candidate.

Cited in footnotes to White v. Sanderson, 42 L. R. A. 231, which holds power to nominate candidate lawfully delegated to committee by political convention;

Kearns v. Howley, 42 L. R. A. 235, which denies injunction against adding to or striking from names on roll of political committee; People *ex rel.* Coffey v. Democratic General Committee, 51 L. R. A. 674, which denies right of county committee to remove member.

Distinguished Walling v. Lansdon, 15 Idaho, 323, 97 Pac. 396, holding where law of state prescribes certain method for electing delegates to party convention, courts will recognize majority thus elected as legal convention.

Mandamus.

Cited in State ex rel. Robbins v. Parker, 147 Iowa, 88, 125 N. W. 856, holding that mandamus is proper remedy to compel county auditor to place name of candidate for office upon official ballot.

42 L. R. A. 235, KEARNS v. HOWLEY, 188 Pa. 116, 68 Am. St. Rep. 852, 41 Atl. 273.

Equitable enforcement of political right.

Cited in Horan v. Blank, 17 Pa. Dist. R. 364, denying court has jurisdiction to issue mandamus compelling political committee to receive certificate of election of one elected under primary act.

Cited in footnotes to Weaver v. Toney, 50 L. R. A. 105, which denies right to enforce in equity, right to have inspector of certain party at polls; State *ex rel.* McCaffery v. Aloe, 47 L. R. A. 393, which denies right to injunction to protect purely political right of citizen as voter.

Cited in note (40 L.R.A.(N.S.) 580) on interference by equity with matters preceding election.

Political committees and conventions.

Cited in *Re* Beck's Nomination, 7 Pa. Dist. R. 633, holding that roll of members made and submitted by committee appointed therefor must be accepted unless bad faith proved.

Cited in footnotes to White v. Sanderson, 42 L. R. A. 231, which holds power to nominate candidate lawfully delegated to committee by political convention; People *ex rel.* Coffey v. Democratic General Committee, 51 L. R. A. 674, which denies right of county committee to remove member; Hutchinson v. Brown, 42 L. R. A. 232, which holds violation of pledges or adoption of fusion plan by members of convention immaterial as to right to have nominations filed with secretary of state.

Jurisdiction of court.

Cited in Hatfield v. De Long, 156 Ind. 211, 51 L. R. A. 753, 83 Am. St. Rep. 194, 59 N. E. 483, holding inquiry as to validity of church tribunal under society's constitution within jurisdiction of court; Milliken v. Ford, 36 Pittsb. L. J. N. S. 317, holding that courts have no jurisdiction to control internal affairs of party organization; Bangor Local No. 101 v. International Union, 12 North. Co. Rep. 373, 20 Pa. Dist. R. 874, holding that where constitution of unincorporated society, provides that "each local union shall have right to appeal from decision of executive council" member may sue in courts of law.

Cited in footnote to Covington v. Buffett, 47 L. R. A. 622, which denies court's jurisdiction to determine existence of vacancy in office of senator.

Cited in notes in (100 Am. St. Rep. 746) on jurisdiction of civil courts over church controversies; (114 Am. St. Rep. 24) on right of corporation or association to expel members.

42 L. R. A. 237, STATE *ex rel.* PLIMMER v. POSTON, 58 Ohio St. 620, 51 N. E. 150.

Validity of election laws.

Cited in State *ex rel.* Plimmer v. Poston, 59 Ohio St. 134, 43 L.R.A. 93, 52 N. E. 196, sustaining requirement that nomination papers contain pledge to vote for candidate; Ladd v. Holmes, 40 Or. 181, 91 Am. St. Rep. 457, 66 Pac. 714, sustaining primary election act excluding political parties from benefits unless casting specified vote at preceding election, but permitting such parties to make nominations in other modes; State v. Felton, 77 Ohio St. 572, 84 N. E. 85, 12 Ann. Cas. 65, upholding statute authorizing primary election by political parties casting ten per cent of vote at preceding election; State v. Drexel, 74 Neb. 787, 105 S. W. 174, which upholds provision of statute allowing party representation on official ballot only when it casts one per cent of vote at preceding election; State v. Felton, 77 Ohio St. 590, 591, 84 N. E. 85, 12 Ann. Cas. 65 (dissenting opinion), on validity of statute authorizing primary election only by political parties casting certain percentage of vote; Rouse v. Thompson, 228 Ill. 560, 81 N. E. 1109 (dissenting opinion), on validity of law permitting only parties that cast certain percentage of vote to nominate; State v. Phelps, 144 Wis. 40, 35 L.R.A.(N.S.) 353, 128 N. W. 1041 (dissenting opinions), as to restrictions in printing ballots as impairing the right to vote; Ledgerwood v. Pitts, 122 Tenn. 604, 125 S. W. 1036, holding a primary law not unconstitutional because it excluded from its benefits political parties casting less than ten per cent of the entire vote; Riter v. Douglass, 32 Nev. 431, 109 Pac. 444, holding that legislature has right to prescribe qualifying classifications for political parties who desire to avail themselves of privilege of getting on official ballot.

Cited in footnotes to State v. Anderson, 42 L.R.A. 239, which upholds statute allowing party representation on official ballot only when it casts 2 per cent of vote at preceding election; State v. Moore, 59 L.R.A. 447, which sustains prohibition against placing on official ballot, name of unsuccessful candidate for party nomination at primary election; Britton v. Election Comrs. 51 L.R.A. 115, which holds void, law depriving members of political party, polling less than 3 per cent of votes at preceding election, of right to nominate candidates; Higgins v. Berg, 42 L.R.A. 245, as to mode of determining largest number of votes polled by party at last general election.

Cited in note (35 L.R.A.(N.S.) 354) on constitutionality of legislation affecting party representation on official ballot.

42 L. R. A. 239, STATE *ex rel.* RUNGE v. ANDERSON, 100 Wis. 523, 76 N. W. 482.

Voting by mark.

Cited in Oughton v. Black, 212 Pa. 8, 61 Atl. 346, 4 Ann. Cas. 141, upholding validity of statute authorizing marking of ballot for straight party vote.

Cited in note (47 L. R. A. 806) on marking official ballot.

Validity of election laws.

Cited in Ladd v. Holmes, 40 Or. 181, 91 Am. St. Rep. 457, 66 Pac. 714, upholding law denying privileges of primary election law to parties not casting specified vote, but permitting nominations by same in other modes; State ex rel. Shepard v. Superior Ct. 60 Wash. 376, 140 Am. St. Rep. 925, 111 Pac. 233, holding that law regulating printing of names upon official ballots is not unconstitutional because it tends to destroy political parties; Ledgerwood v. Pitts, 122 Tenn. 594, 125 S. W. 1036, holding that statute excluding political parties casting less than ten per cent of entire vote is not unconstitutional for that reason;

Riter v. Douglass, 32 Nev. 419, 109 Pac. 444, holding that direct primary law of March 23, 1909, is not unconstitutional as destroying political parties; State ex rel. McGrael v. Phelps, 144 Wis. 17, 35 L.R.A.(N.S.) 360, 128 N. W. 1041, holding that every legislative interference with freedom of voters to form political organizations, is at same time, interference with right to vote, so that limit of power as to one is substantially limit as to other; State ex rel. Van Alstine v. Frear, 142 Wis. 337, 125 N. W. 961, upholding statute establishing primary election and denying right of nominee of convention to have name on ballot; State ex rel. Labauve v. Michel, 121 La. 391, 46 So. 430, upholding statute requiring nominations by primary election and prescribing qualifications for voters participating therein; State ex rel. Labauve v. Michel, 121 La. 389, 46 So. 430, upholding statute denying privilege of primary election to parties not casting ten per cent of vote at preceding election; Ex parte Owens, 148 Ala. 407, 8 L.R.A.(N.S.) 891, 121 Am. St. Rep. 67, 42 So. 676, on constitutionality of statute prohibiting placing candidate's name on ballot twice and depriving voter of right of making out his own ballot; State ex rel. Fisk v. Porter, 13 N. D. 409, 67 L.R.A. 474, 3 Ann. Cas. 794, holding statute prohibiting printing of name of candidate in more than one column of ballot applicable to candidate who is nominee of party and of electors by petition and valid; State ex rel. Cook v. Houser, 122 Wis. 593, 100 N. W. 964, on validity of statutes prohibiting name of candidate to appear on ballot but once; State ex rel. Van Alstine v. Frear, 142 Wis. 341, 125 N. W. 961, 20 Ann. Cas. 633, holding provision of primary law restricting number of signatures candidate for nomination on party ticket may procure, valid; State ex rel. Cook v. Houser, 122 Wis. 551, 100 N. W. 964, holding decision of tribunal authorized by statute to determine disputes of party factions, as to which faction constitutes the party, is final if the tribunal has regularly acquired jurisdiction of the question; State ex rel. Hunt v. Stafford, 120 Wis. 221, 97 N. W. 1043, on constitutionality of laws imposing unreasonable regulations on exercise of franchise.

Cited in footnotes to State *ex rel.* Plimmer v. Poston, 42 L. R. A. 237, which sustains statute requiring political party to poll 1 per cent of vote at last general election to be entitled to have nominations appear on blanket ballot; Higgins v. Berg, 42 L. R. A. 245, as to mode of determining largest number of votes polled by party at last general election; Britton v. Election Comrs. 51 L. R. A. 115, which holds void, law depriving members of political party, polling less than 3 per cent of votes at preceding election, of right to nominate candidates; State *ex rel.* McCarthy v. Moore, 59 L. R. A. 447, which sustains prohibition against placing on official ballot, name of unsuccessful candidate for party nomination at primary election; State ex rel. Fisk v. Porter, 67 L.R.A. 473, which sustains as to nominee of single political party and nominee of electors by petition, statute prohibiting printing of name of candidate for office in more than one column of official ballot.

Cited in note (37 L.R.A.(N.S.) 826) on constitutionality of legislation restricting candidate to one place on ballot.

Distinguished in Payne v. Hodgson, 34 Utah, 282, 97 Pac. 132, holding in absence of statute prohibiting same, name of candidate may appear on ballot for each party nominating him.

Disapproved in Murphy v. Curry, 137 Cal. 481, 59 L. R. A. 98, footnote p. 97, 70 Pac. 461, holding void, statute requiring nominee of more than one party to choose on which ticket name shall be printed.

"Ballot" and "vote."

Cited in Re P. B. Mathiason Mfg. Co. 122 Mo. App. 444, 99 S. W. 502, on

meaning of word "ballot;" Detroit v. Inspectors of Election, 139 Mich. 552, 69 L.R.A. 186, 111 Am. St. Rep. 430, 102 N. W. 1029, 5 Ann. Cas. 861, upholding statute authorizing use of voting machines as not violating constitutional provision requiring votes to be given by ballot; State v. Custer, 28 R. I. 225, 66 Atl. 306, holding complaint charging defendant with "giving in his vote" sufficient allegation under statute prohibiting fraudulent voting.

Recovery of costs where main question has become moot.

Cited in State ex rel. Treat v. Hammel, 134 Wis. 65, 114 N. W. 97; State ex rel. McComb v. Chicago, B. & Q. R. Co. 71 Neb. 600, 99 N. W. 309,—which holds applicant for writ of mandamus, the reason for which existed when petition was filed but ceased to exist before judgment, may recover costs.

Distinguished in Lamoreaux v. Williams, 125 Wis. 545, 104 N. W. 813, where question originally raised was moot and no costs were awarded by the order appealed from.

Duties which may be compelled by mandamus.

Cited in State ex rel. Burke v. Hinkel, 144 Wis. 451, 129 N. W. 393, holding that in proceeding by mandamus to compel placing of relator's name on primary ballot questions involved are properly before court on appeal from judgment awarding writ to relator although primary and election has passed.

Cited in note (125 Am. St. Rep. 493) on duties, performance of which may be compelled by mandamus.

42 L. R. A. 245, HIGGINS v. BERG, 74 Minn. 11, 76 N. W. 788.

Followed without discussion as to practice in Davidson v. Hanson, 87 Minn. 211, 92 N. W. 93.

Validity of election laws.

Cited in footnotes to State *ex rel.* Plimmer v. Poston, 42 L. R. A. 237, which sustains statute requiring political party to poll 1 per cent of vote at last general election to be entitled to have nominations appear on blanket ballot; State *ex rel.* Runge v. Anderson, 42 L. R. A. 239, which upholds statute allowing party representation on official ballot only when it casts 2 per cent of vote at preceding election; Britton v. Election Comrs. 51 L. R. A. 115, which holds void, law depriving members of political party, polling less than 3 per cent of votes at preceding election, of right to nominate condidates; State *ex rel.* McCarthy v. Moore, 59 L. R. A. 447, which sustains prohibition against placing on official ballot, name of unsuccessful candidate for party nomination at primary election.

Control of courts over executive officers.

Cited in Cooke v. Iverson, 108 Minn. 392, — L.R.A.(N.S.) —, 122 N. W. 251, enjoining state auditor from executing warrants under unconstitutional statute.

42 L. R. A. 247, CLEMENT v. NEW YORK L. INS. CO. 101 Tenn. 22, 70 Am. St. Rep. 650, 46 S. W. 561.

Validity of incontestable clause.

Approved in Union Cent. L. Ins. Co. v. Fox, 106 Tenn. 353, 82 Am. St. Rep. 885, 61 S. W. 62, sustaining validity of incontestable clause; Royal Circle v. Achterrath, 204 Ill. 560, 63 L. R. A. 456, 98 Am. St. Rep. 224, 68 N. E. 492, upholding provision making policy incontestable for fraud after lapse of specified period.

Cited in Citizens' L. Ins. Co. v. McClure, 138 Ky. 144, 27 L.R.A.(N.S.) 1026, 127 S. W. 749, holding that provision in life policy making it incontestible after it has been renewed beyond first year, if premiums are paid, is valid; Kansas

Mut. L. Ins. Co. v. Whitehead, 123 Ky. 29, 93 S. W. 609, 13 Ann. Cas. 301, sustaining validity of uncontestable clause; Reagan v. Union Mut. L. Ins. Co. 189 Mass. 556, 2 L.R.A.(N.S.) 823, 109 Am. St. Rep. 659, 76 N. E. 217, 4 Ann. Cas. 362, holding provision of policy making it incontestable from date of issue, void as against public policy if fraud cannot be pleaded as a defense.

Cited, as to question of incontestability of policy, in note (53 L. R. A. 205) on innocent misrepresentations as to health of insured when he has undiscovered disease.

What is covered by incontestable clause.

Cited in Murray v. State Mut. L. Ins. Co. 22 R. I. 526, 53 L. R. A. 743, footnote p. 742, 48 Atl. 800, holding false answers in application covered by incontestable clause; Prudential Ins. Co. v. Mohr, 185 Fed. 938, holding that stipulation in life policy that it shall be incontestable after one year only inures to benefit of insured and his beneficiary, and may not be invoked by stranger to policy; Citizens' L. Ins. Co. v. McClure, 138 Ky. 144, 27 L.R.A.(N.S.) 1028, 127 S. W. 749, holding false answers as to health in application covered by incontestible clause; Mutual L. Ins. Co. v. New, 125 La. 46, 27 L.R.A.(N.S.) 433, 136 Am. St. Rep. 326, 51 So. 61, holding misrepresentation of age of insured by beneficiary in making proof of death covered by incontestable clause.

Cited in footnotes to Welch v. Union Cent. L. Ins. Co. 50 L.R.A. 774, which holds insurer's reliance on warranties not precluded by incontestable clause; Royal Circle v. Achterrath, 63 L.R.A. 452, which holds incontestable clause in policy a bar to insurer taking advantage of suicide clause.

Cited in note (5 L.R.A.(N.S.) 748, 749) on defense of want of insurable interest as affected by incontestable clause.

Assignment or gift of policy.

Cited in Rylander v. Allen, 125 Ga. 215, 6 L.R.A.(N.S.) 135, 53 S. E. 1032, 5 Ann. Cas. 355; Gordon v. Ware Nat. Bank, 67 L.R.A. 553, 65 C. C. A. 580, 132 Fed. 447,—holding insurable interest in assignee of life insurance policy not necessary, unless assignment mere cloak for wager.

Cited in footnotes to Chamberlain v. Butler, 54 L. R. A. 338, which sustains right to assign policy on own life to one without insurable interest; McQuillan v. Mutual Reserve Fund Life Asso. 56 L. R. A. 233, which sustains right to provide that assigned policy shall be void as to all above debt due assignee; American Mut. L. Ins. Co. v. Bertram, 64 L. R. A. 935, which sustains right of assignee, without knowledge of facts, of policy void because taken out without consent of insured by one having no insurable interest, to recover from company premiums paid by him; Opitz v. Karel, 62 L. R. A. 982, which sustains right of one taking policy on his own life to make valid gift of proceeds by mere delivery of policy; Hinton v. Mutual Reserve Fund L. Asso. 65 L.R.A. 161, which holds insurance company not liable on policy issued to wife of mortgagor and assigned by her to mortgagee as security for the debt; Gordon v. Ware Nat. Bank, 67 L.R.A. 550, which holds assignment of life policy immediately on its issue to evade rule against issuing policy to one without insurable interest renders assignment void.

Cited in notes (3 L.R.A.(N.S.) 947) on validity of assignment of interest in life insurance to one paying premiums; (6 L.R.A.(N.S.) 129) on validity of assignment not made as cover for wager policy of life insurance to one having no insurable interest; (87 Am. St. Rep. 507, 509) on assignment of life insurance policies.

Distinguished in Bendet v. Ellis, 120 Tenn. 292, 18 L.R.A.(N.S.) 119, 127 Am. St. Rep. 1000, 111 S. W. 795, holding where contract purely a wager, as-

signee cannot retain amount paid on policy as against administratrix of insured.

Insurable interest.

Cited in Bloomstein v. Bloomstein, 1 Tenn. Ch. App. 190, holding widow and children of insured cannot recover proceeds of policy from his niece who took policy on uncle's life and paid premiums.

Cited in note (128 Am. St. Rep. 321) on life insurance in favor of persons having no insurable interest.

42 L. R. A. 253, PATTERSON v. NATURAL PREMIUM MUT. L. INS. CO. 100 Wis. 118, 69 Am. St. Rep. 899, 75 N. W. 980.

Suicide as avoidance of policy.

Approved in Campbell v. Supreme Conclave I. O. H. 66 N. J. L. 282, 54 L. R. A. 579, 49 Atl. 550, holding suicide not bar to recovery on policy not procured by insured with intention to suicide.

Cited in Hart v. Modern Woodmen, 60 Kan. 681, 72 Am. St. Rep. 380, 57 Pac. 936, holding recovery on suicide's policy defeated by clause for avoidance by self-destruction by insured, sane or insane; White v. Empire State, D. H. 47 Pa. Super. Ct. 59, holding that life insurance policy cannot be forfeited on ground that insured committed suicide unless it is so stipulated in policy; Supreme Lodge, S. & D. P. v. Underwood, 3 Neb. (Unof.) 801, 92 N. W. 1051; Grand Legion, S. K. A. v. Beaty, 224 Ill. 349, 8 L.R.A.(N.S.) 1128, 79 N. E. 565, 8 Ann. Cas. 160,—holding suicide not bar to recovery on policy which is silent as to effect of suicide thereon; Supreme Court H. v. Updegraff, 68 Kan. 477, 75 Pac. 477, 1 Ann. Cas. 309, holding suicide after expiration of two years from issuance of policy not bar to recover by wife as beneficiary on policy incontestable after two years; Grand Legion, S. K. A. v. Beaty, 117 Ill. App. 659, holding suicide not bar to recovery on policy which is silent as to effect of suicide thereon where beneficiary is other than insured's estate; Lange v. Royal Highlanders, 75 Neb. 203, 10 L.R.A.(N.S.) 673, 121 Am. St. Rep. 786, 110 N. W. 1110, holding suicide not bar to recovery on policy not procured by insured with intention of suicide.

Cited in footnote to Shipman v. Protected Home Circle, 63 L. R. A. 347, which holds adoption of by-law relieving benefit society from liability in case of suicide applicable to existing members who agreed to be bound by all rules enacted.

Cited in notes (8 L.R.A.(N.S.) 1124, 1127) on suicide while sane as defense to action on policy or certificate containing no provision as to effect thereof; (84 Am. St. Rep. 541, 543, 554) on self-destruction as defense to life insurance.

Disapproved in Davis v. Supreme Council R. A. 195 Mass. 409, 10 L.R.A. (N.S.) 724, 81 N. E. 294, 11 Ann. Cas. 777, holding voluntary suicide bar to recovery on policy silent as to effect of suicide thereon.

— Death in consequence of violation of law.

Cited in Northwestern Mut. L. Ins. Co. v. McCue, 223 U. S. 251, 56 L. ed. 425, 38 L.R.A.(N.S.) 61, 32 Sup. Ct. Rep. 220, Reversing 93 C. C. A. 71, 167 Fed. 439, holding that death by execution for crime is not covered by policy, though it contains no provision excepting such death.

Beneficiary's interest.

Approved in Rawson v. Milwaukee Mut. L. Ins. Co. 115 Wis. 646, 92 N. W. 378, holding interest of beneficiary in mutual benefit certificate vested interest subject to right of insured to devest it.

Cited in Parker v. Des Moines Life Asso. 108 Iowa, 123 78 N. W. 826, and

Berg v. Damkoehler, 112 Wis. 590, 88 N. W. 606, sustaining beneficiary's vested interest in policy, subject to insured's right to vest it elsewhere.

Incontestable clause.

Approved in Royal Circle v. Achterrath, 204 Ill. 560, 63 L. R. A. 456, 98 Am. St. Rep. 224, 68 N. E. 492, upholding provision in policy making it incontestable for fraud after lapse of specified period.

Cited in Murray v. State Mut. L. Ins. Co. 22 R. I. 527, 53 L. R. A. 744, footnote p. 742, 48 Atl. 800, holding false answers in application covered by incontestable clause.

Cited in footnote to Welch v. Union Cent. L. Ins. Co. 50 L. R. A. 774, which holds insurer's reliance on warranties not precluded by incontestable clause.

Cited in note (2 L.R.A.(N.S.) 822) on validity of provision making policy incontestable from date.

Criticised in Reagan v. Union Mut. L. Ins. Co. 189 Mass. 558, 2 L.R.A.(N.S.) 824, 109 Am. St. Rep. 659, 76 N. E. 217, 4 Ann. Cas. 362, holding provision of policy making it incontestable from date of issue, void as against public policy if fraud cannot be pleaded as defense.

Definition of crime.

Cited in note (78 Am. St. Rep. 236) as definition of crime.

42 L. R. A. 261, MASSACHUSETTS BEN. LIFE ASSO. v. ROBINSON, 104 Ga. 256, 30 S. E. 918.

Incontestable clause.

Cited in Welch v. Union Cent. L. Ins. Co. 108 Iowa, 231, 50 L. R. A. 777, footnote p. 774, 78 N. W. 853, holding insurer's reliance on warranties not precluded by incontestable clause; Murray v. State Mut. L. Ins. Co. 22 R. I. 526, 53 L. R. A. 744, footnote p. 742, 48 Atl. 800, holding false answers in application covered by incontestable clause; Northwestern L. Ins. Co. v. Montgomery, 116 Ga. 805, 43 S. E. 79, upholding clause making policy incontestable after three years, in absence of actual fraud; Royal Circle v. Achterrath, 204 Ill. 560, 63 L. R. A. 456, 98 Am. St. Rep. 224, 68 N. E. 492, upholding provision in policy making it incontestable after lapse of specified period; Mutual L. Ins. Co. v. New, 125 La. 49, 27 L.R.A.(N.S.) 433, 136 Am. St. Rep. 326, 51 So. 61, holding misrepresentation of age of insured by beneficiary in making proof of death covered by incontestable clause; Reagan v. Union Mut. L. Ins. Co. 189 Mass. 557, 2 L.R.A.(N.S.) 823, 109 Am. St. Rep. 659, 76 N. E. 217, 4 Ann. Cas. 362, holding provision of policy making it incontestable from date of issue, void as against public policy if fraud cannot be pleaded as defense.

Cited in note (2 L.R.A.(N.S.) 822) on validity or provision making policy incontestable from date.

Construction of ambiguous policy.

Cited in Mutual L. Ins. Co. v. Durden, 9 Ga. App. 800, 72 S. E. 295, holding that if any doubt should exist in regard to construction of insurance contract, doubt should be resolved in favor of insured; Puryear v. Farmers' Mut. Ins. Asso. 137 Ga. 582, 73 S. E. 851, holding that actual notice is necessary where policy contains clause which works forfeiture on failure to pay assessment within thirty days after notice; Mutual L. Ins. Co. v. New, 125 La. 46, 27 L.R.A.(N.S.) 433, 136 Am. St. Rep. 326, 51 So. 61,—holding policy containing provisions susceptible of two constructions should be construed most favorably to insured; Hall v. Royal Fraternal Union, 130 Ga. 835, 61 S. E. 977, construing terms of policy susceptible of two constructions the way most favorable

to insured; Arnold v. Empire Mut. Annuity & L. Ins. Co. 3 Ga. App. 695, 60 S. E. 470, on construction of policy containing provisions susceptible of two constructions.

Reasonableness of stipulations in contracts.

Cited in Western U. Teleg. Co. v. Waxelbaum, 113 Ga. 1019, 56 L. R. A. 747, 39 S. E. 443, sustaining reasonableness of stipulation as to exemption from liability for negligence in transmission of telegram, unless claim presented in sixty days; McGarry v. Seiz, 129 Ga. 299, 58 S. E. 856, sustaining validity of contract exempting surety on bond from liability unless claims of materialmen are valid liens and claim for damages is asserted within six months after work completed as reasonable conditions; McGarry v. Seiz, 136 Ga. 851, 72 S. E. 243, holding that surety has right to contract with party that its liability should be subject to reasonable conditions as to time in which suit should be brought.

Waiver of forfeiture by default in premiums.

Cited in Francis v. Supreme Lodge A. O. U. W. 150 Mo. App. 358, 130 S. W. 500, holding that receipt of premium after certificate was forfeited for nonpayment of premium constitutes waiver of forfeiture.

Cited in footnote to McQuillan v. Mutual Reserve Fund Life Asso. 56 L. R. A. 233, which holds forfeiture of policy waived by retaining payment made after default, without notice of any condition affixed.

Reinstatement as new contract.

Cited in Monahan v. Fidelity Mut. L. Ins. Co. 242 Ill. 495, 134 Am. St. Rep. 337, 90 N. E. 213, holding payment of premium after due and reinstatement of insured does not make new contract.

Distinguished in Pacific Mut. L. Ins. Co. v. Galbraith, 115 Tenn. 481, 112 Am. St. Rep. 862, 91 S. W. 204, holding reinstatement of policy after forfeiture for nonpayment of premium operates as new contract.

Conflict of laws.

Cited in Atlanta & N. P. R. Co. v. Broome, 3 Ga. App. 644, 60 S. E. 355, holding that as to all matters effecting remedy, including evidence and therefore burden of proof, laws of forum govern, even as to contracts made in other states; Ellington v. Harris, 127 Ga. 86, 119 Am. St. Rep. 320, 56 S. E. 134; Bailey v. Devine, 123 Ga. 655, 107 Am. St. Rep. 153, 51 S. E. 603,—holding where statute of sister state not pleaded, it will be presumed common law is in force.

Cited in notes (63 L.R.A. 866) on conflict of laws in contract of insurance; (67 L.R.A. 44) on how case determined when proper foreign law not proved.

Accidental injury.

Approved in Thornton v. Travelers' Ins. Co. 116 Ga. 126, 94 Am. St. Rep. 99, 42 S. E. 287, holding accident insurance company liable although consequences of accident to insured were aggravated because he was afflicted with hernia.

Laches.

Cited in Reynolds & H. Estate Mortg. Co. v. Martin, 116 Ga. 502, 42 S. E. 796, denying relief to one seeking to avoid contract for purchase of stock on ground of fraud, after delay of more than four years; Caldwell v. Campbell, 4 Ga. App. 326, 61 S. E. 290, holding verdict against insured for amount of note given for premium, proper where he kept policy varying slightly from application and gave note therefor.

Instruction as to negligence.

Cited in Savannah, F. & W. R. Co. v. Evans, 115 Ga. 317, 90 Am. St. Rep. 116,

41 S. E. 631, holding, in action for tort committed in another state, judge should not tell jury what acts constitute negligence unless such acts have been declared negligence by statute or ordinance in such other state.

"Good health."

Cited in Atlantic & B. R. Co. v. Douglas, 119 Ga. 661, 46 S. E. 867, on meaning of term "good health."

42 L. R. A. 277, SMITH v. BENICK, 87 Md. 610, 41 Atl. 56.

Liability for negligence of independent contractor.

Approved in Hobb v. Shockley, 122 Iowa, 726, 64 L. R. A. 541, footnote p. 538, 101 Am. St. Rep. 289, 98 N. W. 573, holding property owner not liable for injuries to traveler from obstructions placed in street by building contractor.

Cited in Symons v. Alleghany County, 105 Md. 260, 65 Atl. 1067, holding road directors not liable for injuries to pedestrian from blasting done by independent contract.

Cited in footnotes to Wright v. Big Rapids Door & Blind Mfg. Co. 50 L. R. A. 495, which denies liability of owner of premises for negligent piling of lumber taken from car by independent contractor; Boomer v. Wilbur, 53 L. R. A. 172, which denies owner's liability for injury by fall of bricks through negligence of independent contractor repairing chimney; Uppington v. New York, 53 L. R. A. 551, which denies city's liability for negligence of independent contractor constructing sewer; Hoff v. Shockley, 64 L.R.A. 538, which holds property owner not liable for injuries to traveler due to obstructions placed by an independent contractor in front of his property without danger signals.

Cited in notes (65 L.R.A. 470) as to who are independent contractors; (65 L.R.A. 642, 644) on general rules as to absence of liability of employer for torts of independent contractor; (1 L.R.A.(N.S.) 429) on negligence of proprietor of place of entertainment injuring visitor; (14 L.R.A.(N.S.) 285) on liability of one conducting fair for injury to patron through negligence of concessionary; (32 L.R.A.(N.S.) 717) on liability of one maintaining place of public amusement for safety of patrons; (76 Am. St. Rep. 385, 408) on liability for negligence and torts of independent contractors.

42 L. R. A. 281, NEW ENGLAND THEOSOPHICAL CORP. v. BOSTON, 172 Mass. 60, 51 N. E. 456.

Institutions exempt as charities.

Cited in Molly Varnum Chapter, D. A. R. v. Lowell, 204 Mass. 491, 26 L.R.A. (N.S.) 707, 90 N. E. 893, holding property of chapter of Daughters of American Revolution exempt from taxation as a charity; Franklin Square House v. Boston, 188 Mass. 409, 74 N. E. 675, which holds property of corporation organized to provide home for working girls at moderate cost and having no capital stock, exempt from taxation.

Cited in footnote to Gray Street Infirmary v. Louisville, 55 L. R. A. 270, which denies exemption of infirmary maintained by proprietors of medical college.

Cited in note (16 L.R.A.(N.S.) 831) on effect of devotion of property otherwise nontaxable to purposes of particular society.

42 L. R. A. 283, SWEDISH-AMERICAN NAT. BANK v. BLEECKER, 72 Minn. 383, 71 Am. St. Rep. 492, 75 N. W. 740.

Garnishment and attachment.

Approved in McKinney v. Mills, 80 Minn. 480, 81 Am. St. Rep. 278, 83 N. W. 452, denying jurisdiction in garnishment when all parties are nonresident, none

being in state except garnishee served while temporarily in state; Strause Bros. v. Ætna F. Ins. Co. 126 N. C. 229, 48 L. R. A. 454, footnote p. 452, 35 S. E. 471, holding debt of insurance company for loss in other state without situs where company has agent, for garnishment purposes, in third state.

Cited in Starkey v. Cleveland, C. C. & St. L. R. Co. 114 Minn. 29, — L.R.A. (N.S.) —, 130 N. W. 540, holding that debt due from corporation doing business in this state to defendant corporation not doing business here is subject to garnishment in an action by resident plaintiff to recover damages for negligent shipment of goods; Strause Bros. v. Ætna F. Ins. Co. 126 N. C. 229, 48 L.R.A. 454, 35 S. E. 471, holding suability not the test of the situs of a debt for the purpose of garnishment; Baltimore & O. R. Co. v. Allen, 58 W. Va. 391, 3 L.R.A.(N.S.) 612, 112 Am. St. Rep. 975, 52 S. E. 465, holding that foreign railroad corporation doing business within the state may be held as garnishee without reference to where the debt due from it was contracted or is payable.

Cited in footnotes to Tootle v. Coleman, 57 L. R. A. 120, which holds right to garnish debtor not limited to situs of chose in action; Balk v. Harris, 45 L. R. A. 257, which holds debtor garnished outside of state not protected in paying debt after returning to domicil; Bullard v. Chaffee, 51 L. R. A. 715, which holds person garnishable only in state where debt payable, if creditor resides there; Stewart v. Northern Assur. Co. 44 L. R. A. 101, which holds judgment against garnishee on contract utterly void at domicil of nonresident debtor not personally served, no protection; Hawley v. Hurd, 52 L. R. A. 195, which sustains discrimination between banks in and out of state as to attachment of negotiable paper; Pennsylvania R. Co. v. Rogers, 62 L. R. A. 178, which holds nonresident summoned as garnishee while temporarily within state not subject to further proceedings unless he has property therein.

Cited in note (85 Am. St. Rep. 925) on jurisdiction of foreign corporations in proceedings by attachment and garnishment.

Distinguished in McShane v. Knox, 103 Minn. 269, 20 L.R.A.(N.S.) 272, 114 N. W. 955, holding that court has jurisdiction over garnishment proceedings against nonresident parties where both defendant and garnishee were served personally with process while within the state.

Situs of debts.

Approved in Gilbert v. Hewetson, 79 Minn. 336, 79 Am. St. Rep. 486, 82 N. W. 655, holding situs of debt to be at creditor's domicil.

Cited in footnote to National Broadway Bank v. Sampson, 66 L.R.A. 606, which holds liability of nonresident to nonresident corporation not subject to attachment within state when debtor is temporarily within jurisdiction as situs of debt is at place of residence either of debtor or of creditor.

Cited in note (69 Am. St. Rep. 116, 117, 118, 120, 122) on situs of debts for purposes of garnishment and of property in transit in hands of carriers.

Restraining enforcement of execution.

Approved in Boyle v. Musser-Sauntry Land, Logging & Mfg. Co. 88 Minn. 461, 97 Am. St. Rep. 538, 93 N. W. 520, reversing order restraining enforcement of execution against foreign corporation on ground that attempt has been made to subject it to jurisdiction of court of another state.

42 L. R. A. 288, STENDAL v. BOYD, 73 Minn. 53, 72 Am. St. Rep. 597, 75 N. W. 735.

Liability for injury to trespassing children.

Approved in Kayser v. Lindell, 73 Minn. 125, 75 N. W. 1038, denying landowner's liability for injury to neighbor's child falling from retaining wall;

Erickson v. Great Northern R. Co. 82 Minn. 66, 51 L. R. A. 648, 83 Am. St. Rep. 410, 84 N. W. 462, denying liability for failure to guard fire on right of way, whereby intruding child was burned.

Cited in Salladay v. Old Dominion Copper Min. Co. 12 Ariz. 131, 100 Pac. 441, holding that unprotected flume was not such dangerous appliance attractive to children as to render owner liable for death of child three years old by being carried down flume while playing near flume as trespasser; Iamurri v. Saginaw City Gas Co. 148 Mich. 57, 111 N. W. 884, the liability of defendant for dangerous machinery attractive to children; Ellington v. Great Northern R. Co. 96 Minn. 183, 104 N. W. 827, holding that a railroad was not liable for the accidental death of a child who was a trespasser in the yards of the company; Driscoll v. Clark, 32 Mont. 188, 80 Pac. 1, holding that a landowner was not liable for the maintenance of machinery attractive to children, where the children injured are trespassers; Brown v. Salt Lake City, 33 Utah, 236, 14 L.R.A. (N.S.) 625, 126 Am. St. Rep. 828, 93 Pac. 570, 14 Ann. Cas. 1004, on the liability of a city for not maintaining its premises in safe condition, where injured person is a trespasser; Walker v. Potomac, F. & P. R. Co. 105 Va. 236, 4 L.R.A. (N.S.) 86, 115 Am. St. Rep. 871, 53 S. E. 113, 8 Ann. Cas. 862, holding that a railroad company was not liable for injury to an infant trespasser inflicted by an unfastened, unenclosed turntable not adjacent to any highway.

Cited in footnotes to Ritz v. Wheeling, 43 L. R. A. 148, which denies city's liability for drowning of five-year-old child in reservoir owned by it; Biggs v. Consolidated Barb-Wire Co. 44 L. R. A. 655, which holds owner liable for maintaining dangerous machinery on private grounds unprotected from visits of trespassing children; Cooper v. Overton, 45 L. R. A. 591, which denies owner's liability for drowning of trespassing child in unfenced city lot, in pond formed by damming surface water; Arnold v. St. Louis, 48 L. R. A. 291, which denies liability of city or private owner for drowning of children while skating on pond without invitation; Kramer v. Southern R. Co. 52 L. R. A. 359, which denies railroad company's liability for death of child by fall of cross-ties piled in unused portion of street; Heimann v. Kinnare, 52 L. R. A. 652, which holds thirteen-year-old boy negligent *per se* in jumping over strip of water onto rotten ice on pond and sliding to point where water was over his head; Kopplekom v. Colorado Cement Pipe Co. 54 L. R. A. 284, which holds owner of uninclosed city lot liable for injury to young child by toppling over of large cement pipe used by children as plaything; Savannah, F. & W. R. Co. v. Beavers, 54 L. R. A. 314, which denies duty of one making excavation on own land, to guard trespassing children from injury.

Distinguished in Mattson v. Minnesota & N. W. R. Co. 95 Minn. 485, 70 L.R.A. 508, 111 Am. St. Rep. 483, 104 N. W. 443, 5 Ann. Cas. 498, holding that the company was liable for the death of children through the explosion of dynamite found by the children upon the defendant's land.

— Unfenced ponds and the like.

Cited in Briscoe v. Henderson Lighting & P. Co. 148 N. C. 406, 19 L.R.A. (N.S.) 1127, 62 S. E. 600, holding that maintenance of insecurely covered well on open space unfenced from street will not render owner liable for injury to child; Bottum v. Hawks, 84 Vt. 383, 35 L.R.A.(N.S.) 447, 79 Atl. 858, Ann. Cas. 1913A, 1025, holding that owner of bulkhead that was attractive to children, which maintained near street, used by school children, is not liable for death of five year old boy who fell into water and was drowned; Sullivan v. Huidekoper, 27 App. D. C. 161, 5 L.R.A.(N.S.) 273, 7 Ann. Cas. 196, holding that there was no duty upon the owner of land to fence the same, because there

was a pond thereon; Indianapolis Water Co. v. Harold, 170 Ind. 177, 83 N. E. 993, holding that the water company was not liable for the death of a child while playing upon a foot log maintained by them across a canal; Wheeling & L. E. R. Co. v. Harvey, 77 Ohio St. 245, 19 L.R.A.(N.S.) 1145, 122 Am. St. Rep. 503, 83 N. E. 66, 11 Ann. Cas. 98, holding that the railroad company is not liable for injuries to an infant trespasser by a turntable, nor is a water company liable for the death of a child by drowning when it comes as a trespasser upon its lands and falls in a reservoir.

Liability for fall of object on pedestrian.

Cited in footnotes to Rachmel v. Clark, 62 L.R.A. 959, which holds manufacturer storing stone slabs on sidewalk in front of building liable for injuries to person lawfully using the sidewalk; Temby v. Ishpeming, 69 L.R.A. 618, which denies liability of city for injuries to traveler by fall of billboard insecurely fastened by abutting owner.

42 L. R. A. 290, PEOPLE *ex rel.* EDISON ELECTRIC ILLUMINATING CO. v. BOARD OF ASSESSORS, 156 N. Y. 417, 51 N. E. 269.

Note given for patent right.

Distinguished in State v. Cook, 107 Tenn. 508, 62 L. R. A. 177, 64 S. W. 720, sustaining statute requiring note for interest in patent right to so state on face.

Taxation of patents and copyrights.

Cited in People *ex rel.* A. J. Johnson Co. v. Roberts, 159 N. Y. 74, 79, 45 L. R. A. 128, footnote p. 126, 53 N. E. 685, holding copyrights exempt from state taxation.

Cited in footnote to Crown Cork & Seal Co. v. State, 53 L. R. A. 417, which denies right of corporation to have assessment of stock limited to value of property other than patents.

Cited in notes (57 L. R. A. 57, 58; 58 L. R. A. 565, 566) as to state taxation of patents and copyrights; (44 L. ed. U. S. 375) on state taxation of patent rights.

Distinguished in People *ex rel.* United States Aluminum Printing Plate Co. v. Knight, 174 N. Y. 477, 63 L. R. A. 88, 67 N. E. 65, Reversing 67 App. Div. 335, 73 N. Y. Supp. 745, holding capital invested in patent right not exempt from franchise tax; State *ex rel.* Atty. Gen. v. Halliday, 61 Ohio St. 380, 49 L. R. A. 434, footnote p. 427, 56 N. E. 118, holding patented article leased by patentee taxable at true value.

42 L. R. A. 293, LOUISVILLE & N. R. CO. v. HALE, 102 Ky. 600, 44 S. W. 213.

Negligence in starting car.

Cited in Chesapeake & O. R. Co. v. Borders, 140 Ky. 549, 140 Am. St. Rep. 396, 131 S. W. 388, holding that passenger injured as result of starting of car while he was on car steps in act of alighting may recover, although car was not started with sudden jerk; Ottinger v. Detroit United R. Co. 166 Mich. 107, 34 L.R.A.(N.S.) 227, 131 N. W. 528, Ann. Cas. 1912D, 578, holding that street cars may be started without waiting for passengers to reach seat, unless there is some special reason apparent for adopting different course; Lexington R. Co. v. Britton, 130 Ky. 680, 114 S. W. 295; Bennett v. Louisville R. Co. 122 Ky. 64, 4 L.R.A.(N.S.) 560, 121 Am. St. Rep. 453, 90 S. W. 1052,—holding starting of street car before passenger reaches seat, not negligence; Louisville R. Co. v. Wilder, 143 Ky. 440, 136 S. W. 892, holding that operators of cars must exercise highest degree of care to discover situation and condition of passengers so

that they may be enabled to exercise degree of care situation and condition demands.

Cited in footnote to Normile v. Wheeling Traction Co. 68 L.R.A. 901, which holds street car company stopping cars to receive passengers charged with highest degree of care to see that all passengers get to a place of safety before starting car.

Cited in notes (4 L.R.A.(N.S.) 558) on starting street car before passenger is seated; (7 L.R.A.(N.S.) 1078) on res ipsa loquitur as applied to jolts or jerks causing injury to passengers; (23 L.R.A.(N.S.) 891) on negligence in starting street car with jerk; (34 L.R.A.(N.S.) 228) on liability to passenger inside car injured by sudden starting or stopping.

42 L. R. A. 297, LANAHAN v. BAILEY, 53 S. C. 489, 69 Am. St. Rep. 884, 31 S. E. 332.

Later appeal in 58 S. C. 270, 36 S. E. 584.

Enforcement of illegal contract.

Cited in Walter A. Wood Mowing & Reaping Co. v. Greenwood Hardware Co. 75 S. C. 388, 9 L.R.A.(N.S.) 508, 55 S. E. 973, 9 Ann. Cas. 902 (dissenting opinion) as illustrating policy of court to refuse enforcement of illegal contracts.

Right to levy on intoxicating liquors.

Cited in note (20 L.R.A.(N.S.) 1119) on right to levy upon intoxicating liquors.

42 L. R. A. 300, *Re* WISCONSIN ODD FELLOWS' MUT. L. INS. CO. 101 Wis. 1, 76 N. W. 775.

42 L. R. A. 302, SMITHA v. GENTRY, 20 Ky. L. Rep. 171, 45 S. W. 515.

Rewards for arrest or conviction.

Cited in Clinton County v. Davis, 162 Ind. 67, 64 L.R.A. 784, 69 N. E. 680, 1 Ann. Cas. 282, holding that vote buyer cannot claim reward offered by statute providing that person who furnishes information resulting in conviction of person selling vote shall be entitled to reward.

Cited in footnotes to Haskell v. Davidson, 42 L. R. A. 155, which holds person informing proper party of facts necessary to secure arrest and conviction of perpetrator of crime entitled to reward for his "arrest and conviction;" People *ex rel.* Maynard v. Holly, 44 L. R. A. 677, which sustains city's power to offer reward for testimony to secure conviction of incendiaries.

Right to reward.

Cited in Cornwell v. St. Louis Transit Co. 100 Mo. App. 262, 73 S. W. 305, holding that if officer performs act outside limit of ordinary official duty and for which reward was offered, he becomes entitled to reward.

Cited in footnotes to Hogan v. Stophlet, 44 L.R.A. 809, which denies sheriff's right to reward for making arrest within county for felony committed therein; Smith v. Vernon County, 70 L.R.A. 59, which sustains right of police officer to reward offered by authorities of another state for apprehension of perpetrator of crime committed there where he acts as private detective in making arrest.

Cited in note (11 L.R.A.(N.S.) 1170) on right of officer to reward for arrest.

Damages for tort.

Cited in Lebanon, L. & L. Teleph. Co. v. Lanham Lumber Co. 131 Ky. 735, 21 L.R.A.(N.S.) 120, 115 S. W. 824, 18 Ann. Cas. 1066, holding that negligence

of telephone company in failing to connect subscriber whose property is threatened with fire, with fire department is not proximate cause of loss of property to which fire is subsequently communicated; Cain v. Vollmer, 19 Idaho, 169, 32 L.R.A.(N.S.) 41, 112 Pac. 686, holding that master of apprentice, who is serving as jockey, cannot recover for loss of profits he would make out of services of apprentice in future races, resulting from injury to apprentice through negligent act of defendant; Connersville Wagon Co. v. McFarlan Carriage Co. 166 Ind. 131, 3 L.R.A.(N.S.) 712, 76 N. E. 294, holding that loss of profits on sales of completed product are not recoverable for breach of contract to deliver wheels for manufacture of wagons.

Cited in note (52 L. R. A. 60) on damages for tort as affected by loss of profit.

42 L. R. A. 305, WILLOW RIVER CLUB v. WADE, 100 Wis. 86, 76 N. W. 273.

What waters are navigable.

Cited in Webster v. Harris, 111 Tenn. 693, 59 L.R.A. 330, footnote, p. 324, 69 S. W. 782, denying navigability of lake 20 miles long, 7 miles wide, and in some places 18 feet deep, where absence of channels precludes navigation; Charnley v. Shawano Water Power & River Improv. Co. 109 Wis. 567, 53 L.R.A. 899, 85 Pac. 507, holding creek 4 miles long and 30 to 40 feet wide, navigable for logs and timber, a navigable stream; Re Rutland Drainage Dist. 148 Wis. 424, 134 N. W. 838, holding that nonmeandered lake or pond, if navigable in fact, is navigable and public body of water; Dana v. Hurst, 86 Kan. 959, 122 Pac. 1041, to the point that river capable of floating logs at certain seasons of year, and carrying row boats, although not meandered and shallow, was navigable stream; Re Horicon Drainage Dist. 136 Wis. 232, 116 N. W. 12, holding stream declared by statute to be public highway, navigable; Shepard Drainage Dist. 140 Wis. 329, 122 N. W. 775, holding millpond capable of floating logs and other products, navigable; Re Southern Wisconsin Power Co. 140 Wis. 255, 122 N. W. 801; Bloomer v. Bloomer, 128 Wis. 312, 107 N. W. 974; Minnesota Canal & Power Co. v. Koochiching Co. 97 Minn. 440, 5 L.R.A.(N.S.) 644, 107 N. W. 405, 7 Ann. Cas. 1182,—holding stream capable of floating logs and other products, navigable.

Cited in notes (42 L.R.A. 318) on what waters are navigable; (126 Am. St. Rep. 727; 48 L. ed. U. S. 74) on same point.

Public and riparian rights.

Cited in Mendota Club v. Anderson, 101 Wis. 494, 78 N. W. 185, holding that where waters of navigable stream had been raised by permanent dam, rights of the public extended to water in entire submerged area; Koenig v. Watertown, 104 Wis. 419, 80 N. W. 728, holding riparian owner's right in stream limited to its use; Re Trempealeau Drainage Dist. 146 Wis. 411, 131 N. W. 838, holding that state has right to grant authority to change natural course of navigable river if change will improve its navigability; Franzini v. Layland, 120 Wis. 82, 97 N. W. 499, holding title of riparian owner to land bordering on Mississippi river between two states goes to boundary line between states; Sliter v. Carpenter, 123 Wis. 581, 102 N. W. 27, holding grant of land adjoining navigable stream without reservation as to islands between bank and thread of stream vests title to them in purchaser; Green Bay & M. Canal Co. v. Telulah Paper Co. 140 Wis. 424, 122 N. W. 1062, holding owner of bank of navigable stream owns to thread subject to rights of public; Schulte v. Warren, 120 Ill. App. 18, holding public have right to fish in navigable stream irrespective of ownership of adjoining land; Hartman v. Tresise, 36 Colo. 161, 4 L.R.A.(N.S.) 885, 84 Pac. 685, holding one owning land on both sides of navigable stream has exclusive right to fish therein; Re Horicon Drainage Dist. 136 Wis. 234, 116 N.

W. 12, holding in absence of legislative sanction drainage commissioners have no authority to destroy navigable pond.

Annotation cited in Hampton v. Columbia Canning Co. 3 Alaska, 105, on right of fishery in navigable waters.

Cited in notes (42 L. R. A. 504) on effect of bounding grant on river or tide water; (60 L.R.A. 485, 486, 487) on right to fish; (67 L.R.A. 821) on right to improve navigability of stream; (17 L.R.A.(N.S.) 1237) on injunction relative to hunting or fishing on navigable waters; (131 Am. St. Rep. 756, 757, 758, 759, 762) on law of fishing.

Title to land under navigable waters.

Cited in Diana Shooting Club v. Lamoreux, 114 Wis. 54, 91 Am. St. Rep. 898, 89 N. W. 880; Rossmiller v. State, 114 Wis. 186, 58 L. R. A. 99, 91 Am. St. Rep. 910, 89 N. W. 839; Pewaukee v. Savoy, 103 Wis. 274, 50 L. R. A. 842, 74 Am. St. Rep. 859, 79 N. W. 436; Priewe v. Wisconsin State Land & Improv. Co. 103 Wis. 550, 74 Am. St. Rep. 904, 79 N. W. 780,—holding that lands under navigable waters are held by state in trust for public; Illinois Steel Co. v. Bilot, 109 Wis, 427, 83 Am. St. Rep. 905, 84 N. W. 855, holding title to land under public waters to be in state, notwithstanding Federal patents to individuals; Lamprey v. Danz, 86 Minn. 322, 90 N. W. 578, discussing without deciding, whether lands under navigable waters are held by state; Kelley v. Salvas, 146 Wis. 552, 131 N. W. 436, on rights of riparian owners to submerge lands as against right of access to navigable waters.

Cited in notes (1 L.R.A.(N.S.) 763) on title to bed of navigable river; (24 L.R.A.(N.S.) 1240) on government grant bounded by nontidal, navigable river as carrying title to land thereunder.

42 L. R. A. 331, PENINSULAR LEAD & COLOR WORKS v. UNION OIL & PAINT CO. 100 Wis. 488, 69 Am. St. Rep. 934, 76 N. W. 359.

Impairment of contracts.

Followed in Eau Claire Nat. Bank v. Macauley, 101 Wis. 307, 77 N. W. 176, holding existing contracts impaired by enactment for dissolution of levy upon general assignment for creditors; Wilson v. Brochon, 95 Fed. 83, Affirming 34 C. C. A. 33, 63 U. S. App. 523, 91 Fed. 619, discussing, without deciding, as to validity of statute modifying remedy by attachment.

Cited in Oshkosh Waterworks Co. v. Oshkosh, 109 Wis. 214, 95 Am. St. Rep. 870, 85 N. W. 376, denying contracts are impaired by making remedy dependent upon acts by public officers; H. W. Wright Lumber Co. v. Hixon, 105 Wis. 159, 80 N. W. 1110, holding lien a property right unaffected by repeal of authorizing statute; Harrigan v. Gilchrist, 121 Wis. 344, 99 N. W. 909; Corbett v. Joannes, 125 Wis. 380, 104 N. W. 69,—holding secured creditor's right to look to his security or to participate in dividends of insolvent estate is a vested right immune from legislative impairment; McNaughton's Will, 138 Wis. 188, 118 N. W. 997, holding statute prohibiting officers of corporation from testifying under certain conditions, not applicable to officer who has resigned; Hammel v. Cairnes, 129 Wis. 127, 107 N. W. 1089; Bekkedal v. Johnson, 127 Wis. 627, 107 N. W. 5,—holding statute requiring filing of report of sale of chattel-mortgaged property not applicable to mortgages in force before it took effect; Kiley v. Chicago, M. & St. P. R. Co. 138 Wis. 255, 119 N. W. 309 (dissenting opinion), on impairment of contracts.

Cited in footnote to Miners' & Merchants' Bank v. Snyder, 68 L.R.A. 313, which holds corporate creditor's contract rights not impaired by statute requir-

ing all creditors to unite in one suit against all stockholders for equitable distribution of liability fund among creditors.

Retroactive legislation.

Cited in Clemons v. Chicago, St. P. M. & O. R. Co. 137 Wis. 400, 119 N. W. 102, holding that the statute abrogating the defense of contributory negligence, does not apply to action for the death of a party, killed before the statute was passed.

42 L. R. A. 334, LITTLE ROCK, H. S. & T. R. CO. v. SPENCER, 65 Ark. 183, 47 S. W. 196.

Mechanic's lien.

Cited in Indianapolis Northern Traction Co. v. Brennan, 174 Ind. 19, 30 L.R.A.(N.S.) 97, 87 N. E. 215, holding that statute conferring right or lien upon laborers does not include contractors who do not themselves perform some labor, Wilson v. District of Columbia, 26 App. D. C. 113, holding that "builder" is one whose occupation is that of building, and comes between architect who designs work and artisans who execute it.

Cited in footnotes to Nanz v. Cumberland Cap Park Co. 47 L. R. A. 273, which denies mechanic's lien for enriching soil and beautifying grounds, including construction of unimportant rustic bridge; Kirchman v. Standard Oil Co. 52 L. R. A. 318, which holds lienor not estopped to enforce lien by mistaken statement of its payment, without knowledge of other person's intention to buy property.

Cited in note (30 L.R.A.(N.S.) 88) as to whether contractors or subcontractors are within protection of statutes giving liens to "laborers," "mechanics," "workmen," etc.

Statutory construction.

Cited in Hartford F. Ins. Co. v. State, 76 Ark. 325, 89 S. W. 42 (dissenting opinion), on strict construction of a penal statute.

42 L. R. A. 343, NORMAN v. NORMAN, 121 Cal. 620, 66 Am. St. Rep. 74, 54 Pac. 143.

What constitutes a valid marriage.

Approved in *Re* Wood, 137 Cal. 136, 69 Pac. 900, holding valid, marriage in another state of divorced person in accordance with its laws, although a year had not elapsed since divorce, as required by laws of state of such person's domicil.

Cited in Dudley v. Dudley, 151 Iowa, 145, 32 L.R.A.(N.S.) 1172, 130 N. W. 785, holding that marriage in another state by one prohibited by decree of divorce from marrying here, is valid upon such person's return to this state, if valid where ceremony was performed; State v. Hand, 87 Neb. 192, 28 L.R.A. (N.S.) 756, 126 N. W. 1002, holding foreign marriage valid although against public policy of state where parties were domiciled and entered into purposely to evade law of their domicile.

Cited in notes (57 L.R.A. 157) on conflict of laws as to validity of marriage; (2 L.R.A.(N.S.) 355) on effect on common-law marriage of statute regulating marriage; (16 L.R.A.(N.S.) 102) on presumptions flowing from marriage ceremony; (79 Am. St. Rep. 365) on what marriages are void; (124 Am. St. Rep. 122) on common law marriages.

Necessity of proof of foreign law.

Cited in note (67 L.R.A. 34) on necessity of proof of foreign law.

42 L. R. A. 347, CRICHFIELD v. BERMUDEZ ASPHALT PAVING CO. 174 Ill. 466, 51 N. E. 552.

Validity of contracts to procure legislation.

Cited in Sussman v. Porter, 137 Fed. 164, holding agreement to procure municipal franchise for operation of street railroad and consent of property owners unenforceable where pay therefore was contingent upon success.

Cited in footnotes to William Deering & Co. v. Cunningham, 54 L. R. A. 410, which holds void, contract to withdraw opposition to granting of pardon; Richardson v. Scotts Bluff County, 48 L. R. A. 294, which holds void, contract to secure passage of bill by legislature.

Cited in note (4 L.R.A.(N.S.) 213) on validity of contract to procure legislative action.

Contracts against public policy.

Approved in Smythe v. Evans, 209 Ill. 383, 70 N. E. 906, refusing to enforce, on ground of public policy, agreement of contractor who erected gas plant, to pay part of profits to engineer, whose duty it was to approve the work.

Cited in Bendet v. Ellis, 120 Tenn. 294, 18 L.R.A.(N.S.) 119, 127 Am. St. Rep. 1000, 111 S. W. 795, holding insurance company liable on wager policy to estate of deceased although beneficiary who was paying the premiums could not enforce payment of policy; Hinsey v. Supreme Lodge, K. P. 138 Ill. App. 273, holding use of trust funds for private profit against public policy; Perry v. United States School Furniture Co. 232 Ill. 110, 83 N. E. 444, holding that a court of equity would not lend its aid to enforce a contract contrary to the public policy of the state; Pietsch v. Pietsch, 245 Ill. 459, 29 L.R.A.(N.S.) 224, 92 N. E. 325, holding that whether a claim of illegality is made by the pleadings or not, the parties cannot compel a court to adjudicate upon the rights of the parties growing out of a contract invalid as against the public policy of a state; Oak Park Trust & Sav. Bank v. Central Life Underwriting Asso. 2 Ill. C. C. 110, holding that a contract whereby securities were loaned to an insurance company to be deposited with the insurance commissioner to comply with the statute, was void as against public policy and no rights thereunder could be established in the courts.

Cited in footnote to Veazey v. Allen, 62 L. R. A. 362, which holds contract to share profits of "short" sale of stock of corporation with one about to bring its affairs before the legislature for investigation, void.

Cited in notes (117 Am. St. Rep. 519) on contracts, consideration for which has partly failed, or is partly illegal; (21 Eng. Rul. Cas. 702) on invalidity of contracts against public policy.

Distinguished in Union Elev. R. Co. v. Nixon, 199 Ill. 243, 65 N. E. 314, sustaining validity of agreement to obtain frontage consent for elevated railroad; Bendet v. Ellis, 120 Tenn. 294, 18 L.R.A.(N.S.) 119, 127 Am. St. Rep. 1000, 111 S. W. 795, holding that where a person applied for an insurance policy upon his life, payable to his administrator or assigns, and immediately assigned the same pursuant to an agreement made before, it was a wagering contract and void as against public policy; Rees v. Schmits, 164 Ill. App. 258, holding that if inequality of guilt exists as where one party is by moral duress coerced into illegal transaction, equity will grant relief.

Necessity of pleading illegality of contract as a defense.

Distinguished in Frankel v. Hiller, 16 N. D. 392, 113 N. W. 1067, 15 Ann. Cas. 265, holding that the defense that a sale was made with the intent to avoid the statutes of the state cannot be availed of unless specifically pleaded.

Voidability of contract made by agent of both parties.

Distinguished in Smythe v. Evans, 108 Ill. App. 151, holding contract effected through instrumentality of one acting as agent for both parties voidable.

42 L. R. A. 353, KENTUCKY REF. CO. v. GLOBE REF. CO. 104 Ky. 559, 84 Am. St. Rep. 468, 47 S. W. 602.

Title to goods.

Approved in Hopkins v. Cowen, 90 Md. 163, 47 L. R. A. 127, footnote p. 124, 44 Atl. 1062, holding title to goods not passed by consignment to consignor's order, where bill of lading with draft attached requires its surrender to obtain delivery of goods; Jackson & Bro. v. Butler, 21 Tex. Civ. App. 381, 51 S. W. 1095, holding title of goods not accepted by purchaser because of seller's refusal to allow rebate stipulated by broker remains in seller, whose duty it is to protect himself from loss if possible.

Cited in Southern Flour & Grain Co. v. McGeehan, 144 Wis. 133, 128 N. W. 879, holding that where goods are to be shipped to certain place in seller's name with draft attached to bill of lading, such place is place of delivery; What Cheer Sav. Bank v. Mowery, 149 Iowa, 128, 128 N. W. 7 (dissenting opinion), on right of lien of one who furnishes money to purchase article to be shipped and sold and proceeds to be deposited to his credit; Hunter Bros. Mill Co. v. Stanley, 132 Mo. App. 311, 111 S. W. 869, holding delivery to order of vendor at point where goods are to be received by vendee is no delivery to vendee; Greenwood Grocery Co. v. Canadian County Mill & Elevator Co. 72 S. C. 453, 2 L.R.A.(N.S.) 81, 110 Am. St. Rep. 627, 52 S. E. 191, 5 Ann. Cas. 261, holding title does not pass where goods are shipped with provision for delivery only upon payment of draft attached to bill of lading; Delta Bag Co. v. Kearns, 112 Ill. App. 274, holding title to goods stopped in transit does not pass to bona fide purchaser from vendee who did not receive the bill of lading.

Cited in note (2 L.R.A.(N.S.) 79, 1079) on effect of attaching draft to bill of lading to prevent title passing upon delivery of goods to carrier.

42 L. R. A. 359, SCOTT v. KEANE, 87 Md. 709, 40 Atl. 1070.

Right of creditors to reach trust estate.

Cited in Ward v. Marie, 73 N. J. Eq. 523, 68 Atl. 1084, holding a spendthrift trust consisting of the settlor's entire estate for the purpose of securing him a monthly income, is invalid as to creditors.

Cited in footnotes to Re Qua v. Graham, 52 L. R. A. 641, which holds annuity in wife's will in lieu of other interest, accepted by husband, not trust beyond reach of creditors; Murphy v. Delano, 55 L. R. A. 727, which holds income of spendthrift trust not within reach of creditors by void agreement of trustees to pay certain portion of income absolutely to beneficiary; Hutchinson v. Maxwell, 57 L. R. A. 384, which denies power to create equitable life estate free from debts of beneficiary.

Cited in note (12 L.R.A.(N.S.) 369) on right, as against subsequent creditors, to create trust to pay income to settlor for life, and thereafter to heirs or devisees.

Attack on fraudulent transfers.

Cited in Baltimore High Grade Brick Co. v. Amos, 95 Md. 601, 52 Atl. 582, denying sufficiency of recording of mortgages to bar right of creditor to impeach them as tending to hinder, delay, or defraud subsequent creditors; Baltimore High Grade Brick Co. v. Amos, 95 Md. 591, 52 Atl. 582, sustaining right of subsequent creditor to set aside mortgage as fraudulent as to creditors; Beasley v.

Coggins, 48 Fla. 225, 37 So. 213, 5 Ann. Cas. 801, holding a bill by a trustee in bankruptcy stating that the deed was made more than four months before bankruptcy as a gift to his wife through an intermediate trustee, and that at the time he was insolvent and contemplated incurring further indebtedness, was sufficient on demurrer.

42 L. R. A. 363, KNEE v. BALTIMORE CITY PASS. R. CO. 87 Md. 623, 40 Atl. 890.

Order staying proceedings.

Cited in Brinsfield v. Howeth, 110 Md. 525, 73 Atl. 289, holding motion to stay proceedings not reviewable in absence of abuse by lower court of discretion.

Restrictions on right of trial by jury.

Cited in note (98 Am. St. Rep. 540) on conditions and restrictions which legislature may impose on right of trial by jury.

42 L. R. A. 368, PEOPLE v. THORN, 156 N. Y. 286, 50 N. E. 947.

View by jury.

Cited in Price v. United States, 14 App. D. C. 405, discussing, without deciding, whether view by jury of scene of crime is part of trial or taking of evidence, within provision that accused must be confronted with witnesses; Fitzgerald v. La Porte, 67 Ark. 265, 54 S. W. 342, holding that view by jury is evidence to be considered by them in connection with other facts in case, and referring particularly to annotation in 42 L. R. A. 368; State v. Mortensen, 26 Utah, 345, 73 Pac. 562, holding view by jury of premises where crime committed may be had in absence of accused, if he declines to be present; Kurrle v. Baltimore, 113 Md. 74, 77 Atl. 373, holding that fact that jury viewed premises in action to recover damages for injury to land does not prevent court from deciding that evidence is insufficient; Starr v. State, 5 Okla. Crim. Rep. 473, 115 Pac. 356, holding that where defendant requests that jury view place where alleged crime was committed, under statute, he waives right to object to order made by court; People v. Pisano, 142 App. Div. 529, 127 N. Y. Supp. 204, holding that view of premises by jury in criminal case is not part of trial of action if no testimony was taken when premises were viewed; People v. White, 5 Cal. App. 340, 90 Pac. 471, holding that in viewing the premises the jury is taking evidence and the accused is entitled to have the judge present at the time, but this right is waived by failure to object; Bender v. Applebaum, 123 App. Div. 565, 108 N. Y. Supp. 318, as to a horse introduced for purpose of proving identity, being evidence; Mitchell v. Rowley, 63 Misc. 644, 118 N. Y. Supp. 748, holding that it was error for the court to direct a view of a cow in action for purchase price several months after the sale, for the purpose of proving disease existed at time of sale.

Cited in notes (42 L. R. A. 768) on conclusiveness of testimony of experts, as to view by jury; (41 L. R. A. 564) on validity of proceedings in course of trial outside of courtroom; (31 L.R.A.(N.S.) 933) on admissibility of affidavit of juror to show misconduct outside jury room not inhering in verdict; (37 L.R.A.(N.S.) 791) on right of jurors to act on own knowledge.

Distinguished in Buffalo Structural Steel Co. v. Dickinson, 98 App. Div. 360, 90 N. Y. Supp. 268, holding that it was error in an action for work done and material furnished, for the court to direct a view of the premises under a statute which applied only in cases of actions for waste.

— Presence of accused.

Annotation approved in State v. McGinnis, 12 Idaho, 342, 85 Pac. 1089, holding that the voluntary absence of the defendant from the court room during the

argument on a motion for an order for the jury to view the premises, was not a violation of the requirement that he should be present at the trial at all times.

42 L. R. A. 396, HANCOCK NAT. BANK v. ELLIS, 172 Mass. 39, 70 Am. St. Rep. 232, 51 N. E. 207.

Foreign law as question for court.

Followed without discussion in Bearse v. Mabie, 198 Mass. 456, 84 N. E. 1015.

Cited in Hutchings v. Missouri, K. & T. R. Co. (Sealy v. Missouri, K. & T. R. Co.) 84 Kan. 482, 41 L.R.A.(N.S.) 500, 114 Pac. 1077, holding that question as to what is law of another state is to be determined by court.

Nature and enforceability of stockholder's liability.

Cited in Howarth v. Lombard, 175 Mass. 573, 49 L. R. A. 305, 56 N. E. 888, holding stockholder's liability under foreign statute contractual; Colton v. Mayer, 90 Md. 718, 47 L. R. A. 621, 78 Am. St. Rep. 456, 45 Atl. 874, denying action by receivers of corporation to enforce liability of stockholders therein; American Spirits Mfg. Co. v. Eldridge, 209 Mass. 597, 95 N. E. 942, holding that under statute action may be maintained by creditor of insolvent corporation against stockholder for amount due on stock without first obtaining judgment against corporation; Hammond v. Cline, 170 Ind. 455, 84 N. E. 827, holding that the statutory liability of stockholders is not a property right of the corporation, and cannot be enforced by the receiver for the benefit of creditors of the corporation.

Cited in note (31 L.R.A.(N.S.) 365) on right of receiver, assignee, or trustee to recover statutory added liability of corporate shareholder.

— Enforceability in other jurisdiction.

Approved in Whitman v. National Bank, 176 U. S. 568, 44 L. ed. 592, 20 Sup. Ct. Rep. 477; Dexter v. Edmands, 89 Fed. 470; Hale v. Hardon, 37 C. C. A. 244, 95 Fed. 751; Broadway Nat. Bank v. Baker, 176 Mass. 295, 57 N. E. 603,— sustaining enforceability of stockholder's liability in any court of competent jurisdiction; Childs v. Cleaves, 95 Me. 509, 50 Atl. 714, sustaining enforceability of stockholder's liability in other state; Stebbins v. Scott, 172 Mass. 361, 52 N. E. 535, as to remedies under Kansas law to enforce stockholder's liability; Love v. Pusey & J. Co. 3 Penn. (Del.) 579, 52 Atl. 542, holding action by creditor of corporation to hold stockholder individually liable is transitory.

Cited in Putman v. Misochi, 189 Mass. 423, 109 Am. St. Rep. 648, 75 N. E. 956, 4 Ann. Cas. 733, holding stockholder who is compelled to pay a judgment against corporation may maintain suit in equity to compel contribution by other stockholders in foreign jurisdiction; Clark v. Knowles, 187 Mass. 140, 105 Am. St. Rep. 376, 72 N. E. 352, 2 Ann. Cas. 26, holding that an action could not be maintained in equity by the creditors of a foreign corporation against a resident stockholder to enforce his liability where the statute of the foreign state contemplated a suit to which the corporation was a party, for the benefit of all the creditors, against all the stockholders; Converse v. Mears, 162 Fed. 774, holding receiver may maintain suit in foreign jurisdiction to enforce statutory liability of nonresident stockholder where authorized by statute creating liability.

Cited in footnotes to Bell v. Farwell, 42 L. R. A. 804, which holds action to enforce stockholder's liability maintainable in other states; Fidelity Ins. Trust & S. D. Co. v. Mechanics' Sav. Bank, 56 L. R. A. 228, which holds stockholder's liability enforceable in Federal court, or any court where personal service obtainable; Bank of China v. Morse, 56 L. R. A. 139, which holds assessment un-

der English statute in proceeding to wind up corporation will not be enforced here against resident; Stoddard v. Lum, 45 L. R. A. 551, which authorizes action in New York by Illinois assignee for creditors of Illinois corporation to enforce liability of all domestic stockholders; Howarth v. Angle, 47 L. R. A. 725, which sustains foreign receiver's right of action against stockholder in foreign corporation; Blair v. Newbegin, 58 L. R. A. 644, which sustains right to enforce stockholder's liability in other state without making corporation a party; Miller v. Smith, 66 L.R.A. 473, which holds that courts of state of stockholder's residence will not take jurisdiction of suit by corporate creditor on behalf of all to enforce his statutory liability to contribute toward payment of corporate debts in advance of judicial determination of his proportionate liability where laws of state of incorporation contemplate pro rata contribution to be enforced in equitable proceeding against all stockholders.

Cited in note (33 L.R.A.(N.S.) 901) on right to enforce stockholders' liability outside of state of incorporation.

Distinguished in Finney v. Guy, 106 Wis. 267, 49 L. R. A. 492, 82 N. W. 595, denying right of action to enforce stockholder's liability under statutes of foreign state, where same provide for one suit in local courts; Francis v. Hazlett, 192 Mass. 141, 116 Am. St. Rep. 230, 78 N. E. 405, holding nonresident stockholders concluded by judgment in action to which corporation was made party.

Disapproved in Crippen v. Laighton, 69 N. H. 555, 46 L. R. A. 472, footnote p. 467, 76 Am. St. Rep. 192, 44 Atl. 538, denying enforceability of stockholder's liability in other state.

Suit by receiver appointed in another state.

Approved in Lewis v. Clark, 129 Fed. 574, holding Federal court sitting in one state may properly permit, as matter of comity, a receiver appointed in another state to maintain foreclosure suit.

Proof of foreign law.

Cited in Louisville & N. R. Co. v. Cook, 168 Ala. 606, 53 So. 190, on sufficiency of proof of law of another state in action to recover damages for negligence.

42 L. R. A. 403, COM. v. HUBLEY, 172 Mass. 58, 70 Am. St. Rep. 242, 51 N. E. 448.

Regulation of dealing in rags.

Cited in note (24 L.R.A.(N.S.) 1168) on power to regulate traffic in rags, secondhand articles, and junk.

Distinguished in Com. v. Maletsky, 203 Mass. 245, 24 L.R.A.(N.S.) 1170, 89 N. E. 245, holding invalid an ordinance imposing a fine of not less than twenty dollars and not more than one hundred, for using a building for picking or storing rags, without permission from the chief of the fire department, under statute giving authority to pass ordinances for the public safety and impose a penalty of not more than twenty dollars for a violation.

Power to impose license taxes.

Cited in note (129 Am. St. Rep. 280) on constitutional limitations on power to impose license or occupation taxes.

Police power.

Cited in Scranton v. Straff, 28 Pa. Super. Ct. 262, on police regulation within cities and holding valid an ordinance prohibiting running of merry-go-round within one thousand feet of public park.

Cited in note (78 Am. St. Rep. 238, 271) on police power.

42 L. R. A. 404, STATE SAV. BANK v. FOSTER, 118 Mich. 268, 76 N. W. 499.

Followed without discussion in American Trust & Sav. Bank v. Foster, 118 Mich. 281, 76 N. W. 1134.

What constitutes bank deposit.

Cited in Wedemeyer v. Hindelang, 161 Mich. 603, 126 N. W. 708, holding surplus of bank not a deposit therein by stockholders; State ex rel. Carroll v. Corning Sav. Bank, 139 Iowa, 348, 115 N. W. 937, holding certificates given by one bank at request of a correspondent to aid correspondent in taking up a bond issue is a loan and not a deposit.

42 L. R. A. 407, BECK v. RAILWAY TEAMSTERS' PROTECTIVE UNION, 118 Mich. 497, 74 Am. St. Rep. 421, 77 N. W. 13.

Unlawful coercion.

Followed in Ideal Mfg. Co. v. Ludwig, 149 Mich. 135, 119 Am. St. Rep. 656, 112 N. W. 723, holding that it was an unlawful interference with the business to place pickets and for the strikers to gather and by threats and intimidation, seek to induce or prevent the remaining employees from going to work.

Cited in Chiatovich v. Hanchett, 96 Fed. 683, holding actionable, notice by employers to employees not to trade or deal with third person under pain of displeasure; National Protective Asso. v. Cumming, 170 N. Y. 348, 58 L. R. A. 148, footnote p. 135, 88 Am. St. Rep. 648, 63 N. E. 369 (dissenting opinion), majority denying liability of members of labor union for causing discharge of nonmembers by threatening to strike unless latter discharged; Patterson v. Building Trades Council, 11 Kulp, 23, holding unlawful, boycott in which others are forced to join through fear of resulting loss or injury; Re Anderson, 69 Neb. 690, 96 N. W. 149, 5 Ann. Cas. 421, holding that constitutional provisions in regard to free speech and free press is not infringed by ordinance prohibiting distribution of hand bills or circulars upon streets; York Mfg. Co. v. Oberdick, 10 Pa. Dist. R. 472, holding that the continual intercepting of employees while on their way to work, and stopping them for the purpose of inducing them to quit their employment was unlawful and would be enjoined; J. F. Parkinson Co. v. Building Trades Council, 154 Cal. 608, 21 L.R.A.(N.S.) 564, 98 Pac. 1027, 16 Ann. Cas. 1165, on threats of declaring boycott as unlawful.

Cited in footnote to Employing Printers' Club v. De Blosser Co. 69 L.R.A. 90, which holds actionable a combination to injure person in his trade in inducing employee to break contract or to decline to continue longer in his employment.

Cited in notes (2 L.R.A.(N.S.) 790) on right of action against unincorporated association; (4 L.R.A.(N.S.) 303) on law as to picketing; (5 L.R.A.(N.S.) 1096) on civil liability for enticing servant to quit; (16 L.R.A.(N.S.) 85, 96) on legality of "secondary boycott" by labor union; (103 Am. St. Rep. 489, 497, 499) on boycotting.

Injunction.

Cited in Hawarden v. Youghiogheny & L. Coal Co. 111 Wis. 551, 55 L. R. A. 832, 87 N. W. 472, sustaining suit to restrain combination between wholesalers and favored retailers to drive plaintiff and others out of business; Brown v. Jacobs Pharmacy Co. 115 Ga. 440, 57 L. R. A. 553, 90 Am. St. Rep. 126, 41 S. E. 553, authorizing injunction against combination of retailers to compel another to sell at its prices or prevent his purchasing from wholesalers; Cumberland Glass Mfg. Co. v. Glass Bottle Blowers' Asso. 59 N. J. Eq. 54, 46 Atl. 208, granting injunction against nonpeaceable methods of strikers to persuade others to quit work; York Mfg. Co. v. Oberdick, 25 Pa. Co. Ct. 336, authorizing injunction

against picketing; Union P. R. Co. v. Ruef, 120 Fed. 106, and Chistensen v. Kellogg, Switchboard & Supply Co. 110 Ill. App. 73, enjoining intimidation and picketing by strikers; Marietta Casting Co. v. Thuma, 28 Pa. Co. Ct. 262, 20 Lanc. L. Rev. 194, enjoining picketing of business place against which strike is in progress; Gray v. Building Trades Council, 91 Minn. 181, 63 L. R. A. 760, footnote p. 753, 97 N. W. 663, sustaining injunction restraining defendants from notifying actual or prospective customers that plaintiffs are unfair; Marlin Fire Arms Co. v. Shields, 171 N. Y. 395, 59 L. R. A. 314, 64 N. E. 163, Reviewing 68 App. Div. 91, 74 N. Y. Supp. 84, denying injunction against publication of unjust and malicious criticism of manufactured article, although special damages not provable; Baldwin v. Escanaba Liquor Dealers' Asso. 165 Mich. 113, 130 N. W. 214, holding that injunction lies to restrain boycott of person's business; Loewe v. California State Federation of Labor, 139 Fed. 84. holding that injunction will issue to restrain boycott against business and goods of manufacturer of another state; Allis-Chalmers Co. v. Iron Molders' Union No. 125, 150 Fed. 178, holding that the maintenance of pickets after the use of threats and violence, and the creation of an unfriendly threatening attitude toward employees, is an unlawful act which may be enjoined; Underhill v. Murphy, 117 Ky. 649, 111 Am. St. Rep. 262, 78 S. W. 482, 4 Ann. Cas. 780, holding injunction proper remedy to prevent intimidation of and injury to employees although acts of defendant amount to crimes; Barnes v. Chicago Typographical Union No. 16, 232 Ill. 435, 14 L.R.A.(N.S.) 1023, 83 N. E. 940, 13 Ann. Cas. 54, holding injunction to restrain picketing proper although no acts of violence are committed where purpose thereof is to entice away or intimidate employees; Pickett v. Walsh, 192 Mass. 588, 6 L.R.A.(N.S.) 1080, 116 Am. St. Rep. 272, 78 N. E. 753, 7 Ann. Cas. 638, holding injunction will issue to restrain union from compelling discharge of nonunion "pointers" as prerequisite to employment of union bricklayers on same building; Escanaba Mfg. Co. v. Trades & Labor Council, 160 Mich. 658, 125 N. W. 709, holding proof of attempted intimidation of remaining employees by strikers accompanied by violence warrants issuance of an injunction; American Federation of Labor v. Buck's Stove & Range Co. 33 App. D. C. 105, 32 L.R.A.(N.S.) 760; My Maryland Lodge No. 186, I. A. M. v. Adt, 100 Md. 251, 68 L.R.A. 758, 59 Atl. 721,—holding that injunction would lie to restrain a boycott and the placing of the employer's name upon the unfair list; Lohse Patent Door Co. v. Fuelle, 215 Mo. 450, 22 L.R.A.(N.S.) 618, 128 Am. St. Rep. 492, 114 S. W. 997, holding that injunction would lie to prevent unlawful interference with another's business by means of boycott but not to prevent mere withdrawal from his service; Detroit Realty Co. v. Barnett (Detroit Realty Co. v. Oppenheim) 156 Mich. 388, 21 L.R.A.(N.S.) 588, 120 N. W. 804, holding equity will abate a public nuisance although it amounts to a crime; Franklin Union No. 4 v. People, 220 Ill. 380, 4 L.R.A.(N.S.) 1014, 110 Am. St. Rep. 248, 77 N. E. 176; Marietta Casting Co. v. Thuma, 12 Pa. Dist. R. 557,—holding that a court of equity will interfere to prevent strikers by threats and intimidations from attempting to induce employees to stop work; Patterson v. Building Trades Council, 11 Pa. Dist. R. 506, sustaining injunction to prevent issuance of circulars threatening builders with boycott if they did not discontinue use of certain company's materials; Everett Waddey Co. v. Richmond Typographical Union No. 90, 105 Va. 193, 5 L.R.A. (N.S.) 794, 53 S. E. 273, 8 Ann. Cas. 798, holding that injunction would lie to prevent members of labor union from inducing employees by means of threats and coercion, to quit their master's employ; Goldfield Mines Co. v. Goldfield Miners' Union Co. 159 Fed. 522, holding injunction will issue to prevent a

picketing system by strikers although entirely peaceable if unnecessarily large numbers gather thereby intimidating workers; Hunt v. Riverside Co-op. Club, 140 Mich. 549, 112 Am. St. Rep. 420, 104 N. W. 40, holding equity will not enjoin a regulation of the price of labor where not forbidden by statute; Pratt Food Co. v. Bird, 148 Mich. 634, 118 Am. St. Rep. 601, 112 N. W. 701, holding by analogy equity in a proper case will enjoin a public officer from issuing a bulletin threatening prosecution for use of complainant's goods when sold in lawful form.

Cited in footnotes to Marx & H. Jeans Clothing Co. v. Watson, 56 L.R.A. 951, which denies power to enjoin publication of circular letter and solicitation of merchants not to deal with boycotted firm; Gray v. Building Trades Council, 63 L.R.A. 753, which holds that boycott by combination of labor unions against firms placed by them on "the unfair list," because of the employment of nonunion men by threatening customers and prospective customers with inability to employ men if they deal with such firms will be enjoined; My Maryland Lodge v. Adt, 68 L.R.A. 752, which sustains right to injunction against boycott.

Cited in notes (3 L.R.A.(N.S.) 623) on injunction against commission of crime when property right involved; (89 Am. St. Rep. 852) on protection of right of privacy by injunction.

Distinguished in Citizens' Light, Heat & P. Co. v. Montgomery Light & Water Power Co. 171 Fed. 557, holding injunction will not issue to stop solicitors of one corporation from falsely stating to customers of competing corporation that it is insolvent.

Appealability of order.

Cited in United States Heater Co. v. Iron Molders' Union, 129 Mich, 360, 88 N. W. 889, holding order overruling motion to dissolve injunction against unlawful interference with employees not appealable.

42 L. R. A. 419, SPRAGUE v. SPRAGUE, 73 Minn. 474, 72 Am. St. Rep. 636, 76 N. W. 268.

Jurisdiction to award alimony, in action for divorce.

Cited in Cohen v. Cohen, 150 Cal. 101, 88 Pac. 267, 11 A. & E. Ann. Cas. 520. holding that where a complaint stated a good cause of action for divorce, a judgment for alimony based thereon was not void on its face, because the complaint contained no averments concerning the husband's property.

Distinguished in Baker v. Jewell, 114 La. 737, 38 So. 532, holding, on rehearing, that a court might render a decree of divorce against a nonresident husband, but could not render a decree for alimony or costs, where he had not been served with process and had not appeared.

42 L. R. A. 423, BROWN v. WEAVER, 76 Miss. 7, 71 Am. St. Rep. 512, 23 So. 388.

Unlawful shooting by officer.

Cited in footnote to Petrie v. Cartwright, 59 L. R. A. 720, which denies right of peace officer without warrant, to kill fleeing person guilty of misdemeanor, but suspected of felony.

Cited in notes (51 L.R.A. 215, 223) on liability of officers for unlawful shooting in making arrest; (67 L.R.A. 300) on homicide by official action or by officers of justice; (12 L.R.A.(N.S.) 1019) on liability of officer for deputy's tort in making arrest; (95 Am. St. Rep. 128) on liability of sheriff damages from use of force.

Necessity of proof that killing was necessary.

Cited in Richards v. Burgin, 159 Ala. 287, 49 So. 294, 17 Ann. Cas. 898, holding in an action for the wrongful killing by an officer, that an officer in pursuit of a felon is allowed to kill him if necessary to prevent his escape by flight, but the plea of justification must show the necessity of the killing; State v. Phillips, 119 Iowa, 655, 67 L.R.A. 296, 94 N. W. 229, 13 Am. Crim. Rep. 325, on necessity which will justify taking life of person resisting arrest for misdemeanor.

Disapproved in State v. Phillips, 119 Iowa, 655, 67 L. R. A. 296, 94 N. W. 229, holding proof of absolute necessity not necessary to justify officer in killing one arrested for misdemeanor.

Liability on official bonds.

Cited in State use of McLaurin v. McDaniel, 78 Miss. 5, 50 L. R. A. 119, 84 Am. St. Rep. 618, 27 So. 994, holding mayor's sureties liable for arrest without warrant, and trial, conviction and sentence for offense not punishable under alleged authorizing ordinance; Johnson v. Williams, 111 Ky. 295, 54 L. R. A. 221, footnote p. 220, 98 Am. St. Rep. 416, 63 S. W. 759, holding sheriff and sureties liable on bond for killing by deputy under mistaken belief as to identity; Hall v. Tierney, 89 Minn. 411, 95 N. W. 219, holding sureties of sheriff liable for his wrongful act under color and by virtue of his office; Growbarger v. United States Fidelity & G. Co. 126 Ky. 125, 11 L.R.A.(N.S.) 762, 128 Am. St. Rep. 274, 102 S. W. 873, holding sureties on marshall's bond liable for malicious killing by him of person arrested for misdemeanor; Wieters v. May, 71 S. C. 16, 50 S. E. 547, holding unlawful assault and battery by constable constitutes a breach of his bond, if done while in execution of official duty.

Cited in footnote to Feller v. Gates, 56 L. R. A. 630, which denies liability on bond for return of money taken by constable from execution defendant to stay execution pending appeal.

Cited in notes (78 Am. St. Rep. 421) on sureties on official bond escaping liability on ground that principal was a trespasser; (91 Am. St. Rep. 541, 543) on acts for which sureties on official bonds are liable.

42 L. R. A. 427, POSKA v. STEARNS, 56 Neb. 541, 71 Am. St. Rep. 688, 76 N. W. 1078.

Right to rely on mercantile reports or statements.

Followed in Berkson v. Heldman, 58 Neb. 597, 79 N. W. 162, denying right to rescind sale for falsity of buyer's statement to commercial agency, where sale made upon faith of entire report of agency.

Cited in note (85 Am. St. Rep. 384) on liability for misrepresentations to commercial agencies.

42 L. R. A. 429, SPECHT v. BEINDORFF, 56 Neb. 553, 76 N. W. 1059.

Stipulations affecting negotiability.

Cited in footnote to National Bank of Commerce v. Feeney, 46 L. R. A. 732, which holds note rendered non-negotiable by stipulation for discount at 12 per cent if paid before maturity.

Cited in notes (125 Am. St. Rep. 199, 202) on agreements and conditions destroying negotiability; (127 Am. St. Rep. 433) on effect of indorsements of memoranda on negotiable instruments at time of execution.

Invalidity of contracts against public policy.

Cited in note (21 Eng. Rul. Cas. 702) on invalidity of contracts against public policy.

42 L. R. A. 432, PEDIGO v. COM. 103 Ky. 41, 82 Am. St. Rep. 566, 44 S. W. 143.

Evidence of trailing by bloodhounds.

Cited in State v. Moore, 129 N. C. 501, 55 L. R. A. 99, footnote p. 96, 39 S. E. 626, holding evidence of bloodhound trailing accused inadmissible; State v. Norman, 153 N. C. 593, 68 S. E. 917, holding that in order to render competent action of bloodhound in trailing person from place where crime was committed, there must exist conditions and circumstances which tend to establish guilt of which action of bloodhound is indicative; Davis v. State, 46 Fla. 141, 35 So. 76, holding evidence as to trailing by dogs, admissible after proper preliminary proof that reliance may be placed upon them; State v. Freeman, 146 N. C. 617, 60 S. E. 986, holding evidence of trailing proper where bloodhounds are shown to be of pure blood, trained to trail men and to have been tried and found reliable; Denham v. Com. 119 Ky. 516, 84 S. W. 538, holding evidence of trailing by bloodhounds admissible where it was proved that they were of good breeding, and had been raised and trained for that purpose, and had already tracked many criminals; Spears v. State, 92 Miss. 619, 16 L.R.A.(N.S.) 287, 46 So. 166, holding that evidence of trailing by bloodhounds is admissible where it is shown that they were of pure blood and had been trained to track human beings, and were at the time in the hands of an experienced dog trainer, and their ability had been proved; State v. Dickerson, 77 Ohio St. 63, 13 L.R.A.(N.S.) 347, 122 Am. St. Rep. 479, 82 N. E. 969, 11 Ann. Cas. 1181, holding evidence of trailing by bloodhounds proper where they are shown to be of pure blood, peculiarly trained to track men and of proved ability; Parker v. State, 46 Tex. Crim. Rep. 467, 108 Am. St. Rep. 1021, 80 S. W. 1008, 3 Ann. Cas. 893, holding evidence of bloodhound trailing admissible if dogs are shown to be peculiarly adapted thereto; State v. Hunter, 143 N. C. 609, 118 Am. St. Rep. 830, 56 S. E. 547, holding evidence of act of bloodhound in trailing tracks admissible as corroborating general testimony that tracks were made by defendant; Sprouse v. Com. 132 Ky. 280, 116 S. W. 344, holding evidence of trailing by bloodhounds inadmissible where premises were not guarded with a view to preserving scent of guilty party and dogs were excited by mob and ran in a very uncertain trail.

Cited in footnotes to Brott v. State, 63 L.R.A. 789, which holds evidence of conduct and behavior of bloodhounds after being set on trail of fugitive criminal inadmissible to prove identity of scent of accused, and of person committing crime; McClurg v. Brenton, 65 L.R.A. 519, which holds evidence as to breeding and training of hounds which led party to a house inadmissible in action for illegal search thereof.

Cited in note (35 L.R.A.(N.S.) 870) on evidence of trailing by bloodhounds.

Impeachment of witness by contradictory statements.

Cited in note (82 Am. St. Rep. 43) on impeachment of witness by proof of prior contradictory statements.

42 L. R. A. 438, STATE v. JACKMAN, 69 N. H. 318, 41 Atl. 347.

Constitutional law.

Approved in State v. Jackson, 71 N. H. 555, 60 L. R. A. 740, 53 Atl. 1021, holding statute requiring school attendance not invalid as interference with parental dominion; Amoskeag Mfg. Co. v. Manchester, 70 N. H. 204, 46 Atl. 470, denying abatement of overvaluation of individual property where neutralized by undervaluation of his other property.

Burdens imposed on abutting owners by statute.

Cited in McGuire v. District of Columbia, 24 App. D. C. 35, 65 L.R.A. 435,

holding unconstitutional ordinance requiring abutting occupants or owners to remove snow from sidewalks, where the ordinance impose unequal duties upon individuals.

Cited in footnotes to Lincoln v. Janesch, 56 L.R.A. 762, which sustains statute imposing on lot owners duty of repairing sidewalks and keeping free from snow and ice; McGuire v. District of Columbia, 65 L.R.A. 430, which holds void for uncertainty statute imposing burden of removing ice and snow from sidewalk on occupants of improved property abutting thereon, without designating the person responsible in case of apartment houses.

Distinguished in State v. McCrillis, 28 R. I. 167, 9 L.R.A.(N.S.) 636, 66 Atl. 301, 13 Ann. Cas. 701, holding valid an ordinance requiring owners, occupants, or those having control and care of, abutting property to remove snow from same as it is a police regulation and an imposition of taxes for the repair of highways; State v. McMahon, 76 Conn. 100, 55 Atl. 591, holding ordinance compelling removal of ice and snow by owner of property adjoining sidewalk constitutional as an exercise of the police power and not taxing power.

Limitations upon exercise of police powers.

Cited in State v. Ramseyer, 73 N. H. 34, 58 Atl. 958, 6 Ann. Cas. 445, holding it not within police power to prohibit giving of trading stamps with purchases of articles of merchandise; State v. Ramseyer, 73 N. H. 36, 58 Atl. 958, 6 Ann. Cas. 445, holding statute prohibiting giving of trading stamps with purchases of merchandise unconstitutional.

Cited in footnotes to Bailey v. People, 54 L. R. A. 839, which holds void, restriction on number which lodging-house keepers may permit to occupy one room; Bessette v. People, 56 L. R. A. 558, which holds void, requirement that horseshoers practise business for four years, submit to examination, and pay license fee.

Cited in note (78 Am. St. Rep. 271) on acts which legislature may declare criminal.

42 L. R. A. 442, JUNIATA LIMESTONE CO. v. FAGLEY, 187 Pa. 193, 67 Am. St. Rep. 579, 40 Atl. 977.

Uniformity of taxation.

Cited in Beaumont Traction Co. v. State, 57 Tex. Civ. App. 608, 122 S. W. 615, holding that statute providing that corporations operating street cars must provide vestibules for protection of motorman is unconstitutional as class legislation.

Cited in notes (60 L.R.A. 347) on constitutional equality in United States in relation to corporate taxation; 13 L.R.A.(N.S.) 901, on constitutionality of poll tax as affected by exemptions; (129 Am. St. Rep. 283) on constitutional limitations on power to impose license or occupation taxes on employment and emigrant agents.

42 L. R. A. 444, STATE v. BREWSTER, 70 Vt. 341, 40 Atl. 1037.

Who entitled to be present in grand jury room.

Cited in Miller v. State, 42 Fla. 273, 28 So. 208, holding presence of assistant counsel in room during deliberations of grand jury an invasion of rights of accused, where he urged them to find the bill; United States v. Rosenthal, 121 Fed. 870, quashing indictment found by Federal grand jury, where special assistant to attorney general aided in conducting the proceedings before the jury; Fooshee v. State, 3 Okla. Crim. Rep. 677, 108 Pac. 554, on effect of presence of stranger in grand jury room while testimony is being taken; Com. v. Hegedus.

44 Pa. Super. Ct. 160, holding that presence of stenographer, appointed by district attorney, in grand jury room, is not ground for quashing indictment, if he was not there during deliberation; People v. Strauch, 153 Ill. App. 551, holding that irregularity occurring in grand jury room is not ground for setting aside indictment unless defendant was injured or prejudiced thereby; State v. Barber, 13 Idaho, 76, 88 Pac. 418, holding presence of person, appointed by court to act for county attorney, at grand jury session not sufficient to quash indictment; State v. Sullivan, 110 Mo. App. 84, 84 S. W. 105, holding improper admission of stenographer to grand jury not sufficient to quash indictment where no harm appears to have been done defendant thereby; Com. v. Kositchy, 17 Pa. Dist. R. 779, holding taking of stenographic notes of the proceedings of grand jury by one rightly there is no ground for quashing indictment.

Distinguished in State v. Salmon, 216 Mo. 508, 115 S. W. 1106, holding that under the statute providing that members of a grand jury may appoint one of its members as clerk to preserve minutes of the testimony of witnesses before it, it is reversible error to permit a stenographer who was also a witness to keep a record of the testimony of the other witnesses before the grand jury.

42 L. R. A. 449, WILLSON v. MILLIKEN, 103 Ky. 165, 82 Am. St. Rep. 578, 44 S. W. 660.

Action in state and Federal courts.

Cited in Bunker Hill & S. Min. & Concentrating Co. v. Shoshone Min. Co. 47 C. C. A. 204, 109 Fed. 508, denying abatement for pendency of suit in state court between same parties over same subject-matter; Knott v. Evening Post Co. 124 Fed. 356, holding pendency of another action not ground for abatement unless between same parties upon same cause of action; Manufacturers' Bottle Co. v. Taylor-Stites Glass Co. 208 Mass. 596, 95 N. E. 103, to the point that plea in abatement founded on pendency of former action may be avoided by discontinuance of former action after plea is filed.

Annotation cited in Burk v. McCaffrey, 136 Fed. 696, holding action in Federal court is not abated because same parties have an action on same subject-matter pending in state court.

Cited in footnote to Baltimore & O. R. Co. v. Fulton, 44 L. R. A. 520, which denies right to recommence action in state court after dismissal in Federal court.

Cited in notes (26 L.R.A.(N.S.) 969, 970) on pendency in Federal court of action in personam removed from state court as affecting right to commence new action in state court; (29 L.R.A.(N.S.) 407) on abatement of action on insurance policy by pendency of action thereon in foreign jurisdiction.

Effect of dismissal upon subsequent right of action.

Approved in Citizens Nat. Bank v. Forman, 111 Ky. 209, 56 L. R. A. 678, 63 S. W. 454, holding dismissal of action sufficient response to plea of former action pending; Krueger v. Chicago & A. R. Co. 84 Mo. App. 365, sustaining action reinstituted after removal to Federal court, and there dismissed by plaintiff; McIver v. Florida C. & P. R. Co. 110 Ga. 230, 65 L. R. A. 441, 36 S. E. 775, sustaining recommencement of action in state court after dismissal in Federal, although second suit for amount of damages, precluding another removal; International & G. N. R. Co. v. Barton, 24 Tex. Civ. App. 123, 57 S. W. 292, sustaining right of election to prosecute case in state court after removal to Federal court, payment of costs, and motion to dismiss in each court.

Cited in Foley v. Cudahy Packing Co. 119 Iowa, 250, 93 N. W. 284, holding new action on same cause in state court not barred by defendant's removal of

former action to Federal court which action was dismissed by plaintiff; Wright v Keifer, 131 Ill. App. 301, holding plea of former suit effectually answered by replication alleging discontinuance thereof.

Cited in notes (7 L.R.A.(N.S.) 503) on right, after removal of action to Federal court and its dismissal without prejudice to commence new action in state court; (54 L. ed. U. S. 734) on new action in state court after removal to Federal court and voluntary dismissal there.

42 L. R. A. 466, OLD TIMES DISTILLERY CO. v. CASEY, 104 Ky. 616, 84 Am. St. Rep. 480, 47 S. W. 610.

Laches as defense to infringement of trademark.

Cited in note (45 L. ed. U. S. 63) on laches or abandonment of trademark as defense.

42 L. R. A. 468, PHŒNIX ASSUR. CO. v. FIRE DEPARTMENT, 117 Ala. 631, 23 So. 843.

Uniformity in taxation.

Approved in Crafts v. Ray, 22 R. I. 187, 49 L. R. A. 608, 46 Atl. 1043, sustaining ten-year exemption by town in consideration of location of manufacturing plant.

Cited in Southern R. Co. v. Greene, 160 Ala. 404, 49 So. 404, holding franchise tax on foreign corporation for use of state based on amount of capital employed within state is constitutional; State ex rel. Haberlan v. Love, 89 Neb. 152, 34 L.R.A.(N.S.) 611, 131 N. W. 196, Ann. Cas. 1912 C, 542, holding that statute requiring cities to pension superannuated firemen is constitutional.

Cited in footnotes to Knisely v. Cotterel, 50 L. R. A. 87, which sustains statute fixing different rates of license for retailers, wholesalers, and sellers on board of trade; Harrodsburg v. Renfro, 51 L. R. A. 897, which holds void, ordinance imposing greater license fee for sale of liquors on main street of town than elsewhere; State v. Garbroski, 56 L. R. A. 570, which holds void, statute exempting veterans from requirement for peddling license; Com. use of Titusville v. Clark, 57 L. R. A. 348, which holds void, exemption from license tax of contractors and real-estate dealers, but not others, whose business less than $1,000; Hubbard v. State, 58 L. R. A. 654, which holds void, act for deduction of percentage from teachers' salaries for pension fund for them.

Validity of statutes creating pensions for firemen out of tax levied on insurance companies.

Cited in note (13 L.R.A.(N.S.) 1148) on validity of tax on insurance companies for benefit of firemen.

Distinguished in Ætna F. Ins. Co. v. Jones, 78 S. C. 452, 13 L.R.A.(N.S.) 1150, 125 Am. St. Rep. 818, 59 S. E. 148) holding statute requiring fire insurance companies to pay annually a specified sum on premiums as a pension fund for firemen is not constitutional.

Special or local laws.

Approved in Sisk v. Cargile, 138 Ala. 172, 35 So. 114, holding legislature has power to pass special or local laws, except as its authority is limited in Constitution.

Extension or amendment of act by reference to its title only.

Cited in State ex rel. Hunt v. Tausick, 64 Wash. 82, 35 L.R.A.(N.S.) 808, 116 Pac. 651, holding that statute authorizing commission form of government for cities, is not void under provision of constitution as to title of acts; Savage

v. Wallace, 165 Ala. 575, 51 So. 605, holding that reference statutes are not obnoxious to constitutional provision against amending statute by reference to title only; Hopper v. Bankhead, 171 Ala. 638, 54 So. 549, to the point that section 4102 of Code of 1896, belongs to class of statutes called "reference statutes;" Beason v. Shaw, 148 Ala. 546, 18 L.R.A.(N.S.) 567, 42 So. 611, holding that a statute providing that an election to determine whether stock should be prohibited from running at large may be contested in the same manner as elections of constables, is not in violation of the constitution prohibiting the extension or amendment of an act by reference to its title only; Darrington v. State, 162 Ala. 63, 50 So. 396, holding an act providing punishment for the selling or purchasing of intoxicating liquors and providing that a conviction therefor may be had under indictment for selling liquors without a license, is not violative of the constitution: State ex rel. Thompson v. Majors, 85 Neb. 390, 123 N. W. 429, on constitutionality of statutes that by reference adopt pre-existing statutes; Pond Creek v. Haskell, 21 Okla. 753, 97 Pac. 338, holding election law original and complete in itself is not unconstitutional because it refers to previously enacted laws for manner of enforcement.

Private property as subject to use for the public good.

Cited in Louisville & N. R. Co. v. Scruggs, 161 Ala. 102, 23 L.R.A.(N.S.) 186, 135 Am. St. Rep. 114, 49 So. 399 (dissenting opinion), on use of private property as subject to public necessity.

42 L. R. A. 474, EATON v. LANGLEY, 65 Ark. 448, 47 S. W. 123.

Damages recoverable for conversion of ties.

Cited in Central Coal & Coke Co. v. John Henry Shoe Co. 69 Ark. 304, 63 S. W. 49, holding one converting ties purchased from trespasser, liable to owner for value at time and place of conversion, with interest; Randleman v. Taylor, 94 Ark. 513, 140 Am. St. Rep. 141, 127 S. W. 723, holding that where trees are cut by innocent trespasser, and cannot be recovered, measure of damages of owner is value of property in converted form less labor expended on it, provided such expense does not exceed increase in value.

Recovery of specific personal property.

Cited in Sibeck v. McTiernan, 94 Ark. 6, 125 S. W. 136, holding that order of delivery is not necessary to action of replevin, which may proceed as action of detinue; Nashville Lumber Co. v. Barefield, 93 Ark. 360, 124 S. W. 758, 20 Ann. Cas. 968, holding that in replevin, where possessor acted in good faith in spending money on property so that its value is greatly increased, owner can recover only value of property less increased value put upon it by possessor; Schattler v. Heisman, 85 Ark. 75, 107 S. W. 196, holding that the court having jurisdiction of the subject-matter in replevin, it could proceed to try the right to possession of the property involved without the possession being changed.

Cited in note (80 Am. St. Rep. 759) as to when replevin or claim and delivery is sustainable.

42 L. R. A. 482, SMITH v. CALLANAN, 103 Iowa, 218, 72 N. W. 513.

Commencement of action.

Approved in Hawley v. Griffin, 121 Iowa, 684, 92 N. W. 113, 97 N. W. 86, holding action to redeem from tax sales lands of insane person not commenced by delivery of notice to sheriff within period of limitation.

Cited in footnote to Hamilton v. Royal Ins. Co. 42 L. R. A. 485, which holds

action on fire policy commenced by delivering summons to sheriff within time limited for commencing action, with intent that it be actually served.

42 L. R. A. 485, HAMILTON v. ROYAL INS. CO. 156 N. Y. 327, 50 N. E. 863.

Limitation of action.

Cited in Conolly v. Hyams, 176 N. Y. 407, 68 N. E. 662, upholding right to institute second action to foreclose mechanic's lien within one year after determination of first action; Wetyen v. Fick, 178 N. Y. 234, 70 N. E. 497, Affirming 90 App. Div. 47, 85 N. Y. Supp. 592, holding Code, § 401, excluding from period of limitation time during which person is absent from state, not applicable to § 1596, limiting time within which action for dower must be brought; Colell v. Delaware, L. & W. R. Co. 80 App. Div. 344, 80 N. Y. Supp. 675, holding limitation in statute conferring right unknown to common law will be enforced by courts of any state in which plaintiff may sue; Pernisi v. John Schmalz Sons, 142 App. Div. 55, 126 N. Y. Supp. 880, holding that if complaint show that action was not begun in time, plaintiff shows affirmatively that he has no cause of action; Johnson v. Phœnix Bridge Co. 133 App. Div. 810, 118 N. Y. Supp. 88, holding compliance with statute limiting time of bringing action for wrongful death a condition precedent to maintenance of action; Williams v. Fire Asso. 119 App. Div. 583, 104 N. Y. Supp. 100, on the necessity of raising by answer the objection that the action was not commenced within the time limited by the policy; Bellinger v. German Ins. Co. 51 Misc. 466, 100 N. Y. Supp. 424, holding that the limitation in a standard policy as to the time of bringing action thereon is a limitation prescribed by law and not by contract so that it applies under a provision of the statute of limitations which shall apply in case no other limitation was provided by law; Kansas City Hydraulic Press Brick Co. v. National Surety Co. 93 C. C. A. 132, 167 Fed. 507, holding that the statute providing that if an action is commenced within the time limited by statute and a judgment thereon for the plaintiff or the plaintiff fail otherwise than upon the merits, and the time limited has expired, he may commence another action within one year thereafter applies to an action on a contractor's bond; Paul v. Fidelity & C. Co. 186 Mass. 416, 104 Am. St. Rep. 594, 71 N. E. 801, on whether such a statute applies to a limitation by contract.

Cited in footnote to Smith v. Callanan, 42 L. R. A. 482, which holds statutory provision that placing notice in sheriff's hands shall constitute beginning of action applicable to redemption from tax sales.

Distinguished in Winter v. Niagara Falls, 119 App. Div. 588, 104 N. Y. Supp. 39, holding infant bound by limitation on time within which suit against city for negligence may be brought.

Nature of provisions of standard policy.

Cited in Temple v. Niagara F. Ins. Co. 109 Wis. 376, 85 N. W. 361, holding provisions of standard policy to be statutory law as well as contract between parties; Wilson v. Central Ins. Co. 135 App. Div. 661, 119 N. Y. Supp. 955 (dissenting opinion), on the limitation in a policy as of the same effect as a statute.

Necessity of pleading curative statute.

Cited in Nehasane Park Asso. v. Lloyd, 167 N. Y. 438, 60 N. E. 741, holding act curing any defects in existing deeds after two years, to be available as a defense, must be pleaded.

Construction of insurance policies.

Cited in Heilbrunn v. German Alliance Ins. Co. 140 App. Div. 564, 125 N. Y.

Supp. 374 (dissenting opinion), on construction of insurance policies when meaning of language is not clear.

42 L. R. A. 490, PEOPLE v. HAWKINS, 157 N. Y. 1, 68 Am. St. Rep. 736, 51 N. E. 257.

Limits upon exercise of police powers.

Approved in People v. Buffalo Fish Co. 164 N. Y. 101, 52 L. R. A. 806, 79 Am. St. Rep. 622, 58 N. E. 34, same case below in 30 Misc. 134, 62 N. Y. Supp. 543, denying validity of prohibition of possession of imported fish during close season; People *ex rel.* Treat v. Coler, 166 N. Y. 150, 59 N. E. 776, denying validity of labor law restricting constructers of public buildings to stone cut, carved, or dressed in state; Buffalo v. Reavey, 37 App. Div. 231, 55 N. Y. Supp. 792, denying validity of ordinance prohibiting sale of farm products without license, except by owner or lessee of premises; Ex parte Hayden, 147 Cal. 653, 1 L.R.A. (N.S.) 187, 109 Am. St. Rep. 183, 82 Pac. 315, holding statute providing that all green and dried fruit contained in packages for shipment shall have stamped on package the immediate locality in which they were grown is invalid.

Cited in People *ex rel.* Rodgers v. Coler, 166 N. Y. 18, 52 L. R. A. 822, 82 Am. St. Rep. 605, 59 N. E. 716, denying validity of statute fixing compensation by city for labor at prevailing wages in such city; People v. Lochner, 177 N. Y. 183, 101 Am. St. Rep. 773, 69 N. E. 373 (dissenting opinion), majority upholding as health law within police power, statute restricting number of hours per week that bakers may be employed; Ives v. South Buffalo R. Co. 201 N. Y. 306, 34 L.R.A.(N.S.) 179, 94 N. E. 431, Ann. Cas. 1912 B, 156, holding that workmen's compensation statute cannot be sustained as legislative exercise of police power; Re Gemmill, 20 Idaho, 737, 41 L.R.A.(N.S.) 714, 119 Pac. 298, Ann. Cas. 1913 A, 76, holding valid, statute requiring state printing to be done within state; People ex rel. Phillips v. Raynes, 136 App. Div. 420, 120 N. Y. Supp. 1053, holding statute prohibiting sale of convict made goods except by licensed sellers is invalid, where it is not made with regard to their quality or nature; State v. Hammond Packing Co. 105 Minn. 369, 117 N. W. 606, holding statute prohibiting sale of oleomargine when colored like butter constitutional; People ex rel. Cossey v. Grout, 179 N. Y. 433, 72 N. E. 464, 10 Ann. Cas. 39, on the power of the legislature to denounce as crimes acts which in themselves are innocent and harmless.

Cited in notes (1 L.R.A.(N.S.) 184) on validity of police regulations as to branding or labeling articles of commerce; (78 Am. St. Rep. 253, 261) on acts which legislature may declare criminal.

Public policy.

Cited in Union Cent. L. Ins. Co. v. Spinks, 119 Ky. 271, 69 L.R.A. 267, 83 S. W. 615, 7 Ann. Cas. 913, holding provision in insurance policy that no suit thereon might be begun after one year of death of insured is against public policy where statute provides a fifteen year limitation on contracts; State ex rel. Scott v. Dircks, 211 Mo. 580, 111 S. W. 1, holding that the public policy of the state as to the qualification for holding public offices is to be found in the constitution; Spread v. Tomlinson, 73 N. H. 59, 68 L.R.A. 437, 59 Atl. 376, holding that the public policy of a state is to be found in its constitution, its statutes, and the common law as evidenced by its decisions; Langmuir v. Landes, 113 Ill. App. 138, holding it not against public policy to permit duly appointed conservator of alien lunatic to remove lunatic's property from state although statute provides for escheat to state of such property; Moorshead v.

United R. Co. 119 Mo. App. 638, 96 S. W. 261 (dissenting opinion), on source of public policy.

Acceptance of benefits from criminal acts.

Cited in Re Kuhn, 125 Iowa, 453, 101 N. W. 151, 2 Ann. Cas. 657, holding where legislature has declared widows statutory interest is not an inheritance but a contract right she cannot be deprived of it for murdering her husband; McAllister v. Fair, 72 Kan. 540, 3 L.R.A.(N.S.) 732, 115 Am. St. Rep. 233, 84 Pac. 112, 7 Ann. Cas. 973, holding husband may inherit from wife although murdered by him to obtain estate where statute provides for inheritance by husband from wife and does not make any exception on account of criminal conduct.

Vested right.

Cited in Page v. American & B. Mfg. Co. 129 App. Div. 348, 113 N. Y. Supp. 734, holding stockholder has a vested right to voice in management of corporation.

42 L. R. A. 502, HANLON v. HOBSON, 24 Colo. 284, 51 Pac. 433.

Construction of grants bounded by waters.

Cited in footnotes to Security Land & Exploration Co. v. Burns, 63 L.R.A. 157, which holds that supposed meander line will be held boundary line if consistent with other calls and distances indicated on plat; Webster v. Harris, 59 L. R.A. 324, which holds grant bounded by water's edge at low-water mark on lake navigable in ordinary sense only does not extend to center of lake.

Cited in notes (42 L. R. A. 174) on title to land under water; (45 L. R. A. 238) on title to land between high and low water marks; (51 L. R. A. 178) on boundary on artificial body of water; (24 L.R.A.(N.S.) 240) on government grant bounded by nontidal, navigable river as carrying title to land thereunder.

42 L. R. A. 514, BAXTER v. CAMP, 71 Conn. 245, 71 Am. St. Rep. 169, 41 Atl. 803.

Right of third party to sue on contract.

Cited in Barber v. International Co. 73 Conn. 595, 48 Atl. 758, and Morgan v. Randolph & C. Co. 73 Conn. 398, 51 L. R. A. 654, footnote p. 653, 47 Atl. 658, denying right of firm creditor to sue corporation assuming firm debts; Lamkin v. Baldwin & L. Mfg. Co. 72 Conn. 62, 44 L. R. A. 789, 43 Atl. 593, denying right of partnership's creditor to sue corporation assuming firm's assets and debts; Whicker v. Hushaw, 159 Ind. 3, 64 N. E. 460, holding mortgagor may avail himself of executory agreement between mortgagor and purchaser, by which latter assumes mortgage debt; Root v. New Haven Trust Co. 82 Conn. 610, 74 Atl. 950, holding wife proper plaintiff in action on notes payable to her individually given in pursuance of contract with her husband for her maintainance although she was not party to original contract; Fisk's Appeal, 81 Conn. 440, 71 Atl. 559, holding equitable action lies in favor of children to enforce trust by parol, of wife who conveyed to husband while dying for sole benefit of children; Sullivan County R. Co. v. Connecticut River Lumber Co. 76 Conn. 474, 57 Atl. 287, holding where two corporations consolidated by the dissolution of one and the purchase of its property by the other, an action on the agreement for dissolution providing for the payment of all debts, could be maintained only by the corporations themselves and not by a creditor; Atwood v. Burpee, 77 Conn. 44, 58 Atl. 237, holding executor's contract with testator's widow and son to pay money obtained from policy to creditors after certain deductions unenforceable by creditor; Root v. New Haven Trust Co. 82 Conn. 609, 74 Atl. 950, holding

wife proper plaintiff in action to enforce payment of notes made to her individually although given in part in trust for her son; Woodbury v. Tampa Water Works Co. 57 Fla. 253, 21 L.R.A.(N.S.) 1039, 49 So. 559, holding citizen proper plaintiff in action to enforce contract of water company with city for furnishing water for benefit of citizens, and also citing annotation on this point; Ancrum v. Camden Water, Light, & Ice Co. 82 S. C. 294, 21 L.R.A.(N.S.) 1029, 64 S. E. 151, holding that in order that a citizen may sue for a breach of contract with a city to furnish water thereto, the contract must be made for the direct benefit of the person suing, and not for the benefit of the city in general.

Annotation cited in Rea v. Barker, 135 Fed. 891, holding principal may sue on contract taken in name of agent where agency is known to other party.

Cited in footnotes to Buchanan v. Tilden, 44 L. R. A. 170, which sustains wife's right to sue on contract by third person with husband to pay her part of proceeds of successful will contest; Ferris v. American Brewing Co. 52 L. R. A. 305, which sustains right of action of one for whose benefit stipulation in lease against sale on premises of other person's beer was made; Capital Traction Co. v. Offutt, 53 L. R. A. 390, which denies liability of street railway company for debts of other company whose property and franchises bought; Electric Appliance Co. v. United States Fidelity & G. Co. 53 L. R. A. 609, which denies right of one furnishing materials to contractor to sue on bond by latter to city, conditioned on turning over building free of claims for materials; Boston Ins. Co. v. Chicago, R. I. & P. R. Co. 59 L. R. A. 796, which denies right of action against railroad company carrying mail under contract with government, by sender of registered mail destroyed through negligence of its employees; Tweeddale v. Tweeddale, 61 L. R. A. 509, which sustains right of third person to enforce contract made for his benefit; Voorhees, M. & Co. v. Porter, 65 L.R.A. 736, which sustains right of creditors of vendor of goods to sue purchaser on agreement with vendor to pay such creditors out of the purchase money.

Cited in note (111 Am. St. Rep. 701) on manufacturer's liability to third persons.

Distinguished in Freeman v. Bristol Sav. Bank, 76 Conn. 219, 56 Atl. 527, holding pledgee in good faith of stocks pledged for loan to estate not liable in conversion although no privity exists between him and those from whom stocks came to him.

Actions on contracts between husband and wife.

Cited in Mathewson v. Mathewson, 79 Conn. 33, 5 L.R.A.(N.S.) 617, 63 Atl. 285, 6 Ann. Cas. 1027, holding wife may maintain suit against husband on his note for money loaned by her; Muller v. Witte, 78 Conn. 498, 62 Atl. 756, holding action to recover money loaned by wife to husband and praying only for money judgment is not an equity proceeding.

Separate claims for damages.

Cited in Goodrich v. Stanton, 71 Conn. 425, 42 Atl. 74, denying propriety of addition to each count of separate claim for damages.

Self-serving declarations.

Cited in Hamburg Bank v. George, 92 Ark. 476, 123 S. W. 654, holding that a party cannot corroborate himself by proving what he said or did at another time.

Evidence of declarations of deceased.

Cited in Jacobs v. Button, 79 Conn. 366, 65 Atl. 150, holding exclusion of oral evidence tending to show intention of person executing will and deed not reversible error where it appears not to have injuriously affected appellants:

Foote v. Brown, 81 Conn. 228, 70 Atl. 699, holding declarations of deceased as to his title admissible in action by his devisee to recover land of persons who raise defense of no title in deceased.

Burden of proof.

Cited in Pickles v. Ansonia, 76 Conn. 283, 56 Atl. 552, holding in action for damages because of changed grade burden of proof of special benefits is on city; Vincent v. Mutual Reserve Fund L. Asso. 77 Conn. 287, 58 Atl. 963, on the burden of proving truth of statements in insurance policy; Lockwood v. Lockwood, 80 Conn. 521, 69 Atl. 8, holding burden of proof that will, duly executed by competent testator, was obtained by undue influence is on opponent of will; Parsons v. Utica Cement Mfg. Co. 82 Conn. 338, 135 Am. St. Rep. 278, 73 Atl. 785, holding plaintiff in action on bond the execution of which is admitted but title denied because fraudulently obtained from intermediate holder has burden of proving that he obtained it for value and in good faith; Fenton v. Iowa State Traveling Men's Asso. 139 Iowa, 171, 117 N. W. 251, holding erroneous instruction that by burden of proof was meant the obligation imposed upon a party who alleges the existence of a fact or thing necessary in the prosecution or defense of an action, to establish that fact or thing by proof.

Cited in note (86 Am. St. Rep. 107) on burden of proof of authority to alter written instrument.

Corroboration of testimony.

Cited in note (82 Am. St. Rep. 65) on corroboration of testimony by proof of prior statements by witness.

42 L. R. A. 518, CENTRAL R. CO. v. STATE, 104 Ga. 831, 31 S. E. 531.

Followed without discussion in Barfield v. Minter, 137 Ga. 551, 73 S. E. 732.

Situs of corporate act.

Cited in Waycross Air-Line R. Co. v. Offerman & W. R. Co. 114 Ga. 731, 40 S. E. 738, holding suit on corporate bond to pay damages properly brought at place of performance, *i. e.*, of principal office; Greene County v. Wright, 126 Ga. 514, 54 S. E. 951, holding no statute to the contrary suit against railroad must be in county where it maintains its principal office; McCall v. Central R. Co. 120 Ga. 604, 48 S. E. 157, holding action against railroad for damages for failure to trace freight must be brought in county where principal office of initial carrier is located in absence of statute; English v. Central R. Co. 7 Ga. App. 264, 66 S. E. 969, holding suit against railway for injuries caused by its failure to obey order of railroad commission to built side track to its factory, must be brought in county of its principal office.

Adoption of Code.

Approved in Barnes v. Carter, 120 Ga. 897, 48 S. E. 387, holding code when adopted by legislature because of the same effect and enacted into one statute all the provisions of the code.

Cited in Stone v. Georgia Loan & T. Co. 107 Ga. 531, 33 S. E. 861, denying power to overthrow decision subsequently incorporated in Code; Smith v. Smith, 115 Ga. 694, 42 S. E. 72, refusing to decide effect of act upon provision of Code adopted but not yet in operation, where the conflicting provisions are included in subsequent Code; Murray v. State, 112 Ga. 12, 37 S. E. 111, holding omission of local act from Code not adopted by legislature, immaterial; Wilensky v. Central R. Co. 136 Ga. 891, 72 S. E. 418, holding that by adoption of Code by legislature provisions of sections thereof have all binding effect of original act of legislature; Barron v. Terrell, 124 Ga. 1078, 53 S. E. 181, holding adoption of Code amounts to enactment of one statute such as embraces all prior acts contrary thereto;

Thornton v. State, 5 Ga. App. 400, 63 S. E. 301, holding legislature in adopting Code might enact therein any new matter or alter any prior law, which then became a part of the existing law of the state; Brandon v. Pritchett, 126 Ga. 298, 55 S. E. 241, 7 Ann. Cas. 1093 (dissenting opinion), on the Code as of the same effect as a statute; Fincher v. Collum, 2 Ga. App. 745, 59 S. E. 22, holding that where the provisions of the code were intended as the sole statute on the subject and covered the whole subject matter, all prior conflicting statutes were impliedly repealed.

Cited in notes (55 L.R.A. 835, 836, 840) as to the power of legislature to enact a Code or compilation of laws, or amend many or undesignated sections thereof by single statute; (86 Am. St. Rep. 272, 273, 275) on constitutionality of code amendment or revision.

Distinguished in Georgia R. & Bkg. Co. v. Wright, 124 Ga. 608, 53 S. E. 251, holding adoption of Code not implied repeal of law previously adopted which is constitutional and not in conflict with any provision thereof; Mower-Hobart Co. v. Dun, 131 Fed. 814, on the statutory character of the state Code.

—Title of act.

Cited in McFarland v. Donaldson, 115 Ga. 569, 41 S. E. 1000, and Parks v. State, 110 Ga. 761, 36 S. E. 73, holding section of Code not invalid because not within title as originally enacted; Cook v. Marshall County, 119 Iowa, 402, 93 N. W. 372, holding valid, acts of general revision and codification under general and comprehensive titles; Binion v. Oklahoma Gas & Electric Co. 28 Okla. 361, 114 Pac. 1096, holding that title to act of May 26, 1908, relating to revenue tax upon public service corporations, is sufficient; Kennedy v. Meara, 127 Ga. 75, 56 S. F. 243, 9 Ann. Cas. 396, holding that after the adoption of an act into the Code, it was immaterial if the act as first passed was open to the objection that it referred to the two subject matters not expressed in its title; Banks v. State, 124 Ga. 17, 2 L.R.A.(N.S.) 1010, 52 S. E. 74, holding act making it illegal to procure value for performance of services with intent to defraud and fixing punishment therefor, "and for other purposes" is not unconstitutional where every part is germane to the subject matter.

Cited in note (79 Am. St. Rep. 476) as to when title of statute embraces only one subject and what may be included thereunder.

— Interpretation.

Cited in Lamar v. Allen, 108 Ga. 165, 33 S. E. 958, holding that as between conflicting provisions of Code, that derived from latest expression of law-making power prevails; Lamar v. McLaren, 107 Ga. 599, 34 S. E. 116, sustaining presumption that Code intended to state existing law.

Powers of state railroad commission.

Cited in Southern R. Co. v. Melton, 133 Ga. 301, 65 S. E. 665 (dissenting opinion), on exercise of legislative power by state railroad commission.

42 L. R. A. 528, HAMMOND BEEF & PROVISION CO. v. BEST, 91 Me. 431, 40 Atl. 338.

Discharge in insolvency, as affecting nonresident.

Cited in Swift v. Winchester, 96 Me. 483, 90 Am. St. Rep. 414, 52 Atl. 1017, holding insolvency no bar to debt due nonresident doing business under name implying residence in debtor's state.

Corporate taxation.

Cited in note (60 L. R. A. 331) on constitutional equality in United States in relation to corporate taxation.

Residence of corporation.

Cited in John P. Squire & Co. v. Portland, 106 Me. 236, 30 L.R.A.(N.S.) 578, 76 Atl. 679, 20 Ann. Cas. 603, holding that residence of corporation is in state of its creation, although it may carry on business in another state.

42 L. R. A. 531, ALDINE MFG. CO. v. PHILLIPS, 118 Mich. 162, 74 Am. St. Rep. 380, 76 N. W. 371.

Lien of corporation on stock.

Cited in United States & C. Land Co. v. Sullivan, 113 Minn. 32, 128 N. W. 1112, Ann. Cas. 1912A, 51, holding that lien on stock created by section 2863, R. L. 1905, may be foreclosed in equity.

Cited in footnote to Buffalo German Ins. Co. v. Third Nat. Bank, 48 L. R. A. 107, which denies equitable lien on national bank stock under by-law in conflict with act of Congress.

Dismissal of bill on demurrer.

Cited in Macomber v. Cottrell, 162 Mich. 719, 128 N. W. 796, holding that although Chancery rule 9, requires that after demurrer to bill has been sustained, complainant be given opportunity to amend, bill may be dismissed unless it can be effectively amended.

42 L. R. A. 536, PFEIFFER v. BOARD OF EDUCATION, 118 Mich. 560, 77 N. W. 250.

Reading of Bible in schools.

Approved in State *ex rel.* Freeman v. Scheve, 65 Neb. 874, 59 L. R. A. 931, footnote p. 927, 91 N. W. 846, holding law does not forbid use of Bible in public schools.

Cited in Church v. Bullock, 104 Tex. 8, 16 L.R.A.(N.S.) 866, 109 S. W. 115, holding it constitutional to repeat Lord's prayer and read from Bible in public school as a moral instruction; Hackett v. Brooksville Graded School Dist. 120 Ky. 623, 69 L.R.A. 596, 117 Am. St. Rep. 599, 87 S. W. 792, 9 Ann. Cas. 36, holding reading of Bible and offering of prayer in Christ's name in public school is not sectarian and no violation of constitutional right to worship, according to person's own conscience.

Cited in footnotes to Billard v. Topeka Board of Education, 66 L.R.A. 166, which holds public school teacher not conducting form of religious worship or teaching sectarian or religious doctrine by repeating Lord's Prayer and Twenty-Third Psalm as morning exercise without comment or remark in which none of pupils are required to participate; Hackett v. Brooksville School District, 69 L.R.A. 592, which sustains right to read King James version of Bible in schools.

Cited in notes (16 L.R.A.(N.S.) 861) on religious exercises or instruction in public schools; (105 Am. St. Rep. 153) on religious and sectarian teaching in public schools.

Distinguished in People ex rel. Ring v. Board of Education, 245 Ill. 350, 29 L.R.A.(N.S.) 448, 92 N. E. 251, 19 Ann. Cas. 220, holding it unconstitutional to read the Bible in public schools under provision against use of public funds for sectarian purposes.

Judicial notice.

Cited in State *ex rel.* Freeman v. Scheve, 65 Neb. 874, 59 L. R. A. 931, 91 N. W. 846, holding courts can take judicial notice of customs and usages in regard to use of Bible in public schools.

42 L. R. A. 549, TROY MIN. CO. v. WHITE, 10 S. D. 475, 74 N. W. 236. Later appeal in 15 S. D. 240, 88 N. W. 106.

Notice of proposed change of by-laws.

Cited in footnote to Bagley v. Reno Oil Co. 56 L. R. A. 184, which requires previous notice to authorize change at regular annual meeting of by-laws increasing number of directors.

Right of interested director to vote.

Cited in Ritchie v. People's Teleph. Co. 22 S. D. 606, 119 N. W. 990, holding that director of telephone company may not vote as director on resolution increasing his salary and his wife, also director is equally incompetent.

42 L. R. A. 553, STATE v. WASHINGTON, 49 La. Ann. 1602, 22 So. 841.

Competency of child as witness.

Cited in State v. King, 117 Iowa, 487, 91 N. W. 768, holding knowledge of the elementary precepts of Christianity may be considered in measuring intelligence of minor offered as witness; State v. Williams, 111 La. 185, 35 So. 505, holding child's lack of information as to existence of a Supreme Being or future state of rewards and punishments does not disqualify it as witness, and referring particularly to annotation in 42 L.R.A. 553; Clinton v. State, 53 Fla. 107, 43 So. 312, 12 Ann. Cas. 150, holding it not reversible error to admit testimony of fourteen-year-old boy on ground that he did not fully understand oath where trial court gave him instruction therein.

Cited in footnote to Lee v. Missouri P. R. Co. 63 L. R. A. 271, which holds eleven-year-old boy, entirely ignorant of meaning of ceremony of administering oath, not competent witness.

Cited in note (124 Am. St. Rep. 300, 302) on competency of children as witnesses.

Overruled in State v. Williams, 111 La. 184, 35 So. 505, holding under change in statute non-religious belief of witness or lack of knowledge, or fear, of Supreme Being not sufficient to disqualify him.

Religious belief as qualification of witness.

Cited in footnote to Brink v. Stratton, 63 L.R.A. 182, which holds that witness cannot be asked for purpose of affecting his credibility as to his belief in a Supreme Being who would punish false swearing.

Cited in note (23 L.R.A.(N.S.) 1023) on religious belief as qualification of witness.

42 L. R. A. 569, DOW v. WINNIPESAUKEE GAS & ELECTRIC CO. 69 N. H. 312, 76 Am. St. Rep. 173, 41 Atl. 288.

Liability for negligent explosions.

Cited in footnote to Purdy v. Westinghouse Electric & Mfg. Co. 51 L. R. A. 881, which holds use of barrels formerly containing explosive substance, for shipping iron, not render one liable for injury to employee by explosion.

Recovery of full damage.

Cited in Salinger v. Salinger, 69 N. H. 590, 45 Atl. 558, holding recoverable all damages from wilful and malicious breach of contract not to engage in business for certain time in particular town; Lancaster & J. Electric Light Co. v. Jones, 75 N. H. 180, 71 Atl. 871, holding mill-owner who wrongfully flows back water of stream, and thereby obtains use of power to which upper owner is entitled is liable to latter for fair rental value of water so taken.

Liability for escape of gas.

Cited in notes (10 L.R.A.(N.S.) 890) on liability for injury to trees by gas escaping from pipes; (15 L.R.A.(N.S.) 538) on liability for escape of gas stored on premises.

42 L. R. A. 570, ELLIS v. BLUE MOUNTAIN FOREST ASSO. 69 N. H. 385, 41 Atl. 856.

Right of way.

Cited in footnotes to Lebus v. Boston, 47 L.R.A. 79, which holds parol evidence that grantor agreed he should have no passway over land conveyed admissible to rebut implied reservation of way of necessity; Ann Arbor Fruit & V. Co. v. Ann Arbor R. Co. 66 L.R.A. 431, which holds that continued use of right of way originating in necessity, after necessity has ceased, does not become adverse until notice of adverse claim is brought home to owner of servient estate.

Cited in notes (26 L.R.A.(N.S.) 325, 355) on easements created by severance of tract with apparent benefit existing; (122 Am. St. Rep. 211) on grant of easements by implication.

Distinguished in Quimby v. Straw, 71 N. H. 162, 51 Atl. 656, holding revocable, parol license to use stairway for obtaining access to adjoining premises.

Equity jurisdiction.

Cited in State v. Sunapee Dam Co. 72 N. H. 116, 55 Atl. 899, holding damages assessable in equity to do complete justice if court has jurisdiction; State v. Sunapee Dam Co. 72 N. H. 122, 55 Atl. 899, holding equity has jurisdiction to restrain unreasonable use of waters of lake by one riparian proprietor to detriment of many.

Cited in note (99 Am. St. Rep. 751) on injunction against trespass on realty.

42 L. R. A. 572, UNITED STATES PIPE-LINE CO. v. DELAWARE, L. & W. R. CO. 62 N. J. L. 254, 41 Atl. 759.

Interest conveyed by deed.

Cited in Morris & E. R. Co. v. Orange, 63 N. J. L. 255, 43 Atl. 730, holding qualified fee granted by deed to successors and assigns, forever, for all purposes of grantee's incorporation; Pennsylvania Canal Co. v. Lewisburg, M. & W. Pass. R. Co. 10 Pa. Super. Ct. 420, sustaining canal company's ownership in fee of canal bridge used by public, so as to make its consent necessary to crossing by street railway company; Overton v. Moseley, 135 Ala. 605, 33 So. 696, holding mere restriction on use of land imposed by terms of deed will not prevent passing of fee under an appropriate clause; Pennsylvania Canal Co. v. Lewisburg, M. & W. Pass. R. Co. 203 Pa. 286, 52 Atl. 1135, holding fee passes under appropriate words of conveyance, though grantee is restricted in use of estate conveyed; Uhl v. Ohio River R. Co. 51 W. Va. 118, 41 S. E. 340 (dissenting opinion), majority holding grant of right of way passes easement only; Abercrombie v. Simmons, 71 Kan. 545, 1 L.R.A.(N.S.) 810, 114 Am. St. Rep. 509, 81 Pac. 208, 6 Ann. Cas. 239, holding conveyance by railroad to individual of land held under warranty deed which purported to convey only a right of way transfers nothing; Bew v. Ventnor City, 81 N. J. L. 209, 80 Atl. 28, holding that city having qualified fee in lands is owner within meaning of chapter 13, of act of 1909.

Construction of deed.

Cited in Speer v. Erie R. Co. 68 N. J. Eq. 618, 60 Atl. 197, holding that where a deed for land is made embodying an agreement to maintain a crossing,

it is to that deed that the parties must look for the obligations imposed upon them.

Limitation of use of crossing.

Distinguished in Speer v. Erie R. Co. 70 N. J. Eq. 321, 62 Atl. 943, holding that where a railroad company covenanted to provide its grantor with a crossing from his severed lands, such grantor was not limited in the use of such crossing for other than farm purposes; Marino v. Central R. Co. 69 N. J. L. 632, 56 Atl. 306, holding that under a statute requiring a railroad company taking land for its right of way through a farm, to maintain crossings between the parts of the farm, a purchaser of a portion of the farm on one side of the railroad was not entitled to the benefit of such statute.

Interest acquired by exercise of eminent domain.

Cited in Currie v. New York Transit Co. 66 N. J. Eq. 315, 105 Am. St. Rep. 647, 58 Atl. 308, holding that the quantity of interest which a railroad corporation takes in lands taken by eminent domain, is that which the statute authorizing the taking, authorizes it to acquire, which may be a fee or any less interest.

Way for pipe lines.

Cited in Uhl v. Ohio River R. Co. 47 W. Va. 62, 34 S. E. 934, holding that grantor of railroad right of way has way of necessity for piping gas subsequently discovered across same to residence.

Availability to grantor's heirs of stipulation in deed.

Approved in Speer v. Erie R. Co. 64 N. J. Eq. 603, 54 Atl. 539, holding stipulation in deed that railroad company shall provide grantor with suitable road crossing creates a right available to his heirs.

Equitable relief.

Cited in Country Homes Land Co. v. De Gray, 71 N. J. Eq. 291, 71 Atl. 340, on refusal of equity to take jurisdiction while an unsettled legal question remains.

42 L. R. A. 583, RITTER v. MUTUAL L. INS. CO. 17 C. C. A. 537, 28 U. S. App. 612, 70 Fed. 954.

Petition for recall of mandate denied in 19 C. C. A. 41, 39 U. S. App. 189, 72 Fed. 568.

Suicide of insured.

Followed in Mutual L. Ins. Co. v. Kelley, 52 C. C. A. 160, 114 Fed. 274, holding beneficiary precluded from recovery by insured's breach of condition against suicide.

Cited in footnote to Campbell v. Supreme Conclave I. O. H. 54 L. R. A. 576, which holds recovery not prevented by suicide of insured.

Cited in notes (35 L.R.A. 259, 261) on insanity as affecting condition as to suicide in life insurance policy; (8 L.R.A.(N.S.) 1124) on suicide while sane as defense to action on policy or certificate containing no provision as to effect thereof; (84 Am. St. Rep. 542) on self-destruction as defense to life insurance.

Distinguished in Seiler v. Economic Life Asso. 105 Iowa, 92, 43 L. R. A. 539, footnote p. 537, 74 N. W. 941, and Morris v. State Mut. Life Assur. Co. 41 W. N. C. 355, holding that policy not avoided by suicide, where same is not an excepted risk, and beneficiary is not decedent's estate.

Criticized in Campbell v. Supreme Conclave I. O. H. 66 N. J. L. 276, 54 L. R. A. 577, footnote p. 576, 49 Atl. 550, holding recovery on policy not defeated by

insured's suicide in absence of express provision therefor, when policy procured without intention of suicide.

Applicability to existing members of by-law as to suicide.

Cited in footnote to Shipman v. Protected Home Circle, 63 L. R. A. 347, which holds adoption of by-law relieving benefit society from liability in case of suicide applicable to existing members who agreed to be bound by all rules enacted.

42 L. R. A. 587, *Ex parte* McCARVER, 39 Tex. Crim. Rep. 448, 73 Am. St. Rep. 947, 46 S. W. 936.

Ordinances relating to loitering in streets.

Cited in footnote to *Re* Stegenga, 61 L. R. A. 763, which sustains city's authority to provide for punishment of loiterers in streets and bar-rooms.

42 L. R. A. 589, FOSTER v. COM. 96 Va. 306, 70 Am. St. Rep. 846, 31 S. E. 503.

Persons who cannot be guilty of rape.

Approved in Chism v. State, 42 Fla. 236, 28 So. 399, holding boy under fourteen years of age conclusively presumed to be incapable of committing crime of rape.

Cited in State v. Fisk, 15 N. D. 592, 108 N. W. 485, 11 Ann. Cas. 1061, as following English rule that child under fourteen cannot commit rape.

Cited in footnote to State v. Haines, 44 L. R. A. 837, which holds husband incapable of committing rape on own wife.

What constitutes attempt to commit crime.

Cited in footnotes to People v. Youngs, 47 L. R. A. 108, which holds preparation for committing burglary, prevented by arrest while proceeding towards house, not an attempt; Groves v. State, 59 L. R. A. 598, which holds mere preparatory acts for commission of crime not an attempt.

42 L. R. A. 591, HARMISON v. BALLOT COMRS. 45 W. Va. 179, 31 S. E. 394.

Constitutionality of reapportionment.

Cited in Ragland v. Anderson, 125 Ky. 159, 128 Am. St. Rep. 242, 100 S. W. 865, holding a division of the state into representative districts which varies the population of the districts from seven to over fifty thousand is unconstitutional because of such unequal distribution.

42 L. R. A. 593, VAN CLEVE v. BERKEY, 143 Mo. 109, 44 S. W. 743.

Payment for stock otherwise than with money.

Cited in McClure v. Paducah Iron Co. 90 Mo. App. 578; Berry v. Rood, 168 Mo. 330, 67 S. W. 644; State Trust Co. v. Turner, 111 Iowa, 669, 53 L. R. A. 138, footnote p. 136, 82 N. W. 1029, holding holder of corporate stock issued for property of speculative value liable for difference between value of stock and real value of property; Moore v. Universal Elevator Co. 122 Mich. 61, 80 N. W. 1015, denying to director defense of not being actual subscriber as against subscriber to bonds on faith of his connection with corporation, where stock issued for worthless property; Kelly v. Clark, 21 Mont. 324, 42 L. R. A. 629, 69 Am. St. Rep. 668, 53 Pac. 959, sustaining stockholder's liability for gross overvaluation of stock received in payment for capital stock; La Crosse Brown Harvester Co. v. Goddard, 114 Wis. 613, 91 N. W. 225, holding that capital stock may be paid for in property or labor as well as cash; Ingraham v. Commerce Lead Co. 101 C. C. A. 317, 177 Fed. 344, holding the waiver of a valuable lease and the extension of time for the payment of rent a sufficient consideration for issuance of capital stock; Meyer v. Ruby Trust Min. & Mill. Co. 192 Mo. 188,

90 S. W. 821, holding parties taking stock in exchange for property on which they have placed an overvaluation are liable for the difference between its true value and that of the stock; Anheuser-Busch Brewing Asso. v. Park Novelty Co. 120 Mo. App. 518, 97 S. W. 209, holding a payment for capital stock by a lease determinable upon three days' notice was of such little value as to render holders of stock liable for full value thereof; First Nat. Bank v. Rockefeller, 195 Mo. 54, 93 S. W. 761, on the payment of stock subscriptions in property at overvaluations thereof as being in violation of statutes providing penalties for such abuse; Macbeth v. Banfield, 45 Or. 565, 106 Am. St. Rep. 670, 78 Pac. 693; In re Royce Dry Goods Co. 133 Fed. 103; Vogeler v. Punch, 205 Mo. 571, 103 S. W. 1001,—on the issuance of stock in exchange for property disproportionate in value as being unlawful as to nonconsenting stockholders or creditors; O'Bear-Nester Glass Co. v. Antiexplo Co. 101 Tex. 435, 16 L.R.A.(N.S.) 523, 130 Am. St. Rep. 865, 108 S. W. 967, holding an unpatented secret formula was not subject to the payment of the debts of a corporation.

Annotation cited in First Nat. Bank v. Northrup, 82 Kan. 641, 136 Am. St. Rep. 119, 109 Pac. 672, holding on the issuance of stock in exchange for property the agreed value of which is less than that of the stock, creditors of the corporation may look to the stockholder for the difference.

Cited in note (16 L.R.A.(N.S.) 521) on payment for corporate stock with unpatented formula or invention.

Distinguished in Steam Stone Cutter Co. v. Scott, 157 Mo. 527, 57 S. W. 1076, refusing to review findings on conflicting evidence as to overvaluation of property transferred in payment of stock.

Liabilities arising out of unpaid stock subscriptions.

Cited in Steam Stone Cutter Co. v. Scott, 157 Mo. 525, 57 S. W. 1076, holding stockholder's liability not increased by statutes affecting remedies of corporate creditors; Chrisman-Sawyer Bkg. Co. v. Independence Wool Mfg. Co. 168 Mo. 643, 68 S. W. 1026, denying power of subscriber to capital stock to so surrender same as to relieve from liability to creditors; Shields v. Hobart, 172 Mo. 510, 95 Am. St. Rep. 529, 72 S. W. 669, and L. M. Rumsey Mfg. Co. v. Kaime, 173 Mo. 559, 73 S. W. 470, holding stockholder liable to creditors of corporation for unpaid balance on his stock; Bagnell v. Ives, 184 Fed. 470, holding that owners of separate judgments against insolvent Missouri corporation cannot join in action against stockholder for unpaid subscription.

Cited in notes (47 L.R.A. 255) on effect of transfer of shares of stock upon liability for unpaid subscription; (30 L.R.A.(N.S.) 285) on liability of transferee on unpaid stock subscription.

Distinguished in Hequembourg v. Edwards, 155 Mo. 520, 56 S. W. 490, holding directors liable to creditors who have been misled, for deficiency over amount paid in as certified in application for incorporation.

Equitable suit to enforce stockholder's liability a concurrent remedy.

Approved in Shields v. Hobart, 172 Mo. 510, 95 Am. St. Rep. 529, 72 S. W. 669, holding suit in equity to enforce stockholder's liability concurrent remedy with statutory action at law.

Distinguished in McKee v. Rudd, 222 Mo. 372, 133 Am. St. Rep. 529, 121 S. W. 312, where the action was for deceit in falsely stating that the stock was paid up.

Liability arising out of purchase of stock below face value.

Cited in Euston v. Edgar, 207 Mo. 301, 105 S. W. 773, on stockholders receiving stock for less than its face value as being liable to bona fide creditors for the difference.

Misrepresentations as to corporate assets.

Cited in Scott v. Abbott, 87 C. C. A. 475, 160 Fed. 578, holding an increase of capital stock which was subsequently disposed of was not fictitious and void because of the falsity of statements as to details; Fall v. Hornbeck, 132 Mo. App. 592, 112 S. W. 41, holding an action for fraud is maintainable against officers of corporation by one who extends credit to on the faith of their statements as to its solvency.

Impairment of capital.

Cited in Boley v. Sonora Development Co. 126 Mo. App. 120, 103 S. W. 975, holding unlawful, an agreement between corporation and stockholder to buy back the stock at the option of the purchaser.

42 L. R. A. 606, SPRAGUE v. NATIONAL BANK, 172 Ill. 149, 64 Am. St. Rep. 17, 50 N. E. 19.

Stockholder's liability.

Bill of revivor in Morse v. Gillette, 93 Ill. App. 24; Morse v. Pacific R. Co. 191 Ill. 359, 61 N. E. 104, Affirming 93 Ill. App. 31.

Later appeal in Sherwood v. Illinois Trust & Sav. Bank, 195 Ill. 113, 88 Am. St. Rep. 183, 62 N. E. 835, as to trustee's statutory exemption.

Followed without discussion in Allen v. National Bank, 172 Ill. 270, 50 N. E. 1123.

Cited in State Trust Co. v. Turner, 111 Iowa, 669, 53 L. R. A. 139, 82 N. W. 1029, and Dean v. Baldwin, 99 Ill. App. 589, holding stockholder liable for difference between value of stock and real value of property turned in at speculative value in payment; Coolidge v. Rhodes, 199 Ill. 30, 60 N. E. 1074, holding issuance of stock to be paid for at $3 per share fraudulent on its face; Garden City Sand Co. v. American Refuse Crematory Co. 205 Ill. 48, 68 N. E. 724, holding exchange of property for stock must constitute valid contract in good faith in the exercise of fair and honest judgment; Security Trust Co. v. Ford, 75 Ohio St. 338, 8 L.R.A.(N.S.) 271, 79 N. E. 474, holding stockholders could not avoid liability for full value of stock by provision in articles of incorporation for its issuance at fifty cents on the dollar as fully paid and unassessable; Buda Foundry & Mfg. Co. v. Columbia Celebration Co. 1 Ill. C. C. 422; Moore v. United States One Stave Barrel Co. 238 Ill. 550, 128 Am. St. Rep. 153, 87 N. E. 536,—on liability of stockholder on unpaid stock subscriptions.

Distinguished in Taylor v. Cummings, 62 C. C. A. 110, 127 Fed. 110, holding overvaluation of property applied by stockholders in payment of stock does not render them liable to creditors in absence of bad faith.

— Liability of assignees of stock.

Later appeals in Florsheim v. Illinois Trust & Sav. Bank, 192 Ill. 383, 61 N. E. 491, Affirming 93 Ill. 298, sustaining liability of assignor of capital stock for unpaid balance; Foote v. Illinois Trust & Sav. Bank, 194 Ill. 600, 62 N. E. 834, and Rogan v. Illinois Trust & Sav. Bank, 93 Ill. App. 41, sustaining liability of assignee with notice of unpaid balance.

Approved in Higgins v. Illinois Trust & Sav. Bank, 193 Ill. 400, 61 N. E. 1024, sustaining liability of assignee with notice of unpaid balance of capital stock.

Cited in Meyer v. Ruby Trust Min. & Mill. Co. 192 Mo. 179, 90 S. W. 821; Gillett v. Chicago Title & T. Co. 230 Ill. 411, 82 N. E. 891,—on liability of one taking certificates of stock reciting that they were fully paid and nonassessable, without knowledge of facts to contrary.

Cited in footnote to Vermont Marble Co. v. Declez Granite Co. 56 L. R. A. 728,

which holds liability for unpaid subscription not defeated by transfer of stock without transferee's consent.

Cited in notes (47 L.R.A. 256) on effect of transfer of shares of stock upon liability for unpaid subscription; (30 L.R.A.(N.S.) 286) on liability of transferee on unpaid stock subscription.

Creditor with notice of fictitious payment.

Cited in note (8 L.R.A.(N.S.) 272) on effect of creditor's knowledge that stock improperly issued as full paid, upon his right to resort to holder.

Distinguished in State Trust Co. v. Turner, 111 Iowa, 674, 53 L. R. A. 140, 82 N. W. 1029, denying stockholder's liability to creditor who became such with full knowledge of payment for stock in property at excessive valuation.

42 L. R. A. 621, KELLY v. FOURTH OF JULY MIN. CO. 21 Mont. 291, 69 Am. St. Rep. 668, 53 Pac. 959.

Liability of stockholders to creditors.

Approved in King v. Pony Gold Min. Co. 28 Mont. 96, 72 Pac. 309, holding liability of stockholder to creditors arises only after recovery of judgment against corporation and return of execution unsatisfied; Richardson v. Treasure Hill Min. Co. 23 Utah, 387, 65 Pac. 74, holding creditors not entitled to recover on ground of unpaid subscriptions to capital stock in absence of fraud.

Cited in McClure v. Paducah Iron Co. 90 Mo. App. 576, holding exchange of property for stock at an exaggerated price a fraud as to corporation creditors, rendering stockholders liable; State Trust Co. v. Turner, 111 Iowa, 669, 53 L. R. A. 139, 82 N. W. 1029, holding owner of stock issued in consideration of transfer of property of speculative value liable to corporate creditors for difference between value of stock and real value of property; Forsell v. Pittsburg & M. Copper Co. 42 Mont. 421, 113 Pac. 479, holding that judgment creditor of insolvent corporation may enforce liability against stockholder and it is not necessary to appoint receiver to enforce it.

Cited in note (93 Am. St. Rep. 359) on liability of subscribers to stock of California mining corporations.

— Liability for torts.

Cited in note (22 L.R.A.(N.S.) 258) as to whether liability of stockholder for debts of corporation includes liability for torts.

— Running of limitations.

Cited in notes (1 L.R.A.(N.S.) 914) on running of limitations against unpaid balance of stock subscription; (96 Am. St. Rep. 988) on necessity of judgment and execution against corporation to action by creditor against stockholder.

Recovery on different theory without amendment of complaint.

Cited in Gumaer v. White Pine Lumber Co. 11 Idaho, 599, 83 Pac. 771, holding defendant could not object to a recovery of actual damages where complainant waived his claim to statutory treble damages without an amendment of the complaint.

Construction of "moneyed corporation."

Cited in State v. Chance, 82 Kan. 396, 108 Pac. 791, construing the use of the phrase "moneyed corporation."

42 L. R. A. 636, ASBERRY v. ROANOKE, 91 Va. 562, 22 S. E. 360.

Assessments for improvements.

Cited in Violett v. Alexandria, 92 Va. 579, 31 L. R. A. 389, 53 Am. St. Rep.

825, 23 S. E. 909, holding ordinance for local assessment by foot front not within authorization of assessments according to benefits; Brookings v. Natwick, 22 S. D. 324, 18 L.R.A.(N.S.) 1263, 113 Am. St. Rep. 927, 117 N. W. 376, 17 Ann. Cas. 1254, holding act providing for the laying of sidewalks to be paid for by the levy of special assessment against the property of abutting owners was unconstitutional; Richmond v. Williams, 102 Va. 741, 47 S. E. 844, on assessments for local improvements as being in nature a property tax.

Cited in footnotes to Detroit v. Chapin, 42 L. R. A. 638, which holds cost of public improvement not assessable on local assessment district unless assessment in proportion to benefits received; Ramsey County v. Robert P. Lewis Co. 42 L. R. A. 639, which upholds water frontage tax of 10 cents per foot on unplanted farm land; Weed v. Boston, 42 L. R. A. 642, which holds void, assessment by frontage of lots fronting on strip of private land taken for sewer; Webster v. Fargo, 56 L. R. A. 156, and Rolph v. Fargo, 42 L. R. A. 646, which sustain power of legislature to direct assessment of entire expense of paving city streets against abutters in proportion to frontage; Hutcheson v. Storrie, 45 L. R. A. 289, which holds invalid, statute authorizing assessments on abutters in excess of special benefit; Schroder v. Overman, 47 L. R. A. 156, which denies right to enjoin street assessment for failure of ordinance to affirmatively show that benefits were considered; Rogers v. St. Paul, 47 L. R. A. 537, which denies right to recover back money paid on assessment for uncompleted street improvement; Norfolk v. Young, 47 L. R. A. 574, which holds insufficient, notice of assessment failing to show when, where, or before whom assessment may be contested; Kersten v. Milwaukee, 48 L. R. A. 851, which holds injunction against wrongful paving assessment will not prevent new assessment; Cincinnati, L. & N. R. Co. v. Cincinnati, 49 L. R. A. 566, which denies right to assess entire cost of land taken for highway on remaining land of same owner; Adams v. Shelbyville, 49 L. R. A. 797, which sustains statute providing for local assessments by frontage, with provision for hearing grievances before final assessment; Ramsey County v. Robert P. Lewis Co. 53 L. R. A. 421, which sustains annual frontage tax on land in front of which water pipes laid; Barber Asphalt Paving Co. v. French, 54 L. R. A. 492, which sustains paving assessment according to frontage; King v. Portland, 55 L. R. A. 812, which upholds street improvement assessment, plan of which not obviously shown to impose burdens in substantial excess of benefit; Sears v. Street Comrs. 62 L. R. A. 145, which authorizes consideration of benefit to abutting property from newly located passenger station in assessing cost of improving streets leading thereto; Smith v. Worcester, 59 L. R. A. 728, holding land owners within district assessed for sewers and defined by legislature cannot show they have received no benefit; Iowa Pipe & Tile Co. v. Callanan, 67 L.R.A. 408, which holds void, assessment for sewer on abutting property only eight feet deep at same front foot rate as full sized lots.

Cited in note (28 L.R.A.(N.S.) 1126, 1138, 1169) on assessments for improvements by front-foot rule.

— Personal liability.

Cited in Clizer v. Krauss, 57 Wash. 30, 106 Pac. 145, holding that owner is not personally liable for local improvement assessments upon his land.

Cited in notes (133 Am. St. Rep. 931, 934; 18 L.R.A.(N.S.) 1261, 1264) on personal liability of property owner for assessments for local improvements.

42 L. R. A. 638, DETROIT v. CHAPIN, 112 Mich. 588, 71 N. W. 149.

Improvement assessment.

Cited in Voigt v. Detroit, 123 Mich. 550, 82 N. W. 253, holding law not in-

validated by failure to require notice of hearing relating to establishment of assessment district and amount of total assessment; Goodrich v. Detroit, 123 Mich. 565, 82 N. W. 255, denying taking without due process where council's resolution is substantial finding as to benefits; Stevens v. Port Huron, 149 Mich. 546, 113 N. W. 291, 2 Ann. Cas. 603, denying right to levy assessment for sprinkling where not levied according to benefits.

Cited in footnotes to Ramsey County v. Robert P. Lewis Co. 42 L. R. A. 639, which upholds water frontage tax of 10 cents per foot on unplanted farming land; Kersten v. Milwaukee, 48 L. R. A. 851, which holds injunction against wrongful paving assessment will not prevent new assessment; Cincinnati, L. & N. R. Co. v. Cincinnati, 49 L. R. A. 566, which denies right to assess entire cost of land taken for highway on remaining land of same owner; Barber Asphalt Paving Co. v. French, 54 L. R. A. 492, which sustains paving assessment according to frontage.

42 L. R. A. 639, RAMSEY COUNTY v. ROBERT P. LEWIS CO. 72 Minn. 87, 75 N. W. 108.

Local improvement assessments.

Followed as law of the case on later appeals in 77 Minn. 317, 79 N. W. 1003, and 82 Minn. 392, 53 L. R. A. 423, 85 N. W. 207.

Followed without discussion in Robert P. Lewis Co. v. Knowlton, 84 Minn. 54, 86 N. W. 875.

Cited in State v. Macalester College, 87 Minn. 167, 91 N. W. 484, sustaining water-frontage assessment against college exempt from all general taxes.

Cited in footnotes to Kersten v. Milwaukee, 48 L. R. A. 851, which holds injunction against wrongful paving assessment will not prevent new assessment; King v. Portland, 55 L. R. A. 812, which upholds street improvement assessment, plan of which not obviously shown to impose burdens in substantial excess of benefit.

Cited in notes (61 L.R.A. 54) on frontage assessment for laying water mains, (28 L.R.A.(N.S.) 1150, 1200, 1201) on assessments for improvements by front-foot rule.

Divisibility of plot of land into lots for assessment.

Approved in Van Wagoner v. Paterson, 67 N. J. L. 458, 51 Atl. 922, holding that plot of land may be treated as divided into city lots for assessment purposes.

Cited in note (23 L.R.A.(N.S.) 405) on right to subdivide land for purpose of assessment for public improvement.

Construction of "lot."

Cited in Salem ex rel. Roney v. Young, 142 Mo. App. 173, 125 S. W. 857, holding that word "lot" is sufficiently comprehensive to include tracts or parcels of land.

42 L. R. A. 642, WEED v. BOSTON, 172 Mass. 28, 51 N. E. 204.

Local improvement assessments.

Reaffirmed in Dexter v. Boston, 176 Mass. 250, 251, 79 Am. St. Rep. 306, 57 N. E. 370, denying validity of assessment not proportioned to benefits.

Approved in Sears v. Street Comrs. 173 Mass. 352, 53 N. E. 876, denying validity of statute authorizing assessments in excess of benefits; King v. Portland, 38 Or. 421, 55 L. R. A. 818, footnote p. 812, 63 Pac. 2, sustaining assessment at street intersections, where benefits exceed cost; Ward v. Newton, 181 Mass. 434, 63 Atl. 1064, discussing, without deciding, whether frontage assessment invalid because grossly disproportionate to benefit; White v. Gove, 183 Mass. 334, 67

N. E. 359, holding unconstitutional, sewer assessment which is excessive, unreasonable, and disproportional.

Cited in Sears v. Boston, 173 Mass. 79, 43 L. R. A. 837, 53 N. E. 138, upholding statute authorizing foot-front assessment for watering of street; Edwards v. Bruorton, 184 Mass. 532, 69 N. E. 328, holding defect in mode of taxation prescribed for meeting expense of constructing street or sewer should not render whole proceeding invalid; O'Connell v. First Parish, 204 Mass. 120, 90 N. E. 580, holding that assessment by front foot rule for construction of sewer is valid unless it can be shown that it is disproportionate or unreasonable; Cotting v. Com. 205 Mass. 528, 91 N. E. 900, on constitutionality of section 4, chapter 402, Laws of 1892, relating to assessments for construction of sewers; Harwood v. Donovan, 188 Mass. 488, 74 N. E. 914, on the constitutionality of statutory levy of assessments for public improvements; Arnold v. Knoxville, 115 Tenn. 222, 3 L.R.A.(N.S.) 845, 90 S. W. 469, 5 Ann. Cas. 881; Kinston v. Wooten, 150 N. C. 300, 63 S. E. 1061,—on when levy of assessment for local improvements on abutting owners will be upheld; McGarvey v. Swan, 17 Wyo. 175, 96 Pac. 697, on when special assessment statute will be upheld; Cheney v. Beverly, 188 Mass. 84, 74 N. E. 306, on the unconstitutionality of a statutory levy of assessment for public improvements without regard to benefits; O'Connell v. First Parish, 204 Mass. 120, 90 N. E. 580, holding a defendant setting up the invalidity of a levy for local improvements must show affirmatively that it was disproportionate to the benefits received.

Cited in footnotes to Kersten v. Milwaukee, 48 L. R. A. 851, denying validity of assessment conclusively shown not to be based on benefits; Adams v. Shelbyville, 49 L. R. A. 797, holding that special assessments must be limited to benefits; Ramsey County v. Robert P. Lewis Co. 53 L. R. A. 421, sustaining water-frontage tax; Webster v. Fargo, 56 L. R. A. 156, and Barber Asphalt Paving Co. v. French, 54 L. R. A. 492, sustaining frontage paving assessment; Smith v. Worcester, 59 L.R.A. 728, which holds landowner within assessment district designated by legislature cannot show he has received no benefit from local improvement; Sears v. Street Comrs. 62 L. R. A. 145, which authorizes consideration of benefit to abutting property from newly located passenger station in assessing cost of improving streets leading thereto; Iowa Pipe & Tile Co. v. Callanan, 67 L.R.A. 408, which holds void, assessment for sewer on abutting property only eight feet deep at same front foot rate as full sized lots.

Cited in notes (58 L.R.A. 357, 377) on who is liable for expense of drainage; (28 L.R.A.(N.S.) 1130, 1132, 1173, 1183, 1186, 1191, 1193) on assessments for improvements by front-foot rule.

— Due process of law.

Cited in King v. Portland, 184 U. S. 70, 46 L. ed. 436, 22 Sup. Ct. Rep. 290, Affirming 38 Or. 417, 55 L. R. A. 817, 63 Pac. 2, holding notice to abutters of assessment for local improvement sufficient; Sears v. Street Comrs. 173 Mass. 356, 53 N. E. 876, discussing, without deciding, as to validity of provision for assessment without opportunity of hearing; State v. Several Parcels of Land, 83 Neb. 18, — L.R.A.(N.S.) —, 119 N. W. 21, holding that to constitute due process of law, notice of every step in levy of taxes was not essential where there was an opportunity to be heard before a proper tribunal.

Presumption of truth of averments not denied by answer.

Cited in Dunn v. Taunton, 200 Mass. 260, 86 N. E. 313, on the presumption that averments not denied in the answer are true.

42 L. R. A. 646, ROLPH v. FARGO, 7 N. D. 640, 76 N. W. 242.

Local improvement assessments.

Cited in Camp v. Davenport, 151 Iowa, 38, 130 N. W. 137, holding that in assessments of benefits for improvements test is whether improvement has enhanced actual value or worth of property, and not necessarily whether market value has been increased.

Cited in footnotes to Kersten v. Milwaukee, 48 L. R. A. 851, which holds injunction against wrongful paving assessment will not prevent new assessment; King v. Portland, 55 L. R. A. 812, which upholds street improvement assessment, plan of which not obviously shown to impose burdens in substantial excess of benefit; Smith v. Worcester, 59 L. R. A. 728, which holds conclusive, decision of legislature that land owners are within assessment district benefited by sewer; Sears v. Street Comrs. 62 L. R. A. 145, which authorizes consideration of benefit to abutting property from newly located passenger station in assessing cost of improving streets leading thereto.

Validity of frontage assessment.

Approved in Roberts v. First Nat. Bank, 8 N. D. 512, 79 N. W. 1049, and Webster v. Fargo, 9 N. D. 209, 56 L. R. A. 157, footnote p. 156, 82 N. W. 732, sustaining statute for assessment on abutters of entire cost of paving according to frontage.

Cited in Whittaker v. Deadwood, 23 S. D. 544, 139 Am. St. Rep. 1076, 122 N. W. 590, holding that statute authorizing assessment of cost of local improvements by front foot rule is constitutional.

Cited in footnotes to Asberry v. Roanoke, 42 L. R. A. 636, which denies right to impose on abutters liability for cost of street improvements in front of their property; Adams v. Shelbyville, 49 L. R. A. 797, which sustains statute providing for local assessments by frontage, with provision for hearing grievances before final assessment; Ramsey County v. Robert P. Lewis Co. 53 L. R. A. 421, which sustains annual frontage tax on land in front of which water pipes laid; Barber Asphalt Paving Co. v. French, 54 L. R. A. 492, which sustains paving assessment according to frontage; Iowa Pipe & Tile Co. v. Callanan, 67 L.R.A. 408, which holds void, assessment for sewer on abutting property only eight feet deep at same front foot rate as full sized lots.

Cited in note (28 L.R.A.(N.S.) 1128, 1130, 1139, 1147, 1159, 1172, 1181, 1201) on assessments for improvements by front-foot rule.

Uniformity in taxation.

Cited in Re Lipschitz, 14 N. D. 629, 95 N. W. 157, holding a constitutional provision requiring uniformity in taxation does not apply to taxes imposed on occupations.

42 L. R. A. 659, HOLLINSHEAD v. GLOBE INVEST. CO. 8 N. D. 35, 77 N. W. 89.

Payment of transferred notes.

Followed in Stolzman v. Wyman, 8 N. D. 110, 77 N. W. 285, denying estoppel of indorser to enforce payment of principal, by original payee's collection of interest for him.

Cited in Hoffmaster v. Black, 78 Ohio St. 7, 21 L.R.A.(N.S.) 55, 125 Am. St. Rep. 679, 84 N. E. 423, 14 Ann. Cas. 877, holding a payment on a note to one not in possession of the securities for the debt raises no presumption of agency; Smith v. First Nat. Bank, 23 Okla. 417, 29 L.R.A.(N.S.) 582, 104 Pac. 1080, holding a payment to the original mortgagee, who had assigned the debt and the mortgage, without notice of such assignment was insufficient as

against the bona fide holder; Loizeaux v. Fremder, 123 Wis. 198, 101 N. W. 423, holding payments by the maker of a note to assignor were not binding on assignee who had possession of the note; Marling v. Nommensen, 127 Wis. 367, 5 L.R.A.(N.S.) 414, 115 Am. St. Rep. 1017, 106 N. W. 844, 7 Ann. Cas. 364, on how payment must be made to the holder of a negotiable instrument to be binding on holder.

Distinguished in Pennypacker v. Latimer, 10 Idaho, 624, 81 Pac. 55, where there was no record of the assignment of note and mortgage and the assignee for four years dealt with the mortgagor through the original mortgagee as agent.

Payment to agent of written obligation.

Approved in Second Nat. Bank v. Spottswood, 10 N. D. 116, 86 N. W. 359, holding payment of note to person without possession of note or authority to collect, made at maker's peril; City Nat. Bank v. Goodloe-McClelland Commission Co. 93 Mo. App. 138, holding payment of note to one unauthorized to receive same not ratified by ostensible agency; Corey v. Hunter, 10 N. D. 14, 84 N. W. 570, holding party in charge of office where note made payable not agent for collection unless note in his possession; Kohl v. Beach, 107 Wis. 415, 50 L. R. A. 603, footnote p. 600, 81 Am. St. Rep. 849, 83 N. W. 657, holding mortgagee not bound by collection of principal by subagent authorized to collect overdue interest.

Cited in footnote to Harrison Nat. Bank v. Austin, 59 L. R. A. 294, which holds nonpossession of evidences of indebtedness by one to whom debt paid not conclusive as to authority.

Cited in notes (21 L.R.A.(N.S.) 53) on payment to one found at place designated, not in possession of securities; (23 L.R.A.(N.S.) 417–419) on effect of agent's nonpossession of security upon question of authority to receive payment.

Provisions affecting negotiability of notes.

Cited in note (35 L.R.A.(N.S.) 391) on bills and notes: provision accelerating maturity as affecting negotiability.

Acceleration of date of payment by default of debtor.

Cited in Russell v. Wright, 23 S. D. 347, 121 N. W. 842, holding that default in payment of interest and installment of principal made due whole of principal under stipulation in mortgage or note.

42 L. R. A. 664, HAUG v. GREAT NORTHERN R. CO. 8 N. D. 23, 73 Am. St. Rep. 727, 77 N. W. 97.

Liability for injury to drunken passenger.

Approved in Fagg v. Louisville & N. R. Co. 111 Ky. 37, 54 L. R. A. 921, footnote p. 919, 63 S. W. 580, holding carrier liable for injury to drunken trespasser ejected in cut with knowledge that other train will soon pass.

Cited in Hanson v. Chicago, R. I. & P. R. Co. 83 Kan. 561, 31 L.R.A.(N.S.) 629, 112 Pac. 152, upholding judgment in favor of representative of sleeping car passenger who was killed by stepping from train after being suddenly awakened when train had passed his destination.

Cited in footnotes to Bageard v. Consolidated Traction Co. 49 L. R. A. 424, which denies carrier's liability for injury to sick passenger, supposed to be intoxicated, while going towards back of station, after being helped to front where way open to street; Wheeler v. Grand Trunk R. Co. 54 L. R. A. 955, which holds carrier liable for fall of drunken passenger permitted to dance and stagger near door of baggage car; Chesapeake & O. R. Co. v. Saulsberry, 56 L. R. A. 580, which denies liability to drunken passenger ejected at station where ticket

expires, for injuries in attempting to re-enter train; Korn v. Chesapeake & O. R. Co. 63 L. R. A. 873, which holds conductor not negligent in ejecting, a short distance from station, for refusal to pay fare, one who, while apparently intoxicated, was able to walk and converse intelligently; Cincinnati, N. O. & T. P. R. Co. v. Marrs's Admrx. 70 L.R.A. 292, which holds railroad company finding asleep in its switch yard drunken trespasser who has recently left train of another company at its station required to either see him safely out of yard or exercise ordinary care to avoid injuring him in operation of switch engine.

Disapproved in Hudson v. Lynn & B. R. Co. 185 Mass. 520, 71 N. E. 66, holding no liability for the death of one who was in a drunken stupor at the time he was run down by defendant's car in the nighttime.

Presumption of pecuniary loss from fact of death.

Approved in Peden v. American Bridge Co. 120 Fed. 524, holding where relation of husband and wife or parent and child exists, law presumes pecuniary loss from fact of death in action to recover damages therefor.

Cited in Cleveland, C. C. & St. L. R. Co. v. Starks, 174 Ind. 347, 92 N. E. 54, holding that complaint alleging that defendant negligently killed decedent and that he left surviving widow and minor children imports damage without allegation thereof; Bond v. United R. Co. 159 Cal. 286, — L.R.A.(N.S.) —, 113 Pac. 366, Ann. Cas. 1912C, 50, holding that in action by parent for death of son, evidence as to loss of society, protection or services could be given under general allegation of damages.

Measure of damages for wrongful death.

Cited in Scherer v. Schlaberg, 18 N. D. 427, 24 L.R.A.(N.S.) 524, 122 N. W. 1000, on the measure of damages recoverable for wrongful death.

42 L. R. A. 673, STATE v. TAYLOR, 70 Vt. 1, 67 Am. St. Rep. 648, 39 Atl. 447.

Liability for making arrest.

Approved in State v. Shaw, 73 Vt. 154, 50 Atl. 863, holding sheriff justified in pursuing and arresting, without warrant, suspected felons.

Cited in footnote to McCullough v. Greenfield, 62 L. R. A. 906, which holds that possession by officer of a warrant will not justify arrest of accused by police department of other town under direction by telephone by officer holding warrant.

Cited in notes (51 L.R.A. 225) on liability of officer for making arrest; (84 Am. St. Rep. 684) on right of policeman to make arrest; (21 Eng. Rul. Cas. 597) on presumption of due appointment of one acting as public officer.

Resisting officer making arrest.

Cited in footnotes to Montgomery v. State, 55 L. R. A. 866, which sustains right to resist, with whatever force necessary, officer attempting to make arrest without warrant for carrying arms without disclosing authority; Roberson v. State, 52 L. R. A. 751, which holds malicious and premeditated killing of officer not reduced to manslaughter because he was making arrest without warrant.

Cited in note (84 Am. St. Rep. 698) on right to resist arrest.

Liability for murder by co-conspirator.

Cited in footnote to Powers v. Com. 53 L. R. A. 245, which holds one conspiring to commit unlawful act not requiring depraved spirit, not guilty of murder on coconspirator killing person.

Inference of intent to kill from assault.

Cited in State v. Kelley, 74 Vt. 284, 52 Atl. 434, holding erroneous, charge that intent to kill might be inferred from fact of assault; State v. Shanley, 20

S. D. 22, 104 N. W. 522, on what is necessary to constitute an assault with intent to kill; State v. Rodriguez, 31 Nev. 344, 102 Pac. 863, holding that to convict person of assault with intent to kill, intent to kill must be proved beyond reasonable doubt; People v. Connors, 253 Ill. 275, 39 L.R.A.(N.S.) 147, 97 N. E. 643, Ann. Cas. 1913 A, 196, holding that in prosecution for assault with intent to murder or with intent to commit some other felony specific intent charged must be proved as alleged.

Evidence of intent.

Cited in State v. Shaw, 73 Vt. 154, 50 Atl. 863, sustaining admissibility of evidence of imprisonment in jail and escape of accused, to show his intent in shooting deputy sheriff.

42 L. R. A. 684, BURRIDGE v. DETROIT, 117 Mich. 557, 72 Am. St. Rep. 582, 76 N. W. 84.

Boulevards.

Cited in footnotes to St. Louis v. Dorr, 42 L. R. A. 686, which holds void, ordinance prohibiting building on line of boulevard except for residences; Cicero Lumber Co. v. Cicero, 42 L. R. A. 696, which sustains conversion of public highway into pleasure driveway from which loaded vehicles excluded.

Liability of municipality for defects in streets.

Cited in Allen v. Minden, 127 La. 406, 53 So. 666, holding that city making excavations in street is held to same degree of care to prevent injury as any individual.

Cited in notes (103 Am. St. Rep. 271; 108 Am. St. Rep. 168; 20 L.R.A.(N.S.) 574) on liability of municipality for defects or obstructions in streets.

Liability of municipality for acts of officers.

Cited in note (2 L.R.A.(N.S.) 148) on municipal liability for acts of officers, servants or agents generally.

42 L. R. A. 686, ST. LOUIS v. DORR, 145 Mo. 466, 68 Am. St. Rep. 575, 41 S. W. 1094, 46 S. W. 976.

Municipal powers; special legislation.

Cited in *Ex parte* Lucas, 160 Mo. 236, 61 S. W. 218, holding barbers' act applicable to cities of over 50,000 not special; State *ex rel.* Goodnow v. Police Comrs. 80 Mo. App. 216, holding municipal charter provisions subject to general law in matters pertaining to state's police powers; State *ex rel.* McCaffery v. Mason, 155 Mo. 501, 55 S. W. 636, denying new class of cities created in contravention of Constitution by act relating to city singled out by Constitution from other cities; Blanchard v. Hartwell, 131 Cal. 266, 63 Pac. 349, denying validity of election of second board of freeholders for framing city charter, within time for amendment of one already framed and enacted; State *ex rel.* White v. Barker, 116 Iowa, 104, 57 L. R. A. 250, 93 Am. St. Rep. 222, 89 N. W. 204, denying power of legislature to take control of municipal water works from city's appointees; Kansas City v. Bacon, 147 Mo. 315, 48 S. W. 860 (dissenting opinion by Sherwood, J.), majority sustaining charter provisions as to streets, alleys, and parks as superseding general laws; Owen v. Baer, 154 Mo. 444, 55 S. W. 644 (separate opinion by Sherwood, J.), majority denying validity of giving local option to cities of certain class as to payments for district sewers; Home Teleph. & Teleg. Co. v. Los Angeles, 155 Fed. 566, on the power conferred by charter to levy taxes for municipal purposes as being a constitutional delegation of power; State ex rel. Dillon v. County Ct. 60 W. Va. 348, 55 S. E. 382, on constitutional delegations of power as not being subject to legislative control.

Cited in footnotes to Burridge v. Detroit, 42 L. R. A. 684, which holds boulevard a street so as to make city liable for defective sidewalk; Cicero Lumber Co. v. Cicero, 42 L. R. A. 696, which sustains conversion of public highway into pleasure driveway from which loaded vehicles excluded.

Local legislation as affected by general law.

Cited in St. Louis v. Williams, 235 Mo. 508, 139 S. W. 340, holding that ordinance of city which is repugnant to laws of state are void, and no one can be convicted for violation thereof.

Distinguished in St. Louis v. Meyer, 185 Mo. 597, 84 S. W. 914, holding a general statute relieving farmers from the necessity of taking out a peddler's license may be raised as a defense in a prosecution under a prior city charter for selling produce without a license.

Construction of statutes.

Cited in State v. Moody, 202 Mo. 128, 100 S. W. 619, on the reason of the law prevailing over the letter thereof in its construction.

Exercise of police powers for esthetic purposes.

Cited in note (34 L.R.A.(N.S.) 1000) on exercise of police power for esthetic purposes.

42 L. R. A. 696, CICERO LUMBER CO. v. CICERO, 176 Ill. 9, 68 Am. St. Rep. 155, 51 N. E. 758.

Legislative powers.

Cited in Noel v. People, 187 Ill. 592, 52 L. R. A. 289, 79 Am. St. Rep. 238, 58 N. E. 616, denying validity of act authorizing issuance of permits by board of pharmacy "in their discretion;" People *ex rel.* Kocourek v. Chicago, 193 Ill. 528, 58 L. R. A. 862, 62 N. E. 179 (dissenting opinion), as to city's subordination to state; People ex rel. Cavanagh v. Waldo, 72 Misc. 420, 131 N. Y. Supp. 307, holding that any law which preserves in any way public safety by regulating use of streets is valid if it affects all of the class.

Delegation of discretionary powers.

Cited in Com. v. Maletsky, 203 Mass. 246, 24 L.R.A.(N.S.) 1173, 89 N. E. 245, on the invalidity of absolute delegation of powers by municipal officers to subordinate officer: Meyer v. Decatur, 125 Ill. App. 560, on necessity that an ordinance make provision for its impartial enforcement; Elkhart v. Murray, 165 Ind. 305, 1 L.R.A.(N.S.) 943, 112 Am. St. Rep. 228, 75 N. E. 593, 6 Ann. Cas. 748, holding unlawful an ordinance requiring street cars to be equipped with a certain fender or one selected by a committee of the city council; Hagerstown v. Baltimore & O. R. Co. 107 Md. 189, 126 Am. St. Rep. 382, 68 Atl. 490, holding an ordinance regulating the keeping of stock is invalid in that the right to a permit to keep stock is placed within the arbitrary discretion of the municipal officers; Hubbard v. Hubbard, 77 Vt. 79, 67 L.R.A. 971, 107 Am. St. Rep. 749, 58 Atl. 969, 2 Ann. Cas. 315, holding unconstitutional an act which authorized the court in its discretion to empower wife on her petition to convey real estate by her separate deed; People v. Davis, 1 Ill. C. C. 280, holding validity of entire ordinance not affected by the invalidity of one part calling for the approval of a nonofficial board.

Cited in note (1 L.R.A.(N.S.) 941) on validity of ordinance vesting in officer's discretion as to subject-matter.

Distinguished in Meyer v. Decatur, 143 Ill. App. 107, holding an ordinance vesting in city council the exclusive right to determine whether or not licenses for the sale of intoxicating liquor should issue was valid.

Municipal control of streets.

Cited in People *ex rel.* Kocourek v. Chicago, 193 Ill. 565, 62 N. E. 187 (dissenting opinion), as to validity of ordinance conferring special privilege to obstruct street; People *ex rel.* Faulkner v. Harris, 203 Ill. 282, 96 Am. St. Rep. 304, 67 N. E. 785, denying right of city to permit by ordinance the extension of bay windows into street; De Land v. Dixon Power & Light Co. 225 Ill. 217, 80 N. E. 125, holding the act of municipal officers in vacating a public street to correct title of private persons to land embraced by street is ultra vires and void; Harder's Fire Proof Storage & Van Co. v. Chicago, 235 Ill. 78, 85 N. E. 245, 14 Ann. Cas. 536, holding a municipality might properly impose a tax or license fee on the use of wagons and other vehicles on streets.

Cited in footnotes to Burridge v. Detroit, 42 L. R. A. 684, which holds boulevard a street so as to make city liable for defective sidewalk; St. Louis v. Dorr, 42 L. R. A. 686, which holds void, ordinance prohibiting building on line of boulevard except for residences; State v. Rohart, 54 L. R. A. 947, which holds void, ordinance excluding heavily loaded vehicle with narrow tires from parkway.

Cited in note (31 L.R.A.(N.S.) 683) on validity of statutes or ordinances regulating horsedrawn vehicles in city streets.

Limitations on powers of municipality.

Cited in Richmond v. Model Steam Laundry, 111 Va. 761, 69 S. E. 932, holding that ordinance requiring permit from city for erection and use of furnaces which prescribes no fixed rules for conduct of business, is void; Bear v. Cedar Rapids, 147 Iowa, 350, 27 L.R.A.(N.S.) 1155, 126 N. W. 324, denying right of municipality in absence of express statute to require persons selling milk to take out a license; William Fox Amusement Co. v. McClellan, 62 Misc. 102, 114 N. Y. Supp. 594, holding the power of revocation given under an ordinance cannot be arbitrarily exercised.

Cited in notes (34 L.R.A.(N.S.) 1000) on exercise of police power for esthetic purposes; (123 Am. St. Rep. 43) on test of validity of municipal ordinance as denying equal protection of the laws.

Sufficiency of pleading in injunction.

Cited in Kesner v. Miesch, 90 Ill. App. 439, denying sufficiency of general allegations to warrant enjoining threatened trespass; Cook County Brick Co. v. Labahm Brick Co. 92 Ill. App. 537, sustaining sufficiency of averment of loss of trade to show irreparable injury.

Injunctive relief.

Cited in Chicago v. Wilkie, 88 Ill. App. 317, sustaining jurisdiction to restrain enforcement of alleged void ordinance to prevent multiplicity of suits; Bear v. Cedar Rapids, 147 Iowa, 350, 27 L.R.A.(N.S.) 1155, 126 N. W. 324, holding that injunction lies against enforcement of ordinance which there was no power to enact; El Reno v. Cleveland-Trinidad Paving Co. 25 Okla. 661, 27 L.R.A. (N.S.) 658, 107 Pac. 163, holding that if ordinance is invalid, injunction lies to prevent its operation to injury of taxpayer; El Reno v. Cleveland-Trinidad Paving Co. 25 Okla. 661, 27 L.R.A.(N.S.) 658, 107 Pac. 163, holding the enforcement of an invalid ordinance might be enjoined; North American Cold Storage Co. v. Chicago, 151 Fed. 123; Glucose Ref. Co. v. Chicago, 138 Fed. 211,—on jurisdiction of equity to enjoin the enforcement of an ordinance; Bessemer v. Bessemer City Waterworks, 152 Ala. 403, 44 So. 663, on jurisdiction of equity to prevent the invasion or disturbance of a vested franchise.

Cited in footnotes to Agua Pura Co. v. Las Vegas, 50 L. R. A. 224, which holds compliance with water company's valid contract not condition to injunctive

relief against interference with same by city ordinance; State *ex rel.* Rose v. Superior Court, 48 L. R. A. 819, which denies right to injunction against passage of ordinance creating contract; General Electric Co. v. Chicago, I. & L. R. Co. 58 L. R. A. 231, which sustains right of railroad company to injunction against construction under invalid ordinance, of street railway which would specially injure former company; State *ex rel.* Kenamore v. Wood, 48 L. R. A. 596, which denies right to injunction against enforcing alleged unconstitutional statute for inspection of beer; Paul v. Washington, 65 L.R.A. 902, which denies right to enjoin enforcement of municipal ordinance on ground that it is unreasonable and void; Ramsey v. Shelbyville, 68 L.R.A. 300, which sustains right of taxpayers to maintain action to annul ordinance accepting gift and obligating city for its maintenance though it has not yet taken effect.

Cited in note (118 Am. St. Rep. 373, 376) on judgment against enforcement of void municipal ordinance.

Appellate jurisdiction.

Cited in Wood v. Chicago, 205 Ill. 72, 68 N. E. 712, denying appellate jurisdiction of supreme court in suit to prevent enforcement of ordinance the constitutionality of which is not involved.

42 L. R. A. 706, WARD v. CONNECTICUT PIPE MFG. CO. 71 Conn. 345, 71 Am. St. Rep. 207, 41 Atl. 1057.

Voluntary conveyances to receiver.

Distinguished in Zacher v. Fidelity Trust & Safety Vault Co. 45 C. C. A. 485, 106 Fed. 597, holding assignment by foreign corporation to its receiver of local property, not general voluntary assignment.

Transfer of property out of state by insolvency proceedings.

Cited in note (65 L.R.A. 353, 365) on transfer of property out of state by bankruptcy or insolvency proceedings or assignment for creditors.

Necessity of surrender of advantage by creditor to participate in benefit of receivership.

Cited in Lake Charles Nat. Bank v. J. I. Campbell Co. 57 Tex. Civ. App. 366, 122 S. W. 601, holding that court has power to exclude creditor from distribution of assets, if such creditor has since receivership of corporation, acquired corporate assets which he refuses to surrender.

Foreign judgments.

Cited in note (103 Am. St. Rep. 308, 310) on judgments of courts of other states.

42 L. R. A. 711, COSGROVE v. AUGUSTA, 103 Ga. 835, 68 Am. St. Rep. 149, 31 S. E. 445.

Municipal police power.

Cited in Campbell v. Thomasville, 6 Ga. App. 231, 64 S. E. 815, on municipal regulation of the sale of intoxicating liquors.

Cited in note (15 L.R.A.(N.S.) 716) on right of state or municipality to forbid solicitation of patronage at railway stations.

Right to discriminate between solicitors of patronage at depots.

Cited in note (16 L.R.A.(N.S.) 783) on right to discriminate between solicitors of patronage at depots, wharves, etc.

42 L. R. A. 715, BARTLETT v. CICERO LIGHT, HEAT & POWER CO. 177 Ill. 68, 69 Am. St. Rep. 206, 52 N. E. 339.

Liability for receiver's negligence.

Followed in Knickerbocker v. Benes, 195 Ill. 443, 63 N. E. 174, Affirming 93 Ill. App. 308, holding income or, if necessary, corpus of property in hands of receiver, liable for negligent injury by receiver's servants.

Cited in Vandalia R. Co. v. Keys, 46 Ind. App. 359, 91 N. E. 173, holding that order discharging receiver and providing that company shall "assume and pay all lawful liabilities" imports that company shall pay existing claim for damages from negligence; Litchfield Min. & Power Co. v. Beanblossom, 138 Ill. App. 127, holding defendant corporation was liable for the negligent injury of a minor while its control was in the hands of a receiver; Gray v. Grand Trunk Western R. Co. 84 C. C. A. 592, 156 Fed. 745; Eckels v. Farley, 131 Ill. App. 560,—on the liability of corporation for personal injuries resulting while corporation in the hands of a receiver.

Cited in notes (74 Am. St. Rep. 299) on action without leave of court against receiver or person for whom he is appointed; (120 Am. St. Rep. 279, 280) on enforcement against receiver of liabilities sounding in tort.

Liability of receiver.

Approved in Malott v. Howell, 111 Ill. App. 234, and Malott v. Mapes, 111 Ill. App. 342, holding it error to award execution against receiver.

Cited in note (63 L. R. A. 229, 230) on personal and official liability of receivers.

42 L. R. A. 718, ADAMS v. BRENAN, 177 Ill. 194, 69 Am. St. Rep. 222, 52 N. E. 314.

Monopolies.

Cited in Inter-Ocean Pub. Co. v. Associated Press, 184 Ill. 454, 48 L. R. A. 575, 75 Am. St. Rep. 184, 56 N. E. 822, denying validity of press association's by-law against dealings with persons or corporations declared antagonistic; People v. McFarlin, 43 Misc. 601, 89 N. Y. Supp. 527, holding agreement by contractor to purchase materials only of such factories as union approved, against public policy as restraining competition and freedom of trade.

Cited in footnote to Figg v. Thompson, 44 L. R. A. 135, which holds void, ordinance requiring license for business of contracting for public work.

Cited in note (74 Am. St. Rep. 268) on combinations constituting unlawful trusts.

Union labor.

Cited in Grey v. People, 194 Ill. 487, 62 N. E. 894, as to effect of union labor clause to invalidate assessment; Atlanta v. Stein, 111 Ga. 793, 51 L. R. A. 338, footnote p. 335, 36 S. E. 932, holding void, ordinance requiring all city printing to be given to union printers; Marshall & B. Co. v. Nashville, 109 Tenn. 499, 71 S. W. 815, holding ordinance requiring union label on city printing invalid as class legislation; Fiske v. People, 188 Ill. 208, 52 L. R. A. 292, footnote p. 291, 58 N. E. 985, holding void, act making it unlawful to try to prevent employees from joining labor unions; State *ex rel.* Robert Mitchell Furniture Co. v. Toole, 26 Mont. 34, 55 L. R. A. 649, footnote p. 644, 91 Am. St. Rep. 386, 66 Pac. 496, holding void, public contract let on bid pursuant to advertisement limiting bids to employees of union labor; Christensen v. Kellogg Switchboard & Supply Co. 110 Ill. App. 70, holding invalid, agreement to employ none but union men in factory; Mathews v. People, 202 Ill. 401, 63 L. R. A. 78, 95 Am. St. Rep. 241, 67 N. E. 28, holding invalid as class legislation, provision in statute forbidding

employment agencies to furnish help to employers whose employees are on strike or locked out; Christensen v. People, 114 Ill. App. 70; O'Brien v. People, 216 Ill. 374, 108 Am. St. Rep. 219, 75 N. E. 108, 3 Ann. Cas. 966, holding attempts under threat of ordering a strike to compel an employer to employ only union labor is unlawful; Kemp v. Division No. 241, 153 Ill. App. 371, holding that injunction lies to restrain combination of union men from conspiring to intimidate employer of complainant for purpose of securing latter's discharge; People ex rel. John Single Paper Co. v. Edgcomb, 112 App. Div. 606, 98 N. Y. Supp. 965, holding a requirement by board of supervisors that union labor be used, is unlawful; Lewis v. Board of Education, 139 Mich. 310, 102 N. W. 756, denying the right of the board of education to require contractors constructing public buildings to contract to employ union labor; Miller v. Des Moines, 143 Iowa, 422, 23 L.R.A.(N.S.) 822, 122 N. W. 226, holding a contract entered into on behalf of the city might be enjoined on the ground that in letting bid it discriminated in favor of the employer of union labor; Farr v. Detroit, 136 Mich. 205, 99 N. W. 19 (dissenting opinion), on right to enjoin the performance of a contract entered into by city which prohibits the employment of alien and nonresident labor.

Cited in notes (2 L.R.A.(N.S.) 293) on validity of contract to employ union labor only; (23 L.R.A.(N.S.) 816) on right of municipality or other public body to discriminate in favor of organized labor; (38 L.R.A.(N.S.) 664) on discretion in choosing between bidders for public contract.

Distinguished in Gillette v. Peabody, 19 Colo. App. 368, 75 Pac. 18, refusing to enjoin the award of a bid for a public work because the bidder attached to his bid a statement that the work would be done in state and by union labor.

Taxpayer's right to prevent public expenditure.

Approved in Holden v. Alton, 179 Ill. 323, 53 N. E. 556, sustaining right of taxpayer to enjoin intended misappropriation of public money; Burke v. Snively, 208 Ill. 336, 70 N. E. 327, upholding right of taxpayer to sue to restrain misappropriation of funds by public authorities.

Cited in Litz v. West Hammond, 230 Ill. 315, 82 N. E. 634, holding the unauthorized expenditure of public funds might be enjoined; Lindblad v. Board of Education, 221 Ill. 274, 77 N. E. 450, holding the employment of "critic" teachers in the public schools to supervise the work of students of the normal school acting as practice teachers, might be enjoined.

Cited in footnotes to Zuelly v. Casper, 63 L.R.A. 133, which upholds right of taxpayer of county to bring suit for restoration to treasury of money illegally appropriated as fees of officers; Johnson v. Black, 68 L.R.A. 264, which sustains jurisdiction of equity over suit by taxpayer to compel restoration of county funds illegally withdrawn by order of board of supervisors.

Cited in note (36 L.R.A.(N.S.) 10) on taxpayer's right to enjoin unlawful municipal expenditures.

Statutory limitation of officer's salary.

Cited in Bourke v. Sanitary District, 92 Ill. App. 338, holding that statute fixing salary at specified figure precludes municipal corporation from allowing larger sum.

Class legislation.

Cited in Shaw v. Marshalltown, 131 Iowa, 151, 10 L.R.A.(N.S.) 835, 104 N. W. 1121, 9 Ann. Cas. 1039 (dissenting opinion), on a soldier's preference act as being invalidated class legislation.

42 L. R. A. 721, STATE v. McLEAN, 121 N. C. 589, 28 S. E. 140.

Intention as element of statutory crime.

Followed in Epps v. Smith, 121 N. C. 161, 28 S. E. 359, holding intent immaterial under statute prohibiting giving money to electors to procure election; State v. Southern R. Co. 122 N. C. 1061, 41 L. R. A. 249, 30 S. E. 133, denying necessity of intention to violate law prohibiting free transportation of favored passengers.

Approved in State v. McDonald, 133 N. C. 684, 45 S. E. 582, holding, on trial for embezzlement, act of conversion does not raise presumption of felonious intent, but such intent must be shown.

Cited in State v. Morgan, 136 N. C. 630, 48 S. E. 670, on necessity of proof of criminal intent.

Rights as to dead bodies.

Cited in footnote to Pulsifer v. Douglass, 53 L. R. A. 238, which denies right to disinter wife's body from another's lot without latter's consent.

Cited in note (16 L.R.A.(N.S.) 333) on right to compel restoration of human remains removed from resting place.

Annotation in 42 L. R. A. 721, referred to particularly in Thompson v. State, 105 Tenn. 180, 51 L. R. A. 884, footnote p. 883, 80 Am. St. Rep. 875, 58 S. W. 213, holding attempt to make unauthorized sale of dead body of human being a misdemeanor.

42 L. R. A. 738, MONTGOMERY COUNTY FISCAL COURT v. TRIMBLE, 104 Ky. 629, 47 S. W. 773.

Sufficiency of majority vote.

Approved in Turpin v. Madison County Fiscal Court, 105 Ky. 230, 48 S. W. 1085, holding proposition to issue bonds carried, where about five sixths of votes given on question are in the affirmative; Tinkel v. Griffin, 26 Mont. 432, 68 Pac. 859, holding proposition that county issue bonds carried if it receive majority of votes cast on the question, although less than majority of all votes cast at the election; State *ex rel.* McClurg v. Powell, 48 L. R. A. 652, which requires majority of all electors voting at election for any purpose, to adopt constitutional amendment.

Cited in Fabro v. Gallup, 15 N. M. 114, 103 Pac. 271; Iglehart v. Dawson Springs, 143 Ky. 143, 136 S. W. 210, holding that assent of two-thirds of electors whose votes are cast on question of incurring indebtedness is all that is necessary; State ex rel. McCue v. Blaisdell, 18 N. D. 39, 119 N. W. 360, holding that majority of votes cast upon question submitted to vote, if in affirmative carries it, unless contrary is clearly expressed in statute; Render v. Louisville, 142 Ky. 413, 32 L.R.A.(N.S.) 532, 134 S. W. 458, holding that statute authorizing vote upon question of issuing bonds for improvements is not void because it does not repeat constitutional provisions as to necessity of two-thirds majority; Frost v. Central City, 134 Ky. 441, 120 S. W. 367; Board of Education v. Winchester, 120 Ky. 593, 87 S. W. 768,—holding a question of incurring an indebtedness which received two thirds of the votes cast on that proposition although not two thirds of all the votes cast at the election carried; Rice v. Palmer, 78 Ark. 450, 96 S. W. 396, on those voting at an election who fail to vote on a particular measure as being presumed to acquiesce in the will of the majority.

Cited in note (22 L.R.A.(N.S.) 479, 484) on basis for computation of majority essential to adoption of proposition submitted at general election.

Distinguished in *Re* Denny, 156 Ind. 122, 51 L. R. A. 729, footnote p. 722,

59 N. E. 359, holding constitutional amendment not adopted unless it receives votes of majority of electors participating in the election.

Stare decisis.

Approved in Pratt v. Breckinridge, 112 Ky. 27, 65 S. W. 136, holding doctrine of *stare decisis* does not render it necessary for court to adhere to erroneous decision.

Cited in note (73 Am. St. Rep. 103) on limitations on doctrine of stare decisis.

42 L. R. A. 745, FLACH v. GOTTSCHALK CO. 88 Md. 368, 71 Am. St. Rep. 418, 41 Atl. 908.

Competency of witness.

Approved in Merriman v. Wickersham, 141 Cal. 571, 75 Pac. 180, holding stockholder who is director and officer of corporation not disqualified from testifying in action brought by corporation and continued against executor of defendant.

Cited in Mendenhall v. School Dist. No. 83, 76 Kan. 176, 90 Pac. 773, holding officers of a corporation may testify as to transactions had with a decedent, in an action in which the corporation is interested; Knickerbocker Ice Co. v. Gardiner Dairy Co. 107 Md. 573, 16 L.R.A.(N.S.) 757, 69 Atl. 405, holding evidence is properly in the case where no motion was made to strike out after it had been admitted subject to exception.

Cited in note (27 L.R.A.(N.S.) 818) on competency of stockholder as witness where corporation is party to suit prosecuted by or against a personal representative.

Validity of contracts of lunatics.

Cited in Ipock v. Atlantic & N. C. R. Co. 158 N. C. 448, 74 S. E. 352, holding that executed contracts of insane person, before office found, are not void but only voidable.

42 L. R. A. 749, STATE *ex rel.* MADIGAN v. WAGENER, 74 Minn. 518, 73 Am. St. Rep. 369, 77 N. W. 424.

Control of civil courts over courts-martial.

Cited in note (20 L.R.A.(N.S.) 413) on superintending control of civil courts over courts-martial.

42 L. R. A. 753, HULL v. ST. LOUIS, 138 Mo. 618, 40 S. W. 89.

Followed without discussion in Green v. St. Louis, 139 Mo. 141, 40 S. W. 1094.

Conclusiveness of expert's testimony.

Approved in State v. Darrah, 152 Mo. 542, 54 S. W. 226; Kingsbury v. Joseph, 94 Mo. App. 305, 68 S. W. 93; Meyers v. R. C. Greer & Sons Realty Co. 96 Mo. App. 630, 70 S. W. 914; St. Louis, O. H. & C. R. Co. v. Fowler, 142 Mo. 689, 44 S. W. 771,— holding expert's testimony of value, but not conclusive; Fischer v. Edward Heitzeberg Packing & Provision Co. 77 Mo. App. 113, holding expert's opinion of safety of tanks or machine merely advisory.

Cited in Cosgrove v. Burton, 104 Mo. App. 704, 78 S. W. 667, holding an instruction that the jury might consider the professional standing and experience of an expert witness was proper; Restetsky v. Delmar Ave. & C. R. Co. 106 Mo. App. 389, 84 S. W. 665, holding it not erroneous to instruct that jury was not bound by expert testimony but might apply their own knowledge and judgment in connection; Smith v. Missouri & K. Teleph. Co. 113 Mo. App. 444, 87 S. W. 71; St. Louis v. Kansas City, 110 Mo. App. 656, 85 S. W. 630,—holding

jury might properly be instructed that they are not bound by expert testimony: Davis v. School Dist. 84 Neb. 865, 122 N. W. 38, holding jury might properly disregard the opinions of an expert; Guyon v. Brooklyn Heights R. Co. 49 Misc. 516, 97 N. Y. Supp. 1038, holding erroneous a charge which in effect instructed jury that they must be bound by the opinions of a physician called as an expert; Andrews v. Frierson, 144 Ala. 477, 39 So. 512, on the weight to be given to the opinions of an expert.

Annotation cited in Ball v. Skinner, 134 Iowa, 309, 111 N. W. 1022, on the weight to be given the testimony of an expert.

Cited in note (42 L. R. A. 769) on conclusiveness of testimony of experts.

Conclusiveness of uncontradicted testimony.

Approved in Ranck v. Cedar Rapids Gas Co. 116 Iowa, 13, 89 N. W. 88, denying new trial in action for injury to grass and trees, asked on ground that verdict was for less amount than that indicated by uncontradicted testimony of plaintiff's witnesses, and referring particularly to annotation in 42 L. R. A. 753.

Recovery for services without proof of value.

Cited in C. W. Hahl & Co. v. Southland Immigration Asso. 53 Tex. Civ. App. 600, 116 S. W. 831, holding that where in action for services rendered, all details of transaction are proved, fact that no evidence of value of services was introduced, would not be sufficient cause for setting aside verdict for plaintiff.

Exception to general rule.

Distinguished in Dean v. Toledo, St. L. & W. R. Co. 148 Mo. App. 447, 128 S. W. 523, on exception of highly perishable property from rule that goods delivered to carrier in good condition are presumed to continue so.

42 L. R. A. 774, STATE v. GRUGIN, 147 Mo. 39, 71 Am. St. Rep. 553, 47 S. W. 1058.

Provocation reducing murder to manslaughter.

Cited in Gilfillan v. McCrillis, 84 Mo. App. 581, as to whether homicide reduced to manslaughter by knowledge, acquired the evening before, that deceased ravished defendant's wife; State v. Crawford, 66 W. Va. 126, 66 S. E. 110, holding that words alone, however insulting are never sufficient to reduce murder to manslaughter, at least where deadly weapon is used; State v. Emerson, 78 S. C. 96, 58 S. E. 974, on the killing by a father of one he discovers having illicit intercourse with his daughter being manslaughter; State v. Hazlet, 16 N. D. 444, 113 N. W. 374 (dissenting opinion), on right to plead provocation in defense of homicide where a reasonable time has elapsed between the provocation and the killing; Johnson v. State, 129 Wis. 158, 5 L.R.A.(N.S.) 827, 108 N. W. 55, 9 Ann. Cas. 923, on the term "heat of passion" how construed in relation to a criminal homicide.

Cited in footnote to State v. Yanz, 54 L. R. A. 780, which holds killing person believed to be in act of adultery with wife of one killing him, manslaughter only.

Cited in notes (4 L.R.A.(N.S.) 159, 160) on insulting words or conduct as provocation to homicide; (5 L.R.A.(N.S.) 817, 823) on heat of passion which will mitigate or reduce degree of homicide; (134 Am. St. Rep. 734) on condition of mind of slayer which reduces murder to manslaughter.

Disapproved in State v. Bone, 114 Iowa, 546, 87 N. W. 507, denying that knowledge of deceased's assault upon defendant's wife will reduce homicide to manslaughter.

Cooling time as question for jury.

Followed in State v. Barutio, 148 Mo. 256, 49 S. W. 1004, holding sufficiency of cooling time, question for jury.

Words as justifying assault.

Distinguished in State v. Gartrell, 171 Mo. 522, 71 S. W. 1045, holding words of opprobrium alone not sufficient to justify assault; State v. Gieseke, 209 Mo. 342, 108 S. W. 525, holding mere words of reproach and abuse not sufficient provocation as to reduce a homicide from murder to manslaughter.

Instruction on less grade of homicide than murder.

Approved in State v. Privitt, 175 Mo. 230, 75 S. W. 457, holding instruction on less grade of homicide than murder in first degree not required where evidence shows killing was done wilfully, with premeditation.

Distinguished in State v. Myers, 221 Mo. 619, 121 S. W. 131, holding no instruction as to manslaughter should be given where the evidence makes it a question of self defense or murder in the second degree.

42 L. R. A. 783, LINDSAY v. UNITED STATES SAV. & L. CO. 120 Ala. 156, 24 So. 171.

Subsequent appeal in 127 Ala. 367, 51 L. R. A. 395, 28 So. 717.

Transactions within usury laws.

Cited in National Mut. Bldg. & L. Asso. v. Burch, 124 Mich. 66, 82 Am. St. Rep. 311, 82 N. W. 837, holding loan by foreign building and loan association secured by local property and to be paid to local agent, although providing for payment in state of incorporation, governed by local interest laws.

Retroactive or expository statutes.

Cited in Felix v. Wallace County, 62 Kan. 840, 84 Am. St. Rep. 424, 62 Pac. 667, holding void, act legalizing gopher warrants issued under void bounty law; Macartney v. Shipherd, 60 Or. 143, 117 Pac. 814, holding that statute validating appeals that had been taken is void as encroachment upon judicial powers; Griffin v. Drennen, 145 Ala. 132, 40 So. 1016, on statutes as presumed to have a prospective operation in the absence of an expression of legislative intent to the contrary; Leahart v. Deedmeyer, 158 Ala. 298, 48 So. 371, on there being no constitutional prohibition on the enactment of retroactive statutes; Keller v. State, — Tex. Crim. Rep. —, 1 L.R.A.(N.S.) 498, 87 S. W. 669, holding that the legislature cannot by defining the terms of the constitution give it a different meaning from that commonly understood at the time of its adoption.

Cited in footnotes to Iowa Sav. & L. Asso. v. Heidt, 43 L. R. A. 689, which sustains statute taking away defense of usury; Merchants' Bank v. Ballou, 44 L. R. A. 306, which holds statute curing defects in acknowledgment of deed of trust does not give it priority over previous judgment lien.

Distinguished in Pond Creek v. Haskell, 21 Okla. 741, 97 Pac. 338, where the act under consideration was neither expository nor retroactive.

Sufficiency of title of act.

Approved in Jackson v. State, 136 Ala. 99, 33 So. 888, holding act conferring jurisdiction of misdemeanors on city recorder within title of act to define powers of recorder, or alderman acting as such.

Cited in Jefferson v. Toomer, 28 Okla. 661, 115 Pac. 793, holding that act entitled "an act relating to certain county and district offices" is not invalid as embracing more than one subject; State ex rel. Thomas v. Gunter, 170 Ala. 175, 54 So. 283, holding that subject stated generally in title of act, includes incidents and subsidiary details; Toole v. State, 170 Ala. 47, 54 So. 195, holding

that acts of 1909, having for its purpose suppression of evils of intemperance was not violative of provisions that each law shall contain but one subject; Jordan v. McClure Lumber Co. 170 Ala. 320, 54 So. 415, holding that title to act reading "to further regulate, the securing, preservation, and sales of swamp and overflowed lands of state" was sufficient to embrace provisions confirming sales of swamp lands; Alford v. State, 170 Ala. 218, 54 So. 213, Ann. Cas. 1912 C, 1093, holding that act known as "Fuller bill" is not unconstitutional in that it contains more than one subject; Rea v. State, 29 Okla. 710, 119 Pac. 235, holding that article 1, chapter 32, session laws 1909, relating to method of opening highways etc., is not void because of insufficiency of title; Revenue & Road Comrs. v. State, 163 Ala. 447, 50 So. 972; Katz v. Herrick, 12 Idaho, 22, 86 Pac. 873; Glasscock v. State, 159 Ala. 94, 48 So. 700,—on the sufficiency of the title of an act; Noble State Bank v. Haskell, 22 Okla. 93, 97 Pac. 590, on sufficiency of compliance with constitutional requirement that an act shall embrace but one subject which shall be expressed in the title; Allman v. Mobile, 162 Ala. 232, 50 So. 238, holding plurality of subjects in title and provisions of act is not fatal if by fair intendment they can be included within the general subject embraced by the act; Re Menefee, 22 Okla. 376, 97 Pac. 1014, holding the title of an act providing for the funding of outstanding warrants, the issuance of bonds therefor and the payment for the same did not violate the constitutional requirements; State ex rel. Caldwell v. Hooker, 22 Okla. 717, 98 Pac. 964; State ex rel. Potter v. King County, 49 Wash. 623, 96 Pac. 156; Re Counties Comprising Seventh Judicial Dist. 22 Okla. 439, 98 Pac. 557,—on how constitutional requirement that the subject-matter of an act be expressed in the title is to be construed.

42 L. R. A. 789, DEWEESE v. MUFF, 57 Neb. 17, 73 Am. St. Rep. 488, 77 N. W. 361.

Death as affecting agency.

Cited in Meinhardt v. Newman, 71 Neb. 535, 99 N. W. 261; Barrett v. Towne, 196 Mass. 489, 13 L.R.A.(N.S.) 644, 82 N. E. 698,—on death of principal as terminating contract of agency.

42 L. R. A. 792, JACKSON v. STATE, 57 Neb. 183, 77 N. W. 662.

Right to mandamus.

Cited in Barry v. State, 57 Neb. 470, 77 N. W. 1096, sustaining right to mandamus commissioners to order special election in accordance with proper petition, where refusal arbitrary; State ex rel. Nelson v. Lincoln Medical College, 81 Neb. 542, 17 L.R.A.(N.S.) 934, 116 N. W. 294, holding mandamus would lie to compel a private medical college to graduate a student who had complied with its regulations and taken its required course of study; Vermillion v. State, 78 Neb. 112, 110 N. W. 736, holding petition of relator for writ of mandamus may be dismissed where the relator refuses to produce evidence in support of the allegations of his petitions.

Cited in footnote to Baltimore University v. Colton, 64 L.R.A. 108, which holds that mandamus lies to compel reinstatement of student wrongfully expelled from law school without notice.

Cited in notes in (98 Am. St. Rep. 879) on mandamus as proper remedy against public officers; (125 Am. St. Rep. 519) on duties, performance of which may be compelled by mandamus.

Who are "ministerial" officers.

Cited in State v. Loechner, 65 Neb. 821, 59 L. R. A. 918, 91 N. W. 874, holding member of district school board, ministerial officer liable for misfeasance.

Discretion.

Distinguished in Re Dunn, 85 Neb. 621, 124 N. W. 120, as inapplicable to test the discretion of the court in contempt proceedings.

42 L. R. A. 794, RICKETTS v. SCOTHORN, 57 Neb. 51, 73 Am. St. Rep. 491, 77 N. W. 365.

Gift of note.

Cited in footnotes to Miller v. Western College, 42 L. R. A. 797, which holds note given to college enforceable where money expended or liability incurred in reliance thereon; Royston v. McCulley, 52 L. R. A. 899, which holds gift of note to servant made by indorsing and giving it to her, though retaining it as her agent.

Cited in note (7 L.R.A.(N.S.) 159) on gift to child by promissory note.

Equitable estoppel.

Cited in Miller v. Ahrens, 163 Fed. 877, on the creation of an equitable estoppel.

42 L. R. A. 797, MILLER v. WESTERN COLLEGE, 177 Ill. 280, 69 Am. St. Rep. 242, 52 N. E. 432.

Negotiability of promissory notes.

Cited in Hunter v. Clarke, 184 Ill. 162, 75 Am. St. Rep. 160, 56 N. E. 297, holding negotiability not affected by agreement to pay before maturity; Simon v Pine Bluff Trust Co. 99 Ark. 528, 138 S. W. 986, holding that note which stipulates for payment of sum named to certain person after maker's death is promissory note; McClenathan v. Davis, 149 Ill. App. 657, holding negotiable a note payable a specific time after the death of the life tenant of land in which promisor has a reversionary interest.

Cited in notes (27 L.R.A.(N.S.) 1017, 1018) on negotiability of note payment of which depends on termination of life; (125 Am. St. Rep. 196) on agreements and conditions destroying negotiability.

Uncertainty as to time.

Cited in Halbert v. Turner, 233 Ill. 534, 84 N. E. 704, holding no uncertainty as to when an indebtedness would mature where it was payable during the life time of promisor or security forfeited.

Validity of gifts of promissory notes.

Cited in Keuka College v. Ray, 41 App. Div. 202, 58 N. Y. Supp. 745, sustaining validity of note for college endowment where relied upon.

Cited in footnotes to Ricketts v. Scothorn, 42 L. R. A. 794, which holds void for lack of consideration, note to granddaughter to enable her to live without working, although enforceable if lucrative position given up in reliance thereon; Royston v. McCulley, 52 L. R. A. 899, which holds gift of note to servant made by indorsing and giving it to her, though retaining it as her agent.

Cited in note (27 L.R.A.(N.S.) 310) on check or note as subject of gift by maker.

Death of promisor as affecting promise of a gift.

Cited in Switzer v. Gertenbach, 122 Ill. App. 29, holding a promise to make a gift is not revoked by the death of the promisor where on the strength of such promise obligations have been incurred.

Reliance upon promise as affecting liability thereon.

Cited in Grubbs v. Kelly, 149 Ill. App. 553, enforcing liability upon a subscription to induce the location of a manufacturing concern in city where acted upon.

What constitutes testamentary writing.

Cited in note (89 Am. St. Rep. 494) on what constitutes a testamentary writing.

42 L. R. A. 804, BELL v. FARWELL, 176 Ill. 489, 68 Am. St. Rep. 194, 52 N. E. 346.

Later appeal in 189 Ill. 417, 59 N. E. 955, Affirming 89 Ill. App. 639.

Stockholder's liability.

Cited in Colton v. Mayer, 90 Md. 718, 47 L. R. A. 621, 78 Am. St. Rep. 456, 45 Atl. 874, denying receiver's action to enforce stockholder's liability.

— Enforcement outside state of incorporation.

Approved in Whitman v. National Bank, 176 U. S. 568, 44 L. ed. 592, 20 Sup. Ct. Rep. 477; Pulsifer v. Greene, 96 Me. 446, 52 Atl. 921; Kulp v. Fleming, 65 Ohio St. 340, 87 Am. St. Rep. 611, 62 N. E. 334,— sustaining enforceability of resident stockholder's liability in foreign corporation; Childs v. Cleaves, 95 Me. 509, 50 Atl. 714, holding nonresident stockholder bound by decrees in patent suit in state of incorporation; Howarth v. Lombard, 175 Mass. 580, 49 L. R. A. 307, 56 N. E. 888, holding that stockholder's liability in foreign corporation may be enforced by foreign receiver in his own name; Hale v. Hardon, 37 C. C. A. 244, 95 Fed. 751, upholding extraterritorial enforcement of stockholder's liability; Love v. Pusey & J. Co. 3 Penn. (Del.) 579, 52 Atl. 542, holding stockholder's statutory liability under laws of one state may be enforced in another; Hale v. Hardon, 37 C. C. A. 269, 95 Fed. 776, upholding right of special receiver appointed in another state to maintain suit to enforce stockholder's liability.

Cited in Edwards v. Schillinger, 245 Ill. 242, 33 L.R.A.(N.S.) 910, 137 Am. St. Rep. 308, 91 N. E. 1048, holding court had jurisdiction of suit by trustee in bankruptcy of a foreign corporation on behalf of creditors to recover from resident stockholders a fraudulent dividend and for an unpaid balance due on stock under a liability imposed by the laws of the foreign state; Voorhes v. Mason, 245 Ill. 267, 91 N. E. 1056, holding to same effect; Putman v. Misochi, 189 Mass. 424, 109 Am. St. Rep. 648, 75 N. E. 956, 4 Ann. Cas. 733, holding a nonresident stockholder of a foreign corporation who has paid a judgment against the corporation may enforce contribution from resident stockholders; Lewis v. Clark, 64 C. C. A. 138, 129 Fed. 574, on the enforcement of a liability imposed by the laws of a foreign state.

Cited in footnotes to Crippen, L. & Co. v. Laighton, 46 L. R. A. 467, which denies enforceability of stockholder's liability in other state; Bank of China v. Morse, 56 L. R. A. 139, which holds assessment under English statute in proceeding to wind up corporation will not be enforced here against resident; Blair v. Newbegin, 58 L. R. A. 644, which sustains right to enforce stockholder's liability in other state without making corporation a party; Fidelity Ins. Trust & S. D. Co. v. Mechanics' Sav. Bank, 56 L. R. A. 228, which holds stockholder's liability enforceable in Federal court, or any court where personal service obtainable; Howarth v. Angle, 47 L. R. A. 725, which sustains foreign receiver's right of action against stockholder in foreign corporation; Stoddard v. Lum, 45 L. R. A. 551, which authorizes action in New York by Illinois assignee for creditors of Illinois corporation, to enforce liability of all domestic stockholders; Miller v. Smith, 66 L.R.A. 473, which holds that courts of state of stockholder's residence will not take jurisdiction of suit by corporate creditor on behalf of all to enforce his statutory liability to contribute toward payment of corporate debts in advance of judicial determination of his proportionate liability where

laws of state of incorporation contemplate pro rata contribution to be enforced in equitable proceeding against all stockholders.

Cited in note (33 L.R.A.(N.S.) 898, 901, 902, 904) on right to enforce stockholders' liability outside of state of incorporation.

Distinguished in Finney v. Guy, 106 Wis. 270, 49 L. R. A. 492, 82 N. W. 595, denying right of action in foreign state to enforce statutory liability made enforceable only by equitable proceeding in local courts.

Construction of statutes and constitutions.

Cited in Keystone Lumber Yard v. Yazoo & M. Valley R. Co. 97 Miss. 451, 53 So. 8, to the point that if redress is remedial to individual and public is indirectly affected thereby, statute is not regarded as strictly penal in its nature; Southern R. Co. v. Melton, 133 Ga. 292, 65 S. E. 665; State v. Atlantic Coast Line R. Co. 56 Fla. 650, 32 L.R.A.(N.S.) 664, 47 So. 969,—on the determination of whether a statute is remedial or penal in nature.

— Local construction.

Cited in Miller v. Smith, 26 R. I. 150, 66 L.R.A. 476, 106 Am. St. Rep. 699, 58 Atl. 634, on the local construction of statute as binding on the courts of other states.

Cited in note (86 Am. St. Rep. 268) on construction of provisions adopted from foreign constitutions.

Determination of the public policy of the state.

Cited in Brush v. Carbondale, 229 Ill. 150, 82 N. E. 252, 11 Ann. Cas. 121, holding the question of whether a contract is against public policy is not for the determination of the jury but for the courts; Zeigler v. Illinois Trust & Sav. Bank, 245 Ill. 193, 28 L.R.A.(N.S.) 1118, 91 N. E. 1041, on the determination of the public policy of a state.

Self-executing constitutional provisions.

Cited in note (44 L. ed. U. S. 588) on self-executing nature of constitutional provisions declaring the liability of stockholders.

42 L. R. A. 809, DORSEY v. BRIGHAM, 177 Ill. 250, 69 Am. St. Rep. 228, 52 N. E. 303.

Declaration of intention to become citizen as affecting right to vote.

Cited in Gill v. Shurtleff, 183 Ill. 443, 56 N. E. 164, denying that right to vote follows from mere filing of declaration to become citizen.

Required residence by women voting at school election.

Cited in Collier v. Anlicker, 189 Ill. 44, 59 N. E. 615, holding same requirements as to residence requisite to voting at school elections apply to women as to men.

Wife's residence.

Cited in Reifschneider v. Reifschneider, 241 Ill. 99, 89 N. E. 255, on the residence of the wife as following that of the husband.

"Domicil" and "residence" distinguished.

Cited in Welsh v. Shumway, 232 Ill. 77, 83 N. E. 549, distinguishing between "domicil" and "residence."

Father's naturalization as conferring citizenship on minor child.

Cited in Rexroth v. Schein, 206 Ill. 83, 69 N. E. 240, holding minor becomes citizen upon naturalization of his father.

Proof required where issue is negative in form.

Cited in Prentice v. Crane, 234 Ill. 311, 84 N. E. 916, holding bad that the

issue is negative in form in a case involving a charge of fraud does not relieve the party making the charge from introducing proof.

42 L. R. A. 814, DREW v. GENEVA, 150 Ind. 662, 50 N. E. 871.

Public nuisances.

Cited in note (53 L. R. A. 900) on prescriptive right to maintain public nuisances.

Annotation in 42 L. R. A. 814, referred to particularly in Valparaiso v. Bozarth, 153 Ind. 538, 47 L. R. A. 488, 55 N. E. 439, holding substantially built house in street, public nuisance.

Injunction.

Cited in Franklin County v. Huff, 43 Tex. Civ. App. 359, 95 S. W. 41, holding a county might enjoin the unlawful obstruction of a public highway; Grand Trunk Western R. Co. v. South Bend, 174 Ind. 220, 36 L.R.A.(N.S.) 857, 89 N. E. 885, to the point that allegation, in action to enjoin city from interfering with street railway laying second track in street, that street was 82 feet wide, included sidewalks.

Cited in note (44 L. R. A. 565) on injunctions by municipalities against nuisances by railroads and electrical companies.

Filing of exceptions.

Cited in Merrill v. State, 156 Ind. 104, 59 N. E. 322, holding that bill of exceptions must be filed after signature and approval by court; Williams v. State, 170 Ind. 644, 85 N. E. 350, holding a bill of exceptions not properly a part of the record where not signed by the judge.

Right of municipality to prohibit construction of sidewalk by abutter.

Cited in note (13 L.R.A.(N.S.) 1113) on right of municipality to prohibit construction of sidewalk by abutting owner.

Adequate remedy at law as bar to equitable relief.

Cited in Robbins v. Reed, 174 Ind. 293, 91 N. E. 921, holding that equity will not interfere to appoint receiver where plaintiff has legal remedy, as adequate, effective and efficient as receivership.

42 L. R. A. 826, STATE TAX COMRS. v. HOLLIDAY, 150 Ind. 216, 49 N. E. 14.

Power of taxation.

Cited in Hart v. Smith, 159 Ind. 184, 58 L. R. A. 951, 95 Am. St. Rep. 280, 64 N. E. 661, holding good will of newspaper business not subject to taxation; Lowe v. White County, 156 Ind. 165, 59 N. E. 466, sustaining provision for payment for road improvement by taxing district; Hart v. Smith, 159 Ind. 185, 58 L. R. A. 955, 95 Am. St. Rep. 280, 64 N. E. 661, holding invalid assessment by state board subject to collateral attack; Adams v. Shelbyville, 154 Ind. 543, 49 L. R. A. 824, 77 Am. St. Rep. 484, 57 N. E. 114, dissenting opinion by Baker, J., sustaining provision impliedly authorizing and requiring assessment according to benefits; State *ex rel.* Lewis v. Smith, 158 Ind. 546, 63 L. R. A. 119, 63 N. E. 25, holding constitutional requirement of equality and uniformity of taxation not infringed by statute permitting deduction of mortgage indebtedness from assessed value; Smith v. Smith, 159 Ind. 390, 65 N. E. 183, denying, as premature, suit to enjoin auditor from entering upon tax duplicate an increased assessment; Kersey v. Terre Haute, 161 Ind. 474, 68 N. E. 1027, holding that under legislative power to tax there need not be such an exact exclusion and inclusion of subjects of taxation as to fully meet judicial approval; Stephens v. Smith, 30 Ind. App. 126, 65 N. E. 546, holding assessment levied upon citizen in township of which he is not a resident, illegal and void; Baltimore v. Johnson, 96 Md. 740,

61 L. R. A. 571, 54 Atl. 646, holding seat in unincorporated stock exchange not taxable; Johnson County v. Johnson, 173 Ind. 84, 89 N. E. 590, holding that selection of subjects for taxation is legislative question, and state board of tax commissioners does not constitute court to determine such question; Cook v. Miller, 47 Ind. App. 458, 94 N. E. 783, holding that wife was not liable for taxes upon money advanced to pay for land, which husband took in his own name, without her knowledge, where taxes on land was paid; Aachen & M. F. Ins. Co. v. Omaha, 72 Neb. 531, 101 N. W. 3, holding under a constitutional provision prohibiting the legislature from taxing municipal and other corporations for corporate purposes, a tax on the premiums of a foreign insurance company doing business in county, town or city is invalid.

Cited in footnotes to *Re* Page, 47 L. R. A. 68, which holds void, tax on insurance company's contract made with unauthorized companies, based on premiums paid; Cooper v. Board of Review, 64 L. R. A. 72, holding claim on life policy assessable, although proof of death not made and insurer has sixty days thereafter in which to pay.

Distinguished in Harn v. Woodard, 151 Ind. 137, 50 N. E. 33, sustaining taxation of building and loan association stock upon which no loan made.

Self-operation of Constitution.

Approved in Hart v. Smith, 159 Ind. 184, 58 L. R. A. 951, 95 Am. St. Rep. 280, 64 N. E. 661, holding constitutional requirement to tax not self-executing.

Cited in footnote to State v. Kyle, 56 L. R. A. 115, which holds self-operating, constitutional amendment for criminal prosecution by indictment or information only.

Construction of enactments.

Cited in Columbia Finance & T. Co. v. Tharp, 24 Ind. App. 84, 56 N. E. 265, and State v. Sopher, 157 Ind. 370, 61 N. E. 785, as to what facts show legislative intent; Edward C. Jones Co. v. Perry, 26 Ind. App. 563, 57 N. E. 583 (dissenting opinion), as to construing particular provision of statute in connection with whole statute; State *ex rel.* Geake v. Fox, 158 Ind. 132, 56 L. R. A. 896, 63 N. E. 19, denying interference with local self-government as inimical to spirit and fundamental principles of government; Thorn v. Silver, 174 Ind. 516, 89 N. E. 943, holding that in construing doubtful statute, courts will consider kindred statutes, history of the legislation, conditions, mischief to be remedied, and object to be attained; Pennsylvania Co. v. Mosher, 47 Ind. App. 562, 94 N. E. 1033, holding that in construing statute intent of legislature should be kept constantly in view; Campbell v. State, 171 Ind. 707, 87 N. E. 212, holding statute would be construed with reference to statutes having application to the same subject-matter where necessary to its effectiveness; Bailey v. State, 163 Ind. 167, 71 N. E. 655, on courts as looking to the history of the evils sought to be remedied in the construction of a statute; Spaulding v. Mott, 167 Ind. 63, 76 N. E. 620; New Albany v. Stier, 34 Ind. App. 620, 73 N. E. 275; Abbott v. Inman, 35 Ind. App. 266, 72 N. E. 284; Morin v. Holliday, 39 Ind. App. 211, 77 N. E. 861; Grand Trunk W. R. Co. v. State, 40 Ind. App. 698, 82 N. E. 1017; Jones v. Leeds, 41 Ind. App. 169, 83 N. E. 526; State v. Lowry, 166 Ind. 398, 4 L.R.A.(N.S.) 538, 77 N. E. 728, 9 Ann. Cas. 350 (dissenting opinion),—on what court will look to in the construction of a statute.

What is county business.

Approved in Newton County v. State, 161 Ind. 620, 69 N. E. 442, holding building of county courthouse is county business.

Injunction against tax.

Cited in Gray v. Foster, 46 Ind. App. 154, 92 N. E. 7, holding that where

tax commissioners make unlawful increase in assessment, and orders auditor to put such taxes on duplicates and treasurer to collect them, taxpayer may enjoin enforcement of such order.

42 L. R. A. 842, MARYLAND STEEL CO. v. MARNEY, 91 Md. 360, 46 Atl. 1077.
Later appeal in 91 Md. 365, 46 Atl. 1077.

Proximate cause.

Cited in Maryland Clay Co. v. Goodnow, 95 Md. 342, 51 Atl. 292 (dissenting opinion by Pearce, J.), majority holding absence of brakes is proximate cause of injury from collision; Smith v. Spokane Falls & N. R. Co. 52 Wash. 354, 100 Pac. 747, holding the negligent building of a coal chute too close to the track was the proximate cause of an injury to an employee sticking his head out of the side door of a moving freight car to discover the cause of a sudden noise.

Voluntarily incurring danger to aid another, as negligence.

Cited in Chicago Terminal Transfer R. Co. v. Kotoski, 101 Ill. App. 306, holding delaying escape from danger in order to aid another not negligence *per se;* Corbin v. Philadelphia, 195 Pa. 472, 49 L. R. A. 724, 78 Am. St. Rep. 825, 45 Atl. 1070, holding going into trench filled with deadly gas to rescue another not negligence *per se* relieving city maintaining trench from liability; Saylor v. Parsons, 122 Iowa, 681, 64 L. R. A. 544, 101 Am. St. Rep. 283, 98 N. W. 500, holding question whether one attempting to rescue another from danger is negligent, for jury; Dixon v. New York, N. H. & H. R. Co. 207 Mass. 131, 92 N. E. 1030; Bracey v. Northwestern Improv. Co. 41 Mont. 346, 137 Am. St. Rep. 738, 109 Pac. 706,—holding that one who voluntarily exposes himself to danger to save another's life, may recover from person by whose negligence peril was brought about, unless such exposure was act of rashness; Harding v. Ostrander R. & Timber Co. 64 Wash. 229, 116 Pac. 635, holding that timber faller, injured by falling tree, is not guilty of contributory negligence, where by reason of deafness of assistant of which he did not know, he was compelled to remain in place of danger to give second warning to assistant; Norris v. Atlantic Coast Line R. Co. 152 N. C. 514, 27 L.R.A.(N.S.) 1074, 67 S. E. 1017, holding the act of a person in trying to save a friend from injury from a rapidly moving engine of which they had no notice was not contributory negligence as a matter of law.

Cited in note (49 L. R. A. 716, 718) on voluntarily incurring danger to save life of another person as contributory negligence.

Master's liability for act of fellow servant.

Cited in McCall's Ferry Co. v. Price, 108 Md. 103, 69 Atl. 832, on what must be shown to render a master liable for injuries to servant through the act of fellow servant.

42 L. R. A. 849, STATE USE OF WILSON v. FOWLER, 88 Md. 601, 71 Am. St. Rep. 452, 42 Atl. 201.
Later appeal in 94 Md. 505, 86 Am. St. Rep. 444, 51 Atl. 299.

Levy of execution.

Cited in Holton Nat. Bank v. Duff, 77 Kan. 251, 16 L.R.A.(N.S.) 1051, 127 Am. St. Rep. 417, 94 Pac. 260, 15 Ann. Cas. 882, holding the reading of the execution to the wife of the owner of a growing crop and the posting of a notice that it was subject to levy and taken on execution constituted a sufficient levy.

Cited in footnote to Battle Creek Valley Bank v. First Nat. Bank, 56 L. R. A. 124, which holds physical seizure or dispossession essential to levy of execution on chattels.

Cited in note (16 L.R.A.(N.S.) 1048) on mode of levying on growing crops.

Liability on bond for wrongful acts of officers.

Cited in Vansant v. State, 96 Md. 131, 53 Atl. 711, holding surety on bond of clerk of court liable for interest received by his principal on public moneys deposited by him; Lee v. Charmley, 20 N. D. 575, 33 L.R.A.(N.S.) 278, 129 N. W. 448, holding that sureties on official bond of deputy sheriff are liable for any unlawful or oppressive act done by such officer under color or by virtue of office; State use of Williams v. Dayton, 101 Md. 599, 61 Atl. 624, holding the sureties on the bond of a constable are not liable for an assault committed by the officer while in serving a writ on one not a party thereto.

Cited in footnotes to Feller v. Gates, 56 L. R. A. 630, which denies liability on bond for return of money taken by constable from execution defendant to stay execution pending appeal; State *ex rel.* McLauren v. McDaniel, 50 L. R. A. 118, which holds sureties on mayor's bond liable for his causing arrest without warrant, and trying and sentencing for offense not punishable by city ordinance.

Cited in notes (78 Am. St. Rep. 420, 422) on sureties on official bond escaping liability on ground that principal was a trespasser; (91 Am. St. Rep. 512, 541) on acts for which sureties on official bonds are liable.

Distinguished in State use of German v. Timmons, 90 Md. 12, 78 Am. St. Rep. 417, 44 Atl. 1003, denying liability of sureties on constable's official bond for seizure under void distress warrant.

42 L. R. A. 852, HANCOCK v. STATE, 62 N. J. L. 289, 41 Atl. 846.

Corporate taxation.

Cited in Myers v. Campbell, 64 N. J. L. 188, 44 Atl. 863, sustaining debtor's right to deduction of amount of mortgage debt due national bank from assessed value of realty; Cooper Hospital v. Camden, 68 N. J. L. 695, 54 Atl. 419, holding exemption from taxation in corporate charter may become irrepealable, if granted for valid consideration, and accepted and acted on by recipient; Hanover Twp. v. Camp Meeting Asso. 76 N. J. L. 67, 68 Atl. 753, holding a provision of a charter to an association exempting it from taxation was subject to legislative repeal; New Jersey v. Anderson, 203 U. S. 494, 51 L. ed. 288, 27 Sup. Ct. Rep. 137, on charter exemption from taxation as being subject to legislative repeal; New Jersey v. Anderson, 203 U. S. 490, 51 L. ed. 287, 288, 27 Sup. Ct. Rep. 137, holding the claim of the state for an annual license fee on the outstanding stock of a corporation was a tax; Re Cosmopolitan Power Co. 70 C. C. A. 388, 137 Fed. 860, on whether the payment of a license fee or franchise tax was a tax on the franchise or on corporate property.

Cited in note (60 L. R. A. 72, 82, 85, 109) on corporate taxation in United States as affected by contract clause in Federal Constitution.

Res judicata.

Cited in Kansas City Exposition Driving Park v. Kansas City, 174 Mo. 442, 74 S. W. 979, holding decree exempting property from taxation *res judicata* in suit to recover similar taxes for subsequent year; New Jersey Junction R. Co. v. Jersey City, 70 N. J. L. 106, 56 Atl. 121, on the conclusiveness of the judgment record in a former proceedings relating to the same matter between the same parties.

L. R. A. CASES AS AUTHORITIES.

CASES IN 43 L. R. A.

43 L. R. A. 33, STATE v. BATES, 14 Utah, 293, 47 Pac. 78.

Number of jurors essential to find indictment or render verdict.

Cited in State v. Carrington, 15 Utah, 483, 50 Pac. 526, upholding indictment by grand jury of seven, for murder committed prior to adoption of Constitution authorizing such grand jury; State v. Caldwell, 50 La. Ann. 670, 41 L. R. A. 719, 69 Am. St. Rep. 465, 23 So. 869, upholding conviction for burglary, indictment for which found by grand jury of twelve and conviction found by less than twelve of petit jury, though offense committed prior to new Constitution.

Cited in footnote to First Nat. Bank v. Foster, 54 L. R. A. 549, which holds unconstitutional, statute authorizing verdict by three fourths of jurors.

Cited in note (43 L. R. A. 33) on number and agreement of jurors necessary to constitute valid verdict.

Annotation in 43 L. R. A. 33, referred to with approval in First Nat. Bank v. Foster, 9 Wyo. 164, 54 L. R. A. 551, 61 Pac. 466, holding verdict by less than entire jury void though jury of less than twelve authorized by Wyoming Constitution; State v. Simons, 61 Kan. 757, 60 Pac. 1052, holding assent of party charged with felony to trial by eleven jurors, ineffectual to bar right to retrial by jury of twelve.

Overruled in effect in Thompson v. Utah, 170 U. S. 353, 42 L. ed. 1067, 18 Sup. Ct. Rep. 620, Reversing 15 Utah, 489, 50 Pac. 409, holding constitutional provision for trial by eight jurors *ex post facto* as to crimes committed prior to statehood.

Cited as overruled in State v. Hart, 19 Utah, 441, 57 Pac. 415, compelling by mandamus, impaneling of jury of twelve by district court to try felony committed prior to admission of territory to statehood; State v. Bates, 22 Utah, 68, 83 Am. St. Rep. 768, 61 Pac. 905, holding former conviction before jury of eight, not jeopardy preventing retrial before jury of twelve.

Statute authorizing prosecution by information as ex post facto.

Cited in footnote to State v. Kyle, 56 L. R. A. 115, which sustains statute authorizing prosecution by information of crimes already committed.

Misconduct of juror.

Cited in footnote to State v. Ned, 54 L. R. A. 933, which denies validity of conviction where one of jurors drunk during trial.

Effect of admission of state upon pending criminal actions.

Cited in Higgins v. Brown, 20 Okla. 392, 1 Okla. Crim. Rep. 68, 94 Pac. 703, holding that where the defendant had been indicted by a grand jury of the territory, the district court of the state after its admission, could try the case.

43 L. R. A. 81, KAYSVILLE v. ELLISON, 18 Utah, 163, 72 Am. St. Rep. 772, 55 Pac. 386.

Validity of municipal tax.

Cited in footnote to Atchison, T. & S. F. R. Co. v. Clark, 47 L. R. A. 77, which holds void, fire tax to which railroad property subject without being entitled to any of benefits.

Cited in note (27 L.R.A.(N.S.) 696) on municipal taxation of rural lands.

Disapproved in Atherton v. Essex Junction, 83 Vt. 227, 27 L.R.A.(N.S.) 701, 74 Atl. 1118, Ann. Cas. 1912 A, 339, holding that farming lands within a municipality can be taxed for general city or village purposes, though it derives no benefit from the tax.

Overruled in Kimball v. Grantsville City, 19 Utah, 398, 45 L. R. A. 637, footnote p. 628, 57 Pac. 1, upholding municipal tax on rural land embraced within city limits, regardless of benefits conferred.

43 L. R. A. 84, HAVER v. CENTRAL R. CO. 62 N. J. L. 282, 72 Am. St. Rep. 648, 41 Atl. 916.

Judgment for defendant reversed on second appeal in 64 N. J. L. 315, 45 Atl. 593.

Master's liability for assault by employee.

Cited in Taillon v. Mears, 29 Mont. 175, 74 Pac. 421, 1 Ann. Cas. 613, holding that the carrier was liable for the negligent acts of its servant, though without the scope of his employment; Houston & T. C. R. Co. v. Batchler, 37 Tex. Civ. App. 122, 83 S. W. 902, on the duties and liabilities of a carrier of passengers.

Cited in footnote to McDermott v. American Brewing Co. 52 L. R. A. 684, which denies master's liability for assault by servant to protect his own interests.

Cited in notes (4 L.R.A.(N.S.) 499) on liability for malicious act of servant when master owes special duty to party injured; (40 L.R.A.(N.S.) 1028, 1052, 1058, 1059, 1073, 1077) on liability of carrier for wilful torts of servants to passengers; (88 Am. St. Rep. 797) on liability of principal for unauthorized acts of agent.

— Assault upon passenger.

Cited in Birmingham R. & Electric Co. v. Baird, 130 Ala. 349, 54 L. R. A. 755, footnote p. 752, 89 Am. St. Rep. 43, 30 So. 456; Johnson v. Detroit, Y. & A. A. R. Co. 130 Mich. 455, 90 N. W. 274, holding carrier liable for conductor's assault on passenger, though not acting within scope of employment; St. Louis S. W. R. Co. v. Johnson, 29 Tex. Civ. App. 185, 68 S. W. 58, holding carrier liable for assault by conductor on intoxicated and noisy passenger; West Jersey & S. R. Co. v. Welsh, 62 N. J. L. 662, 72 Am. St. Rep. 659, 42 Atl. 736, holding carrier liable for excessive force used by brakeman in ejection of trespasser from freight train; Greb v. Pennsylvania R. Co. 41 Pa. Super. Ct. 68, holding that passenger cannot recover for assault by conductor committed after leaving train and while walking on depot platform; Jackson v. Old Colony Street R. Co. 206 Mass. 486, 30 L.R.A.(N.S.) 1049, 92 N. E. 725, 19 Ann. Cas. 615, holding that railroad is liable to passenger for damages caused by assault by conductor, even

though passenger used insulting language towards conductor; St. Louis & S. F. R. Co. v. Kilpatrick, 67 Ark. 55, 54 S. W. 971, holding that passenger who was wrongfully ejected from train by brakeman may recover whether brakeman was acting within scope of authority or not; Bleecker v. Colorado & S. R. Co. 50 Colo. 143, 33 L.R.A.(N.S.) 388, 114 Pac. 481, holding that passenger may recover compensatory damages caused by abusive and insulting language of conductor towards him; Hayne v. Union Street R. Co. 189 Mass. 552, 3 L.R.A.(N.S.) 607, 109 Am. St. Rep. 655, 76 N. E. 219, holding that a street railway company was liable for the acts of a motorman upon one car, in injuring a passenger upon another car; McDonald v. Central R. Co. 72 N. J. L. 283, 2 L.R.A.(N.S.) 508, 111 Am. St. Rep. 672, 62 Atl. 405, holding that the carrier is liable for the wrongful ejection of a passenger; St. Louis, I. M. & S. R. Co. v. Dowgiallo, 82 Ark. 293, 101 S. W. 412, holding railway company liable for unprovoked assault upon a passenger by a brakeman on a train.

Cited in footnote to McNamara v. St. Louis Transit Co. 66 L.R.A. 486, which holds exemplary damages against street car company justified by conductor's intentional and unjustified kicking of boy attempting to board car.

Burden of showing accidental injury was unavoidable.

Cited in footnote to Kohner v. Capital Traction Co. 62 L. R. A. 875, which requires carrier, when peaceable passenger on street car is unlawfully assaulted by conductor, to show that injury was result of unavoidable accident.

43 L. R. A. 86, SCHMALZ v. WOOLLEY, 57 N. J. Eq. 303, 73 Am. St. Rep. 637, 41 Atl. 939.

Union trademarks.

Cited in Com. v. Morton, 23 Pa. Co. Ct. 388, 9 Pa. Dist. R. 133, upholding indictment under statute providing penalty for counterfeiting union label; People v. Dantuma, 252 Ill. 566, 39 L.R.A.(N.S.) 1190, 96 N. E. 1087, Ann. Cas. 1912D, 370, holding that legislature may provide for registration of union label and protect its use.

Cited in notes (25 L.R.A.(N.S.) 474) on validity of penal statute to protect trademarks; (28 L.R.A.(N.S.) 459) on right of members to protection in use of organization name which their efforts have made valuable; (39 L.R.A.(N.S.) 1192, 1193, 1195) on law as to union labels; (25 Eng. Rul. Cas. 239) on who can have a trademark.

Title of statute.

Cited in American Surety Co. v. Great White Spirit Co. 58 N. J. Eq. 529, 43 Atl. 579, holding erroneous statement of date of approval of act amended in title of amendatory act does not invalidate latter where object properly expressed; Van Vane v. Centre Twp. 67 N. J. L. 590, 52 Atl. 359, holding repeal of road acts, save that of 1859 and its supplements, does not affect act of 1860 supplementary thereto though expressed to be supplementary to repealed act of 1846, to which act of 1859 is truly supplementary; Hickman v. State, 62 N. J. L. 503, 41 Atl. 942, holding foreign corporations properly regulated under statute in "supplement to act entitled, 'Act to Provide for Regulation of Insurance Companies.'"

Cited in notes (79 Am. St. Rep. 482) as to when title of statute embraces only one subject and what may be included thereunder; (86 Am. St. Rep. 269) on sufficiency of title of code amendment or revision.

43 L. R. A. 90, STATE *ex rel.* PLIMMER v. POSTON, 59 Ohio St. 122, 52 N. E. 196.

Uniform operation of general law.

Cited in State v. Buckley, 17 Ohio C. C. 94, 9 Ohio C. D. 346, holding that election law must have uniform operation throughout the state.

Rights of political parties according to percentage of votes.

Cited in State v. Felton, 77 Ohio St. 590, 84 N. W. 85, 12 Ann. Cas. 65, sustaining primary election law which applies to political parties only, which cast ten per cent of the vote at the last preceding general election, as not depriving one of the equal protection of the law.

43 L. R. A. 94, STATE v. MARTIN, 59 Ohio St. 212, 69 Am. St. Rep. 762, 52 N. E. 188.

Enhancement of penalty against habitual criminals.

Cited in note (24 L.R.A.(N.S.) 435) on enhancing penalty for crimes committed by habitual criminals or prior offenders.

43 L. R. A. 95, ARMINGTON v. PALMER, 21 R. I. 109, 79 Am. St. Rep. 786, 42 Atl. 308.

Injunction against use of corporate name.

Cited in Aiello v. Montecalfo, 21 R. I. 498, 44 Atl. 931, sustaining bill by private individual to enjoin fraudulent use of corporate name; Philadelphia Trust, S. D. & Ins. Co. v. Philadelphia Trust Co. 123 Fed. 542, restraining use of corporate name adopted with intent of unfairly taking advantage of the credit, reputation, and business standing of another corporation; Nesne v. Sundet, 93 Minn. 301, 106 Am. St. Rep. 439, 101 N. W. 490, 3 Ann. Cas. 30, holding that a corporation would be enjoined from using a trade name lawfully adopted prior thereto by a copartnership in the same line of business; Tuckahoe Mineral Springs Co. v. Tuckahoe Lithia Water Co. 18 Pa. Dist. R. 987, holding that a corporation would be enjoined from using the same name as another corporation previously incorporated, though it was not in business when the former was incorporated, if it since resumed business; Eastern Outfitting Co. v. Manheim, 59 Wash. 433, 35 L.R.A.(N.S.) 256, 110 Pac. 23, holding that name of corporation is not its trademark, as latter refers to thing sold, and trade name embraces both thing and individuality of seller.

Cited in footnotes to International Committee, Y. W. C. Asso. v. Young Women's Christian Asso. 56 L. R. A. 888, which sustains right of local Y. W. C. A. to enjoin deceptive use of similar name by organization subsequently incorporated; Peck Bros. & Co. v. Peck Bros. Co. 62 L. R. A. 81, which sustains injunction in favor of purchaser of name and good will of corporation against use of similar name by persons connected with branch of old corporation.

Cited in notes (4 L.R.A.(N.S.) 962) on necessity of fraudulent intent to justify injunction against unfair competition; (15 L.R.A.(N.S.) 631) on relief against infringement of trade name not used in connection with manufactured article.

Conversion of good will.

Cited in Millspaugh Laundry v. First Nat. Bank, 120 Iowa, 6, 94 N. W. 262, holding continuance of business by purchaser of plant on mortgage foreclosure not a conversion of the good will which was not sold.

Effect of sale of entire assets of corporation.

Cited in note (103 Am. St. Rep. 570) on effect of sale of entire assets of corporation.

43 L. R. A. 101, MAULDIN v. GREENVILLE, 53 S. C. 285, 69 Am. St. Rep. 855, 31 S. E. 252.

Compensation of abutting owner for change of grade.

Approved in Mauldin v. Greenville, 64 S. C. 455, 42 S. E. 202, holding abutting owner entitled to compensation for damages to his property by altering the street grade.

43 L. R. A. 105, WHEELOCK v. JACOBS, 70 Vt. 162, 67 Am. St. Rep. 659, 40 Atl. 41.

Percolating waters.

Cited in Forbell v. New York, 47 App. Div. 376, 61 N. Y. Supp. 1005, holding municipality liable for damage to crops by drawing off percolating waters; Miller v. Black Rock Springs Improv. Co. 99 Va. 756, 86 Am. St. Rep. 924, 40 S. E. 27, upholding right of landowner to dig ditch to intercept percolating waters; Huber v. Merkel, 117 Wis. 360, 62 L. R. A. 592, footnote p. 589, 98 Am. St. Rep. 933, 94 N. W. 354, holding water supply reaching well by percolation through inclined stratum of porous rock not subterranean stream; Western Maryland R. Co. v. Martin, 110 Md. 565, 73 Atl. 267, holding that mere percolating waters under lands do not affect the owners with the same rights and duties as water running in well defined streams; Pence v. Carney, 58 W. Va. 300, 6 L.R.A. (N.S.) 269, 112 Am. St. Rep. 963, 52 S. E. 702, holding that all waters in the earth not shown to be in streams or bodies are percolating waters, and the presumption is that all waters are percolating.

Cited in footnotes to Stillwater Water Co. v. Farmer, 60 L.R.A. 875, which sustains right to injunction against landowner draining, collecting, and diverting percolating waters solely to waste them; Huber v. Merkel, 62 L.R.A. 589, which sustain's land owner's right as against neighbor to sink wells and use percolating water; Gagnon v. French Lick Springs Hotel Co. 68 L.R.A. 176, which sustains right to interlocutory injunction against malicious pumping by owners of surface of mineral water from large subterranean reservoir coming to surface in valuable springs on neighboring property.

Cited in notes (17 L.R.A.(N.S.) 648) on effect of grant upon rights in percolating water; (67 Am. St. Rep. 671) on what are percolating waters; (99 Am. St. Rep. 66, 67) on landlord's right to percolating waters.

Appropriation of water.

Cited in Dickey v. Maddux, 48 Wash. 414, 93 Pac. 1090, on the acquisition of prescriptive rights in underground waters.

Cited in footnotes to Vineland Irrig. Dist. v. Azusa Irrig. Co. 46 L. R. A. 820, which holds subsurface flow of river through gravelly bed subject to legal appropriation subordinate to rights of prior appropriator of surface flow; Brosnan v. Harris, 54 L. R. A. 628, which sustains right under statute to appropriate water of spring without natural outlet.

Cited in note (93 Am. St. Rep. 713) on prescriptive title to water.

Draining or diminishing source of supply.

Cited in Clarke County v. Mississippi Lumber Co. 80 Miss. 544, 31 So. 905, holding one who in good faith sinks well to procure water for business purposes not liable because the supply of other wells is thereby diminished.

Cited in footnote to Smith v. Brooklyn, 45 L. R. A. 664, which holds city liable for draining underground sources of surface stream by pumping water for city reservoir.

Motive of act as test of liability.

Cited in note (62 L. R. A. 688) on effect of bad motive to make actionable what would otherwise not be.

43 L. R. A. 108, PLOOF v. BURLINGTON TRACTION CO. 70 Vt. 509, 41 Atl. 1017.

Statutory action by next of kin for negligent death.

Cited in Tucker v. Draper, 62 Neb. 76, 54 L. R. A. 327, footnote p. 321, 86 N. W. 917, holding contributory negligence of father for death of child bars his action as next of kin.

Imputation of parent's negligence to child.

Cited in Feldman v. Detroit United R. Co. 162 Mich. 490, 127 N. W. 687, holding that in action brought under "death act," for death of child, if parent is real beneficiary, his contributory negligence will be imputed to infant; Bottum v. Hawks, 84 Vt. 386, 35 L.R.A.(N.S.) 448, 79 Atl. 858, Ann. Cas. 1913A, 1025, holding that in action for negligence resulting in death of child, declaration need not negative contributory negligence of parents, where if any existed, it was remote and not proximate; Scherer v. Schlaberg, 18 N. D. 431, 24 L.R.A.(N.S.) 526, 122 N. W. 1000, holding that the contributory negligence of the father was a defense to an action for death of his child by the wrongful act of the defendant; Richmond, F. & P. R. Co. v. Martin, 102 Va. 206, 45 S. E. 894, holding that the father cannot recover for the death of his child by the wrongful act of another, where the father had been negligent, which negligence contributed to the death of the child.

Cited in footnotes to Ives v. Welden, 54 L. R. A. 854, which holds child injured by explosion of unlabeled gasoline jug not affected by father's negligence; Nashville R. Co. v. Howard, 64 L. R. A. 437, which holds mother's negligence, in permitting four-year-old child to sit alone on seat of open street car from which he is thrown by jolting due to defect in track, not imputable to him; Mattson v. Minnesota & N. W. R. Co. 70 L.R.A. 503, which holds parent's or guardian's negligence not imputable to child *non sui juris* in action by it for injuries to his person.

Cited in notes (18 L.R.A.(N.S.) 321) on contributory negligence of parent or custodian as bar to action by child for negligent injuries; (18 L.R.A.(N.S.) 330) 331) on contributory negligence of parent as bar to action by parent or administrator for death of child non sui juris; (110 Am. St. Rep. 283) on imputed negligence.

Proximate cause of injury.

Cited in footnote to Rider v. Syracuse Rapid Transit R. Co. 58 L. R. A. 126, which holds proximate cause that which in natural sequence unbroken by new cause produced event.

43 L. R. A. 114, BEACH v. BROWN, 20 Wash. 266, 72 Am. St. Rep. 98, 55 Pac. 46.

Right of wife to maintain action for alienation of affections.

Cited in King v. Hanson, 13 N. D. 97, 99 N. W. 1085; Nolin v. Pearson, 191 Mass. 290, 4 L.R.A.(N.S.) 649, 114 Am. St. Rep. 605, 77 N. E. 890,—holding that under the Women's Enabling Acts, a married woman may maintain an action in her own name against a third person for the alienation of the affections of the husband.

Divorce as affecting right of action for alienation of affections.

Cited in Lee v. Hammond, 114 Wis. 555, 90 N. W. 1073, holding evidence of

divorce admissible in action for criminal conversation occurring after acts forming ground of divorce; Keen v. Keen, 49 Or. 365, 10 L.R.A.(N.S.) 505, 90 Pac. 147, 14 Ann. Cas. 45, holding that a divorce was no bar to an action by the wife against a third person for the alienation of her husband's affections; Luick v. Arends, 21 N. D. 629, 132 N. W. 353, holding that divorce granted wife upon ground of cruelty is not bar to action for alienation of wife's affections at time prior to divorce.

Distinguished in Hamilton v. McNeill, 150 Iowa, 487, 129 N. W. 480, Ann. Cas. 1912D, 604, holding that one against whom decree of divorce has been entered on ground of cruelty, is concluded by judgment from maintaining action for alienation of affections.

Testimony of wife as to declarations made by the husband.

Cited in Sexton v. Sexton, 129 Iowa, 497, 2 L.R.A.(N.S.) 712, 105 N. W. 314, holding that the wife could testify to declarations made by the husband to show his affection for her, and its loss, in an action for alienation of affections of the husband, though the statute provides that the wife cannot be examined as to any communications made to her by the husband while married.

Cited in note (2 L.R.A.(N.S.) 708) as to whether communications between husband and wife tending to show affection, or the want of it, are privileged.

Presumptions from marriage ceremony.

Cited in note (16 L.R.A.(N.S.) 100) on presumptions flowing from marriage ceremony.

43 L. R. A. 117, GREEN v. ASHLAND WATER CO. 101 Wis. 258, 70 Am. St. Rep. 911, 77 N. W. 722.

Subsequent precautions as evidence of prior negligence.

Cited in Georgia Southern & F. R. Co. v. Cartledge, 116 Ga. 167, 59 L. R. A. 120, footnote p. 118, 42 S. E. 405, holding incompetent, evidence of additional precautions after injury; Southern P. Co. v. Hall, 41 C. C. A. 57, 100 Fed. 768, holding subsequent removal of waterbox by which injury caused, not evidence of negligence in prior maintenance; Baran v. Reading Iron Co. 202 Pa. 286, 51 Atl. 979, holding evidence of different support of new boiler and precautionary instructions in regard to use inadmissible as evidence of negligence in regard to management of exploded boiler.

Municipal water supply.

Cited in note (91 L. R. A. 87–89, 95) on establishment and regulation of municipal water supply.

Expert testimony.

Cited in Benson v. Superior Mfg. Co. 147 Wis. 27, 132 N. W. 633, holding that opinions not based on any hypothetical statement of facts, but directed to and passing upon every question in issue, are not admissible; Brotherhood of Painters, D. & P. v. Barton, 46 Ind. App. 179, 92 N. E. 64 (dissenting opinion), on right of physician to testify as to cause of death from personal examination or knowledge; Olwell v. Skobes, 126 Wis. 323, 105 N. W. 777, holding expert testimony that the business of chipping cast iron with a cold chisel and hammer, is a very dangerous business, is inadmissible, as calling for expert opinion in a matter not involving science, art or skill; Lyon v. Grand Rapids, 121 Wis. 621, 99 N. W. 311, as to the admissibility of expert testimony.

Liability of water companies.

Cited in note (81 Am. St. Rep. 483, 484) on liability of water companies.

Liability for unforeseeable injury.

Cited in Marcott v. Minneapolis, St. P. & S. Ste. M. R. Co. 147 Wis. 219, 132 N. W. 37, holding that railroad is not liable to passenger alleged to have contracted pneumonia in car by reason of cold and damp condition of atmosphere, if it had no reason to anticipate such injury.

43 L. R. A. 125, YORK v. STEWARD, 21 Mont. 515, 55 Pac. 29.

Parol evidence to affect written instrument.

Cited in Hogan v. Kelly, 29 Mont. 488, 75 Pac. 81, holding that parol evidence to show that parties did not include certain buildings in a bill of sale, was inadmissible; Western Loan & Sav. Co. v. Smith, 42 Mont. 450, 113 Pac. 475, holding that parol evidence, tendency of which was to vary terms of written contract, was inadmissible, where there was no issue of fraud or mistake nor any imperfection in writing.

Implied warranty of fitness for use of leased premises.

Cited in Landt v. Schneider, 31 Mont. 18, 77 Pac. 307, holding that in the absence of statute or agreement, there is no implied agreement that leased premises are suitable for the purposes for which they are demised, or that the lessor will keep the premises in repair.

Specific allegation of ultimate facts constituting fraud.

Approved in Butte Hardware Co. v. Knox, 28 Mont. 119, 72 Pac. 301, holding in action to set aside contract for fraud, the ultimate facts constituting the fraud must be specifically alleged.

Landlord's duty to discover latent defects.

Cited in footnote to Franklin v. Tracey, 63 L. R. A. 649, which holds owner not required to exercise care to discover latent defects for benefit of intending lessees.

Eviction as defense to rent.

Cited in Osmers v. Furey, 32 Mont. 590, 81 Pac. 345, holding that an eviction by the landlord is a complete defense to an action for rent.

43 L. R. A. 128, JACKSON v. McINNIS, 33 Or. 529, 72 Am. St. Rep. 755, 54 Pac. 884, 55 Pac. 535.

Necessity of presentment and demand to charge indorser.

Cited in Robinson v. Holmes, 57 Or. 7, 109 Pac. 754, to the point that implied contract of indorsement is that, if maker does not pay at maturity indorser, upon notice of dishonor, will take up obligation.

43 L. R. A. 130, CARSON v. GENTNER, 33 Or. 512, 52 Pac. 506.

Implied grant of irrigation ditches.

Cited in Toyaho Creek Irrig. Co. v. Hutchins, 21 Tex. Civ. App. 283, 52 S. W. 101, holding ditches and water necessary to beneficial use of arid lands, pass by implication under grant of land with rights, appurtenances, etc.

Prior appropriation of water.

Approved in McCall v. Porter, 42 Or. 57, 70 Pac. 820, holding validity of appropriation as against subsequent owner not affected by prior vested rights on the stream, either above or below.

Cited in Drainage Dist. v. Wattier, 48 Or. 339, 86 Pac. 775, holding that where there had been an appropriation of water over public lands, the successors in interest of the appropriators, were protected as against a subsequent patentee of the lands, though water rights were not reserved by the patent; Davis v.

Chamberlain, 51 Or. 315, 98 Pac. 154, holding that a prior appropriator will be protected as against a subsequent patentee of the public lands, though the patent was issued prior to the act of Congress recognizing water rights upon public lands; Harrington v. Demaris, 46 Or. 115, 1 L.R.A.(N.S.) 759, 77 Pac. 603, on the rights of prior appropriators of waters; McFarland v. Alaska Perseverance Min. Co. 3 Alaska, 330, holding that riparian rights to the waters of non-navigable streams does not exist in Alaska but rights to water must be acquired by appropriation.

Cited in footnote to Crawford Co. v. Hall, 60 L. R. A. 889, which holds right to use water acquired by appropriation, superior to that of subsequent riparian proprietor.

43 L. R. A. 134, STATE v. REED, 76 Miss. 211, 71 Am. St. Rep. 528, 24 So. 308.

Exclusive hack privileges.

Cited in Hedding v. Gallagher, 69 N. H. 663, 76 Am. St. Rep. 204, 45 Atl. 96, and Indianapolis Union R. Co. v. Dohn, 153 Ind. 12, 45 L. R. A. 428, footnote p. 427, 74 Am. St. Rep. 274, 53 N. E. 937, holding unlawful, grant of exclusive right to stand hacks within station area; Pennsylvania Co. v. Chicago, 181 Ill. 302, 53 L. R. A. 228, 54 N. E. 825, upholding reasonable municipal regulations establishing hackstands though exclusive lease by railway to single hackman thereby nullified; Com. v. Grau, 24 Lanc. L. Rev. 147, 10 Del. Co. Rep. 232, holding that railroad cannot give to one line of public vehicles exclusive right to stand in front of and carry trunks through station; Oregon Short Line R. Co. v. Davidson, 33 Utah, 375, 16 L.R.A.(N.S.) 782, 94 Pac. 10, 14 Ann. Cas. 489, holding that a railroad company may grant to one hack company the exclusive right to solicit business upon the former's depot premises.

Cited in footnotes to Pennsylvania Co. v. Chicago, 53 L. R. A. 223, which denies carrier's power to prevent others than lessee occupying hackstands in street; Boston & A. R. Co. v. Brown, 52 L. R. A. 418, which holds driver of public carriage entering railroad grounds to get passenger ordering carriage, a trespasser on soliciting other passengers; Hedding v. Gallagher, 64 L. R. A. 811, which sustains right of railroad company to give to one teamster exclusive right to enter railroad property to solicit privilege of carrying baggage and passenger; State ex rel. Sheets v. Union Depot Co. 68 L.R.A. 793, which sustains right of union depot company to grant transfer company exclusive right to use specified part of depot grounds for hacks and vehicles and soliciting patronage of passengers.

Cited in note (16 L.R.A.(N.S.) 780) on right to discriminate between solicitors of patronage at depots, wharves, etc.

Disapproved in Donavan v. Pennsylvania Co. 61 L. R. A. 143, footnote p. 140, 57 C. C. A. 363, 120 Fed. 216, holding a railroad company may give the exclusive right to solicit patrons within its station to one hackman.

43 L. R. A. 136, TREZONA v. CHICAGO G. W. R. CO. 107 Iowa, 22, 77 N. W. 486.

Ejection of passenger presenting invalid ticket.

Cited in Cincinnati, N. O. & T. P. R. Co. v. Harris, 115 Tenn. 509, 5 L.R.A. (N.S.) 782, 91 S. W. 211, on the right of carrier to eject a passenger for nonpayment of fare upon presentation of invalid ticket.

Cited in footnotes to Louisville & N. R. Co. v. Klyman, 56 L. R. A. 769, which sustains right to eject one stopping over on ticket good for continuous passage; United R. & Electric Co. v. Hardesty, 57 L. R. A. 275, which denies carrier's duty to accept coupon detached from commutation book; Louisville & N. R. Co. v. Tur-

ner, 43 L. R. A. 140, which holds railroad liable for ejection of passenger who paid full fare but was given limited ticket.

Pleading waiver of performance of contarct.

Cited in American Soda Fountain Co. v. Dean Drug Co. 136 Iowa, 317, 111 N. W. 534, holding that in an action of replevin to recover goods sold upon a conditional sale contract, the waiver of performance by the plaintiff cannot be availed of unless pleaded.

43 L. R. A. 140, LOUISVILLE & N. R. CO. v. TURNER, 100 Tenn. 213, 47 S. W. 223.

Conditions on ticket or transfer.

Cited in O'Rourke v. Citizens' Street R. Co. 103 Tenn. 139, 46 L. R. A. 617, footnote p. 614, 76 Am. St. Rep. 639, 52 S. W. 872, holding void, conditions on transfer check requiring passenger to ascertain correctness of date, time, and direction; Saunders v. Southern R. Co. 62 C. C. A. 530, 128 Fed. 22, holding carrier's liability in the matter of baggage transportation fixed on purchase of tickets, not altered by subsequent notice of limitation, unless assented to by passenger upon sufficient consideration; Norman v. Southern R. Co. 65 S. C. 522, 95 Am. St. Rep. 809, 44 S. E. 83, holding passenger purchasing general ticket not bound by conditions printed thereon in absence of actual notice; Burn v. Chicago, B. & Q. R. Co. 153 Ill. App. 321, holding that notice on ticket issued by carrier to effect that it shall be used on particular day is valid; Boling v. St. Louis & S. F. R. Co. 189 Mo. 231, 88 S. W. 35, on the right of the railroad company to place a time limit upon tickets.

Cited in footnote to Crary v. Lehigh Valley R. Co. 59 L. R. A. 815, which requires proof of negligence causing injury to passenger using excursion ticket by which passenger assumes risk of accident.

Cited in notes (28 L.R.A.(N.S.) 641) on effect of shipping contract limiting common-law liability, signed under compulsion; (84 Am. St. Rep. 397) on binding effect of conditions in unsigned passenger tickets.

Distinguished in Watson v. Louisville & N. R. Co. 104 Tenn. 199, 49 L. R. A. 456, footnote p. 454, 56 S. W. 1024, holding condition requiring return coupon of round-trip ticket to be stamped, reasonable.

Ejection of passenger.

Cited in Walker v. Price, 9 Kan. App. 727, 59 Pac. 1102, holding party entitled to damages for forcible removal from train for passage on which she presented expired time-limit ticket; Nashville Street R. Co. v. Griffin, 104 Tenn. 89, 49 L. R. A. 453, 57 S. W. 153, holding railway liable for injuries resulting from ejection of passenger entering car outside station, on refusal to pay fare, where reasonable rule requires party paying fare in station to enter car there; McLain v. St. Louis & G. R. Co. 131 Mo. App. 737, 111 S. W. 835, holding that a passenger may be ejected for a persistent non-observation of reasonable rules of a carrier.

Cited in footnote to Trezona v. Chicago G. W. R. Co. 43 L. R. A. 136, which denies carrier's liability for ejecting one attempting to ride on ticket which he knows does not on its face entitle him to a ride.

Distinguished in Louisville & N. R. Co. v. Klyman, 108 Tenn. 308, 56 L. R. A. 771, footnote p. 769, 91 Am. St. Rep. 755, 67 S. W. 472, sustaining right to eject one stopping over on ticket good for continuous passage.

Vacation of verdict for excessive damages.

Cited in Harvey v. Atlantic Coast Line R. Co. 153 N. C. 585, 69 S. E. 627, holding that appellate court cannot set aside verdict for damages because excessive, unless trial court grossly abused discretion in refusing to set verdict aside.

43 L. R. A. 143, GAGE v. HARVEY, 66 Ark. 68, 74 Am. St. Rep. 70, 48 S. W. 898.

Statutory liability of saloon keeper for injuries to intoxicated persons.

Followed in Peter Anderson & Co. v. Diaz, 77 Ark. 608, 4 L.R.A.(N.S.) 650, 113 Am. St. Rep. 180, 92 S. W. 861, holding that a saloon keeper is not liable on his bond required by statute, for personal injuries to a patron through the malicious acts of the bartender and another person.

Cited in Currier v. McKee, 99 Me. 368, 59 Atl. 442, 3 Ann. Cas. 57, holding that if the defendant ought to have apprehended the resulting injury to the son, he was liable to the mother for a decrease in the earning capacity of the son, under a statute making a saloon keeper liable for injuries resulting from intoxication, the injury resulting from a provoked assault by a third party.

Proximate cause of injury.

Cited in Arkansas Valley Trust Co. v. McIlroy, 97 Ark. 164, 31 L.R.A.(N.S.) 1022, 133 S. W. 816; Pulaski Gaslight Co. v. McClintock, 97 Ark. 584, 32 L.R.A. (N.S.) 830, 134 S. W. 1189,—holding that in order to warrant finding that negligence is proximate cause of injury, it must appear that injury was natural and probable consequence of negligence, and that it ought to have been foreseen.

43 L. R. A. 146, CAMP v. BRUCE, 96 Va. 521, 70 Am. St. Rep. 873, 31 S. E. 901.

Contracts against public policy.

Cited in Southern R. Co. v. Wilcox, 99 Va. 408, 39 S. E. 144, refusing recovery of damages for overcharge of freight where contract price illegal under Interstate Commerce Act; Nitro-Phosphate Syndicate v. Johnson, 100 Va. 779, 42 S. E. 995, holding contract tending to restrain bidding at public sale not enforceable; Bolling v. Mullins, 111 Va. 251, 68 S. E. 982, holding that contract between prospective bidders at judicial sale is contrary to public policy and void; Wood v. Stewart, 81 Ark. 49, 98 S. W. 711, holding any contract preventing the due enforcement of justice, is void as against public policy; Fisher v. Hampton Transp. Co. 136 Mich. 223, 112 Am. St. Rep. 358, 98 N. W. 1012, holding that a contract to refrain from bidding at a bankrupt sale, after a certain bid had been reached, was void as against public policy; Baltimore & O. R. Co. v. Hamburger, 155 Fed. 853, on validity of contracts against public policy.

Distinguished in Barnes v. Morrison, 97 Va. 378, 34 S. E. 93, upholding agreement by parties purchasing for joint benefit, to refrain from bidding at government sale.

43 L. R. A. 148, RITZ v. WHEELING, 45 W. Va. 262, 31 S. E. 993.

Injuries to trespassing children.

Cited in Uthermohlen v. Bogg's Run Co. 50 W. Va. 458, 55 L. R. A. 912, 88 Am. St. Rep. 884, 40 S. E. 410, holding negligent management of cable mining cars, resulting in injury to trespassing child, not ground of action; Savannah, F. & W. R. Co. v. Beavers, 113 Ga. 413, 54 L. R. A. 321, footnote p. 314, 39 S. E. 82, denying duty of one making excavation on own land to guard trespassing children from injury; Paolino v. McKendall, 24 R. I. 438, 60 L.R.A. 136, 96 Am. St. Rep. 736, 53 Atl. 268, holding occupant of land not obliged to keep trespassing children away from fire started to burn rubbish; Bottum v. Hawks, 84 Vt. 383, 35 L.R.A.(N.S.) 447, 79 Atl. 858, Ann. Cas. 1913A, 1025, holding that owner of open bulkhead, that was attractive to children, which was maintained near street is not liable for death of child who fell into water and was drowned: Gordon v. Snoqualmie Lumber & Shingle Co. 59 Wash. 277, 29 L.R.A.(N.S.) 90, 109 Pac. 1044, holding that owner of mill was not liable for injury to trespassing child who was scalded in attempting to take hot water from barrel maintained

on premises; Indianapolis Water Co. v. Harold, 170 Ind. 177, 83 N. E. 993, holding that a water company was not liable for the death of a child by falling into their reservoir while playing upon a foot bridge which was necessary to aid in keeping the canal in repair, the child having been warned of the danger; Wheeling & L. E. R. Co. v. Harvey, 77 Ohio St. 245, 19 L.R.A.(N.S.) 1144, 122 Am. St. Rep. 503, 83 N. E. 66, 11 Ann. Cas. 981, holding that a railroad company was not liable for injuries to a child playing upon a turn table without the company's knowledge, and also holding same as to a child playing near a reservoir of a water company; Conrad v. Baltimore & O. R. Co. 64 W. Va. 177, 16 L.R.A.(N.S.) 1130, 61 S. E. 44; Thompson v. Baltimore & O. R. Co. 218 Pa. 451, 19 L.R.A.(N.S.) 1168, 120 Am. St. Rep. 897, 67 Atl. 768, 11 Ann. Cas. 894,—holding same as to the turn table.

Cited in footnotes to Cooper v. Overton, 45 L. R. A. 591, which denies owner's liability for drowning of trespassing child in pond formed by damming surface water in unfenced city lot; Heimann v. Kinnare, 52 L. R. A. 652, which holds thirteen year old boy negligent *per se* in jumping over strip of water onto rotten ice in pond, and sliding to point where water over his head; Biggs v. Consolidated Barb-Wire Co. 44 L. R. A. 655, which holds owner liable for maintaining dangerous machinery on private grounds unprotected from visits of trespassing children; Kopplekom v. Colorado Cement Pipe Co. 54 L. R. A. 284, which holds owner of uninclosed city lot liable for injury to young child by toppling over of large cement pipe used by children as plaything.

Cited in notes (3 L.R.A.(N.S.) 151) on doctrine of "attractive nuisance" as applied to injury from hot water or ashes; (17 L.R.A.(N.S.) 917) on duty of owner of premises to protect licensee against hidden dangers; (19 L.R.A.(N.S.) 1096, 1148) on attractive nuisance; (32 L.R.A.(N.S.) 562) on duty of property owner to trespassing child; (25 Eng. Rul. Cas. 113) on liability for injury to trespasser by dangerous instrumentalities.

Direction of verdict.

Cited in Ketterman v. Dry Fork R. Co. 48 W. Va. 609, 37 S. E. 683, holding failure of employee to prove negligent defect in car brake in action for injury alleged to have been caused thereby, warrants direction of verdict for railway.

Question for court.

Cited in Paolino v. McKendall, 24 R. I. 446, 60 L. R. A. 139, 96 Am. St. Rep. 736, 53 Atl. 268, holding whether facts alleged imposed a duty on occupant of land in favor of trespassing child is a question of law for court that can be decided on demurrer.

Vacation of verdict.

Cited in Clark v. Beard, 69 W. Va. 317, 71 S. E. 188, holding that where verdict is contrary to law, and without evidence to support it, it should be set aside by court.

43 L. R. A. 154, MURPHY v. COM. 172 Mass. 264, 70 Am. St. Rep. 266, 52 N. E. 505.

Resentence under prior statute in 174 Mass. 369, 48 L. R. A. 393, 75 Am. St. Rep. 353, 54 N. E. 860, Affirmed in 177 U. S. 55, 44 L. ed. 711, 20 Sup. Ct. Rep. 639.

Modification of sentence at term for civil business.

Cited in Com. v. O'Brien, 175 Mass. 38, 55 N. E. 466, upholding sentence imposed by court on return of *capias* while court in session in trial of civil actions.

Indeterminate sentence.

Cited in *Re* Convicts, 73 Vt. 424, 56 L. R. A. 661, 51 Atl. 10, holding statute giving prison commissioners power to release prisoner after expiration of minimum sentence, void; People *ex rel.* Clark v. Warden, 39 Misc. 117, 78 N. Y. Supp. 907, upholding validity of law providing for indeterminate sentence; Wilson v. Com. 141 Ky. 352, 132 S. W. 557, holding that indeterminate sentence law is not unconstitutional in that it confers on board of prison commissioners arbitrary powers; Peters v. Snavely–Ashton, 144 Iowa, 147, 120 N. W. 1048, holding that parole of prisoners under indeterminate sentence law does not infringe right of governor to grant pardons, etc.; McCoy v. Reid, 172 Ind. 188, 87 N. E. 1086, holding that one who committed crime and who was sentenced after passage of indeterminate sentence law cannot question validity thereof as to persons who committed crimes before and who were sentenced after passage; State v. Perkins, 143 Iowa, 60, 21 L.R.A.(N.S.) 935, 120 N. W. 62, holding that a sentence under the indeterminate sentence law, is for the full period provided by statute for the offense; People v. Maddin, 120 App. Div. 344, 105 N. Y. Supp. 554, sustaining an indeterminate sentence law, which provided for the release of the prisoner by the board of managers of the reformatory, as not being in conflict with the pardoning power of the governor; State v. Duff, 144 Iowa, 147, 24 L.R.A.(N.S.) 628, 122 N. W. 829, holding that indeterminate sentence law does not interfere with the right of the Governor to grant pardons, reprieves, etc.; Re Lambrecht, 137 Mich. 455, 100 N. W. 606, holding that the indeterminate sentence law did not repeal a statute providing for imprisonment in the county jail for a certain time, for an attempt to commit a crime punishable by imprisonment in the penitentiary for more than five years; Re Marlow, 75 N. J. L. 405, 68 Atl. 171, sustaining similar law; People v. Joyce, 246 Ill. 134, 92 N. E. 607, 20 Ann. Cas. 472, holding that sentence under parol act is not indefinite.

Cited in footnotes to People v. Burns, 60 L. R. A. 270, which holds void for uncertainty as to offense punishable with life imprisonment, statute making penalty for attempt half that for offense: People v. Adams, 63 L. R. A. 406, which sustains statute permitting the imposition of a sentence of imprisonment with a minimum and maximum term.

Ex post facto laws.

Cited in State v. Smith, 56 Or. 27, 107 Pac. 980, holding that amendment increasing penalty is an ex post facto law within meaning of constitution; People ex rel. Adams v. Johnson, 44 Misc. 554, 90 N. Y. Supp. 134, holding that a statute which deprives a person accused of crime of any right which he had at the time the offense was committed, is invalid as an ex post facto law; State v. Tyree, 70 Kan. 207, 78 Pac. 525, 3 Ann. Cas. 1020, holding the indeterminate sentence law an ex post facto law as to one convicted of a crime committed while the statute provided for a deduction from the sentence for good behavior, but who was sentenced under the indeterminate sentence law.

Cited in footnote to State v. Kyle, 56 L.R.A. 115, which sustains statute authorizing prosecution by information of crimes already committed.

Commutation of sentence as a matter of right under statute.

Cited in McCoy v. Reid, 172 Ind. 186, 87 N. E. 1086, on the statute providing for a commutation of sentence for good behavior, as entering into the sentence and becoming a part thereof.

Cited in note (1 L.R.A.(N.S.) 521) on constitutionality of statutory credits for good behavior.

43 L. R. A. 161, SULLY v. CAMPBELL, 99 Tenn. 434, 42 S. W. 15.

43 L. R. A. 185, WEEKS v. McNULTY, 101 Tenn. 495, 70 Am. St. Rep. 693, 48 S. W. 809.

Review of rulings on exclusion of testimony.

Cited in Union R. Co. v. Hunton, 114 Tenn. 627, 88 S. W. 182, holding that the appellate court would not consider assignments of error based upon the exclusion of evidence where it does not appear what the witnesses would have testified to.

Presumption from failure to testify.

Distinguished in Princeville v. Hitchcock, 101 Ill. App. 591, denying presumption where failure due merely to omission to call witness available equally to either party.

Liability of inn-keeper for injuries to guests.

Cited in Clancy v. Barker, 71 Neb. 94, 69 L.R.A. 649, 115 Am. St. Rep. 565, 103 N. W. 446, 8 Ann. Cas. 682 (dissenting opinion), upon the liability of an innkeeper for injuries to guests; Clancy v. Barber, 69 L.R.A. 654, 66 C. C. A. 469, 131 Fed. 163, holding that an inn-keeper is not an insurer of the safety of his guests, but must exercise reasonable care for their safety, comfort, and entertainment, and is not liable for the acts of his employees beyond the scope of their authority.

Cited in notes (20 L.R.A.(N.S.) 1028) on res ipsa loquitur as between innkeeper and guest; (119 Am. St. Rep. 792) on liability of hotel owner for failure to provide fire escapes.

Fire escapes.

Cited in footnotes to Arms v. Ayer, 58 L. R. A. 277, which sustains statute for fire escapes on certain kinds of buildings giving factory inspector discretion as to their number, location, etc.; Carrigan v. Stillwell, 61 L. R. A. 163, which holds owner of rented building liable for injury from lack of fire escapes; Carrigan v. Stillwell, 68 L.R.A. 386, which denies necessity for fire escape for building having above first floor a restaurant kitchen containing three employees.

Cited in note (10 L.R.A.(N.S.) 181) on liability for injuries caused by lack or insufficiency of fire escapes.

Actionable violation of a city ordinance.

Cited in Memphis Street R. Co. v. Haynes, 112 Tenn. 721, 81 S. W. 374, on the violation of a city ordinance as negligence per se.

Cited in note (5 L.R.A.(N.S.) 261, 265) on violation of police ordinance as ground for private action.

43 L. R. A. 189, WIGHT v. GOTTSCHALK (Tenn. Ch.) 48 S. W. 140.

43 L. R. A. 195, COLUMB v. WEBSTER MFG. CO. 28 C. C. A. 225, 50 U. S. App. 264, 84 Fed. 592.

Extent of estoppel by judgment.

Cited in Bresnahan v. Tripp Giant Leveller Co. 39 C. C. A. 510, 99 Fed. 283, refusing to reverse prior adjudication of validity of patent where newly discovered evidence offered on rehearing merely cumulative; Hein v. Westinghouse Air Brake Co. 172 Fed. 526, on the conclusiveness of a prior adjudication.

Res judicata.

Approved in The New Brunswick, 125 Fed. 569, holding dismissal on the merits of petition to assert general lien and statutory lien on foreign vessel renders *res judicata* a subsequent petition to enforce lien for same supplies against ship as domestic vessel.

Cited in Marshall v. Bryant Electric Co. 107 C. C. A. 599, 185 Fed. 501, hold-

ing that decree rendered dismissing bill alleging infringement of patent, is conclusive adjudication that device in suit does not infringe.

Amendment of complaint for negligence.

Cited in Chobanian v. Washburn Wire Co. 33 R. I. 304, 80 Atl. 394, holding that allowance of amendment to complaint setting forth additional ground of negligence as cause of same injury does not amount to statement of new cause of action.

43 L. R. A. 199, GLOCK v. HOWARD & W. COLONY CO. 123 Cal. 1, 69 Am. St. Rep. 17, 55 Pac. 713.

Retention of amounts paid.

Cited in Odd Fellows' Sav. Bank v. Brander, 124 Cal. 258, 56 Pac. 1109, holding vendor of land entitled to retain amounts paid, on vendee's failure to complete purchase, whether contract provides for forfeiture or not; Poheim v. Meyers, 9 Cal. App. 37, 98 Pac. 65, holding that a vendee in default upon a contract for the sale of land, of which time is the essence, cannot recover amounts paid, where he has not tendered the amount in default.

Distinguished in Sherburne v. Hirst, 121 Fed. 1002, relieving purchaser from penalty where contract provides for resale at advanced price on purchaser's default; Biescar v. Pratt, 4 Cal. App. 290, 87 Pac. 1101, holding that under the statute fixing the rights of the seller upon breach of contract, where the seller disposes of the goods afterward at an advanced price, he cannot recover money deposited as a part of the price by the other party to the contract.

Rescission of contract.

Cited in Swain v. Jacks, 125 Cal. 220, 57 Pac. 989, holding absence from state of vendor of land preventing completion of terms of contract does not constitute a rescission by him; Smith v. Blandin, 133 Cal. 445, 65 Pac. 894, holding vendor of land entitled to rescind contract, after vendee's failure to pay first instalment, and upon returning everything of value received; Frank v. Bauer, 19 Colo. App. 452, 75 Pac. 930, holding that a failure to pay instalments of the purchase price under the contract providing for forfeiture in such cases, does not rescind the contract, but the vendors were entitled to recover royalties due thereunder.

Forfeiture of contract for sale of land.

Cited in Howard v. Galbraith, 13 Cal. App. 376, 109 Pac. 889, holding that under Code where party gives notice before default that he will not perform contract, he has burden of showing that he offered to perform before default; Boone v. Templeman, 158 Cal. 297, 139 Am. St. Rep. 126, 110 Pac. 947, holding that where vendor waived right to declare whole sum due after default, he must tender deed as condition of demanding unpaid purchase price, and without such tender he cannot declare forfeiture; Commercial Bank v. Weldon, 148 Cal. 608, 84 Pac. 171, holding that where two parties obtained an option jointly, and one defaulted in his payments, the other could make any new contract excluding the former from its benefits; Oursler v. Thacher, 152 Cal. 744, 93 Pac. 1007, holding under a contract for the sale of mining property providing for forfeiture in case of non-payment of instalments, that the one party could claim a breach on the part of the other, without abandoning the same, or rescinding it, so as not to make it a mutual rescission.

Distinguished in McDonald v. Kingsbury, 16 Cal. App. 247, 116 Pac. 380, holding that vendee, who made payments on contract after they became due in reliance upon agent's statement that they might be made, may be relieved from forfeiture in equity.

Demand and notice as condition of forfeiture.

Cited in Graham v. Merchant, 43 Or. 305, 72 Pac. 1088, holding after acceptance by vendor of land of payment from vendee in default, former cannot declare a forfeiture except upon demand and notice.

Distinguished in Noyes v. Schlegel, 9 Cal. App. 520, 99 Pac. 726, holding that the vendee was entitled to a reasonable time after the notice of forfeiture in which to make up his payments under a contract providing for forfeiture for non-payment of instalments, where the vendor had waived the forfeiture upon several previous occasions.

Recovery of sums paid.

Cited in Heilig v. Parlin, 134 Cal. 102, 66 Pac. 186, upholding right of vendee to recover sums paid under rescinded contract for the sale of land; Sanders v. Brock, 230 Pa. 618, 35 L.R.A.(N.S.) 532, 79 Atl. 772; Hillyard v. Banchor, 85 Kan. 526, 118 Pac. 67,—holding that vendee of land who failed to fulfill his contract, cannot recover amount paid; Pfeifer v. Norman, 22 N. D. 175, 38 L.R.A. (N.S.) 901, 133 N. W. 97, holding that vendee cannot recover amount paid, where vendor retakes possession on default of vendee; Carter v. Fox, 11 Cal. App. 72, 103 Pac. 910, holding that the vendor being in default upon a contract of which time was the essence, the vendee may recover cash payments made; Pierce v. Staub, 78 Conn. 467, 3 L.R.A.(N.S.) 790, 112 Am. St. Rep. 163, 62 Atl. 760, holding that where there is a mutual rescission of a contract, which does not provide for forfeiture upon a nonpayment of instalments the vendee may recover the instalments paid; Moffet v. Oregon & C. R. Co. 46 Or. 457, 80 Pac. 489, holding same as to a mutual rescission arising from different facts; Liver v. Mills, 155 Cal. 465, 101 Pac. 299 (dissenting opinion), on the right of the vendee to recover the parts of the purchase price paid.

Cited in note (35 L.R.A.(N.S.) 534) on right to compel return of advance payment upon resale after purchaser's default.

Equity actions on contracts for sale of land.

Cited in White v. Sage, 149 Cal. 614, 87 Pac. 193, holding that an action to recover the purchase price of land, under an agreement, and tendering the deed provided for by the contract, is an equity action for specific performance and not an action at law for the recovery of money.

Specific performance of contracts.

Cited in Johnston v. Blanchard, 16 Cal. App. 326, 116 Pac. 973, holding that contract not to engage in business for specified time and place, and stipulation for forfeiture of $5,000 as liquidated damages can be specifically enforced.

43 L. R. A. 207, DEEDS v. STRODE, 6 Idaho, 317, 96 Am. St. Rep. 263, 55 Pac. 656.

Communication of contagious disease.

Cited in footnote to Missouri, K. & T. R. Co. v. Wood, 56 L. R. A. 592, which holds railroad company liable for communication of smallpox by employee negligently permitted to escape while being cared for.

Cited in note (93 Am. St. Rep. 851) on liability of person communicating contagious or infectious disease to others.

Property rights on annulment of marriage.

Cited in Coats v. Coats, 160 Cal. 676, 36 L.R.A.(N.S.) 848, 118 Pac. 441, to the point that property accumulated during continuance of void marriage will be equitably divided between parties.

43 L. R. A. 210, ILLINOIS C. R. CO. v. BEEBE, 174 Ill. 13, 66 Am. St. Rep. 253, 50 N. E. 1019.

Degree of care required of carrier of passengers.

Cited in Elgin, A. & S. Traction Co. v. Hench, 152 Ill. App. 541, holding a traction company bound to use the highest degree of care for the safety of its passengers, in selecting its route whether on streets or private rights of way.

Cited in note (31 L.R.A.(N.S.) 632, 635) on duty of carrier to caretaker accompanying live stock.

Limitation of liability for negligence.

Cited in Pennsylvania Co. v. Greso, 79 Ill. App. 132, Subsequent appeal 102 Ill. App. 254, holding drover passenger for hire within statute prohibiting contract by carrier exempting itself from liability for negligence; Illinois C. R. Co. v. Anderson, 184 Ill. 307, 56 N. E. 331, holding attendant in charge of hogs, passenger, as to whom carrier cannot, by contract, limit its liability to gross negligence; Bolton v. Missouri P. R. Co. 172 Mo. 103, 72 S. W. 530, holding railroad requiring shipper of stock to assume risk if he left caboose liable for injury sustained by him due to reckless management of switching engine, while he was in stock car; Pennsylvania Co. v. Purvis, 128 Ill. App. 371, holding that a carrier cannot exempt itself from liability for injuries because of its negligence, no matter of what degree; Beifeld v. Chicago & N. W. R. Co. 3 Ill. C. C. 509, holding invalid, an exemption from liability for negligence in the carrying of baggage; Weaver v. Ann Arbor R. Co. 139 Mich. 600, 102 N. W. 1037, 5 Ann. Cas. 764, on the limitation of liability of a carrier.

Cited in footnotes to Tecumseh Mills v. Louisville & N. R. Co. 49 L. R. A. 557, which holds prohibition against carriers limiting liability inapplicable to contract by domestic corporation in other state for transportation entirely outside of state; Crary v. Lehigh Valley R. Co. 59 L. R. A. 815, which requires proof of negligence causing injury to passenger using excursion ticket by which passenger assumes risk of accident; Central R. Co. v. Lippman, 50 L. R. A. 673, which denies carrier's right to contract against liabilities for injuries to passenger on freight train; Richmond v. Southern P. Co. 57 L. R. A. 616, which holds unenforceable, agreement by purchaser of mileage ticket at reduced rate not to hold carrier liable for injury on freight train.

Who is a passenger.

Cited in Illinois C. R. Co. v. Rothschild, 134 Ill. App. 508, holding that a person upon a train in charge of cattle which are being transported for hire, is a passenger for hire, whether he has a drover's pass or not.

Contributory negligence.

Cited in Losey v. Atchison, T. & S. F. R. Co. 84 Kan. 231, 33 L.R.A.(N.S.) 414, 114 Pac. 198, holding that failure of shipper to carry lantern as required by his contract does not as matter of law bar recovery of damages on account of his death caused by railroad's negligence; Evansville & T. H. R. Co. v. Mills, 37 Ind. App. 606, 77 N. E. 608, holding that a person on a freight train in charge of stock, as called for by the contract for the shipment of stock, is a passenger, so that a presumption of negligence arose from the unnecessary jolting of the train.

Cited in footnote to Florida C. & P. R. Co. v. Sullivan, 61 L. R. A. 410, which denies negligence of white passenger in riding in car set apart for negroes.

— Question for jury.

Cited in Memphis & C. Packet Co. v. Buckner, 108 Ky. 706, 57 S. W. 482, holding contributory negligence of shipper of stock injured by falling through open hatchway while going to care for animals, question for jury.

Erroneous instructions.

Cited in Ballance v. Peoria, 180 Ill. 39, 54 N. E. 428; Shorb v. Webber, 89 Ill. App. 478; Chicago & A. R. Co. v. Harrington, 192 Ill. 25, 61 N. E. 622,—declining to reverse for erroneous instruction where similar error occurs in instruction given at request of appellant; Smith v. Hersh, 161 Ill. App. 86, holding that party cannot complain of instructions given by opposite party where his own requested instructions contain same defects; People v. Threewitt, 251 Ill. 513, 96 N. E. 242, holding that error in instruction cannot be complained of by party, if it also appears in instructions given at his request.

Conflict of laws.

Cited in Valk v. Erie R. Co. 130 App. Div. 449, 114 N. Y. Supp. 964, holding that the validity of a limitation of the liability of a carrier, is to be determined by the laws of the state where the contract was made, though it was for shipment through several states, and the goods were destroyed in another state; Coats v. Chicago, R. I. & P. R. Co. 239 Ill. 163, 87 N. E. 929, holding that where a bill of lading called for a partial performance within the state of Iowa, its validity was to be determined according to the laws of Iowa, even though the goods were to be carried into or through the state of Illinois; Sawyer v. El Paso & N. E. R. Co. 49 Tex. Civ. App. 115, 108 S. W. 718, holding that under a contract of carriage from Pennsylvania to Mexico, the right to recover was governed by the laws of Pennsylvania, though the action was brought in Texas, and the injury occurred in New Mexico, whose laws required an affidavit to be filed within ninety days after the injury; Johnson v. Western U. Teleg. Co. 144 N. C. 415, 10 L.R.A.(N.S.) 259, 119 Am. St. Rep. 961, 57 S. E. 122, holding that the right to recover damages for mental anguish and suffering for a failure to deliver a telegram depends upon the laws of the state from which the message was sent.

Cited in note (63 L. R. A. 517, 527) on conflict of laws as to carrier's contracts.

Remarks of counsel.

Approved in Quincy Gas & Electric Co. v. Baumann, 203 Ill. 299, 67 N. E. 807, holding objectionable remarks of counsel not available on appeal in absence of requested instruction directing jury to disregard them; Chicago City R. Co. v. Creech, 207 Ill. 403, 69 N. E. 919, holding counsel may make reasonable comment upon the evidence and conduct of witnesses.

Cited in Chicago & J. Electric R. Co. v. Herbert, 115 Ill. App. 251, holding that the improper remarks of counsel are not grounds for reversal, where court sustains an objection to them and in effect instructed the jury to disregard them; North American Restaurant & Oyster House v. McElligott, 129 Ill. App. 509, on improper remarks of counsel.

43 L. R. A. 214, McPEEK v. WESTERN U. TELEG. CO. 107 Iowa, 356, 70 Am. St. Rep. 205, 78 N. W. 63.

Liability of telegraph company for delay in delivery of telegram.

Cited in Western U. Teleg. Co. v. Love Banks Co. 73 Ark. 210, 83 S. W. 949, 3 Ann. Cas. 712, holding a telegraph company liable for a negligent delay in the delivery of a telegram, in answer to an offer to sell, whereby the sendee was made to accept a lower bid than that contained in the delayed message; Western U. Teleg. Co. v. Caldwell, 126 Ky. 48, 12 L.R.A.(N.S.) 752, 102 S. W. 840, holding that the telegraph company was liable for a negligent delay in the delivery of a message notifying the sendee of the death of his brother, though there was nothing to show that the sendee would have gone to the funeral; Wells v. Western U. Teleg. Co. 144 Iowa, 617, 24 L.R.A.(N.S.) 1051, 138 Am. St. Rep. 317, 123 N. W. 371, on the liability of the telegraph company to the sendee of a message for

negligence in the transmission of the same; Frazier v. Western U. Teleg. Co. 45 Or. 418, 67 L.R.A. 321, 78 Pac. 330, 2 Ann. Cas. 396, holding that the sendee or the addressee of a telegram could maintain an action for the negligent performance of the contract for transmission, if it was made for his benefit; McLeod v. Pacific Teleph. & Teleg. Co. 52 Or. 30, 18 L.R.A.(N.S.) 955, 95 Pac. 1009, 16 Ann. Cas. 1239, holding same and that the same rule applied to messages sent by telephone companies; Barber v. Western U. Teleg. Co. 134 Wis. 155, 14 L.R.A.(N.S.) 537, 126 Am. St. Rep. 1017, 114 N. W. 439, holding that the telegraph company was liable for a failure to deliver a telegram requesting the attendance of a physician in a town where he was building up a practice, though there was nothing to show that the physician would have attended the person if the message had been delivered; Green-Wheeler Shoe Co. v. Chicago, R. I. & P. R. Co. 130 Iowa, 129, 5 L.R.A.(N.S.) 884, 106 N. W. 498, 8 Ann. Cas. 45, on the liability of a carrier for delay in the carriage of goods.

Agent's power to contract for delivery of message.

Cited in Western U. Teleg. Co. v. Crumpton, 138 Ala. 643, 36 So. 517, holding that in the absence of proof to the contrary, it will be presumed that an agent of a telegraph company had authority to bind the company as to the time of the sending of a telegram according to an agreement.

Cited in footnote to Brown v. Cumberland Teleph. & Teleg. Co. 50 L. R. A. 277, which holds telephone agent's agreement to deliver message at destination for extra charge binding on company notwithstanding habitually disregarded instruction to contrary.

Transmission or delivery of message after office hours.

Cited in Bright v. Western U. Teleg. Co. 132 N. C. 325, 43 S. E. 841, holding attempted delivery of message outside of office hours waiver of right of company to claim benefit of rule as to such hours; Potter v. Western U. Teleg. Co. 138 Iowa, 412, 116 N. W. 130, holding that the telegraph company was liable for a negligent delay in the transmission of a message notifying the sendee of the dangerous illness of his mother where the defendant's office and the plaintiff's residence were only five blocks apart and a second attempt was not made to deliver the message after office hours; Bolton v. Western U. Teleg. Co. 76 S. C. 538, 57 S. E. 543, holding that where a night message was changed to a day message, which meant that it should be delivered immediately, the company was negligent in failing to deliver it until office hours the next day.

Cited in note (53 L. R. A. 735) on liability of telegraph company sending message to office after hours of closing.

Form of action.

Cited in Fisher v. Western U. Teleg. Co. 119 Wis. 149, 96 N. W. 545, raising, but not deciding, question whether addressee of telegram, the delivery of which is delayed, limited to action for negligence.

Measure of damages.

Approved in Cowan v. Western U. Teleg. Co. 122 Iowa, 385, 64 L. R. A. 550, 101 Am. St. Rep. 268, 98 N. W. 281, holding, in action for negligent transmission of telegram, plaintiff not limited to damages as for breach of contract; Western U. Teleg. Co. v. Pearce, 82 Miss. 492, 34 So. 152, holding telegraph company not liable for special damages due to its delay in delivery of telegram, and arising from the physical condition of the sender, of which the company had no notice.

Cited in McNeil v. Postal Teleg.-Cable Co. 154 Iowa, 243, 38 L.R.A.(N.S.) 729, 134 N. W. 611, holding that sendee can recover loss of profits on contract caused by delay in delivery of telegram; Larsen v. Postal Teleg. Cable Co. 150 Iowa, 750,

130 N. W. 813, holding that damages for failure to deliver telegram tendering definite employment are not so remote as to preclude recovery therefor, where plaintiff testified that if he had received message he would have accepted position; Western U. Teleg. Co. v. Potts, 120 Tenn. 44, 19 L.R.A.(N.S.) 480, 127 Am. St. Rep. 991, 113 S. W. 789, holding that the measure of damages for a failure to deliver a telegram is such as may be fairly and reasonably considered as arising naturally from the breach of the contract or such damages as may reasonably be supposed to have been within the contemplation of the parties at the time they made the contract; Bennett v. Western U. Teleg. Co. 129 Iowa, 610, 106 N. W. 13, holding that where the delayed message contained only a request for the price of land, and not an offer to buy, the loss of profits arising from the loss of the sale is not the measure of damages.

Cited in footnotes to Western U. Teleg. Co. v. North Packing & Provision Co. 52 L. R. A. 275, which holds agent purchasing live stock through delay in delivering telegram, not required to resell before communicating with principal, to reduce damages; Western U. Teleg. Co. v. Nye & S. Grain Co. 63 L. R. A. 803, which holds difference in value between market value and price at which sale might have been made, measure of damages for delay in delivering telegram resulting in loss of sale; Hays v. Western U. Teleg. Co. 67 L.R.A. 481, which holds that change in telegram so as to quote price of mules at ten dollars per head less than market price resulting in sendee's ordering purchase of designated number, renders telegraph company liable for difference between price paid and that stated in the telegram.

Cited in note (117 Am. St. Rep. 291) on elements of damages recoverable for failure to transmit and deliver telegrams.

Diligence in delivery of telegram as jury question.

Cited in Glenn v. Western U. Teleg. Co. 84 S. C. 163, 65 S. E. 1024, holding that question as to whether company made sufficient effort to deliver telegram was for jury; Poulnot v. Western U. Teleg. Co. 69 S. C. 549, 48 S. E. 622, holding that whether a telegram was delivered with due diligence is a question for the jury.

Right of action by sendee of telegram.

Cited in Wells v. Western U. Teleg. Co. 144 Iowa, 618, 24 L.R.A.(N.S.) 1051, 138 Am. St. Rep. 317, 123 N. W. 371, holding that bank to which forged telegram is delivered through company's negligence, agreeing to honor draft, and which on faith thereof, cashes draft to insolvent, may maintain action against telegraph company.

Cited in footnote to Frazier v. Western U. Teleg. Co. 67 L.R.A. 319, which holds that telegraph company must be chargeable with notice that message is for sendee's benefit to entitle him to sue for delay.

Cited in note (30 L.R.A.(N.S.) 1135) on right of addressee of telegram to sue for delay in delivery.

Liability to third persons for neglect.

Distinguished in McPhee v. United States Fidelity & G. Co. 52 Wash. 158, 21 L.R.A.(N.S.) 537, 132 Am. St. Rep. 958, 100 Pac. 174, holding that a sheriff was not liable on his official bond for the benefit of one entitled to a reward for apprehending criminals, where the sheriff permitted the prisoners to escape before the award was paid.

43 L. R. A. 219, PISTEL v. IMPERIAL MUT. L. INS. CO. 88 Md. 552, 42 Atl. 210.

Performance of contract indefinite as to time therefor.

Cited in Latrobe v. Winans, 89 Md. 655, 43 Atl. 829, holding purchaser liable

for interest on purchase money and for taxes on property, from date for conclusion of sale, where failure to complete same to purchaser's "satisfaction" due to his delay.

Cited in footnote to Hall v. First Nat. Bank, 44 L. R. A. 319, which denies validity of payee's oral promise to renew till business situation improves.

Exercise of judgment as to performance of condition.

Cited in Smith v. Weaver, 41 Pa. Super. Ct. 256, holding that where party agrees to deliver to another bond satisfactory to latter for performance of contract, expression of dissatisfaction by latter with bond tendered is sufficient.

43 L. R. A. 222, LINVILLE v. HADDEN, 88 Md. 594, 41 Atl. 1097.

Attachment by nonresident.

Cited in Hodgson v. Southern Bldg. & L. Asso. 91 Md. 447, 46 Atl. 971, holding foreign creditor entitled to attachment of local property of foreign debtor in action on debt arising in foreign state.

Effect of appointment of receiver for corporation.

Cited in Buchanan v. Hicks, 98 Ark. 376, 34 L.R.A.(N.S.) 1204, 136 S. W. 177, holding that appointment of receiver for corporation carries with it title to credits due from nonresidents, and debtor can make no settlement with officers of corporation; Brynjolfson v. Osthus, 12 N. D. 49, 96 N. W. 261, holding that the appointmen of a receiver of an insolvent corporation acts as a suspension of its corporate functions and of all its authority over its property and effects.

43 L. R. A. 225, HOUSTON, E. & W. T. R. CO. v. CAMPBELL, 91 Tex. 551, 45 S. W. 2.

Duty of carrier as to furnishing or equipping cars.

Cited in State v. International & G. N. R. Co. 29 Tex. Civ. App. 150, 68 S. W. 534, holding statute requiring good brake and brakeman on last car of trains transporting passengers and merchandise not applicable to passenger trains only: Southern R. Co. v. Atlanta Sand & Supply Co. 135 Ga. 49, 68 S. E. 807, holding that rules of railroad commission requiring railroads to furnish cars is reasonable and valid; Ethridge v. Central of Georgia R. Co. 136 Ga. 680, 38 L.R.A. (N.S.) 935, 71 S. E. 1063, Ann. Cas. 1912 D, 128, holding that shipper is not bound to deliver goods where carrier was accustomed to receive them for shipment, before bringing action for damages for refusal to receive goods where he has offered to do so and was notified by carrier that it would not receive goods.

Annotation cited in Durden v. Southern R. Co. 2 Ga. App. 69, 58 S. E. 299, on the duty of the carrier to furnish facilities to the public.

Cited in footnotes to Loraine v. Pittsburg, J. E. & E. R. Co. 61 L. R. A. 502, which sustains right to mandamus to compel carrier to furnish cars without exacting compliance with illegal conditions; Mathis v. Southern R. Co. 61 L. R. A. 824, which holds carrier liable for refusal to receive for transportation fruit not in properly iced refrigerator car.

Cited in notes (8 L.R.A.(N.S.) 110, 112) on duty of carrier to furnish cars; (17 L.R.A.(N.S.) 364) on state regulations requiring carriers to furnish cars as interference with interstate commerce; (22 L.R.A.(N.S.) 1201) on effect of strike on statutory liability of carrier for refusal to receive shipment; (26 L.R.A.(N.S.) 851) on exclusiveness of statutory remedy for carrier's failure to furnish cars.

Statutory penalty.

Cited in State *ex rel.* Wheeler v. Adams, 101 Mo. App. 476, 74 S. W. 497, holding county treasurer not liable for statutory penalty for refusal to pay warrant

when he acted under legal advice; Dorrance & Co. v. International & G. M. R. Co. 53 Tex. Civ. App. 466, 126 S. W. 694, holding that in action to recover statutory penalty plaintiff must bring himself strictly within provisions of act in order to recover penalty prescribed; State v. Louisville & N. R. Co. 51 Fla. 322, 40 So. 885, on the liability of a railroad company for a penalty imposed by the railroad commissioners for failure to furnish cars and also citing annotation on this point.

— Validity of statute.

Cited in Allen v. Texas & P. R. Co. 100 Tex. 528, 101 S. W. 792, holding that the statute imposing a penalty for the failure of a carrier to furnish cars within a certain time, is a valid regulation as applied to intrastate commerce.

Cited in note (15 L.R.A.(N.S.) 733) on validity of penalty for failure to furnish freight cars.

— Strict construction the statute.

Cited in Texas & P. R. Co. v. Hughes, 99 Tex. 536, 91 S. W. 567, holding that the statute providing for a penalty to a carrier for failure to furnish cars, was a penal statute and the person seeking to recover the penalty under it must bring himself strictly within the provisions of the statute; Texas & P. R. Co. v. Barrow, 33 Tex. Civ. App. 613, 77 S. W. 643, holding that where the person demanded stable cars of a certain kind, the railroad company was not bound to furnish him with other suitable cars, or be liable for the statutory penalty; Davis v. Pullman Co. 34 Tex. Civ. App. 624, 79 S. W. 635, holding a statute providing a penalty for the canceling of a surety bond, without cause, was a penal statute and one relying thereon to recover a penalty must bring himself strictly within the provisions of the act; Missouri, K. & T. R. Co. v. Rines & Co. 37 Tex. Civ. App. 621, 84 S. W. 1092, holding that a railroad company was not liable for the statutory penalty for a negligent detention of freight where the freight had been sold to pay freight charges but the sale was not in accordance with the statute; Texas & P. R. Co. v. Blocker, 48 Tex. Civ. App. 102, 106 S. W. 718, holding that an application for cars, requiring them to be delivered the day after the date of the application was not a sufficient notice to subject the railroad company to the statutory penalty.

Measure of damages.

Cited in Texas & P. R. Co. v. Smith, 34 Tex. Civ. App. 572, 79 S. W. 614, holding that the railroad company is liable for the expenses of keeping the cattle, in an action for the breach of a contract to furnish cars at a certain time; Chattanooga Southern R. Co. v. Thompson, 133 Ga. 132, 65 S. E. 285, holding that the measure of damages for breach of contract to furnish cars, is the deterioration of the goods at the place of shipment, or the difference between their value at the time cars were furnished, and when they should have been furnished.

Cited in notes (53 L.R.A. 88, 89, 91, 110) on loss of profits as element of damages for breach of contract; (26 L.R.A.(N.S.) 1193) on loss of profits because of inability to fulfill contract as element of damages for carrier's breach of contract to furnish cars.

Construction of word "switch."

Cited in Denison v. Denison & S. R. Co. 103 Tex. 347, 127 S. W. 804, to the point that "switch" as used in railroad law has meaning in addition to its technical meaning depending upon facts which indicate its character.

Declarations of agents.

Cited in note (131 Am. St. Rep. 326) on declarations and acts of agents.

43 L. R. A. 233, BIRMINGHAM TRACTION CO. v. BIRMINGHAM R. & ELECTRIC CO. 119 Ala. 137, 24 So. 502.

Street railway as additional servitude.

Cited in Baker v. Selma Street & Suburban R. Co. 130 Ala. 481, 30 So. 464, holding abutting owners not entitled to compensation for use of street by authorized electric street railway; Baker v. Selma Street & Suburban R. Co. 135 Ala. 561, 93 Am. St. Rep. 42, 33 So. 685, refusing to enjoin construction of electric street railway duly authorized by municipality, where special injury from alleged nuisance not shown; La Crosse City R. Co. v. Higbee, 107 Wis. 402, 51 L. R. A. 929, footnote p. 923, 83 N. W. 701, holding electric street railroad pole in city street not additional burden; Kinsey v. Union Traction Co. 169 Ind. 618, 81 N. E. 922 (dissenting opinion), on an interurban railway operating over the tracks of a street railway company, as being an additional servitude upon the street.

Cited in footnotes to Ingersoll v. Nassau Electric R. Co. 43 L.R.A. 236, which holds consent of abutters unnecessary to use of other company's street car tracks under contract therefor; Mordhurst v. Fort Wayne & S. W. Traction Co. 66 L.R.A. 106 which holds operation of interurban railway by electric power upon T rails through city street with authority to carry passengers, baggage, mail, and light express matter running no more than two cars in train not an additional servitude on street.

Cited in notes (106 Am. St. Rep. 243, 244) on what are additional servitudes in highways; (36 L.R.A.(N.S.) 813) on abutter's right to compensation for railroads in streets.

He who seeks equity must do equity.

Cited in Southern R. Co. v. Hood, 126 Ala. 316, 85 Am. St. Rep. 32, 28 So. 662, holding railroad not entitled to enjoin ejectment suit as to property traversed by roadbed, where owner is estopped by acquiescence, unless compensation for use offered.

43 L. R. A. 236, INGERSOLL v. NASSAU ELECTRIC R. CO. 157 N. Y. 453, 52 N. E. 545.

State regulation of municipal affairs.

Cited in People *ex rel.* Rodgers v. Coler, 166 N. Y. 31, 52 L. R. A. 826, 82 Am. St. Rep. 605, 59 N. E. 716 (dissenting opinion), majority holding statute regulating rate of payment for and number of hours of labor on public works, void.

Railway franchises.

Cited in Kittinger v. Buffalo Traction Co. 160 N. Y. 391, 54 N. E. 1081, holding grant by municipal authorities of right to construct street railway, conclusive; Gallagher v. Keating, 27 Misc. 137, 58 N. Y. Supp. 366, holding statutory right of railroad corporation to contract with any other railroad for use of its road is a part of its franchise; Pennsylvania Steel Co. v. New York City R. Co. 191 Fed. 221, to the point that lessee corporation created under general railroad law was not required to obtain a new consent of property owners, where such consent had been obtained prior to passage of amendatory act.

Distinguished in New York v. Fulton Street R. Co. 130 App. Div. 795, 115 N. Y. Supp. 410, Reversing 59 Misc. 632, 112 N. Y. Supp. 494, holding that a street railroad company granted a franchise to lay its tracks in the street upon the payment of a certain percentage tax, was not relieved of liability for the tax, because it leased tracks from another street railway corporation.

Liability of street railway to abutting owners.

Cited in Dolan v. New York & H. R. Co. 74 App. Div. 436, 77 N. Y. Supp. 815, holding abutting owners cannot recover for injury to easements of light and air

by raising of street railway to viaduct under command of statute; De Grauw v. Long Island Electric R. Co. 43 App. Div. 508, 60 N. Y. Supp. 163, upholding right of street railroads to operate exclusive express or freight cars under general railroad law.

Right to lease railroad property.

Cited in Wormser v. Metropolitan Street R. Co. 98 App. Div. 37, 90 N. Y. Supp. 714, sustaining lease of a street railway for nine hundred ninety-nine years; Re Interborough-Metropolitan Co. 125 App. Div. 805, 110 N. Y. Supp. 186, on the right of a street railway corporation to lease the use of its tracks to another street railway corporation.

Joint use of street railway tracks.

Cited in Coney Island & G. R. Co. v. Coney Island & B. R. Co. 38 App. Div. 498, 56 N. Y. Supp. 508, holding railway constructing double track under agreement with another railway for joint use thereof as deemed proper by each, may run cars of leased road thereover; Gallagher v. Keating, 27 Misc. 137, 58 N. Y. Supp. 366, upholding right of steam surface road to erect over land dedicated by city to railroad uses, incline to connect with consolidated elevated road, under traffic agreement; Barnett v. Brooklyn Heights R. Co. 53 App. Div. 440, 65 N. Y. Supp. 1068, holding lessee of separate road, operating same in connection with its own, as continuous line, entitled to charge additional fare for passage over leased portion, notwithstanding § 101 Railroad Law (1890, chap. 565).

Franchise as property.

Cited in People v. Adirondack R. Co. 39 App. Div. 48, 56 N. Y. Supp. 869 (dissenting opinion), majority holding right of railway to condemn property requisite notice of use of which for roadbed given landowners, and maps and profiles filed, not acquired under condemnation proceedings by state of which no notice given railroad; Wakefield v. Theresa, 125 App. Div. 42, 109 N. Y. Supp. 414, holding that a franchise granted a private person of the right to use the streets in connection with the operation of a public lighting plant, is a property right which cannot be taken away except upon a forfeiture.

Duty to give transfers.

Cited in Blume v. Interurban Street R. Co. 41 Misc. 174, 83 N. Y. Supp. 989, holding statute requiring street railway to give transfers within police power, and not objectionable as destroying or diminishing the salability of property.

Distinguished in Topham v. Interurban Street R. Co. 42 Misc. 508, 86 N. Y. Supp. 295, holding street railways in New York city within provision of railroad law as to the giving of transfers.

Contract exempting street railway from expense of paving.

Cited in Kent v. Binghamton, 40 Misc. 8, 81 N. Y. Supp. 198, holding invalid contract between city and street railroad company exempting it from ⅘ of the expense of paving the street between its tracks.

Effect of re-enactment of statute.

Cited in People *ex rel.* New York University v. Wells, 94 App. Div. 278, 87 N. Y. Supp. 1107, holding re-enactment of previous statutes operates as a continuance of the former statute instead of a repeal and new enactment.

43 L. R. A. 247, PEOPLE v. DUNN, 157 N. Y. 528, 52 N. E. 572.

Right of appeal.

Cited in People v. Rutherford, 47 App. Div. 211, 62 N. Y. Supp. 224, denying right to appeal from order denying motion to set aside indictment, in absence of legislative provision therefor; People v. Montgomery, 36 Misc. 328, 73 N. Y.

Supp. 535, denying motion to dismiss indictment where not based upon grounds prescribed by Code; People v. Martin, 99 App. Div. 373, 91 N. Y. Supp. 486, holding an order denying motion to dismiss indictment for want of prosecution, is not appealable; People ex rel. Hummel v. Reardon, 112 App. Div. 868, 98 N. Y. Supp. 399, holding that the right of appeal in criminal cases is not an inherent right granted by the constitution, but exists only in cases provided for by statute; People v. Markham, 114 App. Div. 389, 99 N. Y. Supp. 1092, holding that the defendant could not appeal from a judgment of the Court of Special Sessions, where the judgment was suspended after conviction; Re Montgomery, 126 App. Div. 75, 110 N. Y. Supp. 793, holding that there was no appeal from an order denying motion to furnish defendant with evidence taken before the grand jury; People ex rel. New York v. Steinhart, 57 Misc. 294, 109 N. Y. Supp. 539, sustaining right of legislature to impose conditions upon the right of appeal, such as requiring a bond before appeal.

Distinguished in People v. Glen, 64 App. Div. 173, 71 N. Y. Supp. 893, sustaining refusal to set aside indictment for admission of affidavits showing to grand jury probable commission of crime.

Jurors and jury trials.

Cited in People v. Hall, 169 N. Y. 194, 62 N. E. 170, upholding appointment of special jury commissions by appellate division on affidavit on trial for murder in first degree; People v. Meyer, 162 N. Y. 362, 56 N. E. 758, holding constitutional right to trial by jury satisfied though jury in murder case necessarily drawn from general panel after selection of special jurors; People v. Conklin, 175 N. Y. 339, 67 N. E. 624, holding challenge to array based on alleged unconstitutionality of special jury law properly overruled; Brown v. State, 62 N. J. L. 690, 42 Atl. 811, upholding constitutionality of act providing for struck juries in capital cases; State v. Bolin, 10 Wyo. 478, 70 Pac. 1, holding jury is from body of county although jury list not selected from all parts of the county; Smith v. Western P. R. Co. 203 N. Y. 204, 40 L.R.A.(N.S.) 141, 96 N. E. 1106, holding that section 973 of code of civil procedure, permitting court in its discretion to "order one or more issues to be tried separately prior to any trial of other issues," is constitutional; People v. Walter, 203 N. Y. 491, 97 N. E. 30, holding that previously formed opinion by juror will not disqualify him, where he declares on oath that he believes such opinion would not influence his verdict, especially where drawn under special jury law; Sporza v. German Sav. Bank, 192 N. Y. 34, 84 N. E. 406, on the right of trial by jury.

Cited in footnotes to Silberman v. Hey, 44 L. R. A. 264, which holds void, statute applicable to particular county changing the law as to jury trials; Eckrich v. St. Louis Transit Co. 62 L. R. A. 912, which holds that the jury, a right to trial by which is continued by Constitution, is that existing prior to adoption of Constitution.

Cited in note (23 L.R.A.(N.S.) 1117) on power of legislature to impose upon judges duty to assist in drawing jurors.

Distinguished in *Re* Brenner, 170 N. Y. 193, 63 N. E. 133, Reversing 35 Misc. 219, 70 N. Y. Supp. 744, holding statute transferring appointment of commissioner of jurors to justices of supreme court, appellate division, void.

Special legislation.

Cited in Kittinger v. Buffalo Traction Co. 160 N. Y. 396, 54 N. E. 1081, upholding statute applying in terms generally to cities of first and second class, irrespective of its operation; Smithsonian Inst. v. St. John, 214 U. S. 31, 53 L. ed. 899, 29 Sup. Ct. Rep. 601, Dismissing writ of error to 191 N. Y. 270, 83 N. E. 981, 14 Ann. Cas. 708, which held that a statute general in its applica-

tion, and not local or temporary, was not made invalid as a special law, because there was only one trust in existence to which it could apply; Coler v. Brooklyn Daily Eagle, 133 App. Div. 301, 117 N. Y. Supp. 273, sustaining statute providing for the calling of special juries in counties having a population of one million or more; Ahern v. Elder, 195 N. Y. 499, 88 N. E. 1059, holding that a statute regulating elections is not rendered invalid as a special law, where parts of it apply only to cities having one million or more inhabitants because of local conditions, where the statute is designed to regulating all elections in the state.

Due process of law.

Cited in People v. Johnson, 185 N. Y. 229, 77 N. E. 1164, holding that the admission of the testimony of a child under twelve years of age, not under oath as provided for by statute in case the court was satisfied that the child did not understand the nature of an oath, was not invalid as not being due process of law.

43 L. R. A. 253, WILLIAMS v. HAYS, 157 N. Y. 541, 68 Am. St. Rep. 797, 52 N. E. 589.

Civil liability of insane party for torts.

Cited in footnote to Tucker v. Hyatt, 44 L. R. A. 129, which holds co-conspirator's unsoundness of mind ineffectual to relieve others from liability.

Liability of insurer on intentional destruction of property by insured.

Cited in note (17 L.R.A.(N.S.) 190) on liability of insurer in case of intentional destruction of property by insured.

43 L. R. A. 256, WARREN v. UNION BANK, 157 N. Y. 259, 68 Am. St. Rep. 777, 51 N. E. 1036.

Investment by guardian.

Cited in *Re* Terry, 31 Misc. 479, 65 N. Y. Supp. 655, charging guardian with trust funds appropriated by him under mortgage to himself on insufficient security; *Re* Hall, 48 App. Div. 491, 62 N. Y. Supp. 888, holding trustees not authorized to invest in umbrella trust, moneys of infant heirs, under will giving full power to invest in any security deemed by them best fitted to carry out the will; Swaine v. Hemphill, 165 Mich. 567, 40 L.R.A.(N.S.) 210, 131 N. W. 68, holding that administrator who violates rule as to liquidating estate without undue delay is liable for losses incurred and is not permitted to offset against them profits that may have been made; Re Burr, 48 Misc. 74, 96 N. Y. Supp. 225, holding that an executor or administrator has not authority to continue loans made by the deceased, but must turn the assets of the estate into money as soon as possible; Mathews v. Sheehan, 76 Conn. 660, 100 Am. St. Rep. 1017, 57 Atl. 694, holding that an executor, administrator, or trustee is not permitted to speculate or otherwise endanger the trust funds, and it is a breach of duty if he does, and is liable for all losses and deprived of all gains, unless done with the advice and consent of the beneficiaries; Miles v. Pike Min. Co. 124 Wis. 285, 102 N. W. 555, holding that the executor was not liable for moneys paid in good faith to an association, to which the deceased had previously paid calls made upon him for mining purposes.

Cited in notes (40 L.R.A.(N.S.) 204, 205, 224, 229) on personal representative, testamentary trustee, or guardian carrying on business; (132 Am. St. Rep. 374) on investment which trustee may not make without incurring liability in case of loss.

Purchase by father of property in which children interested.

Cited in Kullman v. Cox, 167 N. Y. 419, 53 L. R. A. 887, 60 N. E. 744 (dissenting opinion), majority sustaining as against children, purchase of property by husband, from mortgagee after acquisition of title by latter on foreclosure of purchase-money mortgage given by wife.

Power of guardian.

Cited in Ide v. Brown, 178 N. Y. 32, 70 N. E. 101, holding guardian without power to bind person of ward by contract extending beyond period of minority; Re Smith, 97 App. Div. 162, 89 N. Y. Supp. 639, holding that a special guardian should not be credited with amounts expended in improving the infants' real estate where no proof exists as to the necessity therefor, and also amounts expended in payment of a void judgment against the infants.

Cited in footnotes to Andrus v. Blazzard, 54 L. R. A. 354, which denies guardian's power to make contract binding on ward or his estate; Frazier v. Jeakins, 57 L. R. A. 575, which holds guardian's sale to her husband void.

Cited in note (89 Am. St. Rep. 295, 296, 314) on common-law powers of guardians.

Right of ward.

Cited in footnote to Pitts v. Rhode Island Hospital Trust Co. 48 L. R. A. 783, which authorizes allowance necessary for infants maintenance out of trust fund provided for his education.

Sale of minor's land.

Cited in footnote to Richards v. East Tennessee, V. & G. R. Co. 45 L. R. A. 712, which sustains power of court of chancery to order sale of entire interest of minors in land on *ex parte* petition in term time.

Creditor's right to satisfy judgment from real estate.

Cited in Hickey v. Dixon, 42 Misc. 7, 85 N. Y. Supp. 551, denying right of creditor to satisfy his judgment from real estate owned by judgment debtor's minor daughter but on which debtor has made improvements; Hanna v. McLaughlin, 158 Ind. 296, 63 N. E. 475, holding land conveyed by husband to wife liable to husband's copartners for firm funds diverted by him to the discharge of a mortgage on the land.

Statute of limitations.

Cited in Barnes v. Courtright, 37 Misc. 62, 74 N. Y. Supp. 203, holding statute of limitations does not bar action against receiver for funds paid to party in spite of notice of claim thereto by plaintiff, where trust never repudiated.

Presumption of jurisdiction.

Cited in Comesky v. Suffern, 179 N. Y. 398, 72 N. E. 320, holding that there is no presumption as to the validity of judgment of a court whose jurisdiction is limited by statute, but the conditions of the statute must be strictly complied with.

Effect of judgment without jurisdiction.

Cited in O'Donoghue v. Boies, 159 N. Y. 99, 53 N. E. 537, holding that judgment in partition, void as contrary to will, may be collaterally attacked where partition sale set up as source of title; McCarthy v. Supreme Court, I. O. F. 107 App. Div. 186, 94 N. Y. Supp. 876, holding that the appointment of an administrator could be attacked collaterally in an action upon a benefit certificate, where it appeared that the appointment was based upon the residence of the deceased in the county, and it appeared that he was not a resident; Bush v. Halsted, 121 App. Div. 542, 106 N. Y. Supp. 133, holding that the order affirming a sale to a person representing the attorneys, was not binding upon the per-

son making the assignment for the benefit of creditors, where the attorneys made the sale without knowledge upon the part of the debtor.

Fraud in action between original parties.

Cited in Grockie v. Hirshfield, 50 App. Div. 91, 63 N. Y. Supp. 365, holding negligence of foreigner in not ascertaining contents of sale agreement signed by him, does not bar proof of fraud therein; Poillon v. Poillon, 37 Misc. 734, 76 N. Y. Supp. 488, upholding complaint stating facts constituting fraud though not charged in terms.

Pleading fraud and deceit.

Cited in Fredericks v. Kreuder, 137 App. Div. 327, 121 N. Y. Supp. 1001, holding that if intent to defraud may fairly be inferred from other facts stated in complaint, express allegations to that effect is not essential; Bellezzire v. Camardella, 95 App. Div. 181, 88 N. Y. Supp. 807 (dissenting opinion), on the pleading of fraud and deceit as a cause of action.

43 L. R. A. 264, PEOPLE *ex rel.* TYROLER v. CITY PRISON, 157 N. Y. 116, 68 Am. St. Rep. 763, 51 N. E. 1006.

Followed without opinion in People *ex rel.* Fleischman v. Caldwell, 168 N. Y. 671, 61 N. E. 1132.

Statutory regulations of sale or purchase of tickets.

Approved in People ex rel. Frank v. Pease, 3 Ill. C. C. 132, holding a statute prohibiting the sale of railroad tickets by any but authorized agents is unconstitutional.

Cited in People *ex rel.* Weil v. Hagan, 35 Misc. 156, 71 N. Y. Supp. 461, and People *ex rel.* Fleischman v. Caldwell, 64 App. Div. 48, 71 N. Y. Supp. 654, holding statute forbidding sale of railroad tickets except by authorized agent of railroad, void; Allardt v. People, 197 Ill. 508, 64 N. E. 533, denying constitutionality of act prohibiting buying, selling, or fraudulent use of passes issued by common carriers; Schubach v. McDonald, 179 Mo. 187, 65 L. R. A. 144, 101 Am. St. Rep. 452, 78 S. W. 1020, upholding right to enjoin ticket brokers from disposing of nontransferable tickets purchased with notice; New York C. & H. R. R. Co. v. Reeves, 41 Misc. 493, 85 N. Y. Supp. 28, denying injunction to restrain ticket brokers from purchasing and reselling reduced rate nontransferable tickets; People ex rel. Lange v. Palmitter, 71 Misc. 163, 128 N. Y. Supp. 426, holding that ordinance prohibiting persons from selling theater tickets on streets in front of theater is valid; Munson v. Colorado Springs, 35 Colo. 509, 6 L.R.A.(N.S.) 435, 84 Pac. 683, 9 Ann. Cas. 970, holding unconstitutional an ordinance providing for the licensing of ticket brokers and requiring them as a condition precedent to procuring a license to present a certificate from some reputable ticket broker's association; People v. Marks, 64 Misc. 683, 120 N. Y. Supp. 1106, holding that the business of ticket speculator is a lawful business, within the protection of the state constitution.

Cited in footnote to Schubach v. McDonald, 65 L.R.A. 136, which holds that ticket broker purchasing nontransferable ticket cannot complain on being forbidden to transfer the same.

Cited in notes (78 Am. St. Rep. 238, 267; 3 L.R.A.(N.S.) 559; 4 L.R.A. (N.S.) 481) on constitutionality of anti-scalping legislation; (96 Am. St. Rep. 830, 832) on power of state to control sale and use of passenger tickets.

Distinguished in Jannin v. State, 42 Tex. Crim. Rep. 640, 53 L. R. A. 351, 96 Am. St. Rep. 821, 51 S. W. 1126, and Com. v. Keary, 14 Pa. Super. Ct. 587, upholding statute penalizing ticket brokerage; Delaware, L. & W. R. Co. v. Frank, 110 Fed. 693, refusing to enjoin brokerage of special nontransferable tickets at

suit of party to illegal combination of railroads; Collister v. Hayman, 71 App. Div. 317, 75 N. Y. Supp. 1102, upholding refusal of theater owner to admit parties purchasing ticket from licensed ticket speculator; Collister v. Hayman, 183 N. Y. 257, 1 L.R.A.(N.S.) 1192, 111 Am. St. Rep. 740, 76 N. E. 20, 5 Ann. Cas. 344, holding that a clause in a theater ticket providing that it should be void if offered for sale upon the street was valid; Musco v. United Surety Co. 196 N. Y. 466, 134 Am. St. Rep. 851, 90 N. E. 171, Affirming 132 App. Div. 304, 117 N. Y. Supp. 21, holding that a statute requiring ticket agencies who are also engaged in the business of receiving money for transmission to foreign countries, to give a bond to protect person depositing money, is not unconstitutional; Lytle v. Galveston, H. & S. A. R. Co. 100 Tex. 302, 10 L.R.A.(N.S.) 442, 99 S. W. 396, holding that a railroad company was entitled to an injunction restraining the dealing in return tickets, where the company has issued round trip excursion tickets for a certain occasion.

Disapproved in Samuelson v. State, 116 Tenn. 490, 115 Am. St. Rep. 805, 95 S. W. 1012; Re O'Neill, 41 Wash. 182, 3 L.R.A.(N.S.) 562, 83 Pac. 104, 6 Ann. Cas. 869; State v. Thompson, 47 Or. 501, 4 L.R.A.(N.S.) 485, 84 Pac. 476, 8 Ann. Cas. 646,—holding that a statute prohibiting the sale of railroad tickets except by duly constituted agencies of the railroads, is valid.

Notice as limitation of agent's power to insure.

Cited in Lowenstein v. Lombard, 164 N. Y. 332, 58 N. E. 44, holding notice on carrier's advertising circular that insurance given free where value of goods declared before shipment, not notice of limitation of agent's power to insure only on declaration at such time.

Statutes affecting hours or payment of labor.

Cited in *Re* Morgan, 26 Colo. 449, 47 L. R. A. 66, 77 Am. St. Rep. 269, 58 Pac. 1071, holding act prescribing under penalty, hours of labor in mines and smelting works, void; People v. Orange County Road Constr. Co. 175 N. Y. 89, 65 L. R. A. 40, 67 N. E. 129, holding state cannot forbid independent contractors, performing work for it, to require their employees to labor more than a certain number of hours each day; People *ex rel.* Rodgers v. Coler, 166 N. Y. 18, 52 L. R. A. 822, 82 Am. St. Rep. 605, 59 N. E. 716, holding statute fixing rate of wages for labor upon public works of municipality, void; State v. Haun, 61 Kan. 161, 47 L. R. A. 375, 59 Pac. 340, holding statute forbidding payment of wages in scrip, store orders, etc., unconstitutional.

Restraint of trade.

Cited in Grossman v. Caminez, 79 App. Div. 21, 79 N. Y. Supp. 900, holding unconstitutional act prohibiting any person in certain cities from offering real property for sale without owner's written authority; Thousand Island Park Asso. v. Tucker, 173 N. Y. 211, 60 L. R. A. 789, 65 N. E. 975, denying injunction to restrain person from furnishing lessees of lots with supplies in violation of a regulation of the lessor association prohibiting traffic without its permission; People v. A. Booth & Co. 42 Misc. 325, 86 N. Y. Supp. 272, holding act prohibiting possession during close season of fish, whether taken within or out of the state, unconstitutional as preventing foreign and interstate commerce; Buffalo v. Hill, 79 App. Div. 408, 79 N. Y. Supp. 449, upholding ordinance requiring license to sell meats outside of public markets, such license to be issued on direction of common council after two-thirds vote; John D. Park & Sons Co. v. National Druggists' Asso. 175 N. Y. 36, 62 L. R. A. 647, 67 N. E. 136 (dissenting opinion), majority holding agreement between merchants and manufacturers that latter sell at fixed prices with rebate to those maintaining selling price not void as creating

monopoly, restraining trade, or against public policy; New York Sanitary Utilization Co. v. Health Department, 61 App. Div. 113, 70 N. Y. Supp. 510, holding invalid, act directed against the continuance of a particular business in a limited locality; Frank L. Fisher Co. v. Woods, 187 N. Y. 95, 12 L.R.A.(N.S.) 710, 79 N. E. 836, holding void a statute prohibiting any one from offering for sale real estate of another without a written order from such owner, or his agent; People ex rel. Moskowitz v. Jenkins, 202 N. Y. 59, 35 L.R.A.(N.S.) 1083, 94 N. E. 1065, holding that ordinance imposing license fee of $100 per month upon transient merchants who purports to sell bankrupt stocks cannot be upheld as exercise of police power; People ex rel. John Single Paper Co. v. Edgcomb, 112 App. Div. 606, 98 N. Y. Supp. 965, holding that a requirement of the county commissioners in requesting bids for printing of their journal, that the union labels should be used by the printer, was void.

Cited in note (53 L. R. A. 765) on constitutionality of statute attempting to grant monopoly.

Distinguished in Whiteley v. Terry, 83 App. Div. 201, 82 N. Y. Supp. 89, upholding constitutionality of act forbidding any person in specified cities to offer for sale real property without written authority from owner.

Failure of subscribing witness to designate residence.

Cited in Dodge v. Cornelius, 168 N. Y. 251, 61 N. E. 244 (dissenting opinion), majority refusing to consider question as to validity of statute imposing fine upon subscribing witness to will who fails to add place of residence, because not raised below.

Erection of asylum without license.

Cited in People *ex rel.* Wagner v. Hagan, 52 App. Div. 389, 65 N. Y. Supp. 120, upholding statute making erection of lying-in asylum without license, misdemeanor.

Deprivation of property without due process of law.

Cited in State v. Ramseyer, 73 N. H. 36, 58 Atl. 958, 6 Ann. Cas. 445, holding that a statute prohibiting the sale or giving away of trading stamps, which are redeemable in other merchandise, is unconstitutional; Wright v. Hart, 103 App. Div. 229, 93 N. Y. Supp. 60 (dissenting opinion), on an ordinance regulating sales in bulk, as a deprivation of property without due process of law; People v. Marcus, 110 App. Div. 260, 97 N. Y. Supp. 322, holding void an ordinance providing that any employer who should compel or coerce any person seeking employment from him not to join any labor union, as a condition precedent to obtaining such employment; State v. Brown, 37 Wash. 103, 68 L.R.A. 892, 107 Am. St. Rep. 798, 79 Pac. 635, holding unconstitutional a statute requiring a license and examination from the state dental board to operate a dental parlor, as distinguished from the actual practice of dentistry.

Disapproved in Chicago v. Openheim, 229 Ill. 318, 82 N. E. 294, 11 Ann. Cas. 554, sustaining city ordinance prohibiting the sale or giving away of street railway transfers, or the use of such transfers by others than those to whom issued.

43 L. R. A. 277, CHOATE v. STEVENS, 116 Mich. 28, 74 N. W. 289.

Clauses affecting negotiability of a note.

Cited in First Nat. Bank v. Badham, 86 S. C. 207, 138 Am. St. Rep. 1043, 68 S. E. 536; Gilpin v. People's Bank, 45 Ind. App. 56, 90 N. E. 91,—holding that recitals in note that title to goods for which note was given does not pass until payment of note, do not destroy its negotiability.

Cited in notes (30 L.R.A.(N.S.) 40) on reference to extrinsic agreement as

affecting negotiability; (125 Am. St. Rep. 194) on agreements and conditions destroying negotiability.

Distinguished in Kimpton v. Studebaker Bros. Co. 14 Idaho, 559, 125 Am. St. Rep. 185, 14 Ann. Cas. 1126, 94 Pac. 1039, holding that a title retaining note, which contained a provision that the payee could declare the same due at any time that he felt himself insecure, was non-negotiable, and also citing annotation on this point; Worden Grocer Co. v. Blanding, 161 Mich. 256, 126 N. W. 212, holding that a note which contains a statement that it is given for the purchase price of a stock of merchandise, title to the latter to remain in the vendor until paid, is a non-negotiable note.

Construction of contracts retaining title until after payment.

Cited in Mishawaka Woolen Mfg. Co. v. Westveer, 112 C. C. A. 109, 191 Fed. 467, holding that contract of sale under which title to property was not to pass until full payment, and that on default of such payment seller might retake possession of goods remaining unsold, sale was not conditional as against subsequent mortgagee; Coeling v. Green, 163 Mich. 29, 127 N. W. 792, holding that under contract conveying interest in business providing that on failure to pay balance of purchase price, title should revest in seller, purchaser obtains title subject to mortgage lien of seller; Van Den Bosch v. Bouwman, 138 Mich. 626, 110 Am. St. Rep. 336, 101 N. W. 832, holding that a note for the purchase price of chattels, which provided that at any time the vendor could take possession and resell the property or retain possession and the amounts paid upon the note to go as payments for the use of the property, was not a conditional sale contract; Bunday v. Columbus Mach. Co. 143 Mich. 13, 5 L.R.A.(N.S.) 479, 106 N. W. 397, holding that a contract for the sale of machinery, which retains title in the vendor until all the payments of the purchase price have been made, is an executory contract.

Cited in note (37 L.R.A.(N.S.) 71) on conditional sale: transfer of purchase-money obligation as affecting reservation of title.

43 L. R. A. 280, CARLAND v. WESTERN U. TELEG. CO. 118 Mich. 369, 74 Am. St. Rep. 394, 76 N. W. 762.

Sufficiency of evidence to uphold submission to jury.

Cited in Donovan v. Daiber, 124 Mich. 53, 82 N. W. 848, refusing to disturb verdict establishing valid contract to deliver grain, where supported by plaintiff's testimony.

Distinguished in Reason v. Detroit G. H. & M. R. Co. 150 Mich. 55, 113 N. W. 596, holding that it was error to admit evidence of the statement made by the station agent that the goods had never left the defendant company's line, where it was not his duty to inform himself of such fact, and the statement was not made in the performance of his duties.

Contracts as to telegrams.

Cited in footnote to Brown v. Cumberland Teleph. & Teleg. Co. 50 L. R. A. 277, which holds telephone agent's agreement to deliver message at destination for extra charge binding on company notwithstanding habitually disregarded instruction to contrary.

Cited in notes (56 L.R.A. 746, 747) on contracts for telegrams not written on company's blanks; (110 Am. St. Rep. 749) on contracts by telegraph.

Operator as being agent of sender.

Cited in Western U. Teleg. Co. v. Sanders, 39 Ind. App. 150, 79 N. E. 406, as to the telegraph operator being the agent of the sender or the company in writing a message directed to be sent; Holler v. Western U. Teleg. Co. 149 N.

C. 343, 19 L.R.A.(N.S.) 478, 63 S. E. 92 (dissenting opinion), on the receipt of an oral message for transmission by telegraph company.

Question for jury.

Cited in De Mary v. Burtenshaw, 131 Mich. 333, 91 N. W. 647, holding whether contract for the purchase of wheat was a gambling transaction is a question for the jury.

Recovery for mental suffering.

Cited in Thomas v. Western U. Teleg. Co. 25 Tex. Civ. App. 400, 61 S. W. 501, denying right of action for mental suffering for failure to deliver telegram transmitted wholly in another state the laws of which deny recovery therefor.

43 L. R. A. 284, RUNYAN v. CENTRAL R. CO. 61 N. J. L. 537, 68 Am. St. Rep. 711, 41 Atl. 367.

Custom to vary contract of carriage.

Cited in Runyan v. Central R. Co. 64 N. J. L. 68, 48 L. R. A. 744, footnote p. 744, 44 Atl. 985, holding custom to carry parcels in cars not established by testimony as to conduct of single person; Runyan v. Central R. Co. 65 N. J. L. 229, 47 Atl. 422, upholding verdict for plaintiff where prevented from entering train with bundles in pursuance of usual custom; Tidey v. Erie R. Co. 66 N. J. L. 384, 49 Atl. 427, holding custom of railway to accept either end of round trip ticket for fare either way, provable in action for assault and battery in removal from car where end reading wrong way presented for passage.

Liability for loss of baggage.

Cited in note (99 Am. St. Rep. 357) on effect of knowledge of character of property on liability for loss of baggage.

— Limitation of liability.

Cited in notes (5 L.R.A.(N.S.) 650) on application to hand baggage of limitation of liability for baggage; (19 L.R.A.(N.S.) 1011) on limitation of carrier's liability for baggage.

What constitutes baggage.

Cited in Yazoo & M. Valley R. Co. v. Baldwin, 113 Tenn. 213, 81 S. W. 599, holding that the clothes of a woman, and her children, together with miscellaneous articles and ornaments, are proper articles of baggage, but not so as to household goods which she was carrying in her trunk, though she was at the time changing her residence.

Cited in note (99 Am. St. Rep. 348) on wearing apparel as baggage.

43 L. R. A. 287, McCLAIN v. WILLIAMS, 10 S. D. 332, 11 S. D. 60, 73 N. W. 72, 75 N. W. 391.

Hearing on merits in 11 S. D. 227, 49 L. R. A. 610, 74 Am. St. Rep. 791, 76 N. W. 930.

Constitutional right to remedy for wrongs.

Cited in Mattson v. Astoria, 39 Or. 580, 87 Am. St. Rep. 687, 65 Pac. 1066, holding charter provision denying remedy against municipality for injury due to defective streets, void; Williams v. Port Chester, 72 App. Div. 522, 76 N. Y. Supp. 631, holding charter provision denying remedy against city for injury due to its negligence, unless presented in thirty days, void as to party prevented by injury from giving such notice.

Right of appeal.

Cited in Williams v. Chicago & N. W. R. Co. 10 S. D. 337, 73 N. W. 74, holding decision on motion for new trial appealable although amount involved less than

$75; Lake Erie & W. R. Co. v. Watkins, 157 Ind. 608, 62 N. E. 443, denying appeal where right taken away after rendition of judgment but before appeal perfected; Mau v. Stoner, 14 Wyo. 196, 83 Pac. 218, holding that in a summary or special proceeding, unknown to common law, the legislature may deny the right of appeal to the supreme court under the constitution and make decision of district court final.

Cited in footnote to Johnson v. State, 51 L. R. A. 272, which sustains statute requiring exception to obtain reversal for error in charge.

Distinguished in McInteer v. Moss, 144 Ky. 670, 139 S. W. 842, holding that statute fixing $25, as minimum of appeals in criminal cases from judgments of police court, is not unconstitutional, although appeals are allowed from judgments of justices of peace where amount of fine is $20.

Change of law as affecting pending appeals.

Cited in Poull v. Foy-Hays Constr. Co. 159 Ala. 458, 48 So. 785, holding that an appeal as a part of the remedy is not a vested right so as not to be affected by a statute changing the time limited for taking appeal; Oppegaard v. Renville County, 110 Minn. 303, 125 N. W. 504, holding statute regulating right of appeal from orders of the county commissioners had a retrospective action.

Cited in footnote to Cassard v. Tracy, 49 L. R. A. 272, which holds pending appeals within provision in new Constitution giving supreme court power to determine questions of fact as well as of law.

Special legislation.

Cited in State v. Sexton, 11 S. D. 108, 75 N. W. 895, construing Laws 1893, chap. 64, to deprive all county courts of jurisdiction in bastardy proceedings, though only counties of 20,000 population expressly included.

Construction of word "may."

Cited in note (5 L.R.A.(N.S.) 344) on "may" in constitutional or statutory provision as mandatory.

43 L. R. A. 290, STATE v. THERIAULT, 70 Vt. 617, 67 Am. St. Rep. 695, 41 Atl. 1030.

Validity of fish and game laws.

Cited in State v. Haskell, 84 Vt. 433, 34 L.R.A.(N.S.) 289, 79 Atl. 852, holding that state may, for protection of food fish in streams of state, prohibit deposit of mill refuse therein; State v. Miles, 78 Vt. 272, 112 Am. St. Rep. 917, 62 Atl. 795, sustaining statute regulating the killing of deer, and limiting the number which may be killed by each person.

Right of fishery.

Cited as approved in State v. Mallory, 73 Ark. 247, 67 L.R.A. 777, 83 S. W. 955, 3 Ann. Cas. 852, holding that the state could regulate the right of fishing, but could not deprive nonresidents of right to fish and hunt, which right they held as a property right inherent in them because of ownership of property within the state.

Cited in Sherwood v. Stephens, 13 Idaho, 404, 90 Pac. 345, holding that the ownership of fish is a qualified ownership as distinguished from the ownership of land and chattels, and the person could not detain them on his lands by obstructing the stream; Re Fishway, 131 App. Div. 416, 115 N. Y. Supp. 745, on the right to regulate fisheries, and the obstruction of streams; Com. ex rel. Hopkins v. Foster, 36 Pa. Super. Ct. 440, holding that a statute providing that a certain stream was navigable though in fact it was not, did not give the public a right to fish in it.

Cited in footnote to Albright v. Cortright, 48 L.R.A. 616, which denies right to fish in private pond by prescription or long usage by public.

Cited in notes (60 L.R.A. 508) on right to fish; (131 Am. St. Rep. 751, 753) on law of fishing.

Maintenance of trespass by owner of right to fish.

Distinguished in Payne v. Sheets, 75 Vt. 340, 55 Atl. 656, holding owner of right to shoot, trap and fish on lands may maintain trespass against one entering lands, without permission, for that purpose.

Police power.

Cited in Bacon v. Boston & M. R. Co. 83 Vt. 451, 76 Atl. 128, holding that all property is held subject to general police regulations of state; State v. Morse, 84 Vt. 398, 34 L.R.A.(N.S.) 195, 80 Atl. 189, holding that regulation of state board of health forbidding riparian owner on pond from which city water supply is taken, to bathe in pond, is valid.

43 L. R. A. 295, BARTLETT v. CLARKSBURG, 45 W. Va. 393, 72 Am. St. Rep. 817, 31 S. E. 918.

Liability of municipality for torts of officers.

Cited in Wood v. Hinton, 47 W. Va. 649, 35 S. E. 824, holding municipality not liable for injury caused by erection of carpenter shop on premises in reliance on permit subsequently modified to prevent use of necessary steam engine; Metz v. Asheville, 150 N. C. 751, 22 L.R.A.(N.S.) 944, 64 S. E. 881, holding that a city was liable for the acts of its officers while acting for the benefit of the city, but not in the exercise of its governmental powers; Shaw v. Charleston, 57 W. Va. 434, 50 S. E. 527, 4 Ann. Cas. 515, holding that a city is not liable for injuries to a person while confined in the city jail, caused by the unsanitary condition of the jail.

Cited in footnote to Wilson v. Mitchell, 65 L.R.A. 158, which holds that municipality cannot ratify act of waterworks superintendent in wrongfully connecting well with city water mains so as to become liable for water taken from the well.

Cited in notes (3 L.R.A.(N.S.) 761) on liability for injury caused by placing or exploding bomb or fireworks in highway; (108 Am. St. Rep. 140, 154) on liability of municipality for negligent acts of its officers.

43 L. R. A. 297, WATKINS v. BIRMINGHAM R. & ELECTRIC CO. 120 Ala. 147, 24 So. 392.

Second appeal in 122 Ala. 678, 26 So. 1029.

Passenger's negligence in riding on platform or alighting.

Cited in Rutledge v. New Orleans & N. E. R. Co. 63 C. C. A. 597, 129 Fed. 95, holding it contributory negligence to alight from train moving at such rate as to make act obviously dangerous; Nashville, C. & St. L. R. Co. v. Casey, 1 Ala. App. 347, 56 So. 28, holding that old and infirm woman is guilty of contributory negligence in attempting with aid of her son to alight from train while in motion; Birmingham R. Light & P. Co. v. Mindler, 3 Ala. App. 446, 57 So. 113, holding that answer in action for injury to street car passenger setting up that such passenger negligently attempted to alight while car was in motion is not demurrable; Louisville & N. R. Co. v. Bargainier, 168 Ala. 576, 53 So. 138, holding that pleas of contributory negligence must impute to plaintiff omission of duty, or commission of some negligence or dangerous act which proximately contributes to injury; Birmingham R. Light & P. Co. v. Dickerson, 154 Ala. 525, 45 So. 659, holding it not contributory negligence as a matter of law for a

passenger to alight from a slowly moving car, even though he stepped in the direction opposite to which the car was moving; Creola Lumber Co. v. Mills, 149 Ala. 481, 42 So. 1019, holding that it was not contributory negligence as a matter of law for a brakeman to alight from a moving train; Atlantic Coast Line R. Co. v. Crosby, 53 Fla. 420, 43 So. 318; Johnson v. Yazoo & M. Valley R. Co. 94 Miss. 453, 22 L.R.A.(N.S.) 316, 47 So. 785,—on the rights and risks of a passenger standing upon the platform of a moving train; Illinois C. R. Co. v. Warren, 79 C. C. A. 350, 149 Fed. 666 (dissenting opinion), as to the contributory negligence of passenger standing upon the platform of a moving train.

Cited in footnotes to Graham v. McNeill, 43 L. R. A. 300, which holds riding on platform when no vacant seats inside not negligence *per se;* Benedict v. Minneapolis & St. L. R. Co. 57 L. R. A. 639, which holds exposure of body beyond side of moving train by passenger on platform, negligence; Jackson v. Natchez & W. R. Co. 70 L.R.A. 294, which holds excursionists not negligent in riding home on platform of train taking them out if not safer position can be obtained because of crowd.

Cited in note (21 L.R.A.(N.S.) 716) on negligence of passenger in going upon platform or steps of car just before reaching station.

Distinguished in Hunter v. Louisville & N. R. Co. 150 Ala. 601, 9 L.R.A. (N.S.) 851, 43 So. 802, holding where the passenger stood upon the steps for several minutes before attempting to alight, and he knew the speed of the train, which was about six or eight miles an hour, and he was familiar with the surrounding, it was contributory negligence as a matter of law for him to alight while encumbered with bundles.

— Question for jury.

Cited in Birmingham R. & Electric Co. v. James, 121 Ala. 123, 25 So. 847, upholding submission to jury where deceased descended to steps of car on its slowing up at point beyond that at which requested to stop; Southern R. Co. v. Roebuck, 132 Ala. 418, 31 So. 611, holding negligence for jury where passenger goes to platform steps preparatory to alighting at station called by conductor; Armstrong v. Montgomery Street R. Co. 123 Ala. 247, 26 So. 349, and Currie v. Mendenhall, 77 Minn. 184, 79 N. W. 677, holding case for jury where plaintiff jerked by sudden motion from step to which he descended while car slowly drawing to stop; Southern R. Co. v. Lollar, 135 Ala. 379, 33 So. 32, holding question for jury where evidence conflicting as to stop of train at point where plaintiff was injured before reaching station; Citizens Street R. Co. v. Hoffbauer, 23 Ind. App. 622, 56 N. E. 54, holding negligence of passenger walking along running board to get transfer from conductor, for jury; Sweet v. Birmingham R. & Electric Co. 136 Ala. 170, 33 So. 886, holding whether one stepping from slowly moving train was negligent is question for jury; National Life & Acci. Ins. Co. v. Lokey, 166 Ala. 181, 52 So. 45, holding that stepping from moving train irrespective of speed thereof, is not as matter of law, obvious danger within terms of accident insurance policy; Birmingham R. Light & P. Co. v. Girod, 164 Ala. 20, 137 Am. St. Rep. 17, 51 So. 242, holding that street car passenger is not guilty of contributory negligence as matter of law in stepping off slowly moving car in dark, encumbered with small bundles; North Alabama Traction Co. v. Taylor, 3 Ala. App. 460, 57 So. 146, holding that question of passenger's negligence in attempting to alight from street car while in motion is for jury; Southern R. Co. v. Patterson, 148 Ala. 80, 121 Am. St. Rep. 30, 41 So. 964; Birmingham R. Light & P. Co. v. Willis, 143 Ala. 222, 38 So. 1016,—holding that whether a passenger was guilty of contributory negligence in alighting from a

slowly moving car, is a question for the jury; Birmingham R. Light & P. Co. v. Lee, 153 Ala. 86, 45 So. 292, holding it a question for the jury whether a passenger was guilty of contributory negligence in attempting to board a moving street car; Pittsburgh, C. C. & St. L. R. Co. v. Miller, 33 Ind. App. 130, 70 N. E. 1006, holding same, unless the inference against negligence was overcome by the conditions shown by the evidence.

43 L. R. A. 300, GRAHAM v. McNEILL, 20 Wash. 466, 72 Am. St. Rep. 121, 55 Pac. 631.

Overloading cars as evidence of negligence.

Cited in Lobner v. Metropolitan Street R. Co. 79 Kan. 813, 21 L.R.A.(N.S.) 974, 21 L.R.A.(N.S.) 974, 101 Pac. 463, holding the overloading of a car so that the plaintiff was pushed off and injured, was evidence of negligence.

Negligence of passenger.

Cited in Louisville & N. R. Co. v. Massie, 138 Ky. 456, 128 S. W. 330, on contributory negligence of passenger on railroad train in riding on platform of car; Indianapolis Street R. Co. v. Haverstick, 35 Ind. App. 285, 111 Am. St. Rep. 163, 74 N. E. 34, holding that it is not negligence as a matter of law for a passenger to stand upon the running board of a street car, where all the seats are filled; Halverson v. Seattle Electric Co. 35 Wash. 612, 77 Pac. 1058; Lane v. Choctaw, O. & G. R. Co. 19 Okla. 337, 91 Pac. 883,—holding that a passenger is not negligent in riding upon the platform or running board of a car, where the car is overloaded and he cannot obtain a seat; Johnson v. Yazoo & M. Valley R. Co. 94 Miss. 453, 22 L.R.A.(N.S.) 316, 47 So. 785; Atlantic Coast Line R. Co. v. Crosby, 53 Fla. 420, 43 So. 318,—on the rights and risks of passenger standing upon platform of moving train.

Cited in footnotes to Watkins v. Birmingham R. & Electric Co. 43 L. R. A. 297, which holds getting on lower step of car while slowing up at street crossing with intention of getting off, not negligence *per se;* Benedict v. Minneapolis & St. L. R. Co. 57 L. R. A. 639, which holds exposure of body beyond side of moving train by passenger on platform, negligence; Jackson v. Natchez & W. R. Co. 70 L.R.A. 294, which holds excursionists not negligent in riding home on platform of train taking them out if no safer position can be obtained because of crowd; Morgan v. Lake Shore & M. S. R. Co. 70 L.R.A. 609, which holds it not negligence per se for passenger on crowded train to seek relief on platform on becoming sick from lack of proper ventilation and tobacco smoke.

Cited in note (29 L.R.A.(N.S.) 327) on riding on platform of railroad car as negligence.

Contributory negligence as question for jury.

Cited in Union Traction Co. v. Sullivan, 38 Ind. App. 526, 76 N. E. 116, holding that the contributory negligence of a passenger in riding upon the running board of a car, was for the jury; Chicago & W. I. R. Co. v. Newell, 113 Ill. App. 266, holding same as to passenger riding upon platform of train.

Waiver of rule against riding on platform.

Cited in footnote to Sweetland v. Lynn & B. R. Co. 51 L. R. A. 783, which holds custom to receive passengers on platforms of electric cars constitutes waiver of rule forbidding them to ride there.

43 L. R. A. 305, NOLAN v. NEW YORK, N. H. & H. R. CO. 70 Conn. 159, 39 Atl. 115.

Master's duty to promulgate rules for safe conduct of business.

Cited in Chesapeake & O. R. Co. v. Barnes, 132 Ky. 735, 117 S. W. 261, hold-

ing that it is the duty of a railroad company to establish and publish rules for the operation of trains and the government of its employees, for promoting the safety of its employees; Furlong v. New York, N. H. & H. R. Co. 83 Conn. 579, 78 Atl. 489, 21 Ann. Cas. 937, holding that railroad which knowingly permits trainmen to habitually disregard rules for protecting stationary trains, is guilty of negligence; Jackson v. Wheeling Terminal R. Co. 65 W. Va. 424, 64 S. E. 450, sustaining as reasonable a rule devolving upon the train crew, the duty to run its trains so that it could be stopped at once, and other duties for the safety of other employees as well as themselves.

Cited in footnote to Wallin v. Eastern R. Co. 54 L. R. A. 481, which holds failure to provide suitable rules for operation of hand cars used by bridge gangs negligence.

Cited in note (43 L. R. A. 335) on duties of master and servant with regard to rules promulgated for safe conduct of business.

Master's duty to warn servant of peril.

Cited in note (44 L. R. A. 40) on duty of master to instruct and warn servants as to perils of employment.

Employer's liability for defective condition of plant.

Cited in note (57 L. R. A. 836) on statutory liability of employers for defects in condition of their plant.

Liability of master for injuries due to negligence of fellow servant.

Cited in Kelly v. New Haven S. B. Co. 74 Conn. 345, 57 L. R. A. 495, 92 Am. St. Rep. 220, 50 Atl. 871, holding owner of vessel not liable for injuries to deckhand by neglect of mate to use fender in bringing vessel to dock; McLaine v. Head & D. Co. 71 N. H. 301, 58 L. R. A. 466, 93 Am. St. Rep. 522, 52 Atl. 545 (dissenting opinion), majority holding master not liable to workman injured by dirt dumped into trench in which he was at work and of which the foreman failed to warn him as he had promised; Whittlesey v. New York, N. H. & H. R. Co. 77 Conn. 103, 107 Am. St. Rep. 21, 58 Atl. 459, holding that where the section hand was killed in a collision with a freight train, because of the negligence of the section foreman to set out flags, the accident was the result of the negligence of a fellow servant for which the company was not liable.

Cited in notes (54 L.R.A. 89, 92, 94) on vice principalship as determined with reference to character of act which caused injury; (14 L.R.A.(N.S.) 757) on liability of master for negligence of fellow servant.

Contributory negligence.

Cited in Cincinnati, N. O. & T. P. R. Co. v. Lovell, 141 Ky. 254, 47 L.R.A. (N.S.) 916, 132 S. W. 569, holding that if railroad employee is injured by his violation of reasonable rule of company that is or should be known to him, he cannot recover damages.

Annotation in 43 L. R. A. 305, particularly referred to in Scott v. Eastern R. Co. 90 Minn. 143, 95 N. W. 892, holding brakeman injured by reason of defective step on car guilty of contributory negligence where rules impose upon him the duty of inspection.

Review of findings of ultimate facts.

Cited in Lawler v. Hartford Street R. Co. 72 Conn. 81, 43 Atl. 545; Post v. Hartford Street R. Co. 72 Conn. 366, 44 Atl. 547; Fox v. Kinney, 72 Conn. 407, 44 Atl. 745; Rockville Nat. Bank v. Citizens Gaslight Co. 72 Conn. 584, 45 Atl. 361; Murphy v. Derby Street R. Co. 73 Conn. 254, 47 Atl. 120; Wood v. Danbury, 72 Conn. 73, 43 Atl. 554,—holding trial court's conclusion as to negligence under circumstances of case, final both in respect to measure of duty and extent

of performance, in absence of error of law; Nichols v. Peck, 70 Conn. 442, 40 L. R. A. 83, 39 Atl. 803, reversing finding of identity of right of way erroneous where evidence showed distinct roads joining highway 70 feet apart; Hoadley v. Savings Bank, 71 Conn. 608, 44 L. R. A. 336, 42 Atl. 667, holding trial court's conclusion as to whether party "procuring cause" or not, reviewable as error of law where it fails to conform to subordinate facts found and logical deductions therefrom; Standard Cement Co. v. Windham Nat. Bank, 71 Conn. 682, 42 Atl. 1006, reversing finding of "notice" of fraud where based on error of law; Knowlton v. New York, N. H. & H. R. Co. 72 Conn. 195, 44 Atl. 8, holding appellate court not bound by construction of clause in deed by trial court though involving circumstances attending transaction; Cunningham v. Fair Haven & W. R. Co. 72 Conn. 250, 43 Atl. 1047, reversing finding of accuracy of photograph where supported by no other proof than identity of location; Barber v. Manchester, 72 Conn. 686, 45 Atl. 1014 (dissenting opinion), as to finality of trial court's findings as to negligence; Hyde v. Mendel, 75 Conn. 142, 52 Atl. 744, holding supreme court cannot consider alleged errors of the trial court in weighing the evidence; Hyde v. Mendel, 75 Conn. 143, 52 Atl. 744, holding conclusion of trial court as to the existence of negligence upon the facts found reviewable if unreasonable or inconsistent; Preston v. Foster, 75 Conn. 712, 55 Atl. 558, holding legal conclusion of trial court based on adjudicated facts reviewable; Goodhart v. State, 84 Conn. 65, 78 Atl. 853, Ann. Cas. 1912 B, 1297, to the point that where subordinate facts have been found by court from evidence, and inference or conclusion drawn from such facts such conclusion is one of law and reviewable; Hazard Powder Co. v. Somersville Mfg. Co. 78 Conn. 178, 112 Am. St. Rep. 144, 61 Atl. 519, holding that where all the facts bearing upon the reasonable use of waters of a stream, are spread upon the record, the conclusion of the trial judge upon the question of reasonable use may be reviewed by the supreme court; Peterson v. New York, N. H. & H. R. Co. 77 Conn. 354, 59 Atl. 502, holding that the rulings of the trial court upon the facts found, are reviewable on appeal by the supreme court; Honrigan v. Norwich, 77 Conn. 370, 59 Atl. 487, on the same point.

Special findings of fact as part of record.

Cited in Morris v. Winchester Repeating Arms Co. 73 Conn. 686, 49 Atl. 180, holding finding of facts accompanying judgment on demurrer may be treated on appeal as part of record, although better practice in such case is to set forth facts in finding for appeal.

New trial for failure to properly apply law to the facts.

Cited in Kugel v. Angell, 74 Conn. 550, 51 Atl. 533, holding failure of trial court to apply uncontested rules of law to the facts or to properly apply them grounds for a new trial; McMahon v. Stratford, 83 Conn. 388, 76 Atl. 983, holding that conclusions of trial court, that plaintiff has no title to land in question, is reviewable only when it appears that in deducing it from evidential facts plain rules of reason were violated or some of such facts are inconsistent with decision.

43 L. R. A. 349, LITTLE ROCK & M. R. CO. v. BARRY, 28 C. C. A. 644, 56 U. S. App. 37, 84 Fed. 944.

Assumption of risk.

Cited in Southern P. Co. v. Yeargin, 48 C. C. A. 505, 109 Fed. 444 (dissenting opinion), majority holding engineer's knowledge of custom of helper engines to run backward without light, not assumption of risk; Glantz v. Chi-

cago, B. & Q. R. Co. 87 Neb. 65, 127 N. W. 221, holding that section hand on railroad assumes risk incident to switching cars and movement of passing trains.

Duty of master.

Cited in American Bridge Co. v. Seeds, 11 L.R.A.(N.S.) 1045, 75 C. C. A. 407, 144 Fed. 609, holding that there is no duty imposed upon a master to anticipate breaches of duty by the servant.

Cited in notes (44 L. R. A. 78) on duty of master to instruct and warn servants as to perils of employment; (43 L. R. A. 310, 336) on duties of master and servant as to rules promulgated for safe conduct of business.

Proximate cause.

Cited in Cole v. German Sav. & L. Soc. 63 L. R. A. 422, 59 C. C. A. 599, 124 Fed. 119, holding act of stranger in opening unlocked door of elevator well in dimly lighted hall proximate cause of injury to one who walked into well supposing elevator was there; Haskell & B. Car Co. v. Przezdziankowski, 170 Ind. 14, 14 L.R.A.(N.S.) 978, 127 Am. St. Rep. 352, 83 N. E. 626, holding that in order to recover for injuries resulting from the negligence of the master, it must be shown that such negligence was the proximate cause, and not the act of a fellow servant; Parry Mfg. Co. v. Eaton, 41 Ind. App. 91, 83 N. E. 510, holding that negligence will not be imputed to an injury that could not reasonably have been anticipated.

Reasonableness of regulations of carrier.

Cited in Rosney v. Erie R. Co. 68 C. C. A. 155, 135 Fed. 315, sustaining as reasonable a rule providing that within the yard limits, no train need be protected by flags while occupying the main track, unless in the time of a first class train; Canadian Northern R. Co. v. Walker, 24 L.R.A.(N.S.) 1024, 97 C. C. A. 44, 172 Fed. 352, holding that the leaving of some duty to the shipper to perform is not negligence where such was customary among railroads, and the shipper knew of the rule.

— As question for the court.

Cited in Kenefick-Hammond Co. v. Rohr, 77 Ark. 294, 91 S. W. 179, holding that the reasonableness of a regulation for the protection of employees, is a question for the court; Missouri, K. & T. R. Co. v. Collier, 88 C. C. A. 127, 157 Fed. 354, holding same as to regulations of carrier; Chicago, R. I. & P. R. Co. v. Ship, 98 C. C. A. 257, 174 Fed. 355, on the same point; Western U. Teleg. Co. v Love Banks Co. 73 Ark. 208, 83 S. W. 949, 3 Ann. Cas. 712, holding that the reasonableness of the regulations of a telegraph company fixing the office's hours at a certain place, is a question for the court, and it was error to submit it to the jury; Great Northern R. Co. v. Hooker, 95 C. C. A. 410, 170 Fed. 159, holding same as to regulations of railroad company.

— Presumption in favor of validity of rules.

Cited in Stone v. Union P. R. Co. 35 Utah, 331, 100 Pac. 362, holding that the presumption is in favor of the validity of the rules of the railroad company.

Contributory negligence as question for jury.

Cited in Gila Valley, G. & N. R. Co. v. Lyon, 8 Ariz. 127, 71 Pac. 957, holding that if the negligence of a fellow servant is the proximate cause of injury, there can be no recovery from the master, and whether such negligence is the proximate cause or the failure of the master to provide safe appliances, or the contributory negligence of the plaintiff is the proximate cause is a question for the jury.

Cited in footnote to Neeley v. Southwestern Cotton Seed Oil Co. 64 L. R. A. 146, which holds contributory negligence of employee in using defective ladder

to adjust belt after complaining to manager and being told that it was all right, question for jury.

43 L. R. A. 376, DOUGLASS v. MONTGOMERY, 118 Ala. 599, 24 So. 745.

Second appeal in 124 Ala. 489, 27 So. 310.

Obstruction of street for private purposes.

Cited in State ex rel. Atty. Gen. v. Louisville & N. R. Co. 158 Ala. 211, 48 So. 391, holding that unless authorized by the legislature, a city cannot permit a railroad company to build its depot across the street; First Nat. Bank v. Tyson, 144 Ala. 466, 39 So. 560, holding that the use of a public street or any part thereof for private purposes is forbidden by law, and the abutting owner is entitled to the view the full length of the street and not only in front of his lot; Meighan v. Birmingham Terminal Co. 165 Ala. 600, 51 So. 775, holding that closing of street in one direction without authority of law was nuisance to property owners abutting thereon.

Cited in note (22 L.R.A.(N.S.) 533) on power of municipality as against abutting owner to devote street or portion thereof to private purposes.

Revocation of dedication.

Cited in Stewart v. Conley, 122 Ala. 185, 27 So. 303, enjoining obstruction of highway opened by owner of land, under agreement with third party, for valuable consideration, and impliedly accepted by municipality; Roberts v. Mathews, 137 Ala. 528, 97 Am. St. Rep. 56, 34 So. 624, holding sale of lots according to plat, irrevocable dedication of streets, squares, and commons designated thereon, to public use.

Injunction by private party against nuisance.

Cited in Louisville & N. R. Co. v. Mobile, J. & K. C. R. Co. 124 Ala. 166, 26 So. 895, holding abutting owner entitled to enjoin obstruction of highway causing special injury; First Nat. Bank v. Tyson, 133 Ala. 473, 59 L. R. A. 402, 91 Am. St. Rep. 46, 32 So. 144, holding neighbor entitled to maintain bill for injunction against erection of building encroaching on sidewalk and obstructing light, without prior application to municipality for relief; Birmingham R. Light & P. Co. v. Moran, 151 Ala. 189, 125 Am. St. Rep. 21, 44 So. 153, holding that the building and operating of a railroad through city alley, without authority of law, is a nuisance which the lot owners were entitled to enjoin where it cut off entirely their access to another street through the alley.

Distinguished in Manson v. South Bound R. Co. 64 S. C. 122, 41 S. E. 832, holding nonabutting property owners not entitled to enjoin conversion of public park into railway terminal; Dennis v. Mobile & M. R. Co. 137 Ala. 658, 97 Am. St. Rep. 69, 35 So. 30, denying injunction to prevent obstruction of street by freight depot on ground that action at law for damages would furnish abutting owner adequate remedy.

43 L. R. A. 382, WORTHINGTON v. GWIN, 119 Ala. 44, 24 So. 739.

Followed without discussion in Baggett v. Mason, 150 Ala. 676, 43 So. 1019.

Rescission or abandonment of contract.

Cited in National Mach. & Tool Co. v. Standard Shoe Mach. Co. 181 Mass. 279, 63 N. E. 900, holding failure for twelve days to pay for articles delivered under contract for prompt payment, entitles seller to repudiate and sue for amount due; J. M. Ackley & Co. v. Hunter-Benn & Co.'s Co. 166 Ala. 309, 51 So. 964, holding that in order to justify rescission of contract because of repudiation by other party, renunciation must cover entire performance to which contract binds parties and must be unequivocal; Mortimer v. Hannah, 82 Miss.

651, 35 So. 159, holding that there can be no rescission of a contract for the performance of work, unless the other party to the contract has evinced an intention to abandon it, or breached the contract in a matter vital to its existence, or the breach cannot be adequately redressed by damages.

Cited in footnotes to West v. Bechtel, 51 L. R. A. 791, which holds contract not abandoned by purchaser's breach of agreement to pay for each shipment as received; Johnson Forge Co. v. Leonard, 57 L. R. A. 225, which sustains seller's right to rescind for purchaser's demand for additional deliveries before remitting for articles delivered; Kauffman v. Raeder, 54 L. R. A. 247, which denies right of one receiving and retaining benefit of part performance by other party to rescind for breach of complete performance.

Loss of profits as damages.

Cited in Peck-Hammond Co. v. Heifner, 136 Ala. 474, 96 Am. St. Rep. 36, 33 So. 807, holding one contracting to put in place heating apparatus at specified price is entitled to recover as damages the profits that would have accrued, where performance of the contract is prevented by the purchaser; Holt v. United Security L. Ins. & T. Co. 76 N. J. L. 600, 21 L.R.A.(N.S.) 699, 72 Atl. 301, holding that the measure of damages for a breach of contract to perform work, is the profits if they are certain, but if not then the expenditures of the injured party made in contemplation of the performance of the contract.

Distinguished in Dickerson v. Finley, 158 Ala. 163, 48 So. 548, holding that remote profits, recoverable from dependent or collateral agreements, cannot be recovered as damages for breach of contract.

Harmless error as elements of damages.

Cited in Vandiver v. Waller, 143 Ala. 417, 39 So. 136, holding that the refusal of a court to strike out parts of the complaint as to damages not recoverable, is not reversible error; Hardaway-Wright Co. v. Bradley Bros. 163 Ala. 600, 51 So. 21, holding that it was not error for the court to admit evidence as to the profits which would have been made, or the value of the use of the machine for the time it was delayed, since the defendant could have protected itself by a request for a charge that both could not be recovered.

43 L. R. A. 385, SOUTHERN R. CO. v. HARRISON, 119 Ala. 539, 72 Am. St. Rep. 936, 24 So. 552.

Legality of contract for carriage at less than regular rates.

Cited in Armour Packing Co. v. United States, 14 L.R.A.(N.S.) 414, 82 C. C. A. 135, 153 Fed. 18, holding that contracts for interstate commerce at less than published rates are void; Chesapeake & O. R. Co. v. Maysville Brick Co. 132 Ky. 651, 116 S. W. 1183, holding that a contract for transportation at less than the regular printed rates, is a discrimination and makes the contract void, though the shipper was ignorant of the fact of the lessened rate; Haurigan v. Chicago & N. W. R. Co. 80 Neb. 143, 117 N. W. 100, 16 Ann. Cas. 450, holding that a contract for transportation at a less rate than that published, though the agreement as to the rate was made through mistake, is illegal and void; Harris v. Great Northern R. Co. 48 Wash. 441, 96 Pac. 224, Modifying on rehearing 93 Pac. 908, holding that the published rates were binding upon the shipper and the carrier alike, and a contract made for less is void.

Cited in notes (14 L.R.A.(N.S.) 401; 52 L. ed. U. S. 682) on effect of statutory provisions against rebates upon contracts for transportation at less than regular rate.

Recovery on illegal contract.

Cited in Southern R. Co. v. Wilcox, 99 Va. 409, 39 S. E. 144, refusing recovery

of freight charges paid under protest in excess of interstate rates in accordance with special contract; Texas & P. R. Co. v. Mugg, 202 U. S. 244, 50 L. ed. 1013, 26 Sup. Ct. Rep. 628; Fisher v. Great Northern R. Co. 49 Wash. 210, 95 Pac. 77; Atchison, T. & S. F. R. Co. v. Holmes, 18 Okla. 101, 90 Pac. 22,—holding that a carrier may recover the published rates though it has entered into an agreement to transport at less, such contract being void; Interstate Commerce Commission v. Chesapeake & O. R. Co. 128 Fed. 71; New York Central & H. R. R. Co. v. Smith, 62 Misc. 528, 115 N. Y. Supp. 838,—on the same point.

Distinguished in Wabash R. Co. v. Sloop, 200 Mo. 212, 98 S. W. 607, holding that publishing notice that the agent had been provided with copies of rate schedules for inspection by interested persons, was not a sufficient publication of the rates to entitle the railway company to recover the balance of a rate which was lower than the one furnished the agent.

Conflict of laws.

Cited in Southern Exp. Co. v. Owens, 146 Ala. 417, 8 L.R.A.(N.S.) 372, 119 Am. St. Rep. 41, 41 So. 752, 9 Ann. Cas. 1143, holding that the doctrine of lex loci contractus in determining the validity of a foreign contract, can be availed of only after appropriate pleading and proof of the foreign law; Mobile, J. & K. C. R. Co. v. Bromberg, 141 Ala. 279, 37 So. 395, holding that the act of congress requiring the use of automatic couplers on all cars used in interstate commerce is a regulation of interstate commerce and binding upon the courts of all the states.

Cited in note (63 L. R. A. 525) on conflict of laws as to carrier's contracts.

Distinguished in Gray v. Western U. Teleg. Co. 108 Tenn. 47, 56 L. R. A. 309, 91 Am. St. Rep. 706, 64 S. W. 1063, holding telegraph company liable under laws of forum to resident sender for failure to deliver message sent from another state, although no liability existed under laws of latter state; Southern Exp. Co. v. Gibbs, 155 Ala. 310, 18 L.R.A.(N.S.) 880, 130 Am. St. Rep. 24, 46 So. 465, holding that the law of the place where the contract was entered into determines its validity, but if it is to be performed elsewhere, the law of the latter place governs.

43 L. R. A. 388, O'DONNELL v. SLACK, 123 Cal. 285, 55 Pac. 906.

Rights and duties in regard to disposal of body.

Cited in Neighbors v. Neighbors, 112 Ky. 164, 65 S. W. 607, upholding right of widow and children to have remains of deceased husband and father removed against the wishes of his brothers and sisters; Pettigrew v. Pettigrew, 207 Pa. 316, 64 L. R. A. 181, footnote p. 179, 99 Am. St. Rep. 795, 56 Atl. 878, sustaining widow's right to remove husband's body from lot of his father to her own lot for purpose of burying beside his only child; McEntee v. Bonacum, 66 Neb. 656, 60 L. R. A. 442, footnote p. 440, 92 N. W. 633, holding next of kin of unmarried person entitled to custody of body and to decide on place of burial; Enos v. Snyder, 131 Cal. 70, 53 L. R. A. 222, footnote p. 221, 82 Am. St. Rep. 330, 63 Pac. 170, holding next of kin entitled to decedent's body for burial, as against disposition by will; Re Seymour, 15 Cal. App. 292, 114 Pac. 1023, on jurisdiction of court to make order requiring delivery of dead body of person to stranger as against right of widow of deceased; Butterworth & Sons v. Teale, 54 Wash. 18, 102 Pac. 768, 18 Ann. Cas. 854, holding that the widow's right to the body of her deceased husband being the same as that of the husband in the body of the wife, the wife is liable for the expense of burial of the husband.

Cited in footnotes to Wright v. Hollywood Cemetery Corp. 52 L. R. A. 621, which sustains right of grandmother of orphan child living with her, to deter-

mine place of burial; Thompson v. State, 51 L. R. A. 883, which holds attempt to make unauthorized sale of dead body of human being a misdemeanor; Pettigrew v. Pettigrew, 64 L.R.A. 179, which sustains widow's right to control interment of intestate husband's corpse; Koerber v. Patek, 68 L.R.A. 956, which holds that legal right to bury corpse vests in nearest relative of decedent so situated as to be able and willing to perform the duty.

Replevin of corpse.

Cited in footnote to Keyes v. Konkel, 44 L. R. A. 242, which holds replevin not maintainable for corpse.

43 L. R. A. 390, CLARK v. MUTUAL RESERVE FUND LIFE ASSO. 14 App. D. C. 154.

Control of affairs of foreign corporation.

Approved in Schickler v. Washington Brewery Co. 33 App. D. C. 46, holding that the courts of the state where the corporation is organized alone have jurisdiction to inquire into and regulate the internal affairs of a corporation; Babcock v. Farwell, 245 Ill. 33, 91 N. E. 683, holding same and that courts of one state will not exercise the power of deciding controversies relating merely to the internal affairs of a foreign corporation.

Cited in Condon v. Mutual Reserve Fund Life Asso. 89 Md. 120, 44 L. R. A. 155, footnote p. 149, 73 Am. St. Rep. 169, 42 Atl. 944, denying jurisdiction of suit to enjoin assessments on member of foreign mutual insurance association and prevent forfeiture for nonpayment; Howard v. Mutual Reserve Fund Life Asso. 125 N. C. 54, 45 L. R. A. 856, footnote p. 853, 34 S. E. 199, denying right to enjoin levying of assessments on resident member of foreign insurance company; Taylor v. Mutual Reserve Fund Life Asso. 97 Va. 68, 45 L. R. A. 626, footnote p. 621, 33 S. E. 375, denying right to enjoin foreign assessment company from having membership certificate declared forfeited for nonpayment of alleged illegal assessment; Barley v. Gittings, 15 App. D. C. 443, questioning whether equitable proceedings involving investigation of foreign corporation's affairs, not maintainable where principal office and place of business located in forum; McKean v. New York Nat. Bldg. & L. Asso. 24 Pa. Co. Ct. 459, holding local stockholder in foreign corporation not entitled to maintain attachment for nonpayment of share guaranteed to mature at fixed time, where under laws of corporation's domicil such date merely approximation; Royal Fraternal Union v. Lunday, 51 Tex. Civ. App. 640, 113 S. W. 185, holding that courts will not control by injunction internal affairs of foreign corporation; McKean v. New York Nat. Bldg. & Loan Asso. 10 Pa. Dist. R. 198, holding that an action cannot be maintained where the plaintiff's rights depend upon the construction to be given the articles of incorporation, by-laws, and regulations of a foreign corporation.

Distinguished in Ebert v. Mutual Reserve Fund Life Asso. 81 Minn. 127, 83 N. W. 506, holding action for damages proper remedy for unauthorized cancellation of policy.

Recovery on certificate delivered after death of insured.

Cited in footnote to McLendon v. Sovereign Camp, W. W. 52 L. R. A. 444, which holds reasonable delay in delivering benefit certificate gives no right to recover on certificate delivered after death of insured.

Service of process against foreign corporation.

Cited in footnote to Buie v. Chicago, R. I. & P. R. Co. 55 L. R. A. 861, which authorizes service of railroad company by serving in other state officers of company organized to construct extension of system.

Admission by demurrer.

Cited in Allen v. South Penn Coal Co. 58 W. Va. 211, 52 S. E. 454, holding that on demurrer to a bill, all facts well pleaded are taken as true.

43 L. R. A. 398, MOHRMANN v. STATE, 105 Ga. 709, 70 Am. St. Rep. 74, 32 S. E. 143.

Sunday sales of intoxicating liquors.

Cited in State v. Meagher, 114 Mo. App. 270, 89 S. W. 595, holding that the law relative to the sale of intoxicating liquors on Sunday, applied to places where the same was sold without a license; Richardson v. State, 3 Ga. App. 314, 59 S. E. 916, holding that the time during which a saloon is opened on Sunday is immaterial to the offense, but the purpose for which opened is relevant.

Sale of liquors by club.

Approved in Manning v. Canon City, 45 Colo. 577, 23 L.R.A.(N.S.) 195, 101 Pac. 978, holding that a sale of liquor by a club to its members was a sale of intoxicating liquors within the meaning of an ordinance prohibiting such sales.

Cited in O'Neil v. State, 116 Ga. 840, 43 S. E. 248, holding one in charge of club house on Sabbath and dispensing liquors therein properly convicted of keeping open tippling house on that day; Lloyd v. Canon City, 46 Colo. 198, 103 Pac. 288, holding that directors, manager, and bartender of unincorporated social club are each liable to prosecution for sale of liquor made by latter in violation of municipal ordinance; Ada County v. Boise Commercial Club, 20 Idaho, 437, 38 L.R.A.(N.S.) 110, 118 Pac. 1086, holding that where liquor is purchased at wholesale by club and distributed to members in small quantities for consideration, such distribution constitutes sale; Moriarty v. State, 122 Tenn. 445, 25 L.R.A.(N.S.) 1253, 124 S. W. 1016, holding that bona fide social and fraternal club is not, in incidentally furnishing liquor to members at cost, engaged in handling such liquors for sale under statute imposing license tax on such business; Beauvoir Club v. State, 148 Ala. 648, 121 Am. St. Rep. 82, 42 So. 1040, holding that a statute prohibiting Sunday sale of intoxicating liquors applied to a social club; State v. Johns, 140 Iowa, 134, 118 N. W. 295, holding same as to statute prohibiting sales of liquors; State ex rel. Young v. Minnesota Club, 106 Minn. 524, 20 L.R.A.(N.S.) 1106, 119 N. W. 494; South Shore Country Club v. People, 228 Ill. 86, 12 L.R.A.(N.S.) 526, 119 Am. St. Rep. 417, 81 N. E. 805, 10 Ann. Cas. 383, holding that a sale by a club to its members of intoxicating liquors, is a sale within the meaning of an ordinance prohibiting such sales without a license, though the liquors are furnished at cost.

Cited in footnote to State *ex rel.* Stevenson v. Law & Order Club, 62 L. R. A. 885, which denies right of social club without license to dispense liquors to members in exchange for checks given them on payment of special assessments.

Cited in note (12 L.R.A.(N.S.) 521) on applicability of liquor laws to social club.

43 L. R. A. 402, CENTRAL R. CO. v. PRICE, 106 Ga. 176, 71 Am. St. Rep. 246, 32 S. E. 77.

Subsequent appeal in 110 Ga. 280, 34 S. E. 847.

Proximate cause.

Cited in Central R. Co. v. Edwards, 111 Ga. 534, 36 S. E. 810, holding defective crank pin in engine retarding progress and rendering sidetracking at unusual place, not cause of injury to brakeman jumping from wrong train to make switch; Southern R. Co. v. Webb, 116 Ga. 160, 59 L. R. A. 114, 42 S. E. 395, holding railway not liable for death of party run over by following train,

while lying on tracks, stunned by fall due to sudden jolting of car on which riding; Stephens v. Oklahoma City R. Co. 28 Okla. 351, 33 L.R.A.(N.S.) 1013, 114 Pac. 611, holding that carrier is not liable for injury to passenger from accident which is not reasonable, natural and probable result of situation and which could not have been foreseen by exercise of degree of care required from carrier; Burnett v. Rome R. & Light Co. 7 Ga. App. 323, 66 S. E. 803, holding that the wrong of the defendant company in putting off the plaintiff at the wrong place was not the proximate cause of an injury received while she was walking to the place to which she intended to go.

Cited in note (7 L.R.A.(N.S.) 1179) on what injuries deemed proximate result of discharging passenger at wrong or improper place.

Liability of railroad on contract by employee with hotel.

Cited in Southern R. Co. v. Grant, 136 Ga. 307, 71 S. E. 422, Ann. Cas. 1912 C, 472, holding that physician employed by railroad to give first medical aid cannot bind company by contracting with hotel-keeper to furnish board and lodgings for injured persons.

43 L. R. A. 403, SMITH v. SMITH, 174 Ill. 52, 50 N. E. 1083.

Equitable conversion.

Cited in McLean v. Leitch, 152 N. C. 267, 67 S. E. 490, holding that the proceeds of lands sold under the order of the court, are realty and goes to the real representatives of the persons entitled to the same.

Conflict of laws regarding land.

Cited in Dibble v. Winter, 247 Ill. 252, 93 N. E. 145, holding that law of state where land is situated governs exclusively as to probate of will; Connell v. Crosby, 210 Ill. 388, 71 N. E. 350, holding that lands situate in a foreign state do not pass by will or the intestate laws of the state so as to be covered by the inheritance tax; Conradt v. Lepper, 13 Wyo. 489, 81 Pac. 307, holding that the validity of a mortgage and the rights of the parties under it are to be determined by the laws of the state where the land is situated; Broadwell v. Banks, 134 Fed. 474, holding that under the laws of Ohio a lease being an interest real, its descent and devolution is governed by the laws of the state where the land is situated if in Ohio.

Cited in note (2 L.R.A.(N.S.) 413) on conflict of laws as to wills.

Enforcement in equity of claims against estate.

Cited in Houston v. Maddux, 179 Ill. 388, 53 N. E. 599, holding trust fund created by payment of premiums by insolvent on policy in favor of wife cannot be reached in equity by holder of note not previously allowed as claim against estate; Strauss v. Phillips, 189 Ill. 22, 59 N. E. 560, Affirming 91 Ill. App. 384, holding allowance of claim against foreign administrator insufficient without similar allowance in forum, to entitle creditor to proceeding in equity to enforce same.

Jurisdiction of equity over foreign realty.

Cited in note (69 L.R.A. 674) on jurisdiction of equity over suits affecting realty in another state or country.

43 L. R. A. 408, STATE *ex rel.* HARRISON v. MENAUGH, 151 Ind. 260, 51 N. E. 117, 357.

Power of state legislature.

Cited in *Re* Bank of Commerce, 153 Ind. 463, 47 L. R. A. 491, 53 N. E. 950, holding extension of special charter granted prior to Constitution of 1851, or of

privileges and immunities therein contained, violation of constitutional prohibition; State *ex rel.* Geake v. Fox, 158 Ind. 129, 56 L. R. A. 895, 63 N. E. 19, holding statute subjecting elective officers to appointment by governor, unconstitutional; State *ex rel.* Dreibelbiss v. Berghoff, 158 Ind. 357, 63 N. E. 717, upholding power of legislature to fix time when act creating an office shall take effect and become operative; Carr v. State, 175 Ind. 246, 32 L.R.A.(N.S.) 1193, 93 N. E. 1071, holding that legislature has power to exempt professional baseball players from operation of Sunday laws while leaving such laws applicable to other occupations; Hanly v. Sims, 175 Ind. 356, 93 N. E. 228, holding that statute providing for issuance of bonds in payment of honorary claims of Vincennes University is valid, allowance of such claim resting in discretion of legislature; Cain v. Allen, 168 Ind. 25, 79 N. E. 201, holding that in the exercise of powers given to it, the legislature is restrained only by the provision of the state constitution, or by fundamental law.

Control of terms of office.

Followed in Larned v. Elliott, 155 Ind. 702, 57 N. E. 901, holding township trustees and assessors properly elected in November, 1900, and enter office under provisions of act 1897, p. 64.

Cited in Wilson v. Clark, 63 Kan. 515, 65 Pac. 705, upholding postponement for one year of election of county and judicial officers, to secure uniformity of commencement of terms; State ex rel. Workman v. Goldthait, 172 Ind. 218, 87 N. E. 133, holding that the office of county councilman not being a constitutional one, the legislature may change the terms of the office, provided that it does not extend the term beyond the four years allowed by the constitution.

Cited in footnote to Gemmer v. State ex rel. Stephens, 66 L.R.A. 82, which denies power of legislature to increase term of public officer fixed by constitution at not more than six years in period of eight years by act operating to postpone date of successor's election.

Cited in note (3 L.R.A.(N.S.) 888) on power to extend term of office by postponing time for election.

Hold-over clause of Constitution.

Cited in Scott v. State, 151 Ind. 561, 52 N. E. 163, holding office filled under constitutional hold-over clause, where statute postponing inauguration of new incumbent makes no provision for filling office in interim; Detroit v. Schmid, 128 Mich. 391, 92 Am. St. Rep. 468, 87 N. W. 383, upholding statute postponing election where incumbents hold over under provision of city charter for expiration of term on election and qualification of successors; State *ex rel.* Snyder v. Burke, 154 Ind. 647, 57 N. E. 509, holding party appointed to fill unexpired term where vacancy caused by death, entitled to office until office filled at postponed election; Watt v. Glasgow, 106 Va. 119, 55 S. E. 536, holding that where the justice was appointed to office for one year from July 1st, 1905, and a new law taking effect Jun. 12th, 1906, provided that the justices should thereafter be elected at regular elections, the former officer was entitled to hold over until his successor was elected in November; State ex rel. Jett v. Ives, 167 Ind. 20, 78 N. E. 225, holding that the clause of the constitution relative to the holding over of officers until their successors have been elected and qualified, applies to municipal officers; State ex rel. Hensley v. Plasters, 74 Neb. 667, 3 L.R.A.(N.S.) 895, 105 N. W. 1092, 13 Ann. Cas. 154 (dissenting opinion), on the time of holding over as a part of the term of office.

43 L. R. A. 419, GROMMES v. SULLIVAN, 26 C. C. A. 320, 53 U. S. App. 359, 81 Fed. 45.

Authority to execute negotiable instruments.

Cited in Bowlby v. Kline, 28 Ind. App. 661, 63 N. E. 723, sustaining foreclosure by assignee of note and mortgage given to secure loan by building association, and referring particularly to annotation in 43 L.R.A. 419; Bohn v. Boone Bldg. & L. Asso. 135 Iowa, 143, 124 Am. St. Rep. 263, 112 N. W. 199, holding that unless restricted by statute a building and loan association may borrow money.

Cited in notes (43 L.R.A. 422) on power of building association to issue negotiable paper; (111 Am. St. Rep. 313, 320) on implied power of corporations to borrow money and give evidence of indebtedness and security therefor.

Disapproved in Helena Nat. Bank v. Rocky Mountain Teleg. Co. 20 Mont. 389, 63 Am. St. Rep. 628, 51 Pac. 829, holding agent intrusted with general management of principal's business has no implied authority to execute promissory note.

Bona fide holder of collateral.

Cited in note (31 L.R.A.(N.S.) 290) on holder of bill or note as collateral as bona fide holder.

43 L. R. A. 427, SVANBURG v. FOSSEEN, 75 Minn. 350, 74 Am. St. Rep. 490, 78 N. W. 4.

Second appeal in Rudd v. Fosseen, 82 Minn. 42, 84 N. W. 496.

Parol contract to convey land.

Cited in Davies v. Cheadle, 31 Wash. 173, 71 Pac. 728, holding one who has completely performed her part of an oral agreement to convey real estate and is in possession thereunder is entitled to a decree quieting title; Jorgenson v. Jorgenson, 81 Minn. 430, 84 N. W. 221, enforcing against heirs deceased's oral contract to convey where purchase price paid in part, and not recoverable by reason of statute of limitations; Reed v. Reed, 108 Va. 798, 62 S. E. 792, holding that rendition of services of personal and peculiar nature in pursuance of parole agreement to convey land, is such part performance as to warrant decree of specific performance; Richardson v. Richardson, 114 Minn. 15, 130 N. W. 4, upholding decree dismissing action for specific performance of parole contract to convey land; Stewart v. Smith, 6 Cal. App. 156, 91 Pac. 667, holding oral agreement of surviving parent to will property to children in consideration of their conveyance to such parent of their interest in property left by deceased parent specifically enforceable, where children had performed on their part; Best v. Gralapp, 69 Neb. 814, 96 N. W. 641, 5 Ann. Cas. 491, holding part performance of such character that court cannot restore promisee to situation in which he was when condition was made or compensate him in damages, is sufficient to take oral contract out of statute of frauds; Teske v. Dittberner, 70 Neb. 548, 113 Am. St. Rep. 802, 98 N. W. 57, Modifying 65 Neb. 167, 101 Am. St. Rep. 614, 91 N. W. 181, which overruled 63 Neb. 607, holding agreement taken out of statute by performance of services incapable of estimation by pecuniary standard; Harrison v. Harrison, 80 Neb. 107, 113 N. W. 1042, holding oral agreement that real estate shall be property of another at owner's death enforceable where promisee has fully performed on his part; White v. Poole, 74 N. H. 73, 65 Atl. 255, holding action for specific performance of oral contract to convey not barred by statute if refusal to convey will operate as fraud upon promisee; Reed v. Reed, 108 Va. 796, 62 S. E. 792, holding agreement by person subject to violent attacks of insanity that his sister should have all his property real and personal in return for caring for him until his death, taken out of statute by performance on her part.

Cited in footnotes to Clancy v. Flusky, 52 L. R. A. 277, which authorizes specific performance of executed oral contract to convey land to son for taking care of father for life, though father left before death; Bryson v. McShane, 49 L. R. A. 527, which holds specifically enforceable, executed oral contract to give entire property for support during life and burial after death.

Distinguished in Weeks v. Lund, 69 N. H. 83, 45 Atl. 249, holding parol contract for conveyance of land not taken out of statute of frauds by performance of services adequately compensated in money; Stellmacher v. Bruder, 89 Minn. 509, 99 Am. St. Rep. 609, 95 N. W. 324, holding specific performance will not be decreed if consideration of contract be labor and services which may be estimated and their value liquidated in money.

— Proof required.

Cited in Stellmacher v. Bruder, 89 Minn. 509, 99 Am. St. Rep. 609, 95 N. W. 324, holding full and satisfactory proof of fairness and justice of the transaction is required.

Agreement to make will.

Cited in McCabe v. Healy, 138 Cal. 86, 70 Pac. 1008, imposing trust on heirs of intestate in favor of nephew where failure to make will in pursuance of contract works fraud on latter; Stellmacher v. Bruder, 89 Minn. 509, 99 Am. St. Rep. 609, 95 N. W. 324, holding party may obligate himself to make his will in a particular way or to give specific property to a particular person, so as to bind his estate; Anderson v. Anderson, 75 Kan. 126, 9 L.R.A.(N.S.) 233, 88 Pac. 743, holding where contract to leave property by will has been clearly and certainly established and there has been performance on part of promisee, equity will grant relief, provided consideration is adequate, and claim is not inequitable; Laird v. Vila, 93 Minn. 48, 106 Am. St. Rep. 420, 100 N. W. 656, holding agreement by one who was father and uncle of certain children whereby he surrendered care and custody of said children in consideration that property of husband and wife who took children should be willed to said children binding upon estate of surviving wife.

Cited in Page Contr. 615, on contract whereby A agrees to make will in favor of B as not void on ground of public policy; Gardner Wills, 81, on contract between husband and wife that each will convey to the other, to take effect on their demise all their property, includes property owned jointly.

Jurisdiction of district court over actions for specific performance of oral agreements to convey.

Cited in Laird v. Vila, 93 Minn. 48, 106 Am. St. Rep. 420, 100 N. W. 656, holding district court has and probate court has not jurisdiction over actions for specific performance of oral contracts for conveyance of real and personal property.

43 L. R. A. 433, ST. PAUL & D. R. CO. v. DULUTH, 73 Minn. 270, 76 N. W. 35.

Adverse possession of street.

Cited in footnote to Norrell v. Augusta R. & Electric Co. 59 L. R. A. 101, which holds title by prescription not acquired by adverse possession of land dedicated and accepted as city street.

43 L. R. A. 435, ESBERG-GUNST CIGAR CO. v. PORTLAND, 34 Or. 282, 75 Am. St. Rep. 651, 55 Pac. 961.

Presumption of negligence.

Cited in Boyd v. Portland Electric Co. 40 Or. 130, 57 L. R. A. 622, 66 Pac. 576, holding negligence presumed from injury to passerby through contact with

broken live wire of electric lighting company; Boyd v. Portland Electric Co. 41 Or. 343, 68 Pac. 810, holding instruction that negligence of electric company is presumed where accident was due to broken wire does not permit recovery on grounds not counted on in the complaint, which alleged injury from defective and broken wire.

Water system as governmental agency of municipalities.

Cited in Tone v. Tillamook City, 58 Or. 387, 114 Pac. 938, holding that city engaged in providing water system is subject to same liability as private person; South Pasadena v. Pasadena Land & Water Co. 152 Cal. 593, 93 Pac. 490, holding that in administering a public utility, such as a water system, the city acts in a proprietary capacity and not in its governmental; Brink v. Grand Rapids, 144 Mich. 476, 108 N. W. 430, on the same point; Keever v. Mankato, 113 Minn. 63, 33 L.R.A.(N.S.) 343, 129 N. W. 158, Ann. Cas. 1912 A, 216, holding that city is liable to person who contracts typhoid fever through negligence of city in permitting water supply furnished by it to become polluted.

Liability of municipality.

Approved in Davoust v. Alameda, 149 Cal. 72, 5 L.R.A.(N.S.) 539, 84 Pac. 760, 9 Ann. Cas. 847, holding city liable for negligence of employee in the operation of its electric light plant; Eaton v. Weiser, 12 Idaho, 554, 118 Am. St. Rep. 225, 86 Pac. 541, holding municipality liable for injuries through the negligent operation of its electric light plant.

Cited in Shipley v. Hacheney, 34 Or. 306, 55 Pac. 971, enforcing interest at 8 per cent on municipal warrants where endowed at maturity at such rate, though legal rate subsequently reduced; Wagner v. Portland, 40 Or. 394, 67 Pac. 300, holding city liable for injury to workman employed by board of fire commissioners, due to defective construction of electric alarm system; Richmond v. Lincoln, 167 Ind. 470, 79 N. E. 445, holding city liable for injuries through the negligent operation of electric light plant; Tewksbury v. Lincoln, 84 Neb. 575, 23 L.R.A.(N.S.) 286, 121 N. W. 994, holding municipality liable for negligence of its agents in the repairing, and keeping in repair of streets and sidewalks.

Cited in footnotes to Rhobidas v. Concord, 51 L.R.A. 381, which sustains city's liability for failure to furnish servant reasonably safe place to work; Bowden v. Kansas City, 66 L.R.A. 181, which holds that city is performing ministerial public duty in maintaining fire station so as to be liable in damages to employee for personal injuries resulting from neglect of city to furnish reasonably safe place to work.

Cited in notes (61 L.R.A. 58, 60) on municipal liability for negligent construction or operation of waterworks; (1 L.R.A.(N.S.) 665, 667) on distinction between private and public functions of municipality with respect to liability for damages; (108 Am. St. Rep. 153, 165, 166, 168) as to what municipal corporations are answerable for injuries due to defects in streets and other public places.

— Bursting of water mains.

Cited in Aschoff v. Evansville, 34 Ind. App. 33, 72 N. E. 279, holding that the city was liable for the flooding of a cellar because of the bursting of a water pipe through the negligence of the city's employees.

43 L. R. A. 444, HUDDLESTON v. EUGENE, 34 Or. 343, 55 Pac. 868.

What is a "street."

Cited in Sachs v. Sioux City, 109 Iowa, 228, 80 N. W. 336, holding bridge maintained on street by city is "street," within statute requiring notice of injury by defect of streets, within sixty days of accident; Oliver v. Newberg, 50

Or. 95, 91 Pac. 470, holding that by the incorporation of a city, the act of the legislature providing therefor providing that the city might open, control, etc., all the highways within its corporate limits, a county road became ipso facto a city street.

What constitutes "additional burden" in street.

Cited in Brand v. Multnomah County, 38 Or. 92, 50 L. R. A. 393, 84 Am. St. Rep. 772, 60 Pac. 390, holding alteration of street grade resulting in obstruction of access to abutting property pursuant to statute, not additional burden entitling owner to compensation.

Cited in note (106 Am. St. Rep. 258, 267) on what are additional servitudes in highways.

Condemnation proceedings.

Cited in Grande Rhonde Electrical Co. v. Drake, 46 Or. 248, 78 Pac. 1031, holding that condemnation proceedings being purely statutory, every condition prerequisite on exercise of the right must be strictly pursued.

Title of abutter to street.

Cited in John P. Sharkey Co. v. Portland, 58 Or. 362, 114 Pac. 933, holding that abutting owner on both sides of street is owner of soil in front of lot, subject to right of city to make improvements, and does not become divested of ownership by act of city in excavating it, in making improvements.

43 L. R. A. 449, AMERICAN GAS & VENTILATING MACH. CO. v. WOOD, 90 Me. 516, 38 Atl. 548.

Agreement restricting negotiability.

Cited in Myrick v. Purcell, 95 Minn. 134, 103 N. W. 902, 5 Ann. Cas. 148, holding notes given in payment for interest in letters patent and contemporaneous written agreement to hold and not negotiate same until certain conditions were fulfilled to be construed as one instrument.

Cited in footnote to Lyle v. McCormick Harvesting Mach. Co. 51 L. R. A. 906, which authorizes action for payee's breach of contract against transfer of note though maker insolvent.

Breach of contemporaneous agreement as defense.

Cited in Pratt v. Johnson, 100 Me. 445, 62 Atl. 242, holding breach of written warranty and guaranty made contemporaneously with notes given for purchase of goods may be set up as defense in action on notes.

Cited in note (33 L.R.A.(N.S.) 892) on breach of contemporaneous agreement as defense to note.

Rights of holder of negotiable paper transferred after maturity.

Cited in note (46 L. R. A. 769, 771) on rights of holder of negotiable paper transferred after maturity.

Parol evidence to vary written contract.

Cited in Tainter v. Wentworth, 107 Me. 442, 78 Atl. 572, holding that testimony was admissible in action on note for price of piano which contained terms of sale, to show warranty of quality of piano.

Cited in footnote to Walton Guano Co. v. Copelan, 52 L. R. A. 268, which denies right of one signing note without reading, to claim contract agreed on not contained in same.

Annotation in 43 L. R. A. 449, referred to particularly in Earle v. Enos, 130 Fed. 471, holding inadmissible evidence of collateral agreement by bank discounting accommodation note, that it should be paid out of securities pledged by indorser.

Note and agreement as one contract.

Cited in Alden v. Camden Anchor-Rockland Mach. Co. 107 Me. 511, 78 Atl. 977, holding that provision endorsed on corporate note that it would be renewed unless stock was sold to pay it is part of contract.

43 L. R. A. 487, McLANE v. PERKINS, 92 Me. 39, 42 Atl. 255.

Burden of proving freedom from contributory negligence.

Cited in Cunningham v. Bath Iron Works, 92 Me. 512, 43 Atl. 106, denying recovery for injury due to negligent management of machinery where plaintiff fails to show freedom from contributory negligence; Day v. Boston & M. R. Co. 96 Me. 215, 90 Am. St. Rep. 335, 52 Atl. 771, holding death of only witness to prove freedom from contributory negligence does not relieve plaintiff of burden; Tatro v. Maine C. R. Co. 108 Me. 392, 81 Atl. 216; Fourier v. York Mfg. Co. 108 Me. 362, 81 Atl. 82,—holding that burden is on plaintiff to show that decedent did not contribute to accident that caused his death; Indianapolis v. Keeley, 167 Ind. 528, 79 N. E. 499, holding statute placing burden of proving contributory negligence on defense does not create inference of exercise of proper care; Dyer v. Maine C. R. Co. 99 Me. 206, 67 L.R.A. 421, 58 Atl. 994, 2 Ann. Cas. 457 (dissenting opinion); Colomb v. Portland & B. Street R. Co. 100 Me. 419, 61 Atl. 898,—on burden of proving affirmatively exercise of due care; Tripp v. Wells, 104 Me. 32, 18 L.R.A.(N.S.) 1147, 70 Atl. 533, holding mere evidence that horse left traveled way, insufficient to prove want of contributory negligence on part of driver; Wright v. Boston & M. R. Co. 74 N. H. 138, 8 L.R.A. (N.S.) 838, 124 Am. St. Rep. 949, 65 Atl. 687, holding want of contributory negligence not shown by proof that men in general would have been careful in like situation; Savage v. Rhode Island Co. 28 R. I. 399, 67 Atl. 633, holding presumption of due care is one of law and not indulged against eye witness testimony.

Cited in notes (11 L.R.A.(N.S.) 848) on presumption of due care by person whose death was unwitnessed, as prevent nonsuit; (33 L.R.A.(N.S.) 1101, 1105, 1113, 1145, 1149) on burden of proof as to contributory negligence.

43 L. R. A. 490, YALE UNIVERSITY v. NEW HAVEN, 71 Conn. 316, 42 Atl. 87.

Legislative rules for taxation.

Cited in State v. Travelers' Ins. Co. 73 Conn. 267, 57 L.R.A. 486, 47 Atl. 299, upholding discrimination between resident and nonresident stockholders in taxation of corporations.

Exemptions of public property from taxation.

Cited in Canaan v. Enfield Village Fire Dist. 74 N. H. 527, 70 Atl. 250, on legislation declaring exemptions of public property as being merely declaratory of the general law.

Exemption of college or school property.

Cited in Harvard College v. Assessors, 175 Mass. 146, 48 L.R.A. 549, footnote p. 547, 55 N. E. 844, holding exempt from taxation houses occupied by college presidents and professors and dormitories and dining halls for students; Phillips Academy v. Andover, 175 Mass. 126, 48 L.R.A. 553, 55 N. E. 841, holding only such property as used for purposes for which academy incorporated, exempt; Linton v. Lucy Cobb Institute, 117 Ga. 685, 45 S. E. 53, holding tuition used solely for maintenance of college not income so as to lose college its exemption from taxation; Chicago v. University of Chicago, 228 Ill. 608, 81 N. E. 1138, 10 Ann. Cas. 669, Affirming 131 Ill. App. 381, holding dormitories, dining

hall and club house operated by university solely for educational ends though partly supported by fees from students, exempt from taxation.

Cited in footnotes to White v. Smith, 43 L.R.A. 498, which holds school maintained by voluntary contribution, but free to all children, exempt as public charity; German Gymnastic Asso. v. Louisville, 65 L.R.A. 121, which holds institution for teaching physical culture exempt from taxation.

Cited in notes (21 L.R.A.(N.S.) 172) on school also used as residence by proprietor or others connected therewith as "exclusively" used for school purposes, within statutory exemption; (47 L. ed. U. S. 643, 644) on exemption of property of educational institutions from taxation, as affected by use for other than educational purposes.

— Exemption of hospital or sanatorium.

Cited in Michigan Sanitarium & Benev. Asso. v. Battle Creek, 138 Mich. 683, 101 N. W. 855, holding sanatorium using all funds received from patients for maintenance only, exempt from taxation under statute exempting property used for care and relief of indigent or other sick or infirm persons within state.

43 L. R. A. 498, WHITE v. SMITH, 189 Pa. 222, 43 W. N. C. 342, 42 Atl. 125.

Exemptions from taxation.

Cited in Pocono Pines Assembly v. Monroe County, 29 Pa. Super. Ct. 42, holding that when a charity ceases to become such its exemption as a charity ceases to the same exent; Mercersburg College v. Polfenberger, 36 Pa. Super. Ct. 106, 33 Pa. Co. Ct. 153, holding school property exempt where whole tuition was used in maintenance without profit; Harrisburg v. Harrisburg Academy, 13 Pa. Dist. R. 263, 26 Pa. Super. Ct. 256, opinion of lower court on the taxability of charity which has become self-supporting from noncharitable sources; Sinnemahoning Iron & Coal Co. v. Shaffer, 14 Pa. Dist. R. 372, holding legislature disabled by constitution to make or permit any exemptions except as prescribed.

Cited in footnotes to Harvard College v. Assessors, 48 L.R.A. 547, which holds exempt from taxation houses occupied by college presidents and professors and dormitories and dining halls for students; Gray Street Infirmary v. Louisville, 55 L.R.A. 270, which denies exemption of infirmary maintained by proprietors of medical college; Fitterer v. Crawford, 50 L.R.A. 191, which holds masonic lodge building first and second stories of whichh are rented not exempt as charitable; German Gymnastic Asso. v. Louisville, 65 L.R.A. 121, which holds institution for teaching physical culture exempt from taxation.

Cited in notes (16 L.R.A.(N.S.) 840) on effect of devotion of property otherwise nontaxable to purposes of particular society; (47 L. ed. U. S. 642) on exemption of property of educational institutions from taxation, as affected by use for other than educational purposes.

Distinguished in Pittsburg v. Third Presby. Church, 10 Pa. Super. Ct. 305, 29 Pittsb. L. J. N. S. 443, 44 W. N. C. 216, holding janitor's separate residence built on church lot, not exempt.

Public charity.

Cited in Hastings v. Long, 19 Lanc. L. Rev. 75, holding home for white women in indigent circumstances is a public charity.

43 L. R. A. 502, REIGHARD v. FLINN, 189 Pa. 355, 42 Atl. 23.

Right of municipal corporation to lease wharf.

Cited in Kemp v. Stradley, 134 Mich. 678, 97 N. W. 41, upholding right of city to lease street end for wharf under ordinance authorizing such lease subject to right of free passage.

Injunction against nuisance.

Cited in note (1 L.R.A.(N.S.) 135) on injunction against nuisance.

43 L. R. A. 505, GANNON v. LACLEDE GASLIGHT CO. 145 Mo. 502, 46 S. W. 968, 47 S. W. 907.

Cited in Gilpin v. Missouri, K. & T. R. Co. 197 Mo. 323, 94 S. W. 869, as one of conflicting cases requiring a certification to supreme court.

Review of verdict or finding.

Cited in Drumm-Flato Commission Co. v. Gerlack Bank, 92 Mo. App. 334; Lesieur v. Zimmerman, 88 Mo. App. 664; Waggoner v. South Gorin, 88 Mo. App. 34,—refusing to disturb jury's verdict where supported by some evidence; Overstreet v. Moser, 88 Mo. App. 80, upholding submission of question to jury though conflict in evidence supplied by plaintiff's testimony alone; Carter v. Current River R. Co. 156 Mo. 642, 57 S. W. 738, refusing to reverse verdict for plaintiff although no evidence introduced to rebut defendant's evidence, which, if believed, sufficient to overcome prima facie case; Poplar Bluff v. Hill, 92 Mo. App. 19, upholding submission to jury of disputed issue even though oral testimony uncontradicted; Hendrickson v. Grable, 157 Mo. 48, 57 S. W. 784, refusing to reverse finding in trial court at law, as to acquisition of title by adverse possession, where evidence insufficient to have supported contrary verdict; Oglesby v. Missouri P. R. Co. 150 Mo. 230, 51 S. W. 758, holding inspection of car, testified to on behalf of railroad, presumed sufficient in absence of evidence to contrary; Ellis v. Mississippi River & B. T. R. Co. 89 Mo. App. 244, refusing to reverse findings by trial court without jury where no evidence of arbitrary or prejudicial action therein; Childers v. R. C. Stone Mill. Co. 99 Mo. App. 270, 72 S. W. 1077, upholding recovery by plaintiff where the testimony supported the essential averments of the petition; O'Mara v. St. Louis Transit Co. 102 Mo. App. 211, 76 S. W. 680, holding appellate court will not interfere with discretion of trial court in refusing to set aside verdict, unless it was rendered from sentiment or partisan motives.

Distinguished in Kingsbury v. Joseph, 94 Mo. App. 304, 68 S. W. 93, overruling verdict for defendant where all material facts in plaintiff's case admitted.

Limited in Jeans v. Morrison, 99 Mo. App. 217, 73 S. W. 235, reversing judgment based on verdict for plaintiff, in action where no issue of fact was contested and every fact essential to recovery by defendant was proved.

Direction of verdict.

Cited in Ward v. Steffen, 88 Mo. App. 576, unholding refusal to direct verdict for plaintiff where evidence to rebut prima facie case introduced; Dodd v. Guiseffi, 100 Mo. App. 315, 73 S. W. 304, holding imperative instruction improper, even where testimony is uncontradicted, excepting the legal construction of written instruments; Kansas City v. Madsen, 93 Mo. App. 146, upholding submission to jury where no request for directed verdict; Asphalt & G. Constr. Co. v. St. Louis Transit Co. 102 Mo. App. 475, 80 S. W. 741, upholding right of appellate court to review action of trial court in refusing peremptory instruction asked by defeated party although trial court approved verdict when it was his plain duty to set it aside; New Harmony Lodge No. 71, I. O. O. F. v. Kansas City, Ft. S. & M. R. Co. 100 Mo. App. 413, 74 S. W. 5, holding refusal of peremptory instruction for defendant not waiver of right to have jury determine cause of fire which it is alleged defendant's engine set; Hunter v. Wethington, 205 Mo. 293, 103 S. W. 543, 12 Ann. Cas. 529, holding credibility of testimony of witnesses for defendant as to his adverse possession for statutory period in action for ejectment, for jury; McManus v. Oregon Short Line R. Co. 118 Mo.

App. 161, 94 S. W. 743, holding case must be submitted to jury where there is any substantial evidence though slight whether direct or inferential tending to establish matter in issue; Howerton v. Iowa State Ins. Co. 105 Mo. App. 584, 80 S. W. 27, holding where issues are raised by the pleadings and evidence thereon is offered by plaintiff he is entitled to have case submitted to jury; Davidson v. St. Louis Transit Co. 211 Mo. 360, 109 S. W. 583, holding where it is apparent to trial judge during trial that there is no dispute over certain questions although such facts are put in issue by answer and both parties treat facts as in existence, court does not err in assuming existence of such facts in its instructions; Cleary v. St. Louis Transit Co. 108 Mo. App. 436, 83 S. W. 1029, holding proof that one of defendant's wires charged with sufficient electrical current to destroy life was down on public thoroughfare made out prima facie case, and court properly refuse to direct verdict for defendant; Brown v. Consolidated Light, Power & Ice Co. 137 Mo. App. 731, 109 S. W. 1032, holding proof that person was killed by shock of electricity communicated by defendant's wire to one encountered by decedent, constitutes prima facie case, but burden of establishing ultimate fact of negligence remains with plaintiff throughout case; Porter v. St. Joseph Stock Yards Co. 213 Mo. 380, 111 S. W. 1136, holding plaintiff made prima facie case by showing deceased car repairer was found dead under car on which he was working, although proof was offered of warning having been given him that cars would be switched onto track where he was working, it being presumed that had warning been given he would not have been found dead; Weigman v. St. Louis, I. M. & S. R. Co. 223 Mo. 718, 123 S. W. 38, holding law presumes that plaintiff in action for personal injuries was at time of injury exercising ordinary care; Cooper v. Century Realty Co. 224 Mo. 727, 123 S. W. 848, holding passenger injured by descent of elevator in office building makes prima facie case by showing what caused the car to descend; Green v. Kansas City S. R. Co. 142 Mo. App. 83, 125 S. W. 865, holding demurrer could not be predicated on incompetent evidence because uncontradicted, and court cannot direct verdict thereon when such evidence is the opinion of experts; Holland v. St. Louis & S. F. R. Co. 105 Mo. App. 123, 79 S. W. 508, on duty to direct a verdict on introduction of evidence to overthrow prima facie case.

Distinguished in Monumental Bronze Co. v. Doty, 99 Mo. App. 199, 73 S. W. 234, upholding peremptory instruction, where no defense was shown to plaintiff's demand, which was proven by documentary evidence; Ferguson v. Venice Transp. Co. 79 Mo. App. 360, upholding direction of verdict notwithstanding issue raised by pleadings, where no evidence to contradict or impeach that offered by appellee; Hawes v. Mulholland, 78 Mo. App. 500, upholding directed verdict where plaintiff's testimony establishing right to recovery, conceded true by failure to contradict or cross-examine.

Cited as modified in Morelock v. Chicago, B. & Q. R. Co. 112 Mo. App. 645, 87 S. W. 5, holding there must be substantial evidence to take case to jury.

Cited as overruled in Hendley v. Globe Refinery Co. 106 Mo. App. 27, 79 S. W. 1163, holding it is the duty of the trial court to direct a verdict where there is no substantial evidence to overcome the prima facie case made.

Province of court and jury.

Cited in Wallrath v. Bohnenkamp, 97 Mo. App. 249, 70 S. W. 1112, holding it is province of jury to weigh testimony warranting different inferences and to draw conclusions as to the facts; Hester v. Fidelity & C. Co. 78 Mo. App. 511, upholding submission to jury where credibility of uncontradicted witness doubtful by reason of interest; Johnson v. Kahn, 97 Mo. App. 632, 71 S. W. 725, holding it is not the province of the court to determine when proof has been made

sufficient for a verdict, but to instruct when testimony tends to establish a fact in issue; Hugumin v. Hinds, 97 Mo. App. 352, 71 S. W. 479, and Chinn v. Chicago & A. R. Co. 100 Mo. App. 584, 75 S. W. 375, holding credibility of uncontradicted witness is for jury; Barker v. Lewis Pub. Co. 152 Mo. App. 722, 131 S. W. 924; Pierce Loan Co. v. Killian, 153 Mo. App. 111, 132 S. W. 280; Milne v. Chicago, R. I. & P. R. Co. 155 Mo. App. 473, 135 S. W. 85; Winn v. Modern Woodmen, 157 Mo. App. 11, 137 S. W. 292; Troll v. Protected Home Circle, 161 Mo. App. 722, 141 S. W. 916; Hitt v. Hitt, 150 Mo. App. 638, 131 S. W. 369,—holding that credibility of witnesses and weight, and value of testimony are for jury, even though testimony is uncontradicted; Fleishman v. Polar Wave Ice & Fuel Co. 148 Mo. App. 134, 127 S. W. 660; Link v. Jackson, 158 Mo. App. 92, 139 S. W. 588; Johnson v. Grayson, 230 Mo. 394, 130 S. W. 673,—holding that where allegations in petition are denied by answer in law case, and oral evidence is offered by plaintiff alone, defendant is entitled to have jury pass upon evidence; Munro v. St. Louis & S. F. R. Co. 155 Mo. App. 731, 135 S. W. 1016, holding that where evidence shows that passenger was injured by stumbling because of decayed condition of platform, question of defendant's negligence was for jury; Evans v. Modern Woodmen, 147 Mo. App. 175, 129 S. W. 485, holding that where proofs of death and application for insurance differs as to age of insured and beneficiary was uncertain as to age, issue as to truthfulness of statement in application is for jury; Brown v. Worthington, 162 Mo. App. 521, 142 S. W. 1082, holding that though evidence for one holding burden of proof is uncontradicted, question credibility of witnesses and weight of testimony for jury, unless clear admission appears; Clonts v. Laclede Gaslight Co. 160 Mo. App. 464, 140 S. W. 970, holding that where there is substantial evidence to sustain averments of petition, case is for jury although contrary proof for defendant may appear quite conclusive; St. Charles Sav. Bank v. Orthwein Invest. Co. 160 Mo. App. 379, 140 S. W. 921, holding that where defendant's statements and attitude during trial indicate that he does not dispute existence of facts essential to plaintiff's recovery, rule that defendant is entitled to have jury determine credibility of witnesses does not apply; Whitson v. Farber Bank, 105 Mo. App. 617, 80 S. W. 327, holding when issues of fact are made by pleadings and plaintiff's evidence is oral, jury must weigh it and decide issues; Mowry v. Norman, 204 Mo. 191, 103 S. W. 15, holding where facts show fiduciary relation between father, testator, and son principal beneficiary, law presumes undue influence, and credibility of testimony in rebuttal is for jury; Connelly v. Illinois C. R. Co. 133 Mo. App. 316, 113 S. W. 233, holding jury not bound to believe witness if his manner on stand discredited him, or if evidence on whole supported another inference.

Notice of defect.

Cited in Atchison, T. & S. F. R. Co. v. Kavanaugh, 163 Mo. 59, 63 S. W. 374, holding railway not liable for killing of cows escaping to tracks where no actual notice of open gate shown, and not imputable by lapse of time.

Variance.

Cited in Fowler Commission Co. v. Chicago, R. I. & P. R. Co. 98 Mo. App. 212, 71 S. W. 1077, holding petition charging failure to deliver goods to consignee and a wrongful delivery to another not supported by evidence of defendant's failure to collect draft attached to bill of lading; Carthage Nat. Bank v. Poole, 160 Mo. App. 144, 141 S. W. 729, to the point that plaintiff need not prove all he avers if what he proves supports enough of averments to constitute cause of action; Shawnee Light & P. Co. v. Sears, 21 Okla. 17, 95 Pac. 449, holding in personal injury action where evidence introduced is not different from that

charged and shown right in plaintiff to recover for very injury complained of and defendant is not confronted by different case than faced him in pleading, variance is harmless.

Distinguished in Laclede Constr. Co. v. Tudor Iron Works, 169 Mo. 155, 69 S. W. 384, holding proof of another agreement does not satisfy allegation of express contract.

Immaterial allegation.

Followed in Cramer v. Springfield Traction Co. 112 Mo. App. 359, 87 S. W. 24, holding unnecessary allegation in pleading will be ignored where sufficient is proved to permit recovery.

Cited in Walker v. Evans, 98 Mo. App. 306, 71 S. W. 1086, holding in action by tenant in common against cotenants for fraud in sale of property, it is immaterial that in the petiton the parties are alleged to have been partners; Spaulding v. Metropolitan Street R. Co. 129 Mo. App. 612, 107 S. W. 1049, holding where two separate allegations of negligence are stated, not contradictory, recovery may be had on proof of but one.

Duty and liability as to electric wires.

Cited in Heiberger v. Missouri & K. Teleph. Co. 133 Mo. App. 459, 113 S. W. 730, holding it for jury whether telephone company was negligent in allowing wire which spanned navigable river to sag and become submerged so as to cause obstruction, whereby boat was capsized; Brown v. Consolidated Light, Power & Ice Co. 137 Mo. App. 733, 109 S. W. 1032, holding electric company whose wires because of storm render telephone wire dangerous by charging it with electricity entitled to reasonable opportunity to discover defect and reasonable time while employing greatest diligence to remedy defect.

Cited in footnotes to Brush Electric Light & P. Co. v. Lefevre, 49 L. R. A. 771, which denies liability for death by uninsulated electric light wire running above awning 16 feet above street; Boyd v. Portland General Electric Co. 52 L. R. A. 509, which holds want of sufficient assistance to promptly replace wires broken by severe storm not excuse as matter of law for delay; Thomas v. Maysville Gas Co. 53 L. R. A. 147, which holds corporation sending electricity into street railway company's wires required to see to their insulation; Boyd v. Portland General Electric Co. 57 L. R. A. 619, which holds electric light company liable for injury by wire broken during storm; Hebert v. Lake Charles Ice, Light & Waterworks Co. 64 L. R. A. 101, which holds electric light company liable for death of person in street by uninsulated wire which burned and fell because of fall of telephone wire negligently strung above former one.

Cited in notes (22 L.R.A.(N.S.) 1178) on injuries from electric wires in highway; (100 Am. St. Rep. 518, 524) on duties and liabilities of electric corporations; (1 Brit. Rul. Cas. 798, 811) on duty to protect traveler from electricity from wires on highway.

Distinguished in Pennebaker v. San Joaquin Light & P. Co. 158 Cal. 586, 31 L.R.A.(N.S.) 1103, 139 Am. St. Rep. 202, 112 Pac. 459, holding that fireman who goes among electric wires, which have fallen from burning building, knowing them to be alive is guilty of negligence.

Presumption of negligence.

Cited in Hoover v. Kansas City Elev. R. Co. 159 Mo. App. 420, 140 S. W. 321, holding that proof of death of pedestrian from contact with broken guy wire is prima facie proof of negligence; Hamilton v. Kansas City S. R. Co. 123 Mo. App. 624, 100 S. W. 671, on application of doctrine of res ipsa loquitur to injury to servant.

Cited in notes (22 L.R.A.(N.S.) 1179) on applicability of res ipsa loquitur

to injury on highway due to disordered electrical appliances; (113 Am. St. Rep. 1012) on presumption of negligence from happening of accident causing personal injuries.

43 L. R. A. 519, FIELDS v. DANEHOWER, 65 Ark. 392, 46 S. W. 938.

Possession by purchaser on foreclosure during period for redemption.

Cited in footnote to Danehower v. Dawson, 44 L.R.A. 193, which holds purchaser on foreclosure entitled to possession during statutory period for redemption.

Tender of payment.

Cited in Jacoway v. Hall, 67 Ark. 345, 55 S. W. 12, holding tender of *pro rata* share of proceeds of estate on execution of receipt in full, invalid as tender of payment where share insufficient to pay claim in full.

Right of mortgagor on redemption.

Cited in Handford v. Edwards, 89 Ark. 153, 23 L.R.A.(N.S.) 191, 115 S. W. 1143, holding mortgagor entitled to redeem lands free of mortgage lien.

43 L. R. A. 524, WILSON v. DONALDSON, 121 Cal. 8, 66 Am. St. Rep. 17, 53 Pac. 404.

Validity of statute giving thresher's lien.

Cited in Phelan v. Terry, 101 Minn. 459, 112 N. W. 872, upholding constitutionality of statute creating lien and giving it preference over all other liens and incumbrances.

43 L. R. A. 526, RANSDELL v. BOSTON, 172 Ill. 439, 50 N. E. 111.

Construction of will.

Cited in Johnson v. Askey, 190 Ill. 61, 60 N. E. 76, construing provision that property should "revert back to heirs" of testator, to limit gift to prior donee, to life estate.

Validity of testamentary provision.

Cited in Ellis v. Birkhead, 30 Tex. Civ. App. 532, 71 S. W. 31, holding testamentary provision devising property in trust for married woman, with direction that it become her absolute property if she outlive or procure divorce from her husband, not void as against public policy.

Cited in notes (84 Am. St. Rep. 150; 25 Eng. Rul. Cas. 639) on validity of condition in restraint of marriage.

43 L. R. A. 529, MORTON v. MURRAY, 176 Ill. 54, 51 N. E. 767.

Sufficiency of memorandum.

Cited in First Presby. Church v. Swanson, 100 Ill. App. 43, holding bond for faithful performance of contract sufficient to take oral agreement out of statute of frauds.

43 L. R. A. 533, BIXBY v. OMAHA & C. B. R. & BRIDGE CO. 105 Iowa, 293, 67 Am. St. Rep. 299, 75 N. W. 182.

Competency of medical works.

Cited in Stewart v. Equitable Mut. Life Asso. 110 Iowa, 530, 81 N. W. 782, holding admission over objection of extracts from medical works to define and explain disease causing death of insured, error; State v. Peterson, 110 Iowa, 651, 82 N. W. 329, upholding exclusion of medical works offered in prosecution for rape, to show impossibility of commission of crime on mature females; Cronk v. Wabash R. Co. 123 Iowa, 351, 98 N. W. 884, holding medical expert may state

contents of medical works on cross-examination where he had referred thereto in his direct evidence; Brady v. Shirley, 14 S. D. 452, 85 N. W. 1002, holding work by veterinary surgeons incompetent to inform jury of the manner of determining horse's age from teeth; Etzkorn v. Oelwein, 142 Iowa, 114, 120 N. W. 636, holding it error to allow counsel to read extract from medical work and ask witness if he has read it; State v. Wilhite, 132 Iowa, 229, 109 N. W. 730, 11 Ann. Cas. 180, holding it not error to receive a standard medical dictionary in evidence as an aid to the memory and understanding of the court; State v. Thompson, 127 Iowa, 443, 103 N. W. 377, holding medical treatise cannot be read in evidence where not in cross-examination of anything witness has said.

Distinguished in Dunbauld v. Thompson, 109 Iowa, 201, 80 N. W. 324, holding introduction of medical works as evidence not ground for reversal where read from by both parties without objection on trial; Betts v. Betts, 113 Iowa, 115, 84 N. W. 975, holding admission of extracts from medical work not error where objection made only to incompetency of subject-matter.

Scientific books as evidence.

Cited in Bruggeman v. Illinois C. R. Co. 147 Iowa, 197, 123 N. W. 1007, Ann. Cas. 1912B, 876, holding that books upon subject of brakes, purporting to give distance at which trains moving at different rates of speed can be stopped are not admissible in evidence.

43 L. R. A. 537, SEILER v. ECONOMIC LIFE ASSO. 105 Iowa, 87, 74 N. W. 941.

Suicide as defense to action on insurance policy.

Cited in Parker v. Des Moines Life Asso. 108 Iowa, 123, 78 N. W. 826, holding suicide of insured does not bar action by beneficiary on policy taken out in good faith, and not providing against liabilty in case of suicide; Grand Legion S. K. A. v. Beaty, 224 Ill. 349, 8 L.R.A.(N.S.) 1128, 79 N. E. 565, 8 Ann. Cas. 160, holding suicide by member of fraternal beneficiary society while sane does not defeat right of beneficiary to recover where contract is silent as to effects, on rights of parties of suicide; Grand Legion, S. K. A. v. Beaty, 117 Ill. App. 659, holding it not a defense where certificate is not issued subject to provision providing for forfeiture therefor, where indemnity is not payable to assured or personal representatives.

Cited in footnote to Campbell v. Supreme Conclave I. O. H. 54 L. R. A. 576, which holds recovery not prevented by suicide of insured.

Cited in notes (8 L.R.A.(N.S.) 1124, 1127, 1128) on suicide while sane as defense to action on policy or certificate containing no provision as to effect thereof; (84 Am. St. Rep. 541) on self-destruction as defense to life insurance.

Distinguished in Mutual L. Ins. Co. v. Kelly, 52 C. C. A. 160, 114 Fed. 274, Reversing 109 Fed. 61, holding beneficiary not entitled to recover where death of insured within exception of policy against liability for death by suicide while insane; Shipman v. Protected Home Circle, 174 N. Y. 408, 63 L. R. A. 351, footnote p. 347, 67 N. E. 83, holding suicide of assured will terminate the rights of the beneficiary in a mutual benefit certificate.

Sufficiency of attached copy of application.

Cited in Corson v. Iowa Mut. F. Ins. Asso. 115 Iowa, 492, 88 N. W. 1086, holding statutory requirement for attachment of copy of application to fire policy not satisfied by memoranda comprehensible only by construction; Mullen v. Woodmen of the World, 144 Iowa, 230, 122 N. W. 903, holding that insured cannot waive requirement of statute as to attaching copy of application to policy; Knapp v. Brotherhood of American Yeoman, 139 Iowa, 142, 117 N. W. 298, holding discrepancy not sufficient to show omission to indorse copy of application where copy of application attached to certificate merely omitted words

"question" and "answer" preceding question and answer but their purpose is apparent; Kirkpatrick v. London Guarantee & Acci. Co. 139 Iowa, 374, 19 L.R.A. (N.S.) 105, 115 N. W. 1107, on purpose of statute requiring attachment of copy of application.

Admissions as to cause of injury as res gestæ.

Cited in Sutcliffe v. Iowa State Traveling Men's Asso. 119 Iowa, 223, 97 Am. St. Rep. 298, 93 N. W. 90, holding admissions of insured, made at the time, as to the cause of his injury, admissible against beneficiary, as part of the *res gestæ*.

43 L. R. A. 541, LOUISVILLE & N. R. CO. v. COM. 104 Ky. 226, 105 Ky. 179, 46 S. W. 707, 47 S. W. 598, 48 S. W. 416.

Supplemental petition for rehearing overruled in 104 Ky. 255, 47 S. W. 210.

Freight rates.

Reaffirmed in Louisville & N. R. Co. v. Com. 106 Ky. 638, 90 Am. St. Rep. 236, 51 S. W. 164, holding higher charge for shorter haul to intermediate station not justified by fact of competition between terminal points.

Followed in Hutchison v. Louisville & N. R. Co. 108 Ky. 617, 57 S. W. 251, holding competition at one point which does not exist at a farther point does not justify reduced rate to former.

Cited in Louisville & N. R. Co. v. Com. 108 Ky. 639, 57 S. W. 508, holding classification of coal as "steam" and "domestic" coal, was practically a classification into screened and unscreened coal and proper.

Cited in footnote to Laurel Cotton Mills v. Gulf & S. I. R. Co. 66 L.R.A. 453, which holds contract between carrier and manufacturer to maintain same rates on goods shipped by him between competitive points as are maintained from other points where same factories are located not a forbidden discrimination.

Disapproved in Cohn v. St. Louis, I. M. & S. R. Co. 151 Mo. App. 677, 133 S. W. 59, holding that carrier may in fixing rates under statute take into consideration question of honest competition and may because of such conditions charge more for short than longer haul.

— Indictment for discrimination.

Cited in Com. v. Louisville & N. R. Co. 112 Ky. 84, 65 S. W. 158, holding statute giving railroad commission right to say when prosecution shall be inaugurated for unjust discrimination by railroads violative of constitution prescribing penalty upon conviction by court of competent jurisdiction; Louisville & N. R. Co. v. Com. 114 Ky. 797, 71 S. W. 910, on necessity for investigation by railroad commission of discrimination before indictment therefor.

Penalty for failure to supply cars.

Cited in footnote to Little Rock & Ft. S. R. Co. v. Oppenheimer, 44 L. R. A. 353, which denies carrier's liability to penalty for better supply of cars at terminus than some other point on road.

Self-operating constitutional provisions.

Cited in footnote to State v. Kyle, 56 L. R. A. 115, which holds self-operating, constitutional amendment for criminal prosecution by indictment or information only.

Construction of state constitutional provision.

Cited in Montgomery County Fiscal Court v. Trimble, 104 Ky. 641, 42 L. R. A. 743, 47 S. W. 773, by Guffy, J., dissenting, who holds state court should construe for itself the true meaning of its Constitution and laws without reliance on decisions of courts of other states.

— When binding on Supreme Court.

Cited in Louisville & N. R. Co. v. Kentucky, 183 U. S. 509, 46 L. ed. 303, 22 Sup. Ct. Rep. 95, holding construction put by state court on state constitutional provision expressed in similar language to Federal statute which had received different construction in Federal courts, binding on United States Supreme Court.

Delegation of power to regulate carriers.

Cited in note (32 L.R.A.(N.S.) 655) on delegation of power to regulate carriers.

43 L. R. A. 551, DOTY v. DEPOSIT BLDG. & L. ASSO. 103 Ky. 710, 46 S. W. 219, 47 S. W. 433.

Priority of liens.

Cited in Taylor v. United States Bldg. & L. Asso. 110 Ky. 93, 60 S. W. 927, holding, in absence of statute, party who has suit pending to enforce lien on land entitled to protection against purchasers or those acquiring liens during pendency of suit.

Cancelation of deed in suit to surcharge settlement.

Cited in Dawkins v. Hough, 112 Ky. 860, 66 S. W. 1047, holding in suit to surcharge settlement made by guardian, court may decree cancelation of deed executed by guardian of ward's land situated in another county.

Venue of action respecting land.

Cited in Gillen v. Illinois C. R. Co. 137 Ky. 384, 125 S. W. 1047, holding that where defendant answered to merits, though action was brought in county other than that in which land injured was situated, provision of statute as to venue of action was thereby waived.

43 L. R. A. 554, ASHLAND & C. STREET R. CO. v. FAULKNER, 106 Ky. 332, 45 S. W. 235, 51 S. W. 806.

Injury to abutting owner by maintenance of street railway.

Cited in Louisville R. Co. v. Foster, 108 Ky. 749, 50 L. R. A. 815, 57 S. W. 480, holding owner of property cannot recover compensation for maintenance of street railway turntable except so far as he is specially damaged thereby.

Annotation cited in Wagner v. Bristol Belt Line R. Co. 108 Va. 603, 25 L.R.A. (N.S.) 1283, 62 S. E. 391, on right to compensation for depriving owner of place in which vehicles could stand in front of place of business.

Cited in notes (43 L.R.A. 557) on injury to abutting owner by laying street railway near side of street; (25 L.R.A.(N.S.) 1265, 1267) on right of abutter to damages for special injuries where street railway not considered additional burden; (25 L.R.A.(N.S.) 1279) on right of abutter to compensation where street railway located on side of street; (36 L.R.A.(N.S.) 769) on abutter's right to compensation for railroads in streets.

What constitutes additional servitude.

Cited in Cumberland Teleph. & Teleg. Co. v. Ayritt, 120 Ky. 38, 85 S. W. 204, 8 Ann. Cas. 955, holding that erection of telephone line along turnpike is not additional servitude on land.

43 L. R. A. 566, JOHN HANCOCK MUT. L. INS. CO. v. DICK, 114 Mich. 337, 72 N. W. 179.

Second appeal in 117 Mich. 519, 44 L. R. A. 846, 76 N. W. 9.

Fraud as ground for equitable relief.

Cited in Mutual L. Ins. Co. v. Pearson, 114 Fed. 398, canceling policy payable

in unmatured bonds where premium fraudulently paid after inception of fatal disease; Mactavish v. Kent Circuit Judge, 122 Mich. 245, 80 N. W. 1086, refusing to review discretionary injunction to prevent action at law on policy pending suit to cancel same for fraud; Des Moines L. Ins. Co. v. Seifert, 112 Ill. App. 279, holding equity will not take jurisdiction of suit to cancel insurance policy procured by fraud; Gragg v. Maynard, 164 Mich. 538, 129 N. W. 723, holding that complaint alleging that defendant obtained, by undue influence and fraud deed to him, by person towards whom he sustained confidential relation, presents case for equitable cognizance; Fidelity Mut. L. Ins. Co. v. Blain, 144 Mich. 219, 107 N. W. 877, holding life insurance company may maintain action in equity to cancel policy and restrain action at law thereon where it claims fraud in procuring policy and subsequent act avoiding it; Roberts v. Sholes, 144 Mich. 217, 107 N. W. 904, holding equity has jurisdiction of action for cancelation of note to third person given as purchase price for land which plaintiff authorized defendant as attorney to purchase for him, and which defendant fraudulently procured for himself; Hamilton v. American Hulled Bean Co. 143 Mich. 286, 106 N. W. 731, holding equity has jurisdiction of suit by stockholder for cancellation of stock and repayment of money paid under fraudulent representation; Edwards v. Michigan Tontine Invest. Co. 132 Mich. 6, 92 N. W. 491, holding equity has jurisdiction on showing of fraud in action for discovery and decree for sum paid corporation on fraudulent representations; Fred Macey Co. v. Macey, 143 Mich. 150, 5 L.R.A.(N.S.) 1043, 106 N. W. 722, holding equity will assume jurisdiction in case of fraud, although adequate remedy at law exist; Garretson v. Witherspoon, 15 Okla. 476, 83 Pac. 415, holding court will exercise its equitable jurisdiction to order surrender of note and decree cancelation of mortgage, irrespective of remedy at law, where there is entire want of consideration for note, recorded mortgage constitutes cloud, and transaction is tainted with fraud; Spangler v. Yarborough, 23 Okla. 812, 101 Pac. 1107, holding averment that plaintiff is without plain, adequate and complete remedy at law unnecessary in cases of fraud; Berdan v. Milwaukee Mut. L. Ins. Co. 136 Mich. 405, 99 N. W. 411, 4 Ann. Cas. 332, holding where no adequate remedy at law exists, equity has jurisdiction to vacate settlement as fraudlent of minor's claim on insurance policy made by guardian under order of court; Beaton v. Inland Twp. 149 Mich. 561, 113 N. W. 361 (dissenting opinion) on right to equitable relief for cancelation for fraud.

Cited in notes (5 L.R.A.(N.S.) 1037) on jurisdiction of equity to cancel instrument for fraud; (12 L.R.A.(N.S.) 882, on equity jurisdiction of suit to cancel insurance policy for fraud, and to enjoin action at law thereon.

Distinguished in Mack v. Frankfort, 123 Mich. 425, 82 N. W. 209, denying reimbursement for money expended in purchase of municipal bonds fraudulently issued, where remedy at law adequate.

Limited in Northwestern Mut. L. Ins. Co. v. Amos, 136 Mich. 213, 98 N. W. 1018, holding doctrine of cited case will not be extended to include case where question of fraud and attempted enforcement of policy was not charged, the question involved purely legal and not reason for interposition of equity existing.

Disapproved in Johnson v. Swanke, 128 Wis. 74, 5 L.R.A.(N.S.) 1057, 107 N. W. 481, 8 Ann. Cas. 544, holding signers of nonnegotiable note are not entitled to equitable relief for cancelation of note or injunction against its transfer on ground of inadequacy of remedy at law.

43 L. R. A. 568, SWEETLAND v. CHICAGO & G. T. R. CO. 117 Mich. 329, 75 N. W. 1066.

Actions for tort causing death.

Cited in Brown v. Chicago & N. W. R. Co. 102 Wis. 168, 44 L. R. A. 591, footnote p. 579, 78 N. W. 771, holding statutory action surviving to estate distinct from statutory action to relatives for loss to them; Peers v. Nevada Power Light & Water Co. 119 Fed. 403, holding statute giving right of action to personal representative of deceased for latter's wrongful death confers but one right of action, and is not a "survival act;" Dolson v. Lake Shore & M. S. R. Co. 128 Mich. 448, 87 N. W. 629, holding in case of instantaneous death remedy is under wrongful death act; otherwise under survival act; Keyes v. Valley Teleph. Co. 132 Mich. 284, 93 N. W. 623, holding where right of action survives death of person injured, who lives day after injury, representative is entitled to recover same measure of damages that decedent could have recovered had he lived.

Cited in footnote to *Re* Meekin, 51 L. R. A. 235, which holds action for death by administrator who is also father and sole beneficiary of deceased survives father's death.

Cited in note (8 L.R.A.(N.S.) 387) on several actions for wrongful death.

Distinguished in Norblad v. Minneapolis, St. P. & S. Ste. M. R. Co. 156 Mich. 701, 118 N. W. 595, holding, under statute, measure of damages for wrongful death shall be such amount as shall be deemed fair.

Overruled in Carbary v. Detroit United R. Co. 157 Mich. 685, 122 N. W. 367, holding right of action under survival act, and death act, not double remedies, but existence of one cause of action is inconsistent existence of other.

— Effect of release.

Cited in Southern Bell Teleph. & Teleg. Co. v. Cassin, 111 Ga. 580, 50 L. R. A. 697, 36 S. E. 881, holding voluntary settlement by deceased with tort feasor defeats statutory action by widow or children.

Cited in note (27 L.R.A.(N.S.) 176) on settlement by injured person of claim against tort feasor as precluding action for resulting death.

— Damages for pain and suffering.

Cited in Olivier v. Houghton County Street R. Co. 134 Mich. 368, 104 Am. St. Rep. 607, 96 N. W. 434, 3 Ann. Cas. 53, holding pain and suffering recoverable in action for injuries which caused death, if decedent lived for appreciable time after injury; Jacobs v. Glucose Sugar Ref. Co. 140 Fed. 768, holding following state construction of statute, that recovery cannot be had for suffering and pain resulting from personal injury in action brought by personal representative after death of person injured.

Instantaneous death as "personal injury."

Cited in footnote to Worcester & Suburban Street R. Co. v. Travelers' Ins. Co. 57 L. R. A. 629, which holds cases of instantaneous death not covered by policy insuring railroad company against loss from liability to persons sustaining "personal injuries."

43 L. R. A. 581, PETERSON v. WESTERN U. TELEG. CO. 75 Minn. 368, 74 Am. St. Rep. 502, 77 N. W. 985.

Liability of corporation for libel.

Cited in Pennsylvania Iron Works Co. v. Henry Voght Mach. Co. 139 Ky. 502, 8 L.R.A.(N.S.) 1025, 96 S. W. 551, holding to establish liability of corporation for libel publication must be shown to have been made by its authority or to have been ratified by it, or to have been made by one of its servants or agents in scope of his employment and in course of business in which he was

employed; Nava v. Northwestern Teleph. Exch. Co. 112 Minn. 202, 127 N. W. 935, holding that liability of defendant for act of servant in publication of libelous letter in course of employment, was for jury.

Cited in notes (88 Am. St. Rep. 794) on liability of principal for unauthorized libelous acts of agent; (115 Am. St. Rep. 722, 723, 724, 725) on corporate liability for libel and slander; (117 Am. St. Rep. 301) on liability of telegraph company for transmitting libelous messages.

Liability of corporation for exemplary damages.

Cited in Anderson v. International Harvester Co. 104 Minn. 51, 16 L.R.A. (N.S.) 443, 116 N. W. 101, holding corporation may be liable.

Excessive damages for tort to reputation.

Cited in Shea v. Cloquet Lumber Co. 97 Minn. 44, 105 N. W. 552, holding $1,200 damages not excessive in action for malicious prosecution.

New trial conditioned on remittitur.

Cited in Blume v. Scheer, 83 Minn. 413, 86 N. W. 446, holding order for new trial conditional on remittitur, erroneous where verdict neither excessive nor result of prejudice.

Telegram as publication of libel.

Cited in note (1 Brit. Rul. Cas. 467) on postcard or telegram as publication of libel.

43 L. R. A. 584, McCONVILLE v. ST. PAUL, 75 Minn. 383, 74 Am. St. Rep. 508, 77 N. W. 993.

Recovery of money paid on assessment.

Distinguished in Germania Bank v. St. Paul, 79 Minn. 33, 81 N. W. 542; Rogers v. St. Paul, 86 Minn. 100, 90 N. W. 155; Rogers v. St. Paul, 79 Minn. 10, 47 L. R. A. 538, footnote p. 537, 81 N. W. 539,— denying right to recover back assessment for uncompleted street improvement, where not alleged that money spent thereon.

Cited in note (94 Am. St. Rep. 437) on recovery back of voluntary payment.

43 L. R. A. 588, NEW LINCOLN HOTEL CO. v. SHEARS, 57 Neb. 478, 73 Am. St. Rep. 524, 78 N. W. 25.

Lien on after-acquired personalty.

Cited in Brown v. Neilson, 61 Neb. 771, 54 L. R. A. 330, footnote p. 328, 87 Am. St. Rep. 525, 86 N. W. 498, holding that stipulation for lien for rent on all property then or thereafter on leased premises does not create lien for rent in arrears on crops and other property not in being at time of lease; Dexter v. Citizens Nat. Bank, 4 Neb. (Unof.) 383, 94 N. W. 530, holding chattel mortgage on after-acquired personalty a nullity; Sporer v. McDermott, 69 Neb. 540, 96 N. W. 659, 5 Ann. Cas. 396 (dissenting opinion), on right to lien on property not in being.

Cited in footnote to O'Neil v. Helmke, 70 L.R.A. 338, which holds neither legal transfer of nor lien on proceeds of milk to be delivered by producer to cheese manufacturer effected by order directing latter to direct to third person proceeds of all milk delivered by producer at factory in future.

43 L. R. A. 593, BRACKENRIDGE v. CLARIDGE, 91 Tex. 527, 44 S. W. 819.

Broker's right to commissions.

Cited in Reasoner v. Yates, 90 Neb. 760, 134 N. W. 651, holding that broker is entitled to commissions although contract for sale of property is canceled by

mutual consent of vendor and vendee; Wilson v. Clark, 35 Tex. Civ. App. 94, 79 S. W. 649, holding broker can recover on oral contract where he has found purchaser ready, willing and able to make purchase on terms proposed, though no sale effected; Albritton v. First Nat. Bank, 38 Tex. Civ. App. 617, 86 S. W. 646, holding broker entitled to commission where he has brought purchaser and seller together and binding contract is made between them on seller's terms if title is good, though no sale is consummated because of defective title; Clark v. Wilson, 41 Tex. Civ. App. 455, 91 S. W. 627, holding broker entitled to his commission where he procures purchaser ready, willing and able to buy on terms proposed, but no sale is effected because of fault of principal; Brunson v. Blair, 44 Tex. Civ. App. 46, 97 S. W. 337, holding broker entitled to commission where he brings seller and responsible purchaser together, but no sale is consummated because of failure of seller to furnish title.

Annotation cited in Dean v. Williams, 56 Wash. 620, 106 Pac. 130, on implied contract by owner to furnish good title; Reams v. Wilson, 147 N. C. 306, 60 S. E. 1124, on right to recover on quantum meruit where express contract exists.

Cited in footnotes to Roche v. Smith, 51 L. R. A. 510, which sustains broker's right to commissions notwithstanding defect in title unknown till after valid contract for purchase made; Livermore v. Crane, 57 L. R. A. 402, which holds purchaser refusing to complete purchase liable to broker for loss of commissions from seller.

Cited in notes (45 L.R.A. 33) on fraud and secret dealings or interest of real-estate brokers as affecting their commissions; (3 L.R.A.(N.S.) 577) on broker's right to commission on failure of employer's title; (15 L.R.A.(N.S.) 187) on right to commission where sale or loan fails because of owner's refusal to indemnify against encumbrances.

Annotation in 43 L. R. A. 593, referred to with approval in Mattes v. Engel, 15 S. D. 337, 89 N. W. 651, holding broker who has secured execution of binding contract of sale entitled to commission although contract is subsequently modified or canceled; Corder v. O'Neill, 176 Mo. 438, 75 S. W. 764, holding real-estate broker if instrumental in effecting sale cannot be deprived of his commission by artifice or fraud.

Performance by broker of contract to find purchaser.

Cited in notes (44 L. R. A. 321, 593, 596, 614, 616, 623, 624) on performance by real-estate broker of contract to find purchaser or effect exchange of principal's property; (44 L. R. A. 345, 350) as to when real-estate broker is considered as procuring cause of sale or exchange effected.

Duty of broker to disclose identity of purchaser.

Cited in note (53 L. R. A. 243) on duty of broker to disclose to his principal the identity of a purchaser.

Opinion of attorney as evidence on defect in title.

Cited in Armstrong v. Maryland Coal Co. 67 W. Va. 610, 69 S. E. 195, to the point that certificate or opinion of attorney as to validity of title to land is not legal evidence; Weaver v. Richards, 144 Mich. 403, 6 L.R.A.(N.S.) 860, 108 N. W. 382, holding opinion not evidence of defect.

Right to recover for breach of warranty on sale of land.

Cited in Roberts v. McFadden, 32 Tex. Civ. App. 54, 74 S. W. 105, holding in suit for damages for non-marketability of title, recovery cannot be had for breach of warranty unless title be shown to be absolutely bad.

43 L. R. A. 615, GUSTAFSON v. STATE, 40 Tex. Crim. Rep. 67, 45 S. W. 717, 48 S. W. 518.

Regulation of fishery rights.

Cited in State v. Hill, 98 Miss. 146, 31 L.R.A.(N.S.) 491, 53 So. 411, holding that legislature cannot authorize county to protect fish within county for benefit of residents only.

Cited in footnotes to Tyler v. State, 52 L. R. A. 100, which holds oysters taken from waters outside of state not within statutory prohibition of possession of; State v. Dow, 53 L. R. A. 314, which sustains statute against fishing for trout with intent to sell or trade.

Cited in note (60 L. R. A. 502, 517) on right to fish.

43 L. R. A. 618, HEKKING v. PFAFF, 33 C. C. A. 328, 50 U. S. App. 484, 91 Fed. 60.

Personal judgment against nonresident.

Cited in Hale v. Hardon, 37 C. C. A. 255, 95 Fed. 762, holding nonresident stockholder not precluded to dispute validity of assessment against him in proceedings by receiver at domicil of corporation; Baker v. Jewell, 114 La. 736, 38 So. 532, holding court has no jurisdiction to award money judgment for alimony against defendant on whom no personal service has been made and who has not voluntarily appeared in proceedings.

Cited in note (9 L.R.A.(N.S.) 594) on power to grant alimony in divorce suit without personal service of process.

Right of federal court to examine jurisdiction of state court.

Cited in Phoenix Bridge Co. v. Castleberry, 65 C. C. A. 481, 131 Fed. 177, holding Federal court can on collateral attack examine jurisdiction of state court, which rendered judgment relied on in Federal court.

Estoppel to question divorce.

Cited in note (133 Am. St. Rep. 443) as to when estoppel exists against urging invalidity of void or voidable divorce.

43 L. R. A. 620, STATE v. BRADNECK, 69 Conn. 212, 37 Atl. 492.

Res gestæ.

Cited in footnote to Sample v. Consolidated Light & R. Co. 57 L. R. A. 186, which holds admissible, declaration of motorman as to cause of accident while car still on body of injured child.

Admissibility of civil judgment in criminal prosecution.

Cited in Wilcox v. State, 8 Ga. App. 537, 69 S. E. 1086, holding that fact of civil suit and of conduct of defendant in relation thereto, may when taken together, constitute, in some cases, quasi admission of facts, and become admissible in criminal suit; Sims v. State, 54 Fla. 102, 44 So. 737, holding admission of civil judgment in criminal prosecution not error where such evidence was merely cumulative; Busby v. State, 51 Tex. Crim. Rep. 308, 103 S. W. 638, holding judgment in civil action in which state and accused in later criminal prosecution for same matter are parties not admissible in such later prosecution.

Cited in notes (11 L.R.A.(N.S.) 655) on judgment in criminal action as res judicata in civil action; (26 L.R.A.(N.S.) 461, 462) on admissibility of civil judgment in criminal prosecution; (103 Am. St. Rep. 21, 28) on res judicata in criminal proceedings.

43 L. R. A. 622, ANGLO-AMERICAN SAV. & L. ASSO. v. CAMPBELL, 13 App. D. C. 581.

Priority of liens.

Cited in Barnes v. Thuet Bros. 116 Iowa, 363, 89 N. W. 1085, holding money received by consignee of cattle who sold them is impressed with constructive trust in favor of one who advanced money with which to buy the cattle to the consignor whose draft consignee dishonored.

Cited in footnote to Fisher v. Wineman, 52 L. R. A. 192, which holds void, judgment giving preference to labor debt over pre-existing lien without making lienor party.

Constructive trust.

Cited in Joralmon v. McPhee, 31 Colo. 36, 71 Pac. 419, holding under statute, lien of mortgagee advancing money for construction of house superior to that of mechanic's lien claimant.

Trust in building loans for benefit of mechanics and material men.

Cited in Pennsylvania Steel Co. v. Title Guarantee & Trust Co. 193 N. Y. 42, 85 N. E. 820, on resort to unadvanced portion of mortgage loan for satisfaction of material and labor lien; France v. Coleman, 29 App. D. C. 294, holding that contractor can enforce payment of a building loan for his own benefit in equity where he relied entirely on it for pay and the mortgage given therefor by his employer so completely covers value that a mechanic's lien would be worthless as security; Rosenblum v. Tilden Improv. Co. 136 App. Div. 745, 121 N. Y. Supp. 510, holding that order to pay material man accepted by one who agreed to advance money for purpose of building is valid and is not within statute against assignment of contracts for labor, etc.

43 L. R. A. 630, CALHOUN v. LITTLE, 106 Ga. 336, 71 Am. St. Rep. 254, 32 S. E. 86.

Construction of statutes.

Cited in Wright v. DuBignon, 114 Ga. 769, 57 L. R. A. 671, 40 S. E. 747, construing Code, § 3120, to refer only to trade fixtures, where headnote of decision from which codified, erroneous; Seaboard Air-Line R. Co. v. Leader, 115 Ga. 704, 42 S. E. 638, holding railway operating line purchased from another corporation, not liable for latter's breaches of contracts or torts, under Code, § 1863, construed in light of decision from which taken; Smith v. North Memphis Sav. Bank, 115 Tenn. 31, 89 S. W. 392, construing statutes codified after decision thereon to abrogate common law marriage.

Liability of public officers.

Cited in Hathaway v. Smith, 117 Ga. 947, 43 S. E. 984, holding justice liable for issuing execution on property to procure costs illegally when no affidavit has been filed; Rush v. Buckley, 100 Me. 334, 70 L.R.A. 468, 61 Atl. 774, 4 Ann. Cas. 318, holding judge not subject to civil suit for commitment under a void ordinance where he acted in good faith and would have had jurisdiction of the specific act if statute would have been valid and his general jurisdiction consisted of such offenses.

Cited in footnotes to Tillman v. Beard, 46 L. R. A. 215, which denies liability of village president for procuring arrest for violating void ordinance; Webb v. Fisher, 60 L. R. A. 791, which holds judge not subject to private action for corruptly entering decree disbarring attorney; Lowe v. Conroy, 66 L.R.A. 907, which holds health officer individually liable for destruction of private property by mistake in attempt to preserve public health; Rush v. Buckley, 70 L.R.A.

464, which holds magistrate not liable to civil action for erroneously deciding that he has jurisdiction over particular offense of which complaint is made to him and issuing warrant for arrest of accused.

Cited in note (137 Am. St. Rep. 53) on personal liability of judges and judicial officers.

43 L. R. A. 634. SETON v. HOYT, 34 Or. 266, 75 Am. St. Rep. 641, 55 Pac. 967.

Liability of county for interest.

Cited in Montezuma County v. Wheeler, 39 Colo. 214, 89 Pac. 50, holding superintendent of irrigation not entitled to interest under statute on amount of claim against county where no agreement made therefor; Palmer v. District of Columbia, 26 App. D. C. 42, 1 L.R.A.(N.S.) 883 (dissenting opinion), on liability of county for interest under general statute; National Bank v. Duval County, 45 Fla. 499, 34 S. 894, 3 Ann. Cas. 457, disallowing interest in absence of agreement therefor, on county warrants after presentment and nonpayment for lack of funds where there is no statute providing therefor; Jackson County v. Kaul, 77 Kan. 720, 17 L.R.A.(N.S.) 556, 96 Pac. 45, holding that interest cannot be recovered on over-charge of taxes, against county under general interest statute providing rate of interest recoverable by creditors in absence of agreement.

Cited in note (17 L.R.A.(N.S.) 554) on implied liability of county for interest on its obligations.

Distinguished in Shipley v. Hacheney, 34 Or. 305, 55 Pac. 971, holding municipality liable for interest on debts to same extent as individual; Monteith v. Parker, 36 Or. 175, 78 Am. St. Rep. 767, 59 Pac. 192, holding city warrants bear legal interest from date of presentation and nonpayment.

— Effect on existing obligations of change of rate.

Cited in Brauer v. Portland, 35 Or. 481, 60 Pac. 378, holding rate of interest on judgment not affected by subsequent statute lowering legal note, without official provision in regard to pending judgments.

Distinguished in Graham v. Merchant, 43 Or. 312, 72 Pac. 1088, holding interest on money received to use of another and which the law raises an implied promise to repay should be computed at the current rate subject to fluctuation according to legislative fiat.

Interest as damages.

Cited in Close v. Riddle, 40 Or. 597, 91 Am. St. Rep. 580, 67 Pac. 932, enforcing provision in note for higher rate of interest in case of nonpayment at maturity.

Failure to demand interest in complaint.

Cited in Ferguson v. Reiger, 43 Or. 512, 73 Pac. 1040, holding failure to demand interest in complaint renders judgment therefor erroneous.

43 L. R. A. 638, CLEVELAND v. AUGUSTA, 102 Ga. 233, 29 S. E. 584.

Construction of electric road across steam road.

Cited in Southern R. Co. v. Atlanta R. & Power Co. 111 Ga. 693, 51 L. R. A. 130, 36 S. E. 873, refusing to enjoin construction of electric road across tracks of steam road laid in city street.

Right of way across street or railway.

Cited in State ex rel. Hutter v. Papillion Drainage Dist. 89 Neb. 811, 132 N. W. 398, holding that drainage district must under provisions of statute make and keep in good repair sufficient crossings wherever drainage ditch crosses streets of city or village; Lake Erie & W. R. Co. v. Shelley, 163 Ind. 42, 71 N. E.

151, holding under statute that railway company cannot recover as compensation, on the establishment of highway across right of way, the expenses incurred in constructing necessary crossings and approaches; New York, C. & St. L. R. Co. v. Rhodes, 171 Ind. 526, 24 L.R.A.(N.S.) 1232, 86 N. E. 840, holding it the duty of railroad companies to construct and keep in repair at their own expense all crossings for highways whether such highways opened after construction of railway or not.

Distinguished in Georgia R. & Bkg. Co. v. Union Point, 119 Ga. 815, 47 S. E. 183, holding that the opening of a new public street over a railroad right of way is a taking and requires the exercise of eminent domain.

Power to compel change in right of way.

Cited in Atlantic Coast Line R. Co. v. Goldsboro, 155 N. C. 359, 71 S. E. 514, holding that ordinance of town requiring railroad to lower its tracks to level with street at expense of railroad was lawful exercise of police power; Atlantic & B. R. Co. v. Cordele, 128 Ga. 298, 57 S. E. 493, holding that a city may enforce a reasonable regulation requiring a railroad to move its tracks a few feet in the street by making the change itself after notice and refusal of company to act: Chicago, B. & Q. R. Co. v. People, 212 Ill. 112, 72 N. E. 219, holding under statute that the requiring of a railroad to change its bridges across a natural stream to accommodate artificial increase of volume of water not a taking.

43 L. R. A. 644, DU QUOIN v. KELLY, 176 Ill. 218, 52 N. E. 919.

43 L. R. A. 645, CARPENTER v. CAPITAL ELECTRIC CO. 178 Ill. 29, 69 Am. St. Rep. 286, 52 N. E. 973.

Injunction against continuing trespass.

Cited in Union Electric Teleph. & Teleg. Co. v. Applequist, 104 Ill. App. 522, enjoining construction and maintenance of telegraph line in alley, as additional permanent burden; Callen v. Columbus Edison Electric Light Co. 66 Ohio St. 179, 58 L. R. A. 787, 64 N. E. 141, compelling removal of electric light and power poles and wires placed at curb and strung in street without compensation to abutting owner dedicating street; O'Connell v. Chicago Terminal Transfer R. Co. 184 Ill. 326, 56 N. E. 355, enjoining construction of railway in highway where interest of abutting owner not condemned under eminent domain proceedings or obtained in other manner; Lowery v. Pekin, 186 Ill. 398, 51 L. R. A. 305, 57 N. E. 1062, enjoining appropriation for highway without compensation, of railroad embankment on right of way; Cleveland, C. C. & St. L. R. Co. v. Munsell, 192 Ill. 434, 61 N. E. 374, refusing to enjoin filling up of pass way under bridge where used merely by license of railway constructing bridge; Kalinowski v. Jacobowski, 52 Wash. 368, 100 Pac. 852, holding that equity may restrain maintenance of permanent fence across private right of way; Donovan v. Pennsylvania Co. 199 U. S. 305, 50 L. ed. 204, 26 Sup. Ct. Rep. 91, holding that injunctive relief from interference of soliciting cabmen with ingress and egress of passengers can be had on the grounds of inadequacy of any remedy at law; New York C. & H. R. R. Co. v. Ryan, 71 Misc. 252, 129 N. Y. Supp. 55, holding that railroad may protect hackman in enjoyment of privilege in soliciting business on its premises under contract with such company.

Cited in footnote to Ives v. Edison, 50 L. R. A. 134, which sustains right of owner of easement to injunction to compel restoration of stairway.

Distinguished in Porter v. Armour & Co. 241 Ill. 152, 89 N. E. 356, holding plattor who retained fee in private ways granting easements therein but not abutting on the locus in quo had no sufficient possession to sustain bill for injunction.

Permanency of erection.

Cited in Ewart v. Western Springs, 180 Ill. 323, 54 N. E. 478, holding poles, wires, and lamps in electric light system permanent within assessment law.

Private alley.

Cited in Chicago v. Borden, 190 Ill. 440, 60 N. E. 915, holding alley stated in deed to be for use of grantee and other owners of lots abutting thereon, private alley.

Additional burden in streets.

Cited in Burrall v. American Teleph. & Teleg. Co. 224 Ill. 269, 8 L.R.A.(N.S.) 1093, 79 N. E. 705, holding maintenance of telephone line an additional burden also the addition of new cross arms wires and insulators, constituting a trespass under equitable jurisdiction for injunction; De Kalb County Teleph. Co. v. Dutton, 228 Ill. 182, 10 L.R.A.(N.S.) 1060, 81 N. E. 838, 10 Ann. Cas. 464, holding that long distance telephone line on rural highway is additional burden.

Cited in note (36 L.R.A.(N.S.) 185) on electric line in street or highway as additional burden.

43 L. R. A. 648, LEHMAN v. CLARK, 174 Ill. 279, 51 N. E. 222.

Assessments upon members of mutual benefit association.

Cited in Clark v. Schromeyer, 23 Ind. App. 567, 55 N. E. 785; Gibson v. Megrew, 154 Ind. 285, 48 L. R. A. 367, footnote p. 362, 56 N. E. 674; Vick v. Clark, 77 Ill. App. 601, holding assessments upon members not recoverable by receiver of mutual benefit association; Betts v. Connecticut Indemnity Asso. 71 Conn. 753, 44 Atl. 65, holding power to assess members not asset of company in proceeding to determine forfeiture of charter by over insurance; Covenant Mut. Life Asso. v. Kentner, 188 Ill. 437, 58 N. E. 966, holding nonenforceability of assessments no defense to action on policy by member paying same; Rowell v. Covenant Mut. Life Asso. 84 Ill. App. 315, enforcing nonforfeiture of policy for failure to pay assessment in excess of amount stipulated for in original contract; L'Union St. Jean Baptiste v. Ostiguy, 64 L. R. A. 159, footnote p. 158, denying right of benefit society to sue former member for dues for nonpayment of which he had been expelled; Faurot v. Swan, 155 Mich. 291, 118 N. W. 955, holding member of order which does not impose any obligation on members to pay assessment, is not under implied obligation to pay in the absence of an express agreement on his part to do so; Cochran v. Boleman, 162 Ind. 663, 65 L.R.A. 519, 71 N. E. 47, 1 Ann. Cas. 388, holding that an assessment cannot be collected from member of unincorporated mutual benefit association where the only means of compelling payment is penalty of forfeiture of membership.

Cited in footnotes to L'Union St. Jean Baptiste v. Ostiguy, 64 L.R.A. 158, which holds assessments by mutual benefit society not debts recoverable by action at law, where right to benefit depends on good standing in the society: Cochran v. Boleman, 65 L.R.A. 516, which holds members of mutual benefit society not subject to suit by beneficiary of deceased member for their part of the benefit.

Distinguished in Calkins v. Angell, 123 Mich. 81, 81 N. W. 977, holding member liable to assessments levied by receiver under Michigan statute.

Forfeiture of policy.

Cited in Dickerson v. Northwestern Mut. L. Ins. Co. 102 Ill. App. 281, holding provision for forfeiture in case of death by own hand, self-operating; Bennett v. Union Cent. L. Ins. Co. 104 Ill. App. 406, refusing to enforce policy where forfeiture for nonpayment of premiums not waived; Delaney v. Kelly, 103 App. Div. 412, 92 N. Y. Supp. 1021, holding that where nonpayment of assessment

forfeits benefit certificate the rule is self-acting and nothing further is required to be done; National Council, K. & L. S. v. Burch, 126 Ill. App. 20, holding a provision in a certificate that a member on nonpayment of assessment shall stand suspended without notice is self-executing and where deceased ceased to pay he ceased to be a member.

Cited in note (25 L.R.A.(N.S.) 22) on failure of insurer to speak or act after notice of breach of policy as waiver.

Distinguished in Traders' Mut. L. Ins. Co. v. Johnson, 200 Ill. 361, 65 N. E. 634, holding forfeiture for falsity of statements in application not self-executing in absence of provision therefor; Grand Lodge A. O. U. W. v. Lachmann, 101 Ill. App. 214, holding forfeiture by nonpayment of assessment waived where payments at later than required date customarily received.

Forfeiture of membership for failure to pay dues.

Cited in People ex rel. Dodson v. Board of Trade, 224 Ill. 375, 79 N. E. 611, holding by-law of board of trade reasonable and valid, which provides for suspension of member for nonpayment of due assessed and forfeiture of membership on full year's delinquency; Mutual Fire Co. v. Maple, 60 Or. 362, 38 L.R.A. (N.S.) 727, 119 Pac. 484, holding that under policy providing that all assessments must be paid within thirty days after notice or policy will be void, expiration of thirty days annuls policy.

Cited in note (17 L.R.A.(N.S.) 247) on necessity of affirmative action to terminate rights of member in mutual benefit society for nonpayment of dues.

Articles of incorporation as part of contract.

Cited in Parker v. Bankers Life Asso. 86 Ill. App. 322, holding nonpayment of premium avoids policy under by-law providing forfeiture thereon *ipso facto* without further ceremony; J. P. Lamb & Co. v. Merchants' Nat. Mut. F. Ins. Co. 18 N. D. 265, 119 N. W. 1048, holding that policy by-law provisions were actual notice to member of benefit association as to forfeiture for nonpayment of premium and were self-executing; Quinn v. North American Union, 162 Ill. App. 326; Enright v. National Council, K. L. S. 253 Ill. 462, 97 N. E. 681,—holding that application, physician's examination, by-laws and are all to be considered as contract between benefit society and member and their construction is for court.

Unilateral contract.

Cited in Robertson v. Merriam, 106 Ill. App. 613, holding payment of promissory notes given for premiums on life insurance still in force cannot be evaded on ground that contract was unilateral; Johnston v. Anderson, 23 Pa. Super. Ct. 157, on the unilateral character of mutual benefit insurance contracts as to payment of assessments.

Statutory construction.

Cited in *Re* Stewart, 40 Misc. 35, 81 N. Y. Supp. 209, holding Illinois act of 1893 constitutes complete code for insurance corporations, and supersedes act of 1874.

Application of general insurance laws to mutual companies.

Cited in Smith v. Loyal Americans of Republic, 2 Ill. C. C. 538, holding that statutes under which fraternal insurance companies were organized do not authorize consolidation of such companies.

Mutual benefit associations as life insurance companies.

Cited in Peterson v. Manhattan L. Ins. Co. 115 Ill. App. 424, holding "Modern Woodmen of America" to be a life insurance company; Peterson v. Manhattan L. Ins. Co. 244 Ill. 343, 91 N. E. 466, 18 Ann. Cas. 96 (dissenting opinion), on

contracts between benefit societies and members as constituting life insurance policies.

43 L. R. A. 654, BEATTIE v. NATIONAL BANK, 174 Ill. 571, 66 Am. St. Rep. 318, 51 N. E. 602.

Unauthorized indorsement of commercial paper.

Cited in Jackson Paper Mfg. Co. v. Commercial Nat. Bank, 199 Ill. 165, 59 L. R. A. 663, 93 Am. St. Rep. 113, 65 N. E. 136, denying acquisition of title under indorsement of draft payable to owner by superintending manager of mill; Central Nat. Bank v. National Metropolitan Bank, 31 App. D. C. 398, 17 L.R.A. (N.S.) 523, holding that one who cashed a check received and indorsed by payee under an assumed name, assumed for purpose of fraudulently obtaining check cannot be compelled to pay back amount thereof received from drawee who has returned amount of check to drawer's account; Thomas v. First Nat. Bank, 101 Miss. 515, 39 L.R.A.(N.S.) 358, 58 So. 478, holding that indorsement of draft by person having same name as payee is forgery.

Cited in note (34 L.R.A.(N.S.) 1101) as to who must bear loss where check or draft negotiated upon indorsement of one bearing same name as payee or indorsee.

Duty of maker of commercial paper to satisfy himself as to title of holder.

Cited in Bruce v. Neal Bank, 134 Ga. 367, 67 S. E. 819, holding that on grounds of protection the maker of a note when sued thereon can inquire into title of holder.

What constitutes Christian name.

Cited in People ex rel. Owen v. Dunn, 247 Ill. 413, 93 N. E. 305, holding that law recognizes only one Christian name, and middle name or initial is not material in legal proceeding.

43 L. R. A. 658, CENTRAL ELEVATOR CO. v. PEOPLE, 174 Ill. 203, 51 N. E. 254.

Commixture of grain by warehousemen.

Cited in Hannah v. People, 198 Ill. 81, 64 N. E. 776, holding statute permitting warehousemen to mix own grain with that of customers on notice to chief grain inspector, void.

Monopolies.

Cited in Taylor v. Pullman Co. 1 Ill. C. C. 57, as overruling legislation tending to show that the public policy of Illinois favors monopolies.

Public warehouses.

Cited in Halsey v. Jordan, 155 Ill. App. 147, to the point that public warehouses established under law are public agencies, and warehousemen pursue public employment and are clothed with duty toward public; People ex rel. Healy v. Illinois C. R. Co. 233 Ill. 398, 16 L.R.A.(N.S.) 613, 122 Am. St. Rep. 181, 84 N. E. 368, 13 Ann. Cas. 285, on the necessity of public grain warehouses in large cities.

Objections on appeal.

Cited in Parsons v. Millar, 189 Ill. 112, 59 N. E. 606, holding objection to jurisdiction of equity to construe will at suit of executor cannot be made for first time on appeal; King v. King, 215 Ill. 119, 74 N. E. 89, on right to raise objections for first time on appeal.

Right of attorney general to enforce statutory regulations.

Cited in note (18 L.R.A.(N.S.) 666) on right of attorney-general, or other representative of state, to maintain action to enforce statutory regulations affecting rates, etc.

43 L. R. A. 664, FOLEY v. MANUFACTURERS' & B. F. INS. CO. 152 N. Y. 131, 46 N. E. 318.

Insurable interest.

Cited in Ulmer v. Phœnix F. Ins. Co. 61 S. C. 467, 39 S. E. 712, holding builder has insurable interest to value of building and material furnished therefor, under contract for construction at gross sum, and referring particularly to annotation at 43 L.R.A. 664; Burke v. Continental Ins. Co. 100 App. Div. 114, 91 N. Y. Supp. 402, holding insurable interest to exist in manufacturer in goods manufactured though entire output is sold under contract releasing him from liability for fire loss, purchaser applying for insurance and premiums being paid by insured.

Cited in note (43 L. R. A. 664) on insurable interest in unfinished building during its construction by contractor.

Measure of loss.

Cited in Michael v. Prussian Nat. Ins. Co. 171 N. Y. 39, 63 N. E. 810, Affirming 64 App. Div. 189, 71 N. Y. Supp. 918, holding continued receipt of share of pooled earnings of elevator association does not bar insured from full recovery on fire policy after destruction of elevator; Wall v. Platt, 169 Mass. 405, 48 N. E. 270, holding real, and not market, value of buildings and furniture measure of damages in action to enforce railroad's statutory liability for fire caused by engine; Devitt v. Providence Washington Ins. Co. 61 App. Div. 399, 70 N. Y. Supp. 654, holding insurer of cargo of boat sunk in the canal liable for insured value less net proceeds.

43 L. R. A. 667, VALENTINE v. HEALEY, 158 N. Y. 369, 52 N. E. 1097.

Motion for reargument denied in 158 N. Y. 705, 53 N. E. 1133.

Holding over by tenants.

Followed in Valentine v. Healey, 178 N. Y. 393, 70 N. E. 913, Reversing 77 App. Div. 635, 79 N. Y. Supp. 1149, holding one tenant in common may, in opposition to his cotenant, permit a lessee to hold over without incurring the liabilities of a hold-over tenant.

Cited in footnote to Byxbee v. Blake, 57 L. R. A. 222, which holds tenant liable for another month's rent, by keeping keys and remaining in possession five days to clean up rubbish.

— As renewal of lease.

Cited in footnote to Andrews v. Marshall Creamery Co. 60 L. R. A. 399, which holds mere holding over after term expires does not show election to renew for additional term under provisions of original lease.

Ratification of agents contract in part.

Cited in Chamberlain v. Brown, 141 Iowa, 553, 120 N. W. 334, holding that lessor must submit to the whole of a lease made by her co-owner acting as her authorized agent where she has for some time accepted the benefits of a part of the lease agreement.

43 L. R. A. 672, PALMER v. LARCHMONT ELECTRIC CO. 158 N. Y. 231, 52 N. E. 1092.

Proper street uses.

Cited in Callen v. Columbus Edison Electric Light Co. 66 Ohio St. 179, 58

L. R. A. 787, footnote p. 782, 64 N. E. 141, holding placing poles of private company at street curb and stringing electric light wires on same to furnish light to private takers a taking of abutter's property; Peck v. Schenectady R. Co. 170 N. Y. 306, 63 N. E. 357, Modifying 67 App. Div. 361, 73 N. Y. Supp. 794, restraining construction of electric street railway until consent of requisite number of abutting owners obtained; People *ex rel.* Pumpyansky v. Keating, 62 App. Div. 350, 71 N. Y. Supp. 97, holding news-stands erected under elevated railroad stations not legalized by municipal permit; Kester v. Western U. Teleg. Co. 108 Fed. 926, holding statutory authority to erect telegraph poles does not bar abutting owner's action for damages for additional burden caused thereby; Gray v. York State Teleph. Co. 41 Misc. 110, 83 N. Y. Supp. 920, holding placing of telephone poles and wires along suburban highway imposes additional burden for which owner is entitled to compensation; Jayne v. Cortland Waterworks Co. 42 Misc. 265, 86 N. Y. Supp. 571, holding village cannot give permission to water company, to lay water mains through street not accepted or worked by village, without payment of compensation to owner; Gulf Coast Ice & Mfg. Co. v. Bowers, 80 Miss. 582, 32 So. 113, holding taking of land for use as a street includes the right to light it; Ogden v. New York, 141 App. Div. 589, 126 N. Y. Supp. 189, holding that construction by city docks for use of others for compensation thereby interfering with street, is not use to which street may be applied as against abutting owner's easement of access without compensation; Richards v. Citizens' Water Supply Co. 140 App. Div. 210, 125 N. Y. Supp. 116, holding that public uses of streets growing out of public necessities attending growth of population will not be considered additional servitude upon street; McCann v. Johnson County Teleph. Co. 69 Kan. 218, 66 L.R.A. 176, 76 Pac. 870, 2 Ann. Cas. 156, holding telephone system in highway a proper street use and not an additional servitude; Osborne v. Auburn Teleph. Co. 189 N. Y. 396, 82 N. E. 428, Reversing 111 App. Div. 704, 97 N. Y. Supp. 874, holding maintenance of telephone system in streets not a proper street use and is an additional burden requiring compensation.

Cited in footnote to French v. Robb, 57 L. R. A. 956, which holds right to maintain as against owner of soil, poles and wires rightfully placed in street to light it, not lost by wrongfully using for private lighting.

Cited in notes (36 L.R.A.(N.S.) 187) on electric line in street or highway as additional burden; (106 Am. St. Rep. 264) on what are additional servitudes in highways.

Distinguished in Castle v. Bell Teleph. Co. 49 App. Div. 443, 63 N. Y. Supp. 482, holding additional burden on city street not imposed by construction of underground conduit for telephone wires; Ryan v. Preston, 59 App. Div. 99, 69 N. Y. Supp. 100, Affirming 32 Misc. 92, 66 N. Y. Supp. 162, holding bicycle side path not additional burden on highway; Weed v. McKeg, 37 Misc. 113, 74 N. Y. Supp. 250, refusing to enjoin erection of structure over alley at height acquiesced in by plaintiff; Lent v. Tilyou, 106 App. Div. 193, 94 N. Y. Supp. 479, where the streets in which electric conduits sought to be laid were private.

Municipal purpose and use.

Cited in Re East Canada Creek Electric Light & P. Co. 49 Misc. 566, 99 N. Y. Supp. 109, holding the furnishing of light to a municipality to be a public use and benefit; Wissler v. Yadkin River Power Co. 158 N. C. 467, 74 S. E. 460, holding that corporation engaged in manufacturing and distributing electricity may exercise power of eminent domain; Re Rapid Transit R. Comrs. 197 N. Y. 97, 36 L.R.A.(N.S.) 655, 90 N. E. 456, 18 Ann. Cas. 366, holding construction of subway a municipal use and not a street use; Re Alexander Street, 145 App.

Div. 500, 129 N. Y. Supp. 844 (dissenting opinion), on distinction between municipal and street purpose as affecting condemnation of land.

Injury to shade trees in highway.

Cited in Van Sielen v. Jamaica Electric Light Co. 45 App. Div. 2, 61 N. Y. Supp. 210, holding lighting company liable for injuries to trees by cutting off branches in construction of system where unnecessary though other practical means more expensive; Adams v. Syracuse Lighting Co. 137 App. Div. 450, 121 N. Y. Supp. 762, holding that lighting company having contract to light city streets has no right to destroy trees unless it is reasonably necessary to do so in lighting streets.

Occupancy of highway under charter as adverse possession.

Cited in Andrews v. Delhi & S. Teleph. Co. 36 Misc. 26, 72 N. Y. Supp. 50, holding occupancy of highway for twenty years under charter establishes no title adverse to owner thereof on relocation of highway.

Right of town to incur indebtedness for water system.

Cited in Holroyd v. Indian Lake, 40 Misc. 77, 81 N. Y. Supp. 268, holding town may incur indebtedness for water mains and sewers, although the direct benefits therefrom accrue more particularly to the residents of a designated district within the town.

43 L. R. A. 676, FALL BROOK COAL CO. v. HEWSON, 158 N. Y. 150, 70 Am. St. Rep. 466, 52 N. E. 1095.

Impeachment of one's own witness.

Cited in Conklan v. Metropolitan Street R. Co. 40 Misc. 623, 83 N. Y. Supp. 45, holding party cannot show inconsistent statements made by his own witness for the purpose of impeaching him; Hubner v. Metropolitan Street R. Co. 77 App. Div. 293, 79 N. Y. Supp. 153, holding party may on cross-examination discredit testimony of his own witness as to matter independent of direct examination and forming part of defendant's affirmative defense; Maloney v. Martin, 81 App. Div. 434, 80 N. Y. Supp. 763, holding extent of cross-examination of party's own witness who proves hostile rests in discretion of court; Bernstein v. Empire Bridge Co. 146 App. Div. 530, 131 N. Y. Supp. 129, holding that statement signed by one's own witness before trial cannot be admitted to impeach such witness; Fine v. Interurban Street R. Co. 45 Misc. 590, 91 N. Y. Supp. 43, holding that plaintiff may show bias of a witness first called by him where his first material testimony was obtained by defendant; O'Doherty v. Postal Teleg. Cable Co. 113 App. Div. 638, 99 N. Y. Supp. 351, denying right of plaintiff to show that before trial a witness called by defense made statements before trial contrary to those made on stand where plaintiff had previously called same person as his own witness and had elicited material testimony from him.

Cited in note (82 Am. St. Rep. 59, 62) on evidence to show credibility or bias of witness.

Distinguished Koester v. Rochester Candy Works, 194 N. Y. 98, 19 L.R.A. (N.S.) 786, 87 N. E. 77, 16 Ann. Cas. 589, where the witness sought to be impeached is the adverse party.

43 L. R. A. 678, WESTON v. SYRACUSE, 158 N. Y. 274, 70 Am. St. Rep. 472, 53 N. E. 12.

Attack upon illegal or improper audit.

Cited in Rockefeller v. Taylor, 69 App. Div. 184, 74 N. Y. Supp. 812, enjoining payment of excessive bills of expense in tax proceeding illegally audited by board with full knowledge of assessor's fraud; Re Mefford, 113 App. Div. 534, 99 N.

Y. Supp. 400, on tax payer's remedy against improper audit of claims against city.

Distinguished in Bank of Staten Island v. New York, 68 App. Div. 237, 74 N. Y. Supp. 284, holding bona fide erroneous allowance of items in coroner's bill, by county board of supervisors, not questionable in action by assignee to enforce warrant issued in payment.

Contract price for public work.

Cited in McCann v. Albany, 158 N. Y. 640, 53 N. E. 673, refusing to reverse judgment against city for balance of contract price for construction of public work, where question of procedure not raised in trial court; Kronsbein v. Rochester, 76 App. Div. 497, 78 N. Y. Supp. 813, upholding stipulation in paving contract deferring contractor's pay until collections have been made from taxpayers.

Cited in footnote to Louisville v. Bitzer, 61 L. R. A. 434, which sustains city's liability to contractor for street improvement notwithstanding agreement to look only to abutting property.

Remedy against city for work or materials.

Cited in Harrison v. New Brighton, 110 App. Div. 276, 97 N. Y. Supp. 246, holding under statute that the only remedy by contractor for payment for public work done before assessment is collected therefor is by mandamus to compel assessment and collection; Davidson v. White Plains, 197 N. Y. 271, 90 N. E. 825, Reversing 121 App. Div. 287, 105 N. Y. Supp. 803, holding that where water commissioners refused to audit claim for supplies furnished the creditors remedy was suit against city and not mandamus.

Cited in footnote to Iowa Pipe & Tile Co. v. Callanan, 67 L.R.A. 408, which holds city not relieved from liability for making unenforceable assessment by provision in improvement contract that contractors shall receive assessment certificates against abutting property in full compensation.

Cited in note (32 L.R.A.(N.S.) 172) on liability of municipality failing to enforce assessments for improvements.

Taxpayer's action.

Cited in People *ex rel.* Lighton v. McGuire, 31 Misc. 327, 65 N. Y. Supp. 463, refusing mandamus against mayor and clerk to sign contract for purchase of property where price authorized by council, so exorbitant as to suggest fraud; Craft v. Lent, 53 Misc. 483, 103 N. Y. Supp. 366, dismissing action by taxpayer to restrain town highway commissioners from granting light franchise except on a public hearing to highest bidder, no fraud being charged; Erie R. Co. v. Buffalo, 96 App. Div. 462, 89 N. Y. Supp. 122, holding the inopportune and unwise letting of viaduct contract by commissioners not subject to review by taxpayer's action in absence of collusion or fraud.

Review of grant of street franchise.

Distinguished in Kittinger v. Buffalo Traction Co. 160 N. Y. 390, 54 N. E. 1081, refusing to declare grant of street franchise by municipality void though alleged that better terms from other corporations obtainable; Barhite v. Home Teleph. Co. 50 App. Div. 29, 63 N. Y. Supp. 659, refusing to review grant of street rights to telephone company of known financial stability in preference to unknown company making higher bid.

Review of city ordinances.

Cited in Swan v. Indianola, 142 Iowa, 740, 121 N. W. 547, holding that the motives of city council in letting a street pavement contract under ordinance may be inquired into and contract set aside on discovery of fraud.

43 L. R. A. 685, OLMSTEAD v. LATIMER, 158 N. Y. 313, 53 N. E. 5.

Accounting by trustee in *Re* Olmstead, 30 Misc. 351, 63 N. Y. Supp. 489.

Promise to administer trust as consideration.

Cited in Carpenter v. Taylor, 164 N. Y. 177, 58 N. E. 53, holding agreement for extra compensation to assignee for creditors, void where only consideration is promise to faithfully administer trust.

Payment to prevent foreclosure as usurious.

Cited in Ganz v. Lancaster, 50 App. Div. 207, 63 N. Y. Supp. 800, holding payment by nonassuming purchaser of mortgaged premises, to prevent foreclosure, not usurious.

Surrender of insurance policy by pledgee as conversion.

Distinguished in Toplitz v. Bauer, 161 N. Y. 331, 55 N. E. 1059, holding pledgee of insurance policy liable for conversion by its surrender to company, where at maturity of principal obligation misleading forbearance exercised.

— Discharge of sureties.

Followed without opinion in Blake v. Clausen, 158 N. Y. 727, 53 N. E. 1123.

Cited in Shayler v. Giddins, 122 Mich. 661, 81 N. W. 552, holding surety not discharged by promisee's forbearance of suit in reliance on promisor's promise after maturity to pay interest; Sully v. Childress, 106 Tenn. 113, 82 Am. St. Rep. 875, 60 S. W. 499, holding sureties not discharged by extension agreement based on part payment of principal; Title Guarantee & T. Co. v. Weiher, 30 Misc. 252, 63 N. Y. Supp. 224, holding mortgagor not discharged by mortgagee's promise to extend time to assuming grantee of mortgagor, where such extension made without consideration; National Citizens' Bank v. Toplitz, 178 N. Y. 467, 71 N. E. 1, holding agreement extending time of payment of note will not discharge surety unless made upon valid consideration and sufficient to preclude enforcement of debt during extended period; Burfeind v. People's Surety Co. 139 App. Div. 765, 124 N. Y. Supp. 385, holding that mere delay in proceeding to enforce liability will not discharge surety, at least in absence of notice to creditor to take legal proceedings; Ferris v. Johnson, 136 Mich. 230, 98 N. W. 1014, on a surety as not discharged by an agreement for an extension of time not based upon a valid consideration.

Cited in note (21 Eng. Rul. Cas. 661) on discharge of surety by alteration of contract between creditor and principal.

Agreement to extend time of payment of debt.

Cited in Schwartz v. Smith, 143 App. Div. 300, 128 N. Y. Supp. 1, holding that present payment of part of debt due is not valid consideration for agreement to extend remainder, and will not discharge surety; Repelow v. Walsh, 98 App. Div. 321, 90 N. Y. Supp. 651, holding nonenforceable a promise to extend the time of payment of a debt upon the agreement of the debtor to pay at a later time with interest.

Distinguished in Krebs v. Carpenter, 124 App. Div. 756, 109 N. Y. Supp. 482, holding the payment of interest on a debt by one not liable thereon rendered an agreement for an extension of the time of payment of the debt valid.

43 L. R. A. 689, IOWA SAV. & L. ASSO. v. HEIDT, 107 Iowa, 297, 70 Am. St. Rep. 197, 77 N. W. 1050.

Effect of statutes upon rights previously existing.

Cited in Windsor v. Des Moines, 110 Iowa, 180, 80 Am. St. Rep. 280, 81 N. W. 476, holding curative act passed during pendency of proceeding based upon invalidity of acts affected, constitutes defense; Ferry v. Campbell, 110 Iowa, 299, 50 L. R. A. 96, 81 N. W. 604, holding no constitutional vested rights under void law disturbed by reversal of judgment based upon curative act passed pending

appeal; Bacon v. Iowa Sav. & L. Asso. 121 Iowa, 450, 96 N. W. 977, holding usurious contract between borrower and building and loan association legalized by curative act; Iowa Sav. & L. Asso. v. Selby, 111 Iowa, 404, 82 N. W. 968, holding curative act legalizing usurious contracts of building and loan associations constitutional; Ross v. Wright County, 128 Iowa, 432, 1 L.R.A.(N.S.) 435, 104 N. W. 506, on the validity of retroactive statutes.

Distinguished in Morrison v. Pepperman, 112 Iowa, 474, 84 N. W. 522, holding appeal at law on errors unaffected by change of statutes after appeal taken: McManus v. Hornaday, 124 Iowa, 273, 104 Am. St. Rep. 316, 100 N. W. 33, 2 Ann. Cas. 237, holding an ordinance legalizing an assessment and levy of a tax which had been declared by the courts to be void, is invalid.

Usury in contracts of building and loan associations.

Cited in Edworthy v. Iowa Sav. & L. Asso. 114 Iowa, 221, 86 N. W. 315, holding statutory legalization of prior usurious loan for premium interest, effective bar against claim of usury in spite of repeal of legalizing statute; Iowa Sav. & L. Asso. v. Curtis, 107 Iowa, 507, 78 N. W. 208, holding usury in loan by corporation subsequently amending charter to conform to laws regulating organization of building associations, cured by Code; Guaranty Sav. & L. Asso. v. Ascherman, 108 Iowa, 152, 78 N. W. 823, holding loan illegal under prior law validated by chap. 48, 27th General Assembly; Le Mars Bldg. & L. Asso. v. McLain, 120 Iowa, 528, 94 N. W. 1122, holding husband who became surety for usurious loan made to his wife cannot maintain defense of usury, although association was entitled to collect excessive rates from members only; Le Mars Bldg. & L. Asso v. Burgess, 129 Iowa, 427, 105 N. W. 641, holding because of statutory exemption a loan by a building and loan association was not usurious; Spithover v. Jefferson Bldg. & L. Asso. 225 Mo. 671, 26 L.R.A.(N.S.) 1141, 125 S. W. 766, holding a statute permitting a building and loan association to charge a premium on the loan which with the interest exceeds the lawful rate of interest is not usurious; Cramer v. Southern Ohio Loan & T. Co. 72 Ohio St. 413, 69 L.R.A. 421, 74 N. E. 200, 2 Ann. Cas. 990, holding to same effect; Clarke v. Conners, 18 S. D. 605, 101 N. W. 883, holding the exaction of a premium without competitive bidding which with the interest is in excess of the legal rate of interest, is usurious to the extent of the excess; Miller v. Prudential Banking & T. Co. 63 W. Va. 115, 59 S. E. 977, holding to same effect.

Cited in footnotes to Gray v. Baltimore Bldg. & L. Asso. 54 L. R. A. 217, which holds percentage payable to loan association indefinitely usurious though called "premium;" Pacific States Sav. Loan & Bldg. Co. v. Hill, 56 L. R. A. 163, which holds requirement that borrower bid for stock and pay dues on same, device to cover usury; Washington Nat. Bldg. Loan & Invest. Asso. v. Stanley, 58 L. R. A. 816, which holds exaction of monthly premium which, with interest, exceeding legal rate, unauthorized; Floyd v. National Loan & Invest. Co. 54 L. R. A. 536, which holds contract with foreign loan association not within exemption of domestic associations as to usury unless in conformity to local law; National Mut. Bldg. & L. Asso. v. Brahan, 57 L. R. A. 793, which holds usury in loan by foreign loan association to resident, secured by mortgage on land in state, determined by local law; Borrowers' & I. Bldg. Asso. v. Eklund, 52 L. R. A. 637, which requires strict adherence to mode fixed by statute exempting loan associations from usury laws; Cramer v. Southern Ohio L. & T. Co. 69 L.R.A. 415, which upholds statute empowering loan associations to collect from members such dues, fines, interest, and premium or other assessments although in excess of legal interest as may be provided for in the constitution and by-laws.

Cited in note (2 L.R.A.(N.S.) 814) on constitutionality of statutory discrimination in interest rates.

Accounting between loan association and borrower.

Cited in Briggs v. Iowa Sav. L. Asso. 114 Iowa, 235, 86 N. W. 320, holding premiums not to be included in credit to shareholder on foreclosure of mortgage, where withdrawal value of shares allowed; Iowa Cent. Bldg. & Loan Asso. v. Vogt, 115 Iowa, 61, 87 N. W. 726, holding borrower charged with only 12 per cent interest on usurious loan on foreclosure of mortgage, cannot complain of erroneous allowance of credit for dues and premiums paid.

Priority of loan association mortgage.

Cited in footnote to Julien v. Model Bldg. Loan & Invest. Asso. 61 L. R. A. 668, which sustains statute giving mortgages to loan associations priority over all liens filed after date of their record.

43 L. R. A. 693, FEDER v. IOWA STATE TRAVELING MEN'S ASSO. 107 Iowa, 538, 70 Am. St. Rep. 212, 78 N. W. 252.

Injuries covered by accident policy.

Cited in Smith v. Ætna L. Ins. Co. 115 Iowa, 220, 56 L. R. A. 273, footnote p. 272, 91 Am. St. Rep. 153, 88 N. W. 368, holding injury by fall from steps of moving train covered by policy; Standard Life & Acci. Ins. Co. v. Schmaltz, 66 Ark. 595, 74 Am. St. Rep. 112, 53 S. W. 49, holding death from sudden strain in attempt to catch engine cylinder head, removed in course of employment, accidental; Appel v. Ætna L. Ins. Co. 86 App. Div. 87, 83 N. Y. Supp. 238, holding death due to rupture of the appendix caused by bicycle riding not "accidental;" Niskern v. United Brotherhood of Carpenters & Joiners, 93 App. Div. 367, 87 N. Y. Supp. 640, holding accidental injury not shown where carpenter became dizzy while at work, and claims to have ruptured blood vessel by lifting while physically weak; Sullivan v. Modern Brotherhood, 167 Mich. 531, 42 L.R.A.(N.S.) 140, 133 N. W. 486, Ann. Cas. 1913 A, 1116, holding that loss of eye from gonorrheal infection caused by water splashing into eye while insured was washing clothes, was not result of disease in such sense that insured could not recover on accident policy; Ludwig v. Preferred Acci. Ins. Co. 113 Minn. 514, 130 N. W. 5, to the point that word "accident," in accident policies means event which takes place without one's foresight or expectation; Schmid v. Indiana Travelers' Acci. Asso. 42 Ind. App. 496, 85 N. E. 1032, holding a death resulting from paralysis of the heart caused by exertion in a rarified atmosphere is not accidental within the meaning of a policy; Pervangher v. Union Casualty & Surety Co. 85 Miss. 35, 37 So. 461, holding death occurring from the rupture of a blood vessel while lifting heavy machinery was not accidental; Fidelity & C. Co. v. Stacey, 5 L.R.A.(N.S.) 662, 74 C. C. A. 409, 143 Fed. 274, 6 Ann. Cas. 955, holding a death was not accidental which resulted from blood poisoning developed from an injury received by deceased when he committed an assault on another who offered no resistance.

Cited in footnotes to Brown v. Sun L. Ins. Co. 51 L. R. A. 252, which sustains recovery on policy of one whose death caused by taking overdose of morphine; Fetter v. Fidelity & C. Co. 61 L. R. A. 459, which holds death from rupture of cancerous kidney covered by accident policy; Preferred Acci. Ins. Co. v. Robinson, 61 L. R. A. 145, which denies right to recover under accident policy for inflammation of eyes from accidental contact with poison ivy; Delaney v. Modern Accident Club, 63 L. R. A. 603, which holds death from blood poisoning received through slight wound as result of accidental injury, covered by accident policy; Horsfal v. Pacific Mut. L. Ins. Co. 63 L. R. A. 425, which holds dilation of

heart resulting in death within few weeks, caused by heavy lift, covered by accident policy; Maryland Casualty Co. v. Hudgins, 64 L. R. A 349, which holds death by accidentally eating spoiled oysters, within clause of policy exempting from injuries from poison or anything accidentally or otherwise taken or absordid; Richards v. Travelers' Ins. Co. 67 L.R.A. 175, which holds recovery on accident policy on cattle broker whose duties require him to ride on cattle cars not prevented by provision excluding liability for accidents while riding in any part of car not provided for occupation of passengers.

Cited in notes (19 L.R.A.(N.S.) 1207) on rupture of blood vessel as within accident policy; (2 Brit. Rul. Cas. 371) on accident insurance as covering injury from exertion or strain.

Disapproved in Columbia Paper Stock Co. v. Fidelity & C. Co. 104 Mo. App. 172, 78 S. W. 320, holding a death was accidental which resulted from a disease of the kidneys contracted by handling infected rags; Young v. Railway Mail Asso. 126 Mo. App. 335, 103 S. W. 557, holding a death accidental which resulted from the rupture of a blood vessel while the deceased was handling heavy objects.

Scope of term "accident."

Cited in Pickering v. Cassidy, 93 Me. 150, 44 Atl. 683, holding statutory authorization of review of decision for "accident, mistake," etc., does not sustain review for error due to petitioner's blunder or omission.

43 L. R. A. 695, WYMAN v. EATON, 107 Iowa, 214, 70 Am. St. Rep. 193, 77 N. W. 865.

Right of foreign receiver to institute foreclosure.

Cited as *obiter* in Hale v. Harris, 112 Iowa, 373, 83 N. W. 1046, upholding right of foreign receiver to foreclose mortgage assigned to him upon lands in forum; Shloss v. Metropolitan Surety Co. 149 Iowa, 387, 128 N. W. 384, holding that right of foreign receiver of foreign insurance company to property in this state will not be recognized as against claim of resident attaching creditor.

Enforcement of stockholder's liability.

Cited in Crippen v. Laighton, 69 N. H. 555, 46 L. R. A. 473, 76 Am. St. Rep. 192, 44 Atl. 538, refusing to enforce resident stockholder's liability in Kansas corporation under laws of corporation's domicil, where laws of forum essentially different.

Cited in footnote to Howarth v. Lombard, 49 L. R. A. 301, which authorizes suit to enforce stockholder's liability in foreign jurisdiction.

Cited in notes (33 L.R.A.(N.S.) 897) on right to enforce stockholders' liability outside of state of incorporation; (47 L. ed. U. S. 381) on right of receiver to enforce liability of corporate stockholder outside state of appointment.

Res judicata.

Cited in Wyman v. Bowman, 62 C. C. A. 199, 127 Fed. 267, holding decree in former suit between the parties not a conclusive adjudication where the issues raised in the later suit were not considered or litigable in the former.

43 L. R. A. 699, GIBSON v. WOOD, 105 Ky. 740, 49 S. W. 768.

Residence as affecting eligibility to office.

Approved in Meffert v. Brown, 132 Ky. 205, 116 S. W. 779, holding that length of residence in territory annexed to a city may be considered in determining the eligibility of a candidate for a city office.

Cited in Seals v. State, 164 Ala. 584, 51 So. 337, 20 Ann. Cas. 991, holding that person was not eligible to office of police commissioner of city where he was not resident of city at time of appointment although he became resident

before term begun by reason of annexation of place in which he resided; Atty. Gen. ex rel. Scott v. McColeman, 144 Mich. 69, 107 N. W. 869, holding on the disorganization of a township and the annexation of its territory to another, just before election the electors might vote in the new township.

43 L. R. A. 701, DUNN v. COM. 105 Ky. 834, 88 Am. St. Rep. 344, 49 S. W. 813.

Control of disorderly persons and places.

Cited in footnotes to State v. Chauvet, 51 L. R. A. 630, which holds covered wagon moving from place to place a house within prohibition against houses of ill fame; *Re* Stegenga, 61 L. R. A. 763, which sustains city's authority to provide for punishment of loiterers in streets and barrooms.

Cited in note (49 L. R. A. 115) on constitutionality of discrimination against women in police regulations.

Validity of exercise of the police power.

Cited in McNulty v. Toof, 116 Ky. 209, 75 S. W. 258, holding an ordinance forbidding the sale of intoxicating liquors between certain hours of the night was a valid exercise of the police power; Com. use of Madisonville v. Price, 123 Ky. 165, 94 S. W. 32, 13 Ann. Cas. 489, holding same in case of ordinance prohibiting the presence of infants and females in saloons.

Cited in notes (49 L.R.A. 115) on discrimination against women in police regulations; (78 Am. St. Rep. 272) on acts which legislature may declare criminal.

43 L. R. A. 703, GROSS v. KENTUCKY BD. OF MANAGERS, 105 Ky. 840, 49 S. W. 458.

Powers and liabilities of public institutions.

Cited in Henderson County Bd. of Health v. Ward, 107 Ky. 482, 54 S. W. 725, holding a county board of health appointed by the state board of health might maintain a suit against the county authorities.

Cited in footnotes to *Re* Rover, 44 L. R. A. 364, which sustains power of state university to take bequest; Maia v. Eastern State Hospital, 47 L. R. A. 577, which denies liability of state hospital for injuries to inmate from negligence or misconduct of persons in charge; Trevett v. Prison Asso. 50 L. R. A. 564, which holds prison association not controlled by state, liable for its torts; Moody v. State's Prison, 53 L. R. A. 855, which denies liability of state to prison guard for injuries due to defective ladder; Overholser v. National Home For Disabled Volunteer Soldiers, 62 L. R. A. 937, which holds national home for disabled soldiers a part of United States government not subject to action sounding in tort.

Cited in note (35 L.R.A.(N.S.) 243) on immunity of state institutions from suit.

Distinguished in Park Comrs. v. Prinz, 127 Ky. 472, 105 S. W. 948, holding an action in tort would not lie against a board of park commissioners for damages due to negligence of employees.

Change of corporate charter.

Cited in footnote to Watson Seminary v. County Court, 45 L. R. A. 675, which holds charter provisions of educational corporation changeable at will of legislature.

Actions against state or public.

Cited in Illinois L. Ins. Co. v. Prewitt, 123 Ky. 42, 93 S. W. 633, holding mandamus to compel the state treasurer to turn over a fund deposited with him is not an action against the state.

43 L. R. A. 706, SPRENGER v. TACOMA TRACTION CO. 15 Wash. 660, 47 Pac. 17.

Ejectment for nonpayment of fare.

Cited in footnotes to Nashville Street R. Co. v. Griffin, 49 L. R. A. 451, which denies authority to eject passenger who, after paying fare inside station, enters car which has stopped just outside station; Kiley v. Chicago City R. Co. 52 L. R. A. 626, which denies recovery for injuries in resisting ejection from street car by one having incorrect transfer given him by former conductor; Southern R. Co. v. Wood, 55 L. R. A. 536, which holds carrier liable for ejection of passenger whose round trip ticket is unstamped from inability to find agent.

Cited in notes (43 L.R.A. 712) on duty of passenger to pay fare wrongfully demanded in order to avoid expulsion and lessen damages; (2 L.R.A.(N.S.) 697) on validity of regulation requiring passenger to pay disputed fare; (5 L.R.A.(N.S.) 779) on duty to pay fare wrongfully demanded; (7 L.R.A.(N.S.) 99) on rights and duties of passenger receiving defective transfer; (14 L.R.A. (N.S.) 465) on duty to pay fare where mistake made in issuing ticket; (24 L.R.A.(N.S.) 1180) on liability of carrier for misdirection of passenger by employee; (29 L.R.A.(N.S.) 299) on right of carrier to refuse to accept nonticket holders as passengers; (84 L.R.A.(N.S.) 282) on duty of passenger to pay fare.

Annotation in 43 L. R. A. 706, referred to particularly in Eddy v. Syracuse Rapid Transit R. Co. 50 App. Div. 112, 63 N. Y. Supp. 645, holding passenger presenting transfer erroneously punched entitled to damages for indignity due to ejectment from car; Morrill v. Minneapolis Street R. Co. 103 Minn. 366, 123 Am. St. Rep. 341, 115 N. W. 395; Elser v. Southern P. Co. 7 Cal. App. 497, 94 Pac. 852,—on right to recovery of damages for ejectment for nonpayment of fare.

Assumption of risk by passenger.

Cited in footnote to McWethy v. Detroit, G. R. & W. R. Co. 55 L. R. A. 306, which holds risk of sleeping on couch on vessel assumed by passenger refusing to pay additional amount demanded for berth after wrongful refusal of one.

Measure of damages for an actionable wrong.

Cited in Indiana R. Co. v. Orr, 41 Ind. App. 430, 84 N. E. 32, on mental suffering as an element of damages where a right of action exists.

43 L. R. A. 717, STATE v. TUGWELL, 19 Wash. 238, 52 Pac. 1056.

Contempt by publishing newspaper articles.

Cited in State v. Buddress, 63 Wash. 28, 114 Pac. 879, holding that § 2372 of Code defining contempt of court, "in its immediate view and presence" is declaratory of common law and equivalent to contempt "in face of court;" Re Egan, 24 S. D. 324, 123 N. W. 478, holding that criticism of judicial officer made after termination of cause, is not ground for disbarment nor for punishment for contempt; Ex parte Green, 46 Tex. Crim. Rep. 580, 66 L.R.A. 729, 108 Am. St. Rep. 1035, 81 S. W. 723, holding the publication of criticisms and reflections upon a county court of a general nature and without reference to any pending litigation is not punishable as contempt.

Cited in footnotes to *Ex parte* Foster, 60 L. R. A. 631, which denies court's power to adjudge, on own motion, publisher in contempt for disobeying oral order not to publish testimony in pending case; State v. Bee Pub. Co. 50 L. R. A. 195, which sustains punishment for contempt of newspaper publishing articles threatening judges with public odium if they decide pending cause in certain way; Ex parte Green, 66 L.R.A. 727, which holds criticism of manner in which

trials are conducted without referring to particular case in court not punishable as contempt.

Cited in note (68 L.R.A. 262) on statement with respect to ended cause as contempt.

Freedom of press.

Cited in footnote to State v. McKee, 49 L. R. A. 542, which sustains statute against papers, etc., devoted to publication of story of crimes.

Contempt of supreme court.

Cited in State Law Examiners v. Hart, 104 Minn. 114, 17 L.R.A.(N.S.) 590, 116 N. W. 212, 15 Ann. Cas. 197, suspending an attorney from practice for a period of six months where he wrote a personal letter to the chief justice impugning the integrity and intelligence of the court on decisions where he appeared for the defeated litigants.

When action is pending.

Cited in Ex parte Howland, 3 Okla. Crim. Rep. 147, 104 Pac. 927, Ann. Cas. 1912 A, 840, holding that criminal case is "pending" in sense that court may correct its records, until judgment is fully satisfied.

Offense of attempt to influence officers of court.

Cited in note (21 L.R.A.(N.S.) 907) on offense of attempt to influence officers of court.

43 L. R. A. 725, CARTER v. COUNTY COURT, 45 W. Va. 806, 43 S. E. 216.

Right to oil or gas.

Cited in Haskell v. Sutton, 53 W. Va. 224, 44 S. E. 533, dissenting opinion by Dent, J., who holds oil lessee has no property in the oil in place, but only the right to reduce it to possession; Kolachny v. Galbreath, 26 Okla. 781, 38 L.R.A. (N.S.) 458, 110 Pac. 902, holding that grant of oil and gas which is in ground passes nothing that can be subject of ejectment or other real action; Peterson v. Hall, 57 W. Va. 540, 50 S. E. 603, holding a lessee under an oil lease for years has no taxable estate in the oil remaining in the ground; Backer v. Penn Lubricating Co. 89 C. C. A. 419, 162 Fed. 632, on interest of lessee in oil remaining in the ground; Kansas Natural Gas Co. v. Haskell, 172 Fed. 563, on the nature of property rights existing in oil and gas found in land.

Cited in footnote to Manufacturer's Gas & Oil Co. v. Indiana Natural Gas & Oil Co. 50 L. R. A. 768, which holds unlawful, pumping of natural gas to injury of other persons having wells supplied from same reservoir.

Cited in notes (17 L.R.A.(N.S.) 691) on interest in mineral in situ unaccompanied by ownership of soil as independent subject of taxation; (44 L. ed. U. S. 730) on property in petroleum oil or gas.

Distinguished in Harvey Coal & Coke Co. v. Dillon, 59 W. Va. 622, 6 L.R.A. (N.S.) 637, 53 S. E. 928, holding a lease of land for a period of years for mining and manufacturing purposes was a chattel real and taxable to the lessee.

43 L. R. A. 727, STATE v. SPONAUGLE, 45 W. Va. 415, 32 S. E. 283.

Forfeiture of property for failure to pay taxes.

Cited in State v. Swann, 46 W. Va. 132, 33 S. E. 89, upholding forfeiture of less than 1,000 acre tract under cumulative statute providing therefor; State v. Cheney, 45 W. Va. 482, 31 S. E. 920, holding forfeiture laws constitutional; Parish v. East Coast Cedar Co. 133 N. C. 486, 98 Am. St. Rep. 718, 45 S. E. 768, holding act declaring that upon failure to pay taxes land shall *ipso facto* revert to the state unconstitutional; Wellman v. Hoge, 66 W. Va. 237, 66 S. E. 357,

holding that sale for one year's delinquent taxes is as effectual as sale for all years for which land may at time be delinquent; Fay v. Crozer, 156 Fed. 499, holding a state constitutional provision for the forfeiture of land for the nonpayment of taxes was not in violation of the Federal constitution as depriving of property without due process of law; Eastern Kentucky Coal Lands Corp. v. Com. 127 Ky. 695, 106 S. W. 260, on validity of statutes forfeiting land for nonpayment of taxes; State v. Harman, 57 W. Va. 469, 50 S. E. 828, on the right to transfer title to forfeited lands as being superior to the right of redemption; State v. King, 64 W. Va. 603, 63 S. E. 468, on the forfeiture of lands for the nonentry on the tax books as not depriving of property without due process of law.

Distinguished in State v. West Branch Lumber Co. 64 W. Va. 704, 63 S. E. 372, denying the right of the state to reforfeit lands previously forfeited by defective proceedings.

Annulment of tax deeds.

Cited in Mosser v. Moore, 56 W. Va. 487, 49 S. E. 537, on when tax deeds will be set aside for fraud.

Nonentry of lands as defense in ejectment.

Cited in Davis v. Living, 50 W. Va. 438, 40 S. E. 365, holding nonentry of lands for taxation during previous five years, defense to action of ejectment by alleged owner.

Effect of laches in prosecution of claim by state.

Cited in Riffle v. Skinner, 67 W. Va. 90, 67 S. E. 1075, to the point that state is subject to limitation because of provision of Code as to land not used for governmental purposes.

Cited in footnote to Robinson v. Bierce, 47 L. R. A. 275, which holds lien for taxes defeated by eight years' unexplained delay in prosecuting suits for same.

Cited in note (101 Am. St. Rep. 148, 152) on maxim "Nullum tempus occurrit regi."

Laches.

Cited in Harris v. Defenbaugh, 82 Kan. 771, 109 Pac. 681, holding laches is not imputable to the owner of land for a failure to bring an action to annul a tax deed the holder of which is not in adverse possession; Waldron v. Harvey, 54 W. Va. 617, 102 Am. St. Rep. 959, 46 S. E. 603, holding laches is no defense to a suit for land where defendant not in possession; Smith v. Owens, 63 W. Va. 66, 59 S. E. 762; Mullins v. Shrewsbury, 60 W. Va. 696, 55 S. E. 736,—holding to same effect.

Construction of statutes.

Cited in Henry v. State, 87 Miss. 122, 39 So. 856 (dissenting opinion), on the construction of statutes as being vested exclusively in the judiciary.

Due process of law.

Cited in Trainor v. Maverick Loan & Trust Co. 80 Neb. 628, 114 N. W. 932, holding due process of law does not require a judicial hearing in matters of taxation; Woods v. Cottrell, 55 W. Va. 482, 65 L.R.A. 619, 104 Am. St. Rep. 1004, 47 S. E. 275, 2 Ann. Cas. 933, holding a statute authorizing the seizure and burning of a gambling table was not unconstitutional as a taking of property without due process of law; Harvey Coal & Coke Co. v. Dillon, 59 W. Va. 638, 6 L.R.A.(N.S.) 645, 53 S. E. 928, holding a statute in the taxation of chattels real was not wanting in due process of law; Anderson v. Ritterbusch, 22 Okla. 791, 98 Pac. 1002, on judicial hearing when necessary to due process of law.

Divesting title of state in land.

Cited in Stockton v. Craig, 56 W. Va. 472, 49 S. E. 386, on how title to land vested in state may be divested.

Application of rule of caveat emptor to tax sales.

Cited in State v. West Branch Lumber Co. 66 W. Va. 2, 65 S. E. 1058 (dissenting opinion), on rule of caveat emptor as applying to sale for taxes.

43 L. R. A. 737, GLIDDEN v. MECHANICS' NAT. BANK, 53 Ohio St. 588, 42 N. E. 995.

Purchase by trustee at foreclosure sale.

Distinguished in Etna Coal & Iron & Steel Co. v. Marting Iron & Steel Co. 61 C. C. A. 404, 127 Fed. 40, upholding stipulation in mortgage permitting trustee to buy at his own sale for the benefit of the *cestui que trust.*

When tender essential to maintenance of an action.

Cited in Whipple v. Tucker, 123 Ill. App. 227, holding tender is not essential to the maintenance of an action for trover where defendant sold stock belonging to plaintiff in violation of an agreement of the parties.

Cited in note (6 L.R.A.(N.S.) 299) on unauthorized sale of pledge as dispensing with tender as condition of trover against pledgee.

Liabilities of pledgee for violation of trust.

Cited in Hellman v. Pogue, 13 Ohio C. C. N. S. 368, holding that contract of pledge is not terminated by sale by pledgee at private office on notice only to persons by him deemed interested; Austin v. Vanderbilt, 48 Or. 210, 6 L.R.A. (N.S.) 298, 120 Am. St. Rep. 800, 85 Pac. 519, 10 Ann. Cas. 1123, on the liability of a pledgee for the violation of his trust.

Purchase by pledgee at own sale.

Cited in Anderson v. Messinger, 7 L.R.A.(N.S.) 1094, 77 C. C. A. 179, 146 Fed. 933, on ratification by pledgeor of sale to pledgee.

Conversion as between pledgeor and pledgee.

Cited in Moore v. Central Nat. Bank, 12 Ohio C. C. N. S. 536, 31 Ohio C. C. 620, holding pledgee of stock pledged as collateral security for loan was liable for conversion of same where such stock was disposed of by pledgee without authority.

Cited in note (43 L.R.A. 738) on conversion of pledged property by invalid sale.

43 L. R. A. 772, IVES v. McNICOLL, 59 Ohio St. 402, 69 Am. St. Rep. 780, 53 N. E. 60.

Legitimation of children by marriage.

Cited in Morton v. Morton, 62 Neb. 425, 87 N. W. 182, holding child born prior to wedlock, but adopted in family by parents subsequently marrying, entitled to share in bequest to "children;" Robinson v. Ruprecht, 191 Ill. 433, 61 N. E. 631, holding children born of parties illegally cohabiting legitimized within inheritance laws by subsequent common-law marriage of parents; Miller v. Pennington, 218 Ill. 224, 1 L.R.A.(N.S.) 773, 75 N. E. 919, holding the fact that a child is the result of adulterous intercourse does not prevent the legitimation of the child under the statute.

Cited in footnote to Fowler v. Fowler, 59 L. R. A. 318, which holds legitimation of child by parent's marriage during his minority fixes his status so that he is legitimate everywhere.

Cited in note (1 L.R.A.(N.S.) 774) on legitimation of offspring of adulterous relations.

Distinguished in Kealoha v. Castle, 210 U S. 153, 52 L. ed. 1001, 28 Sup. Ct. Rep. 684, following the local courts in refusing to apply legitimation statutes to the off-spring of adulterous intercourse.

Construction of adopted statutes.

Cited in Ardrey v. Shell, 77 Ohio St. 232, 82 N. E. 1075, on courts as following the construction of a statute adopted from another state as was given it by the courts of such state; State v. Bovee, 6 Ohio N. P. N. S. 345, 17 Ohio S. & C. P. Dec. 669, on adoption of construction of statute where it is copied from another state.

Conflict of laws as to wills.

Cited in note (2 L.R.A.(N.S.) 453) on conflict of laws as to wills.

43 L. R. A. 777, CINCINNATI, N. O. & T. P. R. CO. v. CITIZENS' NAT. BANK, 56 Ohio St. 351, 47 N. E. 249.

Liability of principal for acts of agent.

Cited in Robison v. Cleveland City R. Co. 13 Ohio S. & C. P. Dec. 36, holding that president of constituent company can recover his share of stock from consolidated company, or its value, where stock of consolidated company was wrongfully directed by secretary of constituent company as trustee; Harbison v Iliff, 8 Ohio N. P. 394, 10 Ohio S. & C. P. Dec. 62, holding landlord not liable for acts of his painter in destroying and carrying away property of tenant; Block Light Co. v. Tappehorn, 2 Ohio N. P. N. S. 562, 15 Ohio S. & C. P. Dec. 605, holding that storekeeper is responsible for act of his clerk is selling nongenuine article.

Liability of one placing it in power of another to do wrong.

Cited in Dreifus v. Union Sav. Bank & T. Co. 13 Ohio C. C. N. S. 447, holding that trustee, certifying that bond is one of series in trust mortgage, with knowledge that property in mortgage was not owned by mortgagor, and redelivering bond to mortgagor, is liable to pledgee of bond.

Rights of surety or pledgee of corporate stock.

Cited in Dueber Watch Case Co. v. Daugherty, 62 Ohio St. 595, 57 N. E. 455, holding agreement to transfer stock to surety as collateral security gives surety superior equity as against corporation issuing same under secret trust; Havens v. Bank of Tarboro, 132 N. C. 222, 95 Am. St. Rep. 627, 43 S. E. 639, holding bank liable for value of unauthorized certificate of its stock pledged by its cashier to one loaning money thereon in good faith.

Distinguished in Farmers' Bank v. Diebold Safe & Lock Co. 66 Ohio St. 377, 58 L.R.A. 624, footnote p. 620, 90 Am. St. Rep. 586, 64 N. E. 518, holding bona fide pledgee of stock stolen from party to whom assigned in blank, not entitled thereto against such assignee in absence of proof of latter's culpable negligence; First Ave. Land Co. v. Parker, 111 Wis. 5, 87 Am. St. Rep. 841, 86 N. W. 604, denying liability on surety bond of officer issuing corporate stock without consideration, since such stock void even in hands of innocent purchasers.

Rights of purchaser of stock before transfer on books.

Cited in Prout v. Post, 12 Ohio S. & C. P. Dec. 147, on right of bona fide purchaser of stock before transfer on books of company.

Liability of corporation on forged or fraudulent instrument.

Cited in Dollar Sav. Fund & T. Co. v. Pittsburgh Plate Glass Co. 213 Pa. 311, 62 Atl. 916, 5 Ann. Cas. 248, holding one lending money on a certificate

of stock to which the signature of the transfer agent was forged could not raise the objection that there was negligence in leaving it in a place to which the clerk forging had access; Merchants & F. Cotton Oil Co. v. Lufkin Nat. Bank, 34 Tex. Civ. App. 556, 79 S. W. 651, holding the forged note of a corporation attested by the secretary and the corporate seal was good in the hands of a bona fide purchaser.

Cited in footnote to The Jennie Clarkson Home for Children v. Missouri K. & T. R. Co. 70 L.R.A. 787, which holds corporation canceling registration of bonds and making them payable to bearer contrary to agreement liable to owner for their value, although transfer agent was deceived by forgeries of owner's agent while acting outside scope of authority.

Cited in note (87 Am. St. Rep. 852, 858) on liability of corporation on fraudulent and over-issued corporate stock.

Implied warranty on sale of stock.

Cited in note (53 L. R. A. 154) on implied warranty on sale of corporate stock.

Questions answerable only by court of last resort.

Cited in Lewis v. Taylor, 18 Ohio C. C. 446, 10 Ohio C. D. 207 (dissenting opinion), on question that can only be answered by court of last resort.

43 L. R. A. 788, SHARP v. STATE, 102 Tenn. 9, 73 Am. St. Rep. 851, 49 S. W. 752.

43 L. R. A. 790, REVELL v. PEOPLE, 177 Ill. 468, 69 Am. St. Rep. 257, 52 N. E. 1052.

Ownership or use of lands under waters of lake.

Cited in Illinois C. R. Co. v. Chicago, 176 U. S. 660, 44 L. ed. 628, 20 Sup. Ct. Rep. 509, holding submerged lands along lake shore not included in state grant of "any lands, streams, and materials of every kind;" Shortall v. Fitzsimons & C. Co. 93 Ill. App. 233, refusing recovery on contract for erection of retaining wall passing partially through waters of Lake Michigan; Pewaukee v. Savoy, 103 Wis. 274, 50 L. R. A. 842, 74 Am. St. Rep. 859, 79 N. W. 436, holding public ownership of bottom of lake extends to strip covered by artificial raising of level by dam; Atty. Gen. *ex rel.* Askew v. Smith, 109 Wis. 542, 85 N. W. 512, holding pier for boathouse erected by nonriparian owner subject to abatement as purpresture in suit by attorney general though navigation not obstructed; Cobb v. Lincoln Park, 202 Ill. 432, 63 L. R. A. 268, 95 Am. St. Rep. 258, 67 N. E. 5, holding lands under waters of Lake Michigan, whether owned by state or individuals, held subject to public rights of fishing and navigation; Cobb v. Lincoln Park, 202 Ill. 435, 63 L. R. A. 267, 95 Am. St. Rep. 258, 67 N. E. 5, denying common-law right of riparian owner to erect wharves and piers in front of his land; People *ex rel.* Hunt v. Illinois C. R. Co. 34 C. C. A. 140, 91 Fed. 957, refusing to consider rights of riparian owner in submerged shore land of Lake Michigan, where question excluded by mandate of supreme court; Lincoln Park Comrs. v. Fahrney, 250 Ill. 267, 95 N. E. 194, holding that state has power to grant title to submerged lands in Lake Michigan.

Cited in note (23 Eng. Rul. Cas. 189, 190) on ownership of riparian owner to thread of stream.

— Shore front conveyed to park commission.

Cited in Gordon v. Winston, 181 Ill. 340, 54 N. E. 1095, enjoining construction of docks on submerged lands granted to park commission along shore of Lake Michigan; Bliss v. Ward, 198 Ill. 114, 64 N. E. 705, holding owners of lots abutting on park entitled to restrain erection of buildings on filled land in front of original park.

Distinguished in Chicago Yacht Club v. Marks, 97 Ill. App. 413, refusing to enjoin at suit of owner of lots abutting on parkway, erection of structure at foot of street adjoining, but outside, park limits though lake view thereby obstructed.

Enjoining purpresture.

Cited in People ex rel. Murphy v. Atchison, T. & S. F. R. Co. 217 Ill. 604, 75 N. E. 573, holding equity has jurisdiction to enjoin the vacation of streets without regular vote as prescribed.

Right of owners on navigable waters.

Cited in Park Comrs. v. Kimball, 133 Iowa, 462, 108 N. W. 927, holding no rights were acquired by filling out in a navigable stream; Peoria v. Central Nat. Bank, 224 Ill. 56, 12 L.R.A.(N.S.) 692, 79 N. E. 296, on the rights of riparian owners on navigable waters to make wharves.

Cited in notes (6 L.R.A.(N.S.) 162) on right of riparian owner to protect shore; (22 L.R.A.(N.S.) 345) on right of owner of upland to access to navigable water; (127 Am. St. Rep. 53, 54) on relative rights of state and riparian owner in navigable waters.

Purpresture.

Cited in Fowler v. Wood, 73 Kan. 540, 6 L.R.A.(N.S.) 175, 117 Am. St. Rep. 534, 85 Pac. 763, on when obstructions in navigable waters will constitute a purpresture.

Cited in note (107 Am. St. Rep. 204) on distinction between public nuisances and purprestures.

Abatement of nuisance.

Cited in Sanders v. Miller, 52 Tex. Civ. App. 379, 113 S. W. 996, holding that right of abatement of nuisance is not affected by fact that affirmative action by creator may be necessary to accomplish it; he may be compelled to perform such action.

43 L. R. A. 797, DOREMUS v. HENNESSY, 176 Ill. 608, 68 Am. St. Rep. 203, 52 N. E. 924, 54 N. E. 524.

Liability for conspiracy.

Cited in Martin v. Leslie, 93 Ill. App. 56, holding single party to alleged conspiracy liable for damage caused by act with which connected, though conspiracy not proven; Carlton v. Henry, 129 Ala. 482, 29 So. 924, holding party liable for assault upon third party by companion while both in pursuit of unlawful plan to beat such party's servant; State *ex rel.* Zillmer v. Kreutzberg, 114 Wis. 535, 58 L. R. A. 751, 91 Am. St. Rep. 934, 90 N. W. 1098, denying constitutionality of law penalizing discharge of laborer by reason of his membership in union.

— To injure business.

Cited in State *ex rel.* Durner v. Huegin, 110 Wis. 259, 62 L. R. A. 745, 85 N. W. 1046, upholding action for malicious conspiracy to injure business though acts not support action if done by single party, nor illegal unaccompanied by malice; Martell v. White, 185 Mass. 263, 64 L. R. A. 264, footnote p. 260, 102 Am. St. Rep. 341, 69 N. E. 1085, holding quarry owner may maintain action against association of which he is not a member, which prevents its members from doing business with him; Walsh v. Association of Master Plumbers, 97 Mo. App. 290, 71 S. W. 455, granting injunctive relief against plumbers' association which by threatened boycott prevented sale of supplies to one not a member of the association; Brown v. Jacobs' Pharmacy Co. 115 Ga. 438, 57 L. R.

A. 552, footnote p. 547, 90 Am. St. Rep. 126, 41 S. E. 553, enjoining combination of merchants to prevent sales to other dealer unless he sells at fixed prices; John D. Park & Sons Co. v. National Wholesale Druggists' Asso. 175 N. Y. 38, 62 L. R. A. 648, 96 Am. St. Rep. 578, 67 N. E. 136 (dissenting opinion), majority denying relief to dealer who by large purchases had obtained advantageous prices from manufacturers, from acts of combination which persuaded manufacturers to refuse to sell him unless he agreed to maintain prices; Purington v. Hinchliff, 219 Ill. 167, 2 L.R.A.(N.S.) 827, 109 Am. St. Rep. 322, 76 N. E. 47, Affirming 120 Ill. App. 533, holding parties to a combination to ruin another because of his refusal to comply with his demands are liable for resulting damages; United Cigarette Mach. Co. v. Winston Cigarette Mach. Co. 114 C. C. A. 583, 194 Fed. 957, holding that managing officer of corporation, who fraudulently violated contract by corporation with third person, causing injury to latter and resulting in profits to officer is liable to third person; Legris v. Marcotte, 129 Ill. App. 71, holding an action would lie for a malicious interference with the business of another; Jones v. Barmm, 119 Ill. App. 476, on same point.

Cited in footnotes to Ertz v. Produce Exchange, 51 L. R. A. 825, which holds produce exchange discriminating against nonmembers and controlling delivery of goods is illegal combination; Gatzow v. Buening, 49 L. R. A. 475, which holds by-law of liverymen's association prohibiting furnishing hearse or carriages to nonunion liverymen, illegal; Boutwell v. Marr, 43 L. R. A. 803, which holds withdrawal of patronage by members of association under by-law imposing penalty for violation, illegal; Ertz v. Produce Exchange, 48 L. R. A. 90, which holds malicious, conspiracy to injure dealer by inducing other people not to deal with him; Downs v. Bennett, 55 L. R. A. 560, which denies right of one, only remotely affected, to injunction fining or expelling member for violation of by-law with nonmembers or those dealing with them; Brown v. American F. L. M. Co. 67 L.R.A. 195, which holds loan agents entitled to sue for statements that they are inattentive, neglectful, insolvent, and guilty of fraud for which their principal has taken business from them made to break up their business and secure their custom.

Cited in note (2 L.R.A.(N.S.) 824) on liability of members of trade combination for injury to boycotted dealer.

Distinguished in Master Builders' Asso. v. Domascio, 16 Colo. App. 33, 63 Pac. 782, denying injury by failure to consider plaintiff's bid for reason that each defendant refused to bid in case plaintiff's bid received; West Virginia Transp. Co. v. Standard Oil Co. 50 W. Va. 622, 56 L. R. A. 810, footnote p. 804, 88 Am. St. Rep. 895, 40 S. E. 591, denying action for injury caused by solicitation of business by combine to destroy plaintiff's competing trade.

— Inducing breach of contract or discharge from service.

Cited in London Guarantee & Acci. Co. v. Horn, 206 Ill. 498, 99 Am. St. Rep. 185, 69 N. E. 526, holding corporation liable for intentionally procuring discharge of employee though contract of service terminable at will; Morehouse v. Terrill, 111 Ill. App. 462, holding a person who maliciously induces one party to a contract to break it to the injury of the other, liable to the latter: Jones v. Leslie, 61 Wash. 114, 48 L.R.A.(N.S.) 893, 112 Pac. 81, Ann. Cas. 1912B, 1158, holding that damages are recoverable by a servant, where on giving notice to employer that he was quitting to take better job employer prevented him from securing other position; Huskie v. Griffin, 75 N. H. 348, 27 L.R.A.(N.S.) 969, 74 Atl. 595, holding that one protesting against employment of another for sole purpose of injuring him may be held liable for damages due to consequent loss of employment; Schonwald v. Ragains, 32 Okla. 239, 39 L.R.A.(N.S.) 862, 122 Pac.

203, holding that agents of rival companies inducing customers of rival to break their contracts are liable for damages therefrom; Fidelity & C. Co. v. Gibson, 135 Ill. App. 298; Illinois Steel Co. v. Brenshall, 141 Ill. App. 44; Tennessee Coal, Iron & R. Co. v. Kelly, 163 Ala. 353, 50 So. 1008,—holding a cause of action arises on the part of a servant against one maliciously procuring his discharge; Mahoney v. Roberts, 86 Ark. 139, 110 S. W. 225, holding persons procuring or aiding another in violating a contract with a stranger are liable to the latter for resulting damages; Employing Printers' Club v. Doctor Blosser Co. 122 Ga. 519, 69 L.R.A. 96, 106 Am. St. Rep. 137, 50 S. E. 353, 2 Ann. Cas. 694, holding a combination which induces employees of a person to leave him to his injury is actionable; Berry v. Donovan, 188 Mass. 361, 5 L.R.A.(N.S.) 905, 108 Am. St. Rep. 499, 74 N. E. 603, 3 Ann. Cas. 738, holding an action would lie against the representative of a labor union procuring the discharge of plaintiff because he refused to join the union; Huskie v. Griffin, 75 N. H. 348, 27 L.R.A. (N.S.) 969, 74 Atl. 595, holding malicious representations by a former employer which prevent plaintiff from obtaining employment are actionable.

Cited in footnotes to *Re* Young, 48 L. R. A. 153, which sustains state statute against soliciting seaman to desert from any vessel within jurisdiction of state; Plant v. Woods, 51 L. R. A. 339, which sustains injunction against threats by labor union to make employers induce employees to leave other union and rejoin former; Raymond v. Yarrington, 62 L. R. A. 962, which holds person responsible for another's engaging in business in breach of contract, liable for damages thereby caused to other contracting party; Employing Printers' Club v. De-Blosser Co. 69 L.R.A. 90, which holds actionable a combination to injure person in his trade in inducing employee to break contract or to decline to continue longer in his employment.

Cited in notes (97 Am. St. Rep. 926; 16 L.R.A.(N.S.) 748) on right of action for inducing breach of contract.

Illegal combinations.

Cited in Albro J. Newton Co. v. Erickson, 70 Misc. 295, 126 N. Y. Supp. 949, holding that attempt upon part of union labor organization to compel builders and contractors to boycott certain manufacturer is illegal; State v. Stockford, 77 Conn. 236, 107 Am. St. Rep. 28, 58 Atl. 769, holding a combination to cause a strike to compel employers to employ union men is criminal where threats and intimidation and other unlawful means are used to accomplish their purpose; O'Brien v. People, 216 Ill. 372, 108 Am. St. Rep. 219, 75 N. E. 108, 3 Ann. Cas. 966, holding unlawful a combination which attempts to compel a corporation to enter into an agreement to employ only union men; Everett Waddey Co. v. Richmond Typographical Union No. 90, 105 Va. 198, 5 L.R.A.(N.S.) 796, 53 S. E. 273, 8 Ann. Cas. 798, holding unlawful a combination which results in injury to complainant's business by reason of the intimidation of his employees by the acts of defendants; J. F. Parkinson Co. v. Buildings Trades Council, 154 Cal. 621, 21 L.R.A.(N.S.) 570, 98 Pac. 1027, 16 Ann. Cas. 1165 (dissenting opinion), on the illegality of a combination to compel employer to discharge nonunion men; J. F. Parkinson Co. v. Building Trades Council, 154 Cal. 621, 21 L.R.A.(N.S.) 570, 98 Pac. 1027, 16 Ann. Cas. 1165 (dissenting opinion), on the illegality of a boycott or strike to prevent employment of nonunion men; Franklin Union No. 4 v. People, 220 Ill. 380, 4 L.R.A.(N.S.) 1014, 110 Am. St. Rep. 248, 77 N. E. 176, Affirming 121 Ill. App. 664, on the illegality of combinations to injure the business of another because of a refusal to comply with the requests of such combination; Rocky Mountain

Bell Teleph. Co. v. Montana Federation of Labor, 156 Fed. 821, on when combinations in the nature of strikes are unlawful.

Cited in footnote to Martell v. White, 64 L.R.A. 260, which sustains right of action by quarry owner against members of voluntary association to which he does not belong for enforcement of by-law imposing fine on members dealing with nonmembers.

Cited in notes (26 L.R.A.(N.S.) 149) on right of injured person not party to agreement to assail validity as tending to monopoly; (33 L.R.A.(N.S.) 1038) on lawfulness of boycott for other than labor union; (103 Am. St. Rep. 494, 503) on boycotting.

— In restraint of trade.

Cited in Chicago, W. & V. Coal Co. v. People, 114 Ill. App. 100, holding an attempt by an association to control the output, price and sale of a certain kind of coal within certain territory was an unlawful combination in restraint of trade.

Right to enjoin combinations to injure business of another.

Cited in Kemp v. Division No. 241, A. A. S. & E. R. E. 153 Ill. App. 361, holding that chancery has jurisdiction to restrain unlawful conspiracy because of discharge of number of employees, if suits at law would afford inadequate remedy; Barnes v. Chicago Typographical Union No. 16, 232 Ill. 432, 14 L.R.A.(N.S.) 1022, 83 N. E. 940, 13 Ann. Cas. 54, Affirming 134 Ill. App. 38, enjoining defendants from interfering with plaintiff's business by maintaining pickets who inflicted injury upon plaintiff by intimidating and assaulting his employees; Christensen v. People, 114 Ill. App. 71, holding contempt proceedings would lie against members of a union for violating an injunction against unlawfully interfering with business of petitioner where by means of intimidation and assault they attempted to compel employee to quit his employment; Piano & O. Workers' International Union v. Piano & O. Supply Co. 124 Ill. App. 359, holding a labor union might be enjoined from conducting a strike by means of intimidation, violence and boycott; L. D. Willcutt & Sons Co. v. Driscoll, 200 Mass. 127, 23 L.R.A.(N.S.) 1247, 85 N. E. 897, enjoining a union from attempting to cause servants of petitioner to quit his employment by threats of fines; Wells & R. Co. v. Abraham, 146 Fed. 195, holding an injunction would lie against one attempting to persuade another to violate his contract with petitioner.

Explained in Wilson v. Hey, 232 Ill. 397, 16 L.R.A.(N.S.) 94, 122 Am. St. Rep. 119, 83 N. E. 928, 13 Ann. Cas. 82, Affirming 128 Ill. App. 230, enjoining a labor union from attempting to compel petitioner to comply with their demand by intimidating others not to deal with him with a resultant injury to his business.

Liberty of contract.

Cited in Coffeyville Vitrified Brick & Tile Co. v. Perry, 69 Kan. 300, 66 L.R.A. 187, 76 Pac. 848, 1 Ann. Cas. 936, holding void a statute making it unlawful for an employer to discharge an employee because he belonged to a labor union; People v. Rittman, 155 Ill. App. 526, holding that rights secured to members of fraternal benefit society by statute and by-laws are as important as rights of contract and should be as strictly protected.

Declarations of conspirator.

Cited in Miller v. John, 111 Ill. App. 68, holding declarations of conspirator admissible although made in absence of other conspirators.

Motive as affecting right of action.

Cited in Dunshee v. Standard Oil Co. 152 Iowa, 625, 36 L.R.A.(N.S.) 267, 132 N. W. 371, holding that wholesale dealer in oil who enters retail business in certain city, solely for purpose of driving out of business customer who begins to purchase from rival wholesaler is liable for damages thereby inflicted.

Cited in note (62 L. R. A. 703) on bad motive as rendering actionable what would otherwise not be.

Action by stockholder for injury to corporate property.

Distinguished in Eldred v. Ripley, 97 Ill. App. 509, denying right of stockholder to maintain action at law against director for wrongful acts depreciating value of stock.

Proximate cause as question for court or jury.

Cited in Champion Chemical Works v. Postal Teleg.-Cable Co. 123 Ill. App. 26, holding where jury is waived it was a question of fact for the court whether damage sustained by plaintiff was due to negligence of defendant.

Cited in footnote to Missouri P. R. Co. v. Columbia, 58 L. R. A. 399, which holds placing on platform heavy doors blown on track by severe gale not proximate cause of derailment of engine.

43 L. R. A. 803, BOUTWELL v. MARR, 71 Vt. 1, 76 Am. St. Rep. 746, 42 Atl. 607.

Combination or conspiracy to injure business.

Cited in Brown v. Jacobs Pharmacy Co. 115 Ga. 439, 57 L. R. A. 553, 90 Am. St. Rep. 126, 41 S. E. 553, enjoining combination of dealers from seeking to compel another dealer to sell at prices fixed by it, or, upon his refusal to prevent manufacturers from selling to him; Martell v. White, 64 L. R. A. 264, footnote p. 260, holding action maintainable on behalf of quarry owner against members of association to which he does not belong enforcing by-law imposing fine on members dealing with nonmembers; John D. Park & Sons Co. v. National Wholesale Druggists' Asso. 175 N. Y. 38, 62 L. R. A. 648, 96 Am. St. Rep. 578, 67 N. E. 136 (dissenting opinion), majority denying relief to dealer who by large purchases had obtained advantageous prices from manufacturers, from acts of combination which persuaded manufacturers to refuse to sell him unless he maintained prices; Huskie v. Griffin, 75 N. H. 350, 27 L.R.A.(N.S.) 970, 74 Atl. 595, holding that desire to promote his welfare will not justify employer's interfering with employee's obtaining employment elsewhere, if his interference constitutes unreasonable interference with employee's right to open market; Chicago Federation of Musicians Local No. 10 v. American Musicians Union, 139 Ill. App. 71, holding the imposition of a fine on the member of a union whose presence was necessary to a musical play where musicians of another organization were employed for the purpose of securing the dismissal of them was in violation of an injunction; L. D. Willcutt & Sons Co. v. Driscoll, 200 Mass. 115, 23 L.R.A.(N.S.) 1241, 85 N. E. 897, injoining a labor union from inducing or compelling its members to leave petitioner's employment by the imposition of fines; Booth & Bros. v. Burgess, 72 N. J. Eq. 185, 65 Atl. 226, enjoining officers of a union from compelling a strike of union men whose employers used materials manufactured by petitioner who maintained an open shop; American Federation of Labor v. Buck's Stove & Range Co. 33 App. D. C. 105, 32 L.R.A. (N.S.) 761, enjoining the prosecution of a boycott; J. F. Parkinson Co. v. Building Trades Council, 154 Cal. 621, 21 L.R.A.(N.S.) 570, 98 Pac. 1027, 16 Ann. Cas. 1165 (dissenting opinion), on the illegality of a combination to compel employer to discharge employees not members of the union.

Cited in footnotes to Doremus v. Hennessy, 43 L. R. A. 797, which holds mem-

bers of trade association combining to prevent other persons dealing with nonmember, liable for resulting injury; Ertz v. Produce Exchange, 48 L. R. A. 90, which holds malicious, conspiracy to injure dealer by inducing other people not to deal with him; Gatzow v. Buening, 49 L. R. A. 475, which holds by-law of liverymen's association prohibiting furnishing hearse or carriages to nonunion liverymen, illegal; Ertz v. Produce Exchange, 51 L. R. A. 825, which holds produce exchange discriminating against nonmembers and controlling delivery of goods an illegal combination; Brown v. Jacobs Pharmacy Co. 57 L. R. A. 548, which sustains right to injunction against combination of merchants to prevent sales to other dealer unless he sells at fixed prices; Downs v. Bennett, 55 L. R. A. 560, which denies right of one only remotely affected to enjoin live stock association from fining or expelling member for violation of by-law against doing business with nonmembers or those dealing with them; West Virginia Transp. Co. v. Standard Oil Co. 56 L. R. A. 804, which sustains malicious competition to get customers from rival and obtain business for one's self; Martell v. White, 64 L.R.A. 260, which sustains right of action by quarry owner against members of voluntary association to which he does not belong for enforcement of by-law imposing fine on members dealing with nonmembers; Brown v. American F. L. M. Co. 67 L.R.A. 195, which holds loan agents entitled to sue for statements that they are inattentive, neglectful, insolvent, and guilty of fraud for which their principal has taken business from them made to break up their business and secure their custom.

Cited in notes (2 L.R.A.(N.S.) 825) on liability of members of trade combination for injury to boycotted dealer; (7 L.R.A.(N.S.) 978) on combination of dealers as giving common law right of action to merchant prevented from obtaining goods; (22 L.R.A.(N.S.) 1224) on liability, in absence of element of conspiracy, for driving away another's customers; (23 L.R.A.(N.S.) 1237) on right of labor union to fine members to induce them to join in strike; (33 L.R.A. (N.S.) 1035) on lawfulness of boycott for other than labor union; (103 Am. St. Rep. 496) on boycotting.

Distinguished in Downs v. Bennett, 63 Kan. 663, 55 L. R. A. 563, 88 Am. St. Rep. 256, 66 Pac. 623, refusing to enjoin association from enforcing by-law prohibiting members from dealing with nonmembers or those who do business with nonmembers; Heim v. New York Stock Exch. 64 Misc. 537, 118 N. Y. Supp. 591, refusing to enjoin a stock exchange from prohibiting its members from buying or selling stocks for a member of a rival exchange.

Motive as affecting right of action.

Cited in note (62 L. R. A. 700, 728) on effect of bad motive to make actionable what would otherwise not be.

Recovery of exemplary damages.

Cited in Corkings v. Meier, 112 Ill. App. 658, holding erroneous an instruction which would tend to have jury understand that proof authorizing exemplary damages against one of defendants would allow them to assess such damages against the other defendants; Moore v. Duke, 84 Vt. 408, 80 Atl. 194, holding that in tort action against several defendants, no exemplary damages can be allowed, if any defendant acted in good faith.

Equitable relief against unlawful combinations.

Cited in Lohse Patent Door Co. v. Fuelle, 215 Mo. 456, 22 L.R.A.(N.S.) 620, 128 Am. St. Rep. 492, 114 S. W. 997; My Maryland Lodge No. 186 v. Adt, 100 Md. 251, 68 L.R.A. 758, 59 Atl. 721,—on equity having jurisdiction to grant relief against an unlawful combination to injure the business of another.

43 L. R. A. 806, HOTCHKISS v. MIDDLEKAUF, 96 Va. 649, 32 S. E. 36.

Ratification.

Cited in Smith v. Miller, 98 Va. 542, 37 S. E. 10, holding ratification by heirs cannot be presumed where trustee's sale to himself not reported to court prior to institution of suit to annul.

Waiver.

Cited in Reed v. Union Cent. L. Ins. Co. 21 Utah, 310, 61 Pac. 21, holding right to commissions on policy obtained not waived by obtaining cancelation of policy at company's request, where no intention to thereby relinquish claim shown; Percy v. First Nat. Bank, 110 Va. 134, 65 S. E. 475, holding that creditors secured by deed of trust cannot be held to have waived their security if they were ignorant of existence of security at time of alleged waiver.

Jurisdiction of equity in suit involving land situated without forum.

Cited in Vaught v. Meador, 99 Va. 574, 86 Am. St. Rep. 908, 39 S. E. 225, upholding decree in equity having jurisdiction of parties, to compel removal of cloud from title to land located in another jurisdiction.

Cited in notes (54 L. ed. U. S. 66; 69 L.R.A. 696) on jurisdiction of equity over suits affecting realty in another state or country.

Implied powers of special agent.

Cited in Bowles v. Rice, 107 Va. 53, 57 S. E. 575, on a special agent as possessing no more powers than are indispensable to the exercise of the power expressly conferred.

43 L. R. A. 810, FISHER v. WALSH, 102 Wis. 172, 72 Am. St. Rep. 865, 78 N. W. 437.

Recovery on entire contract not performed.

Cited in Hildebrand v. American Fine Art Co. 109 Wis. 181, 53 L. R. A. 830, 85 N. W. 268, holding employee wrongfully discharged before completion of entire contract entitled to recover at contract rate to date of discharge and damage for balance of period; Manitowoo Steam Boiler Works v. Manitowoo Glue Co. 120 Wis. 5, 97 N. W. 515, denying recovery for a boiler sold to increase steam capacity but which actually provided less steam; Manning v. School Dist. No. 6, 124 Wis. 105, 102 N. W. 356, on the measure of recovery on the partial performance of a contract.

Cited in note (134 Am. St. Rep. 679) on right of building contractor to recover for substantial performance of his contract.

Impossibility of performance.

Cited in footnotes to Angus v. Scully, 49 L. R. A. 562, which sustains right to recover under contract to move building destroyed by fire before work completed; Ontario Deciduous Fruit Growers' Asso. v. Cutting Fruit Packing Co. 53 L. R. A. 681, which denies liability for failure to deliver specified quantity of fruit contracted for, from failure of crop due to unusual climatic conditions; Krause v. Crothersville School Trustees, 65 L.R.A. 111, which holds covenant to repair building and construct annex thereto discharged by destruction by lightning of main building when work is practically completed.

Liquidated damages.

Cited in Madison v. American Sanitary Engineering Co. 118 Wis. 503, 95 N. W. 1097, holding where sum fixed in bond is excessive and the damages are wholly uncertain, the sum named will be considered as liquidated damages; Werner v. Finley, 144 Mo. App. 561, 129 S. W. 73, enforcing contract for service according to stipulated damages for breach.

Cited in note (108 Am. St. Rep. 59) on agreements purporting to liquidate damages.

43 L. R. A. 814, COLLINS v. RYAN, 49 La. Ann. 1710, 22 So. 920.

Duress to avoid marriage.

Cited in notes (16 L.R.A.(N.S.) 938) on duress as ground for avoiding marriage to escape prosecution for seduction; (79 Am. St. Rep. 370; 27 L.R.A. (N.S.) 803) on duress to avoid marriage.

Distinguished in Quealy v. Waldron, 126 La. 260, 27 L.R.A.(N.S.) 804, 52 So. 479, 20 Ann. Cas. 1374, holding that marriage is properly annulled where consent of complainant was procured by violence or threats of such nature as to inspire just fear of great bodily harm.

43 L. R. A. 820, NATHAN v. LEE, 152 Ind. 232, 52 N. E. 987.

Extraterritorial effect of statutes creating rights.

Cited in Baltimore & O. S. W. R. Co. v. Reed, 158 Ind. 30, 56 L. R. A. 471, 92 Am. St. Rep. 293, 62 N. E. 488, refusing recovery under laws of forum for injury in another state where no right of action therefor exists.

Preferences by insolvent.

Cited in Nappanee Canning Co. v. Reid, M. & Co. 159 Ind. 620, 59 L. R. A. 201, 64 N. E. 870, upholding mortgage by insolvent corporation to directors to secure personal claims against it and corporate debts on which personally liable.

Distinguished in City Nat. Bank v. Goshen Woolen Mills Co. 35 Ind. App. 568, 69 N. E. 206, holding the right of insolvent corporation to prefer bona fide creditors does not give directors right to prefer themselves.

Conflict of laws of mortgages.

Distinguished in Ft. Wayne Trust Co. v. Sihler, 34 Ind. App. 153, 72 N. E. 494, holding a mortgage given on lands in another state to secure a note executed by a married woman in this state and made payable here is to be governed by the laws of this state.

Comity of state.

Cited in State ex rel. Mutual Protective League v. Bigler, 169 Ind. 227, 82 N. E. 464, holding comity does not extend so far as to allow foreign corporations to exercise powers, not permitted to a domestic corporation.

43 L. R. A. 826, AMERICAN WALTHAM WATCH CO. v. UNITED STATES WATCH CO. 173 Mass. 85, 73 Am. St. Rep. 263, 53 N. E. 141.

Unfair competition.

Cited in Flagg Mfg. Co. v. Holway, 178 Mass. 91, 59 N. E. 667, holding maker of unpatented zither entitled to protection from copying of shape and marks by rival, only to extent of marks identifying manufacturer; Esselstyn v. Holmes, 42 Mont. 518, 114 Pac. 118, holding that good will of business is property and owner thereof is entitled to same protection in its exclusive enjoyment as he is to that of tangible property; W. R. Lynn Shoe Co. v. Auburn-Lynn Shoe Co. 100 Me. 472, 4 L.R.A.(N.S.) 967, 62 Atl. 499, holding it unfair competition for a new corporation members of which had belonged to complainant corporation to use a name having such a similarity as to confuse customers of complainant as to who they were dealing with; George G. Fox Co. v. Glynn, 191 Mass. 349, 9 L.R.A.(N.S.) 1102, 114 Am. St. Rep. 619, 78 N. E. 89, holding the use of the name "Crown Malt" as a trade name for a certain kind of bread was unfair competition towards one using the name "Creamalt" for the name of a similar

kind of bread; De Long Hook & Eye Co. v. Francis Hook & Eye Fastener Co. 139 Fed. 151, on what will constitute unfair competition in the use of similarity of advertisements or trade names by a competing concern; Rice-Stix Dry Goods Co. v. J. A. Scriven Co. 91 C. C. A. 475, 165 Fed. 655 (dissenting opinion), on what may constitute unfair competition.

— Protection of trade names.

Cited in Fuller v. Huff, 51 L. R. A. 334, footnote p. 332, 43 C. C. A. 456, 104 Fed. 144, sustaining right to enjoin use of term "health food" for foods previously known as "sanitarium foods;" Hansen v. Siegel-Cooper Co. 106 Fed. 692, holding manufacturer of "junket tablets" entitled to injunction against use of name "junket capsules" to describe product used for same purpose; Samuels v. Spitzer, 177 Mass. 228, 58 N. E. 693, enjoining intentionally fraudulent use of similar corporate name, though not subject to appropriation as trademark, where trade diverted thereby; Shaver v. Heller & M. Co. 65 L. R. A. 884, 48 C. C. A. 57, 108 Fed. 830, enjoining fraudulent sale of "American" goods in place of goods of established reputation as "American Ball Blue;" American Waltham Watch Co. v. Sandman, 96 Fed. 331, holding use of "Waltham" on watch unfair competition where unaccompanied by statement distinguishing product from that of Waltham Watch Co.; Draper v. Skerrett, 116 Fed. 208, holding party entitled to injunction against fraudulent imitation of paper and wrapper of package known as "French Tissue" though latter name not capable of appropriation as trade-mark; Hygeia Distilled Water Co. v. Hygeia Ice Co. 72 Conn. 654, 49 L. R. A. 152, 45 Atl. 957, refusing to enjoin use of word "Hygeia" for corporate name and products except so far as false impression thereby created; Viano v. Baccigalupo, 183 Mass. 161, 67 N. E. 641, restraining use of geographical trade name by later comer in such way as to deceive and mislead the trade; Bissell Chilled Plow Works v. T. M. Bissell Plow Co. 121 Fed. 367, holding one who has marked his goods with his own name not entitled on starting rival business to so use it as to amount to unfair competition; Dyment v. Lewis, 144 Iowa, 515, 26 L.R.A.(N.S.) 81, 123 N. W. 244, holding that name "Sioux City Robe & Tanning Company," which is conducted in city named under which business has been built up, may be protected from adoption by rival; Computing Cheese Cutter Co. v. Dunn, 45 Ind. App. 25, 88 N. E. 93, holding that use of trade name "Anderson Cheese Cutter Company" cannot be restrained, unless by long continued use it has gained meaning other than that of locality; L. E. Waterman Co. v. Modern Pen Co. 193 Fed. 247, holding that trade name "L. E. Waterman Company" will be infringed upon by use of word "Waterman" except when used in connection with phrase "not connected with original Waterman pen" or equivalent; Cohen v. Nagle, 190 Mass. 9, 2 L.R.A.(N.S.) 969, 76 N. E. 276, 5 Ann. Cas. 553; Sartor v. Schaden, 125 Iowa, 701, 101 N. W. 511,— enjoining the use of a trade name which plaintiff had adopted to designate a certain brand of cigars, although the name was not registered as a trade mark; David E. Foutz Co. v. Foutz Stock Food Co. 163 Fed. 412; Buzby v. Davis, 80 C. C. A. 163, 150 Fed. 278, 10 Ann. Cas. 68,—holding to same effect; Dyment v. Lewis, 144 Iowa, 515, 26 L.R.A.(N.S.) 81, 123 N. W. 244, enjoining the use of geographical names as a trade name where such name had previously been appropriated by petitioner in the same business and under which his business had been built up; Pegis v. Jaynes, 185 Mass. 462, 70 N. E. 480, holding the use of the word "Rexall" to designate the name of an article, also manufactured by complainants and designated "Rex" might be enjoined; Giragosian v. Chutjian, 194 Mass. 506, 120 Am. St. Rep. 570, 80 N. E. 647, refusing on behalf of one carrying on a business as the "Oriental Process Rug Renovating Company" to

enjoin another conducting a similar business under the name of the "Oriental Rug and Carpet Renovating Works;" Herring-Hall-Marvin Safe Co. v. Hall's Safe Co. 208 U. S. 559, 52 L. ed. 621, 28 Sup. Ct. Rep. 350; International Silver Co. v. William H. Rogers Co. 66 N. J. Eq. 126, 57 Atl. 1037, 2 Ann. Cas. 407,— on the right to enjoin the use of a trade name by a competing manufacturer; Trinidad Asphalt Mfg. Co. v. Standard Paint Co. 90 C. C. A. 195, 163 Fed. 989, on the right to have geographical terms used as a trade name protected in equity.

Cited in footnotes to La Republique Francaise v. Saratoga Vichy Springs Co. 65 L.R.A. 830, which holds conspicuous use of word "Vichy" and inconspicuous use of word "Saratoga" on bottle of water from Saratoga spring unfair competition with bottled waters from Vichy in France; Kipling v. G. P. Putnam's Sons, 65 L.R.A. 873, which holds merely placing a design on the covers of an edition of an author's works without registering it as a trademark or giving notice that it is such does not protect it from use by others; Shaver v. Heller & M. Co. 65 L.R.A. 878, which sustains right to injunction against unfair use of names "American Ball Blue" and "American Wash Blue" under which a large and lucrative trade has been built up.

Cited in notes (45 L. ed. U. S. 380, 381; 26 L.R.A.(N.S.) 77) on right to protection in use of geographical name; (12 L.R.A.(N.S.) 733) on right to use substantially similar work as trademark or trade name, as affected by differences in other respects; (85 Am. St. Rep. 110) on what words or phrases may constitute a valid trademark.

Distinguished in Illinois Watch Case Co. v. Elgin Nat. Watch Co. 35 C. C. A. 240, 94 Fed. 670, holding complaint in suit to enjoin use of word "Elgin" on watch, insufficient where fraud not alleged.

43 L. R. A. 831, GRAFTON NAT. BANK v. WING, 172 Mass. 513, 70 Am. St. Rep. 303, 52 N. E. 1067.

Power of executor to convey land.

Cited in footnote to Bauerle v. Long, 52 L. R. A. 643, which denies power of executors under will to give warranty deed of land.

Personal liability of administrator.

Cited in Howe v. Richardson, 186 Mass. 266, 71 N. E. 543, on personal liability of executor signing instrument with name used by testator by himself as executor.

Cited in footnote to Painter v. Kaiser, 65 L.R.A. 672, which holds contract by executrix to distribute money as fast as a certain sum is accumulated in consideration of withdrawal of opposition to probate of will, enforceable against her individually.

Distinguished in Hadlock v. Brooks, 178 Mass. 438, 59 N. E. 1009, holding administrator bound personally by acceptance of order not purporting to bind estate, without knowledge of heirs.

Liability on falsely signed paper.

Distinguished in Breed v. Gardner, 187 Mass. 305, 72 N. E. 983, holding a bond given to discharge a lien does not do so where the signatures of the sureties are forged by parties falsely representing themselves to be the sureties.

43 L. R. A. 832, SPADE v. LYNN & B. R. CO. 172 Mass. 488, 70 Am. St. Rep. 298, 52 N. E. 747.

Recovery for injury due to fright.

Cited in Gannon v. New York, N. H. & H. R. Co. 173 Mass. 41, 43 L. R. A. 834,

52 N. E. 1075, permitting recovery for injury due to sudden attempt to escape from car in fright at burning lamp; Homans v. Boston Elev. R. Co. 180 Mass. 457, 57 L. R. A. 292, footnote p. 292, 91 Am. St. Rep. 324, 62 N. E. 737, allowing recovery for nervous shock and hysteria accompanying slight physical injury in collision; Ford v. Schliessman, 107 Wis. 483, 83 N. W. 761, holding woman entitled to damages for fright caused by trespasser though unaccompanied by actual assault; Berard v. Boston & A. R. Co. 177 Mass. 182, 58 N. E. 586, reversing directed verdict for defendant where evidence would support finding of injury from other cause than fright.

Cited in footnotes to Kline v. Kline, 58 L. R. A. 397, which sustains right to damages for mental suffering for assault by pointing gun with threat to shoot unless house abandoned; Watkins v. Kaolin Mfg. Co. 60 L. R. A. 617, which sustains right of action for physical injury or disease from fright or nervous shock from negligent acts; Reed v. Maley, 62 L. R. A. 900, which holds that merely soliciting woman to sexual intercourse gives her no right of action.

Cited in notes (3 L.R.A.(N.S.) 64) on right to recover for physical injury resulting from fright caused by wrongful act; (77 Am. St. Rep. 861, 862) on fright as element of recoverable damages.

Distinguished in Smith v. Postal Teleg. Cable Co. 174 Mass. 578, 47 L. R. A. 324, footnote p. 323, 75 Am. St. Rep. 374, 55 N. E. 380, denying recovery for sickness due to fright caused by grossly negligent blasting.

Assumption of risks incident to street car travel.

Cited in Jacobs v. West End Street R. Co. 178 Mass. 118, 59 N. E. 639, refusing recovery by passenger tripping while attempting to alight from car so crowded that she could not reach guiding bar; Cobb v. Boston Elev. R. Co. 179 Mass. 212, 60 N. E. 476, denying recovery by entering passenger tripped by drunken man in process of removal by conductor.

Unusual physical condition.

Cited in Sullivan v. Marin, 175 Mass. 423, 56 N. E. 600, holding plaintiff's previous habits of intoxication not available in mitigation of damages; Webber v. Old Colony Street R. Co. 210 Mass. 442, 97 N. E. 74, holding that fact that passenger was suffering from physical condition making her more susceptible to injury did not deprive her of all damages caused by fall resulting from sudden jolt; Texas & P. R. Co. v. Howell, 224 U. S. 583, 56 L. ed. 894, 32 Sup. Ct. Rep. 601, holding that where injury actually causes disease, injured party may recover even if disease does not immediately develop.

Duties of railroads to passengers.

Cited in notes (118 Am. St. Rep. 466) on duties and liabilities of street railway companies toward passengers under disability; (40 L.R.A.(N.S.) 1000) on liability of carrier for wilful torts of servants to passengers.

43 L. R. A. 833, GANNON v. NEW YORK, N. H. & H. R. CO. 173 Mass. 40, 52 N. E. 1075.

Liability for injury due to fright.

Cited in Mullin v. Boston Elev. R. Co. 185 Mass. 525, 70 N. E. 1021, on liability for negligence causing fright which results in injury.

Distinguished in Cameron v. New England Teleph. & Teleg. Co. 182 Mass. 312, 65 N. E. 385, holding one exploding blast near house liable to injuries sustained by person therein through fright.

Care in sudden peril or emergency.

Cited in Steverman v. Boston Elev. R. Co. 205 Mass. 512, 91 N. E. 919, hold-

ing that passenger who was injured while attempting to avoid what appeared to be imminent peril may recover, if it appears that there was reasonable cause for such action; Tozier v. Haverhill & A. Street R. Co. 187 Mass. 180, 72 N. E. 953, holding the exercise of reasonable care by a motorman is not excused by reason that a sudden emergency requires him to act quickly.

Cited in note (37 L.R.A.(N.S.) 48) on care required in sudden emergency.

— Question for jury.

Cited in Mannon v. Camden Interstate R. Co. 56 W. Va. 557, 49 S. E. 450, on the question of whether a passenger exercised ordinary prudence when confronted with a supposed peril as being for the jury.

43 L. R. A. 834, SEARS v. BOSTON, 173 Mass. 71, 53 N. E. 138.

Validity of special assessments.

Cited in Phillips Academy v. Andover, 175 Mass. 127, 48 L. R. A. 554, 55 N. E. 841, and Stark v. Boston, 180 Mass. 294, 62 N. E. 375, upholding similar statute assessing street watering expense on abutting owners; Harrisburg v. McPherran, 14 Pa. Super. Ct. 494, and Hadley v. Dague, 130 Cal. 222, 62 Pac. 500, upholding validity of assessment of cost of street improvements upon abutting owners in proportion to frontage of lots; French v. Barber Asphalt Paving Co. 181 U. S. 353, 45 L. ed. 893, 21 Sup. Ct. Rep. 625 (dissenting opinion), majority enforcing against abutting owners entire cost of street improvement, in proportion to frontage according to city charter; Indianapolis v. Holt, 155 Ind. 240, 57 N. E. 966, holding assessment by frontage prima facie correct, but subject to correction for actual benefit; King v. Portland, 38 Or. 421, 55 L. R. A. 818, footnote p. 812, 63 Pac. 2, upholding assessment for street improvement imposing 5/9 of cost against corner 50 feet and balance against middle 50 feet; Lincoln v. Street Comrs. 176 Mass. 212, 57 N. E. 356, upholding assessment upon abutting owners of special benefits conferred by construction of streets, laying sewer connections, and establishment of building lines, taken as whole; Sears v. Street Comrs. 180 Mass. 280, 62 L. R. A. 148, footnote p. 145, 62 N. E. 397, holding expense of railroad terminal, extension and opening of streets leading thereto, properly united in laying special assessment on benefited property; Ladd v. Gambell, 35 Or. 399, 59 Pac. 113, upholding statute authorizing abutting owners assessed more than $25 for street improvement, to defer instalments, balance of expense being met by municipal interest-bearing bonds; Ward v. Newton, 181 Mass. 434, 63 N. E. 1064, holding evidence of benefit received not admissible on certiorari to review validity of assessment where answer alleges same to be less than benefit conferred; White v. Gove, 183 Mass. 335, 67 N. E. 359, holding special sewer assessments unconstitutional if in substantial excess of the benefits received; Cheney v. Beverly, 188 Mass. 84, 74 N. E. 306, upholding a special assessment to pay for the construction of sewers against the property benefited thereby according to such benefits; Driscoll v. Northbridge, 210 Mass. 154, 96 N. E. 59, holding that assessments based upon street frontage, and not in excess of benefits are valid; O'Connell v. First Parish, 204 Mass. 121, 90 N. E. 580, holding to same effect: Corcoran v. Cambridge, 199 Mass. 11, 18 L.R.A.(N.S.) 189, 85 N. E. 155; Hodgdon v. Haverhill, 193 Mass. 328, 79 N. E. 818,—upholding assessment for sprinkling purposes levied against abutting property owners; McGarvey v. Swan, 17 Wyo. 175, 96 Pac. 697; Arnold v. Knoxville, 115 Tenn. 221, 3 L.R.A.(N.S.) 845, 90 S. W. 469, 5 Ann. Cas. 881,—on validity of special assessments for local improvements.

Cited in footnotes to Ramsey County v. Robert P. Lewis Co. 53 L. R. A. 421, which sustains annual frontage tax on land in front of which water pipes laid;

Adams v. Shelbyville, 49 L. R. A. 797, which sustains statute providing for local assessments by frontage, with provision for hearing grievances before final assessment; Webster v. Fargo, 56 L. R. A. 156, which sustains statute assessing entire cost of paving on abutters according to frontage; Smith v. Worcester, 59 L. R. A. 728, which holds conclusive, decision of legislature that landowners within assessment district benefited by sewer; Sperry v. Flygare, 49 L. R. A. 757, which holds rural highway not local improvement authorizing assessment on farm lands; Maydwell v. Louisville, 63 L. R. A. 655, which holds street sprinkling a public purpose for which taxes may be levied; Sears v. Street Comrs. 62 L. R. A. 145, which authorizes consideration of benefit to abutting property from newly located passenger station, in assessing cost of improving streets leading thereto; Iowa Pipe & Tile Co. v. Callanan, 67 L.R.A. 408, which holds void, assessment for sewer on abutting property only eight feet deep at same front foot rate as full sized lots.

Cited in notes (18 L.R.A.(N.S.) 182) on special assessment for street sprinkling; (28 L.R.A.(N.S.) 1171, 1174, 1182, 1186) on assessments for improvements by front-foot rule.

Distinguished in Charles v. Marion, 100 Fed. 543, holding assessment of entire cost of street improvement upon abutting owners in proportion to frontage irrespective of benefit, and without notice or hearing other than to conform assessment to such basis, unconstitutional; Dexter v. Boston, 176 Mass. 251, 79 Am. St. Rep. 306, 57 N. E. 379, holding statute assessing sewer benefits by frontage of property void as to lots bearing burden disproportional to benefit by reason of turn of sewer; Sears v. Street Comrs. 173 Mass. 352, 53 N. E. 876, holding statute authorizing taxation of realty to meet expense of sewer, on other grounds than, and in excess of, special benefits, without opportunity for hearing, void.

Disapproved in Stevens v. Port Huron, 149 Mich. 539, 113 N. W. 291, 12 Ann. Cas. 603; Owensboro v. Sweeney, 129 Ky. 620, 18 L.R.A.(N.S.) 186, 130 Am. St. Rep. 477, 111 S. W. 364,—refusing to uphold a special tax for street sprinkling purposes to be levied against the property of abutting owners.

Public improvements.

Cited in McAllen v. Hamblin, 129 Iowa, 332, 5 L.R.A.(N.S.) 436, 105 N. W. 593, 6 Ann. Cas. 980, on street sprinkling as being a public rather than a private improvement.

43 L. R. A. 838, L'ANSE v. FIRE ASSO. 119 Mich. 427, 75 Am. St. Rep. 410, 78 N. W. 465.

Location of movable property as affecting insurance.

Cited in Shutts v. Milwaukee Mechanics' Ins. Co. 159 Mo. App. 441, 141 S. W. 15, holding that insurance company has right to stipulate against liability in event of changes in condition or location of property insured, but such stipulation may be waived; Jacobson v. Liverpool, L. & G. Ins. Co. 135 Ill. App. 25, holding a policy covering the property of a salesman "while traveling" does not cover it after it has been returned to starting point; McIntyre v. Liverpool, L. & G. Ins. Co. 131 Mo. App. 93, 110 S. W. 604, on the place of the property insured as being of the essence of contract.

Cited in footnote to Ohio Farmer's Ins. Co. v. Burget, 55 L. R. A. 825, which authorizes recovery of insured chattels destroyed at place to which removed with insurer's consent notwithstanding previous removal without consent.

Cited in note (22 L.R.A.(N.S.) 849) on temporary absence of insured property from location stated in policy.

43 L. R. A. 840, MARQUETTE v. WILKINSON, 119 Mich. 413, 78 N. W. 474.

Deposit of public moneys.

Cited in Fire & Water Comrs. v. Wilkinson, 119 Mich. 661, 44 L. R. A. 496, footnote p. 493, 78 N. W. 893, holding unlawful, deposit of public moneys by treasurer of public board under its direction in bank of which he is a partner; Re Salmon, 145 Fed. 654, holding that deposits of public funds in bank are held in trust for city and can be recovered as such as against creditors of bank.

Cited in notes (5 L.R.A.(N.S.) 887) on preference of public funds deposited in bank becoming insolvent; (14 L.R.A.(N.S.) 1053) on validity and effect of agreement among banks to prevent competition for public deposits.

Distinguished in Retan v. Union Trust Co. 134 Mich. 10, 95 N. W. 1006, holding that money deposited in bank by register in chancery pursuant to statute is not special deposit, entitled to priority over others on insolvency of bank.

— Interest on public funds.

Cited in footnote to Maloy v. Bernalillo County, 52 L. R. A. 126, which denies defaulting county treasurer's liability to county for interest paid to him by bank, in which public money deposited after he has paid county.

Duty of employee to serve substituted employer.

Approved in Globe & R. F. Ins. Co. v. Jones, 129 Mich. 668, 89 N. W. 580, holding insurance agent under contract to work for one company cannot be required to work for an entirely different company.

Competency of witnesses.

Cited in Lorimer v. Lorimer, 124 Mich. 636, 83 N. W. 609, holding party claiming to inherit as common-law wife of deceased incompetent to testify in suit of ejectment against heirs, in regard to relationship.

Assignability of personal contract.

Cited in People's Bank & T. Co. v. Weidinger, 73 N. J. L. 436, 64 Atl. 179, holding that where contract involves rendition of personal services, it is not assignable.

Necessity for beneficiary's knowledge of trust.

Cited in note (10 L.R.A.(N.S.) 618) on necessity for beneficiary's knowledge of trust.

Equitable jurisdiction to follow trust funds.

Cited in note (6 L.R.A.(N.S.) 794) on legal remedy defeating equitable jurisdiction to follow trust funds.

43 L. R. A. 843, VEGA S. S. CO. v. CONSOLIDATED ELEVATOR CO. 75 Minn. 308, 74 Am. St. Rep. 484, 77 N. W. 973.

Subrogation of carrier.

Cited in Cleveland Iron Min. Co. v. Eastern R. Co. 75 Minn. 509, 78 N. W. 84, holding carrier subrogated to consignee's rights against shipper for fraudulent deficiency, upon payment of shortage to consignee.

Legislative control over rules of evidence.

Cited in Re Allen, 82 Vt. 377, 26 L.R.A.(N.S.) 240, 73 Atl. 1078, holding valid, statute making physician's certificate prima facie evidence of insanity; State v. Duluth Bd. of Trade, 107 Minn. 522, 23 L.R.A.(N.S.) 1269, 121 N. W. 395, on power of legislature to make weigh-master's certificate prima facie evidence of its contents; State ex rel. Roche v. Rogers, 97 Minn. 328, 106 N. W. 345, holding control of legislature over subject of evidence proper is generally subject to limitation that it must not arbitrarily forbid investigation of facts; Petersilie v. McLachlin, 80 Kan. 180, 101 Pac. 1014, holding that provision of

statute which makes posting in county clerk's office of copy of notice of forfeiture of school-land conclusive evidence of service of such notice, is void.

Rescission of contract.

Cited in footnote to Bigham v. Madison, 47 L. R. A. 267, which authorizes rescission for mutual mistake as to location of boundary lines pointed out by vendor.

43 L. R. A. 845, STATE *ex rel.* HEZEL v. BLAND, 148 Mo. 625, 50 S. W. 293.

Final determination on merits in Barber Asphalt Paving Co. v. Hezel, 155 Mo. 394, 48 L. R. A. 287, 56 S. W. 449.

43 L. R. A. 849, NEW JERSEY ELECTRIC R. CO. v. NEW YORK, L. E. & W. R. CO. 61 N. J. L. 287, 41 Atl. 1116.

Imputability of negligence of gratuitous bailee to owner of property.

Cited in Doran v. Thomsen, 74 N. J. L. 447, 66 Atl. 897, holding the owner of a motor car was not liable for an injury due to the negligence of a borrower thereof who was not using it in the owner's business; Sea Ins. Co. v. Vicksburg, S. & P. R. Co. 17 L.R.A.(N.S.) 928, 86 C. C. A. 544, 159 Fed. 679, on the negligence of a bailee as not imputable to bailor.

Cited in footnote to Illinois C. R. Co. v. Sims, 49 L. R. A. 322, which holds negligence of gratuitous bailee of mule imputable to owner.

Right of action by bailee for injury to property bailed.

Cited in Raleigh & G. R. Co. v. Western & A. R. Co. 6 Ga. App. 623, 65 S. E. 586, on right of action by bailee against third party for injury to the thing bailed.

Right of action for injury to one's property in another's possession.

Distinguished in Van Ness v. New York & N. J. Teleph. Co. 78 N. J. L. 514, 74 Atl. 456, holding that landlord cannot maintain action in trespass for injuries to land which is in exclusive possession of tenant.

Liability for acts of independent contractor.

Cited in note (65 L.R.A. 475) on liability for acts of independent contractor.

43 L. R. A. 854, STANDARD FASHION CO. v. SIEGEL-COOPER CO. 157 N. Y. 60, 68 Am. St. Rep. 749, 51 N. E. 408.

Specific performance or injunction against breach.

Cited in St. Regis Paper Co. v. Santa Clara Lumber Co. 173 N. Y. 160, 65 N. E. 967, Affirming 55 App. Div. 230, 67 N. Y. Supp. 149, refusing specific performance of negative covenant by enjoining sale of pulp woodland in such manner as to jeopardize performance of contract for supply of wood during term of years; Backes v. Curran, 69 App. Div. 197, 74 N. Y. Supp. 723, holding assignment of land lease under contract for erection of store building of specified dimensions upon leased premises by assignee, entitles assignor to enjoin erection of building not including such store in plans, although specific performance would not be decreed; Bomer Bros. v. Canady, 79 Miss. 234, 55 L. R. A. 331, footnote p. 328, 89 Am. St. Rep. 593, 30 So. 638, denying specific performance of indefinite contract to purchase standing timber on fourteen different tracts in two counties scattered over 5,000 acres; Texas Co. v. Central Fuel Oil Co. 114 C. C. A. 21, 194 Fed. 22, holding that injunction may be granted to restrain violation of contract if equities require it; Lawrence v. Dixey, 119 App. Div. 298, 104 N. Y. Supp. 516, on contracts for personal services as not being subject to specific enforcement; Butterick Pub. Co. v. Rose, 141 Wis. 537, 124 N. W. 647; Butterick Pub. Co. v.

Fisher, 203 Mass. 131, 133 Am. St. Rep. 283, 89 N. E. 189,—enjoining defendants from handling other than complainants' patterns where under the contract there was a negative covenant not to sell other patterns; Waldorf-Astoria Segar Co. v. Salomon, 109 App. Div. 69, 95 N. Y. Supp. 1053, enforcing by injunction a negative covenant that lessor is not to use real estate for certain purposes; Willis Cab & Auto Co. v. Abbaye, 67 Misc. 570, 124 N. Y. Supp. 756, enjoining defendant violating contract for the exclusive privilege to maintain a carriage service station in front of defendant's premises; Colgate v. J. T. White & Co. 180 Fed. 886, enjoining the publication of complainant's biography in a set of books where the defendant contracted not to publish it in other than a set issued under the auspices of the Federal government; Perrin v. Smith, 135 App. Div. 131, 119 N. Y. Supp. 990; New York Phonograph Co. v. Davega, 127 App. Div. 231, 111 N. Y. Supp. 363,—on injunctive relief to prevent the violation of a negative covenant; Beck v. Indianapolis Light & P. Co. 36 Ind. App. 607, 76 N. E. 312, holding an injunction would lie to compel the specific performance of a contract not to use any electricity, for a period of years but petitioner's, although specific performance could not be decreed; American Electrical Works v. Varley Duplex Marget Co. 26 R. I. 297, 58 Atl. 977, 3 Ann. Cas. 975, holding injunctive relief might be had although specific performance of the contract was impossible; General Electric Co. v. Westinghouse Electric Co. 151 Fed. 675; Harlow v. Oregonian Pub. Co. 45 Or. 529, 78 Pac. 737; New Idea Pattern Co. v. Whitner, 215 Pa. 194, 64 Atl. 518; Samuel Cupples Envelope Co. v. Lackner, 99 App. Div. 235, 90 N. Y. Supp. 954,—on right to injunctive relief although specific performance is not decreeable.

Cited in footnote to Stanton v. Singleton, 47 L. R. A. 334, which denies right to specific performance of contract involving supervision of long series of acts requiring special knowledge and skill.

Cited in notes (3 L.R.A.(N.S.) 829) on specific performance of contract for performance of continuous acts; (10 L.R.A.(N.S.) 475) on injunction to prevent breach of stipulation to handle or use one's product only; (11 L.R.A.(N.S.) 203) on injunction against inducing, or assisting in continuance of, breach of contract; (68 Am. St. Rep. 755, 758) on specific performance of contract where decree cannot be enforced; (90 Am. St. Rep. 636, 638) on injunction against breach of contract; (128 Am. St. Rep. 383) on refusal of specific performance of valid contract for other reason than that property is of a particular class; (140 Am. St. Rep. 56, 63, 86) on specific performance of contract for personal services.

Distinguished in Goddard v. American Queen, 44 App. Div. 459, 61 N. Y. Supp. 133, Reversing 27 Misc. 488, 59 N. Y. Supp. 46, enforcing negative contract to refrain from publishing advertisement of rival skirt protector; Butterick Pub. Co. v. Boynton, 191 Mass. 179, 77 N. E. 705, refusing to enjoin defendants who had contracted to sell petitioner's patterns for a period of years from handling the patterns of other manufacturers.

Demurrer.

Cited in Morrell v. Ball, 45 App. Div. 585, 61 N. Y. Supp. 405, holding demurrer to petition for removal of assignee for misconduct insufficient to bring before court sufficiency of misconduct to authorize equitable proceeding; John D. Park & Sons Co. v. National Wholesale Druggists' Asso. 175 N. Y. 30, 62 L. R. A. 645, 96 Am. St. Rep. 578, 67 N. E. 136, by Martin, J., dissenting, who holds that all the allegations of the complaint, as well as all that can reasonably and fairly be implied therefrom, are admitted on demurrer; Clark v. West, 193 N. Y. 361, 86 N. E. 1, on a demurrer as admitting the truth of allegations of the complaint.

43 L. R. A. 858, PERKINS v. HEERT, 158 N. Y. 306, 70 Am. St. Rep. 483, 53 N. E. 18.

Special legislation.

Cited in Com. v. Morton, 23 Pa. Co. Ct. 388, 9 Pa. Dist. R. 133, upholding statute protecting union trade labels; Reynolds v. Plumbers' Material Protective Asso. 30 Misc. 711, 63 N. Y. Supp. 303, upholding statutes authorizing organizations of boards of trade to publish to members name of member failing to pay, or to explain nonpayment of debt from one member to another.

Cited in note (39 L.R.A.(N.S.) 1200) on law as to union labels.

Sufficiency of title.

Cited in Parker v. Elmira, C. & N. R. Co. 165 N. Y. 278, 59 N. E. 81, upholding regulation of rate of fare in statute, entitled "Act to Authorize Extension of Road."

Cited in note (79 Am. St. Rep. 466) as to when title of statute embraces only one subject, and what may be included thereunder.

43 L. R. A. 861, STATE v. MONROE, 121 N. C. 677, 61 Am. St. Rep. 686, 28 S. E. 547.

Liability of druggist for injury to stranger.

Cited in note (13 L.R.A.(N.S.) 648) on liability of druggist for injury to stranger from drug or poison sold.

43 L. R. A. 863, *Ex parte* BATTIS, 40 Tex. Crim. Rep. 112, 76 Am. St. Rep. 708, 48 S. W. 513.

Habeas corpus.

Cited in *Ex parte* Patterson, 42 Tex. Crim. Rep. 260, 51 L. R. A. 656, 58 S. W. 1011, issuing original writ from court of criminal appeals to release party arrested for violation of void ordinance suppressing bowling alleys; *Ex parte* Patterson, 42 Tex. Crim. Rep. 260, 51 L. R. A. 656, 58 S. W. 1011, holding writ of habeas corpus proper remedy as against city ordinance so unreasonable as to be void.

Validity of ordinance.

Cited in *Ex parte* Vance, 42 Tex. Crim. Rep. 623, 62 S. W. 568, holding ordinance requiring hackmen to remain on their carriages at the hackstand, but not restraining motormen from soliciting patronage, is unreasonable; Kissinger v. Hay, 52 Tex. Civ. App. 299, 133 S. W. 1005, holding that ordinance which vests in city authorities power to grant license to one public vehicle and refuse it to another is not necessarily void on ground that it is discriminatory; People v. Gilbert, 68 Misc. 52, 123 N. Y. Supp. 264, holding that ordinance providing that no person shall be licensed to occupy any portion of any street with any vehicle unless drawn by one or more horses, for purpose of selling peanuts is unreasonable and in restraint of trade.

Cited in note (31 L.R.A.(N.S.) 685) on validity of statutes or ordinances regulating horse-drawn vehicles in city streets.

L. R. A. CASES AS AUTHORITIES.

CASES IN 44 L. R. A.

44 L. R. A. 33, JAMES v. RAPIDES LUMBER CO. 50 La. Ann. 717, 23 So. 469.
Master's duty to warn servant of dangers.

Approved in Lambert v. Troy Laundry Co. 118 La. 51, 42 So. 642, holding plaintiff sufficiently warned when put to work on dangerous machine where some notice of danger given by foreman and the character of the machine itself was a warning.

Cited in Daly v. Kiel, 106 La. 173, 30 So. 254, holding master liable for insufficiently warned servant injured while working in gravel pit, by caving in of earth; Berry v. Louisiana Sawmill Co. 129 La. 694, 56 So. 639, holding that young and inexperienced servant, who has not been properly warned does not assume risks incident to employment, unless danger be known to and appreciated by him; German-American Lumber Co. v. Hannah, 60 Fla. 73, 30 L.R.A.(N.S.) 884, 53 So. 516, holding that master is liable for failure to warn inexperienced servant, if servant is not guilty of contributory negligence; Carter v. Fred W. Dubach Lumber Co. 113 La. 245, 36 So. 952, holding master liable for failure to warn servant put to work on machinery known to be peculiarly dangerous from past accidents; Gracia v. Maestri Furniture Mfg. Co. 114 La. 375, 38 So. 275, holding master liable for injury caused by placing sixteen year old boy to work on a re-saw without proper instructions as to danger; German-American Lumber Co. v. Brock, 55 Fla. 592, 46 So. 740, holding master liable for injury where he failed to warn servant of peculiar danger, although servant had observed machine in use without appreciating danger; International Paper Co. v. Robin, 93 C. C. A. 322, 167 Fed. 928 (dissenting opinion); Parker v. Crowell & S. Lumber Co. 115 La. 467, 39 So. 445,—on duty of master to warn and instruct inexperienced servant.

Cited in footnotes to Ribich v. Lake Superior Smelting Co. 48 L. R. A. 649, which holds master required to instruct employee as to nature, force, and probable effect of explosion of molten metal on contact with water; Cincinnati, N. O. & T. P. R. Co. v. Gray, 50 L. R. A. 47, which sustains railroad company's duty to instruct employees or promulgate rules as to operation of automatic switches; McLaine v. Head & D. Co. 58 L. R. A. 462, which denies master's duty to warn workman in trench before dumping in dirt; American Tobacco Co. v. Strickling, 69 L.R.A. 909, which holds that failure to guard revolving upright

shaft in passage way where inexperienced girl is required to sweep may be found to constitute negligence; Western Electric Co. v. Hanselmann, 70 L.R.A. 765, which holds master sending employee to repair switches on elevators which requires him to work inside wells in path of cars while in operation liable for injuries due to failure to use necessary means to give him timely warning of approach of cars by means other than persons in charge of such cars.

Cited in notes (48 L. R. A. 97) on right of servant to recover for injuries caused by projecting screws in shaft and other moving machinery; (48 L. R. A. 377) on duty of master as to employment of his servants; (48 L. R. A. 544) on effect of assurance of safety given by master or coservant; (46 L. R. A. 47, 75) on right of servant to recover damages from persons other than his master for injuries received in performance of duties; (47 L. R. A. 162, 165) on *volenti non fit injuria*, as defense to actions by injured servants; (8 L.R.A.(N.S.) 285) on instructing minor of insufficient capacity to comprehend dangers, as affecting master's responsibility; (19 L.R.A.(N.S.) 999) on duty to warn servant engaged in blasting of dangers therefrom; (26 L.R.A.(N.S.) 626) on delegability of master's duty to instruct or warn servants; (29 L.R.A.(N.S.) 111) on duty to warn minor servant already aware of dangers.

Annotation in 44 L. R. A. 33, referred to with approval in North Birmingham Street R. Co. v. Wright, 130 Ala. 425, 30 So. 360, holding superintendent of railroad not negligent in failing to warn engineer of location of telegraph poles, plainly visible, along track.

Distinguished in Jenkins v. Maginnis Cotton Mills, 51 La. Ann. 1018, 25 So. 643, holding master not responsible for injury to servant who voluntarily assumed a dangerous method of operating machine.

Injuries to servants obeying orders.

Cited in notes (48 L.R.A. 753) on servant's right of action for injuries received in obeying direct command; (30 L.R.A.(N.S.) 450) on same point.

Risks of employment.

Cited in Adolff v. Columbia Pretzel & Baking Co. 100 Mo. App. 208, 73 S. W. 321, holding it question for jury whether one ordered to perform a known dangerous service assumes risk thereof.

Cited in footnote to Cudahy Packing Co. v. Marcan, 54 L. R. A. 258, which holds risk of block on which minor employee works, slipping on greasy floor, assumed.

Cited in notes (1 L.R.A.(N.S.) 279) on assumption of risk by minor employee; (17 L.R.A.(N.S.) 81) on servant's assumption of risk from latent danger or defect.

Doctrine of vice principalship.

Cited in notes (51 L. R. A. 518, 550, 557) on vice principalship considered with reference to superior rank of negligent servant; (54 L. R. A. 96) on vice principalship as determined with reference to character of act which caused injury.

44 L. R. A. 90, L'HOTE v. NEW ORLEANS, 51 La. Ann. 93, 24 So. 608.

Municipal powers with reference to houses of ill fame.

Cited in footnotes to State v. Chauvet, 51 L. R. A. 630, which holds covered wagon moving from place to place a house within prohibition against houses of ill fame; Ogden v. Madison, 55 L. R. A. 506, which sustains city's power to impose penalty for keeping house of ill fame, though misdemeanor under state statute.

Cited in note (78 Am. St. Rep. 272) on ordinances as to houses of ill fame.

Injunction against criminal prosecution.

Cited in Louisiana Oyster & Fish Co. v. Assumption Parish, 126 La. 525, 52 So. 685, holding that injunction will not lie to restrain district attorney from enforcing parish ordinance making it offense to fish in lakes of parish on theory ordinance was invalid; Sennette v. St. Mary's Parish, 129 La. 732, 56 So. 653, holding that civil courts are without power to interfere by injunction with enforcement of criminal statutes; Portland Dish Co. v. Benson, 56 Or. 155, 108 Pac. 122, holding that equity will not enjoin criminal prosecutions, even under void law, where defendant may have full remedy at law, except where property rights are involved; New Orleans Baseball & Amusement Co. v. New Orleans, 118 La. 234, 7 L.R.A.(N.S.) 1017, 118 Am. St. Rep. 366, 42 So. 784, 10 Ann. Cas. 757, holding that equity may enjoin criminal proceedings under an ordinance where property rights are affected.

44 L. R. A. 92, BARRICKMAN v. MARION OIL CO. 45 W. Va. 634, 32 S. E. 327.

Liability for escape and explosion of dangerous substances.

Cited in Indiana Natural & Illuminating Gas Co. v. Long, 27 Ind. App. 227, 59 N. E. 410, holding natural gas company liable for damages caused through negligent increase in pressure of gas furnished customers; Paden v. Van Blarcom, 100 Mo. App. 197, 74 S. W. 124, holding it question for jury whether house owner was negligent in not testing valves in range before turning on gas; Triple-State Natural Gas & Oil Co. v. Wellman, 114 Ky. 85, 70 S. W. 49, 1 Ann. Cas. 64, holding gas company not liable for injury caused by explosion where through mistake of mill owner to which gas was supplied and under whose control it was, the gas was turned on before pressure reduced, causing meter to explode; Paden v. Van Blarcom, 181 Mo. 132, 79 S. W. 1195, holding that where an explosion of gas would not have occurred had house owner tested stove valves before turning on gas, a question for jury arises as to negligence as establishing liability.

Cited in footnotes to McKenna v. Bridgewater Gas Co. 47 L. R. A. 790, which denies gas company's liability for explosion due to blundering act of employee of other company; Purdy v. Westinghouse Electric & Mfg. Co. 51 L. R. A. 881, which holds use of barrels formerly containing explosive substance, for shipping iron, not render one liable for injury to employee by explosion.

Cited in note (32 L.R.A.(N.S.) 809, 817) on liability of gas company for negligence in escape or explosion.

Degree of care required to prevent accident.

Cited in McVey v. Chesapeake & O. R. Co. 46 W. Va. 115, 32 S. E. 1012, holding fact that pedestrians are accustomed to travel on railroad at particular place imposes duty of greater precaution in operation of trains there; Marshall Window Glass Co. v. Cameron Oil & Gas Co. 63 W. Va. 206, 59 S. E. 959, holding company supplying gas not an insurer and that failure to use care required by the nature of the business must be shown to hold it liable for explosion.

44 L. R. A. 101, STEWART v. NORTHERN ASSUR. CO. 45 W. Va. 734, 32 S. E. 218.

Garnishment.

Cited in Roberts v. Hickory Camp Coal & Coke Co. 58 W. Va. 282, 52 S. E. 182, holding garnishee liable for payment of amount sought to be sequestered without protest or objection where he knew that his creditor had not been served and was a nonresident of county and his property not subject to garnishment.

Cited in footnotes to Strause Bros. v. Ætna Ins. Co. 48 L. R. A. 452, which holds debt of insurance company for loss in another state, without situs where company has agent, for garnishment purposes, in third state; Hawley v. Hurd, 52 L. R. A. 195, which sustains discrimination between banks in and out of state as to attachment of negotiable paper by trustee process; Tootle v. Coleman, 57 L. R. A. 120, which holds right to garnish debtor not limited to situs of chose in action; Pennsylvania R. Co. v. Rogers, 62 L. R. A. 178, which holds nonresident summoned as garnishee while temporarily within state not subject to further proceedings unless he has property within state; National Broadway Bank v. Sampson, 66 L.R.A. 606, which holds liability of nonresident to nonresident corporation not subject to attachment within state when debtor is temporarily within jurisdiction as situs of debt is at place of residence either of debtor or of creditor.

Cited in note (67 L.R.A. 217) as to where debt garnishable.

Common-law disability of married woman.

Cited in Mynes v. Mynes, 47 W. Va. 698, 35 S. E. 935, concurring opinion by Dent, J., who holds common-law disability of husband and wife to enter into valid contracts with each other during coverture not abrogated.

Attack on foreign judgments for want of jurisdiction.

Cited in note (103 Am. St. Rep. 308) on attack on judgments of courts of other states on ground of want of jurisdiction.

44 L. R. A. 107, STEELSMITH v. GARTLAN, 45 W. Va. 27, 29 S. E. 978.

Oil and gas leases.

Cited in Eclipse Oil Co. v. South Penn Oil Co. 47 W. Va. 106, 34 S. E. 923, holding former lessee's payment of commutation money for a past term not consideration for future royalty as against lessor; Lawson v. Kirchner, 50 W. Va. 348, 40 S. E. 344, holding lease of tract of land for oil and gas purposes, contingent and conditional sale of the oil and gas in place; Foster v. Elk Fork Oil & Gas Co. 32 C. C. A. 563, 61 U. S. App. 576, 90 Fed. 181, holding lease in consideration of share of oil produced, work being abandoned after completion of dry well within stipulated time, inoperative; Huggins v. Daley, 48 L. R. A. 324, footnote p. 320, 40 C. C. A. 18, 99 Fed. 612, holding oil and gas lease forfeited by failure to bore well within time specified; Barnsdall v. Boley, 119 Fed. 200, holding oil lease not perpetuated by drilling, within stipulated time, of well producing small quantity of oil, under stipulation for continuation as long as oil or gas is produced in paying quantities; Urpman v. Lowther Oil Co. 53 W. Va. 505, 97 Am. St. Rep. 1027, 44 S. E. 433, canceling oil lease where facts showed intent on part of lessee to abandon; Haskell v. Sutton, 53 W. Va. 224, 44 S. E. 533, dissenting opinion by Dent, J., who holds that oil lessee has no property in the oil in place.

Cited in footnotes to Parish Fork Oil Co. v. Bridgewater Gas Co. 59 L. R. A. 566, which holds vested interest in oil not vested in lessees by mere drilling of well and discovery of oil; Gadbury v. Ohio & I. Consol. Natural & Illuminating Gas Co. 62 L. R. A. 895, which holds forfeiture of gas lease for breach of condition subsequent sufficiently shown to give equity jurisdiction by failure for long time, without apparent excuse, to develop the property.

Distinguished in Harness v. Eastern Oil Co. 49 W. Va. 243, 38 S. E. 662, holding lease of two contiguous tracts owned by husband and wife, proceeds payable to both lessors with royalty to joint credit, joint lease as between lessors and lessees; Parish Fork Oil Co. v. Bridgewater Gas Co. 51 W. Va. 589, 59 L. R. A. 569, 42 S. E. 655, upholding lessor's right to lease to another after lessee's

abandonment of well for eighteen months; Henne v. South Penn Oil Co. 52 W. Va. 199, 43 S. E. 147, holding lessee drilling "dry hole" and then taking away machinery entitled to reasonable time to return and continue operations under lease.

— as vesting an interest.

Cited in Phillips v. Springfield Crude Oil Co. 76 Kan. 784, 92 Pac. 1119, holding interest of lessee under a gas lease not subject to a mechanic's lease, the rights under such a lease not being a vested interest; Brookshire Oil Co. v. Casmalia Ranch Oil & Development Co. 156 Cal. 215, 103 Pac. 927, holding that an oil lease giving right to produce oil and lay pipe lines to convey same from the land does not give lessee right to object to the allowance by lessor to another company of a right to construct pipe lines across land; Richlands Oil Co. v. Morriss, 108 Va. 290, 61 S. E. 762, holding gas and oil lease giving right to explore and in consideration therefor calling for share of oil if discovered in paying quantities and if gas only is found an annual rental for each well, not to create a vested interest in the land prior to discovery, but merely contingent interest and right to explore; Cartland v. Hickman, 56 W. Va. 84, 67 L.R.A. 699, 49 S. E. 14, holding that the forfeiture of an oil lease extends only to the right to explore for gas and oil and there being no interest vested thereunder the lessee may remove fixtures; Smith v. South Penn Oil Co. 59 W. Va. 208, 53 S. E. 152, holding that in order to preserve interest under lease calling for completion of "a well" such well must be productive or compensation must be paid for non-action as provided in lease; Amons v. Toothman, 59 W. Va. 167, 115 Am. St. Rep. 908, 53 S. E. 13, holding that when an oil well ceases to give oil from a given depth it is not abandoned, but if within a reasonable time the well is deepened and gives oil it is the same well and lessee retains vested interest therein; Backer v. Penn Lubricating Co. 89 C. C. A. 419, 162 Fed. 629, holding that recovery cannot be had for interference with rights under oil lease on theory that the oil in place belonged to lessee, but holding that a right of recovery exists for violation of his exclusive rights thereunder; Harvey Coal & Coke Co. v. Dillon, 59 W. Va. 621, 6 L.R.A.(N.S.) 637, 53 S. E. 928, holding by analogy that a mining lease passes no vested interest to the body of the minerals in place but merely a chattle real or permit to mine.

— Equity jurisdiction in conflicting claims under mineral lease.

Cited in Eastern Oil Co. v. Coulehan, 65 W. Va. 536, 64 S. E. 836, on equity jurisdiction to settle questions of priority and validity of oil and gas leases where parties claim under same title.

Forfeiture of mining lease by failure to operate.

Cited in Smith v. Root, 66 W. Va. 638, 30 L.R.A.(N.S.) 181, 66 S. E. 1005, holding that oil and gas lease for ten years providing that if lessee will not complete well within three months he shall pay stipulated rent, may expire before expiration of ten years by abandonment; Mansfield Gas Co. v. Alexander, 97 Ark. 176, 133 S. W. 837, holding that oil or gas lease of lands for term of 50 years, requiring work of prospecting to begin within one year, will be deemed abandoned if no work is done for eight years; Toothman v. Courtney, 62 W. Va. 173, 58 S. E. 915, on the implied covenant in oil and gas lease under royalty that lessee shall operate the wells; Florence Oil & Ref. Co. v. Orman, 19 Colo. App. 84, 73 Pac. 628, holding failure to make diligent search for oil for a period of four years under a twenty year lease operates as a forfeiture of the lease which until discovery of oil amounted only to privilege to prospect; Mills v. Hartz, 77 Kan. 222, 94 Pac. 142, holding failure to operate under a 20 year coal and

gas lease for seven years operates as a surrender of the lease though no stipulation as to commencement of operation was made in lease, where from the nature of the lease early operation was contemplated; Jennings-Heywood Oil Syndicate v. Houssiere-Latreille Oil Co. 119 La. 844, 44 So. 481, holding failure to operate under oil lease for two years and nine months and election to pay penalty for not operating is an abandonment of lease where same company is taking thousands of barrels of oil from adjacent land which is supplied from the same body of oil; Chauvenet v. Person, 217 Pa. 474, 11 L.R.A.(N.S.) 423, 66 Atl. 855, holding mining lease forfeited by failure to operate according to intention expressed in the agreement; Sult v. A. Hochstetter Oil Co. 63 W. Va. 331, 61 S. E. 307, holding oil and gas lease surrendered by intention of parties where gas well discovered and operated for five years but oil not discovered after a few early searches and such gas well is disconnected from pipes and given up as exhausted followed by execution of new lease to another; Bay State Petroleum Co. v. Penn Lubricating Co. 121 Ky. 643, 87 S. W. 1102, holding that under a lease calling for sinking of well within specified time the sinking of a well with no find of oil and then discontinuance of operations for four years amounts to an abandonment of lease; Eastern Oil Co. v. Coulehan, 65 W. Va. 533, 64 S. E. 836, holding that lessee has vested right to operate oil or gas discovered in upper sand within time limit of lease and is not obliged to risk destroying productiveness of well in attempt to tap lower sand; Doddridge County Oil & Gas Co. v. Smith, 154 Fed. 978, holding that equity will declare a forfeiture of oil lease for nondevelopment but not so where lessor caused the cessation of operation in bad faith; Tennessee Oil, Gas & Mineral Co. v. Brown, 65 C. C. A. 524, 131 Fed. 700, holding that a grant of minerals if any were found after search, and providing the conditions for the searching and payment for the ores, was a mining lease, requiring a search as a condition precedent; Garrett v. South Penn Oil Co. 66 W. Va. 596, 66 S. E. 741, holding that in action of ejectment, in which plaintiff, to show right and title relies on oil and gas lease, surrender and abandonment thereof by him are available as defenses.

44 L. R. A. 114, SLEVIN v. POLICE PENSION FUND COMRS. 123 Cal. 130, 55 Pac. 785.

Injuries within policemen's pension act.

Cited in note (20 L.R.A.(N.S.) 1176) on nature and circumstances of injury, as affecting right to share in pension or insurance fund for policemen and firemen.

44 L. R. A. 115, NATIONAL BANK v. FURTICK, 2 Marv. (Del.) 35, 69 Am. St. Rep. 99, 42 Atl. 479.

Rights of nonresident debtors and garnishees.

Cited in Smith v. Armour, 1 Penn. (Del.) 365, 40 Atl. 720, holding that foreign attachment will not lie under statute for action sounding in tort; McKinney v. Mills, 80 Minn. 481, 81 Am. St. Rep. 278, 83 N. W. 452, directing discharge of garnishee process served on nonresident garnishee while temporarily in state, plaintiff and defendants also being nonresidents; Gilbert v. Hewetson, 79 Minn. 336, 79 Am. St. Rep. 486, 82 N. W. 655, holding that causes of action against nonresident pass to receiver of creditor appointed by court of state of creditor's residence; Strause Bros. v. Ætna F. Ins. Co. 126 N. C. 230, 48 L. R. A. 454, footnote p. 452, 35 S. E. 471, holding debt of insurance company for loss in another state, without situs where company has agent, for garnishment purposes, in third state; Boyle v. Musser-Sauntry Land, Logging & Mfg. Co. 88 Minn. 462, 97 Am. St. Rep. 538, 93 N. W. 520, holding that execution on judgment against

nonresident will not be stayed pending determination of foreign attachment suit; Baltimore & O. R. Co. v. Allen, 58 W. Va. 402, 3 L.R.A.(N.S.) 608, 112 Am. St. Rep. 975, 52 S. E. 465, holding that debt may be garnished at place of residence of debtor although it be expressly made payable elsewhere; Opdyke v. Murphy Iron Works, 10 Pa. Dist R. 70, holding that by weight of authority the situs of a debt for purpose of garnishment is the situs of the creditor.

Annotation cited in Sutton v. Heinzle, 84 Kan. 757, 34 L.R.A.(N.S.) 239, 115 Pac. 560, holding that foreign corporation may be garnished for debt owing to nonresident, incurred outside state.

Cited in footnotes to Balk v. Harris, 45 L. R. A. 257, which holds debtor garnished outside of state not protected in paying debt after returning to domicil; Tootle v. Coleman, 57 L. R. A. 120, which holds right to garnish debtor not limited to situs of chose in action; National Broadway Bank v. Sampson, 66 L.R.A. 606, which holds liability of nonresident to nonresident corporation not subject to attachment within state when debtor is temporarily within jurisdiction as situs of debt is at place of residence either of debtor or of creditor.

Cited in notes (67 L.R.A. 219) as to where debt garnishable; (3 L.R.A.(N.S.) 611) on place of payment as affecting jurisdiction to garnish debt; (69 Am. St. Rep. 122) on situs of debts for purposes of garnishment and of property in transit in hands of carriers; (85 Am. St. Rep. 925) on jurisdiction of foreign corporations in proceedings by attachment and garnishment; (94 Am. St. Rep. 553) on foreign judgments in attachment and garnishment.

44 L. R. A. 122, PEOPLE *ex rel.* ATTY. GEN. v. ALTURAS COUNTY, 6 Idaho, 418, 55 Pac. 1067.

When court will decline to examine constitutional questions.

Cited in McGinness v. Davis, 7 Idaho, 668, 65 Pac. 364, refusing to consider question of constitutionality of revenue act, record failing to show any injustice done complainant; Holmberg v. Jones, 7 Idaho, 759, 65 Pac. 563, raising, but not deciding, question whether constitutional amendment adopted by people is open to attack on ground that submission was not legally authorized by legislature.

Estoppel as applied to municipalities.

Cited in Simpson v. Stoddard County, 173 Mo. 465, holding county estopped from asserting irregularities in private sale of swamp lands after acquiescence therein for thirty years; Greenfield School Dist. v. Hannaford Special School Dist. 20 N. D. 399, 127 N. W. 499, holding that in applying doctrine of estoppel no fixed time will be taken as controlling but facts in each case must control court's decision.

Estoppel by laches and acquiescence.

Cited in Iowa v. Carr, 112 C. C. A. 477, 191 Fed. 267, holding that in controversy between rights of state and those of citizens doctrine of estoppel applies; State ex rel. Simpson v. St. Louis County, 117 Minn. 49, 134 N. W. 299, holding that acquiescence of state and counties interested, in boundary line between said counties, as located and fixed by statute, precludes inquiry into correctness of such location; State ex rel. Walker v. McLean County, 11 N. D. 367, 92 N. W. 385, denying on the grounds of estoppel, application to file information in nature of quo warranto against counties which have for some years exercised governmental powers over another county's territory by absorbing such county under an act admitted to be unconstitutional; Boise City v. Wilkinson, 16 Idaho, 175, 102 Pac. 148; McBee v. Brady, 15 Idaho, 774, 100 Pac. 97,—on estoppel by acquiescence and failure to act.

Cited in note (13 L.R.A.(N.S.) 534) on laches as estopping state to attack municipal charter.

Distinguished in McDonald v. Doust, 11 Idaho, 20, 69 L.R.A. 222, 81 Pac. 60, where no question of estoppel arose and a direct act of abolishment was sought to be enforced.

Stare decisis in statutory construction.

Cited in Walling v. Bown, 9 Idaho, 744, 76 Pac. 318, 2 Ann. Cas. 720, holding that where statutes have frequently been judicially upheld and have been relied upon as constitutional for a long time courts will not reconsider their rulings thereon where a reversal would work disaster far exceeding the benefits flowing from such action.

44 L. R. A. 124, PEOPLE *ex rel.* KASSON v. ROSE, 174 Ill. 310, 51 N. E. 246.

Construction of ordinances statutes and contracts.

Cited in People's Caslight & Coke Co. v. Hale, 94 Ill. App. 420, holding that courts will not go beyond plain and explicit words of ordinance in construing it; Loomis v. Federal Union Surety Co. 163 Ill. App. 625, holding that where language of statute is plain and unambiguous court is required to follow statute and enforce it as it is written; Case v. Sullivan, 123 Ill. App. 677, construing amendment to statute according to the plain language thereof to ascertain the intent of legislature as contained in statute as amended.

Cited in footnotes to *Re* Hogan, 45 L. R. A. 166, which holds contract guaranteeing a certain revenue per acre from crops, insurance; Holmes v. Phenix Ins. Co. 47 L. R. A. 308, which holds damage by hail accompanied by wind storm not covered by policy against wind storms.

Indemnity guaranty as insurance.

Cited in United States Fidelity & G. Co. v. First Nat. Bank, 233 Ill. 481, 84 N. E. 670, holding that a fidelity bond issued to a bank as a guaranty against loss by default of employee is an insurance contract subject to rules of construction applicable to insurance policies; State v. Willett, 171 Ind. 302, 23 L.R.A. (N.S.) 202, 86 N. E. 68; Getchell & M. Lumber & Mfg. Co. v. Peterson, 124 Iowa, 616, 100 N. W. 550,—on surety undertakings as being contracts of insurance; Van Buren County v. American Surety Co. 137 Iowa, 495, 126 Am. St. Rep. 290, 115 N. W. 24, construing surety contract by application of decisions on questions of insurance; Sullivan v. Radzuweit, 82 Neb. 660, 118 N. W. 571, holding that a company whose declared business is to guarantee the fidelity of officers and other parties in the performance of their duties and to be responsible for violation of contract and statutory duties, is an insurance company; American Bonding & T. Co. v. New Amsterdam Casualty Co. 125 Ill. App. 36, holding that under insurance principles which are applicable to bonds of indemnity to employers, such bonds are not invalid because not signed as provided by employer before they have expired by limitation; United States Fidelity & G. Co. v. Ridgley, 70 Neb. 628, 97 N. W. 836, distinguishing contracts of guaranty and insurance.

Cited in notes (33 L.R.A.(N.S.) 513) on character of, and rules governing, contracts by fidelity and guaranty companies; (100 Am. St. Rep. 775) on fidelity insurance.

Distinguished in Vredenburgh v. Physicians' Defense Co. 126 Ill. App. 512, holding that an organization which agrees to defend actions of specified kind does not conduct an insurance business where it does not agree to pay costs adjudged nor judgments rendered.

44 L. R. A. 127, RACK v. CHICAGO CITY R. CO. 173 Ill. 289, 50 N. E. 668.

Care required in running cars in streets.

Cited in Springfield Consol. R. Co. v. Puntenney, 200 Ill. 16, 65 N. E. 442, Affirming 101 Ill. App. 98, holding question to car driver whether he had used due care to prevent collision properly excluded; West Chicago Street R. Co. v. Schwartz, 93 Ill. App. 396, holding that motorman seeing seven-year-old boy approaching track has right to assume he will stop before crossing; Elwood Electric Street R. Co. v. Ross, 26 Ind. App. 262, 58 N. E. 535, holding ten-mile speed of street car along city street not of itself negligence; Chicago City R. Co. v. Fennimore, 99 Ill. App. 175, holding rate of speed, although not of itself negligent, may be considered by jury with other evidence tending to establish negligent operation of cars; Chicago Union Traction Co. v. Browdy, 206 Ill. 618, 69 N. E. 570, and Chicago City R. Co. v. Ahler, 107 Ill. App. 404, holding street car company not liable for unavoidable collision due to sudden turning of wagon in front of car; Healy v. Chicago City R. Co. 163 Ill. App. 296, holding that motorman is not bound to anticipate act of driver of vehicle in suddenly driving upon track at place other than street intersection; Wilson v. Chicago City R. Co. 133 Ill. App. 437, holding that motorman cannot reasonably be expected to anticipate that boys standing upon street watching fire would suddenly run behind car coming in opposite direction and come in collision with car he was operating; Perryman v. Chicago City R. Co. 242 Ill. 275, 89 N. E. 980, holding carrier liable where motorman ran car into child by reason of fact that he was watching a fight and failed to see that child was about to cross track until too late to stop car; North Chicago Street R. Co. v. Canfield, 118 Ill. App. 355, holding that there was no evidence to show that a speed of from seven to ten miles per hour was not reasonable and lawful at the time and place under the circumstances; Chicago City R. Co. v. Hagenback, 228 Ill. 295, 81 N. E. 1014, holding rate of speed at which car was run as shown by the evidence, not dangerous in itself.

Cited in footnote to Sample v. Consolidated Light & R. Co. 57 L. R. A. 186, which requires high degree of care from motorman to prevent injury to small children.

Cited in note (18 L.R.A.(N.S.) 371) on duty of motorman to anticipate that child may leave place of safety.

Distinguished in Chicago City R. Co. v. Tuohy, 196 Ill. 410, 58 L. R. A. 272, footnote p. 270, 63 N. E. 997, holding question for jury whether motorman kept proper lookout for child slowly approaching track.

At place other than a crossing.

Distinguished in Chicago City R. Co. v. Hackett, 136 Ill. App. 600, holding that motorman must "take precaution" to protect children reasonably expected to cross street at any place and time "even before children show an intent to cross other than at a street crossing."

Rule as to taking case from jury.

Cited in Offutt v. World's Columbian Exposition, 175 Ill. 475, 51 N. E. 651, holding "scintilla rule of evidence" not in force in Illinois; Marshall v. John Grosse Clothing Co. 184 Ill. 425, 75 Am. St. Rep. 181, 56 N. E. 807, holding that where there was no evidence tending to support any defense to action for rent, jury was properly instructed to find for plaintiff; Groszewski v. Chicago Sugar Ref. Co. 84 Ill. App. 586; Barnes v. Western Wheel Works, 84 Ill. App. 653; Gravadahl v. Chicago Ref. Co. 85 Ill. App. 345; Roberts v. Chicago & G. T. R. Co. 78 Ill. App. 530,— holding case should have been submitted to jury where there was evidence tending to prove plaintiff's case; Swift v. Zerwick, 88 Ill. App. 562; Chicago & E. I. R. Co. v. Stonecipher, 90 Ill. App. 512; Norton Bros.

v. Nadebok, 92 Ill. App. 545; North Chicago Street R. Co. v. Hoffart, 82 Ill. App. 541,— holding case properly submitted to jury, where evidence of plaintiff tended to prove defendant's negligence; Illinois C. R. Co. v. Batson, 81 Ill. App. 154, sustaining instruction to find for defendant where there was no evidence tending to show person killed by railroad train used due care to prevent accident; Cohen v. Chicago & N. W. R. Co. 104 Ill. App. 322, holding case improperly taken from jury where evidence showed omission to ring bell or blow whistle, and other omissions alleged to have been negligent; Nolan v. Morris, 108 Ill. App. 263, holding case properly taken from jury where evidence merely showed that injured person was struck by omnibus, and did not show negligence of driver; Chicago Title & T. Co. v. Standard Fashion Co. 106 Ill. App. 139, holding case properly taken from jury where stranger pried open elevator door, pulled cable, and was in some unknown manner killed by the ascending car; Finley v. West Chicago Street R. Co. 90 Ill. App. 370, holding that where evidence, with all inference justifiably to be drawn from it, is insufficient to support verdict for plaintiff, court is not bound to submit case to jury but may direct verdict; Geiger v. Geiger, 247 Ill. 631, 93 N. E. 314, holding that on motion to direct verdict question of preponderance does not arise; Woodman v. Illinois Trust & Sav. Bank, 211 Ill. 581, 71 N. E. 1099, holding that in considering motion to withdraw case from jury, the judge may not weigh the evidence but must merely determine as to the presence of evidence tending to prove fact alleged; Wolf v. Chicago Sign Printing Co. 233 Ill. 504, 84 N. E. 614, 13 Ann. Cas. 369, holding that on a motion to direct a verdict only a question of law is raised as to the legal sufficiency of the evidence; Nicholls v. Colwell, 113 Ill. App. 224, holding that in determining the propriety of giving a peremptory instruction the court is not authorized nor required to weigh the evidence or to determine where the preponderance of evidence lies; Fleming v. Tudington, 121 Ill. App. 55; Linderman Box & Veneer Co. v. Thompson, 127 Ill. App. 142; Lakin v. South Side Elev. R. Co. 148 Ill. App. 269; Ware v. Illinois C. R. Co. 119 Ill. App. 459,—holding that where a peremptory instruction is complained of, the question arises as to existence of evidence which if true with all the inferences and intendments to be drawn therefrom would have tended to support a verdict for party complaining notwithstanding modifying evidence; W. W. Kimball Co. v. Cruikshank, 123 Ill. App. 582, holding it error to take case from jury where reasonable minds might well differ as to the effect of the evidence produced without respect to the credibility of witnesses nor weight of such evidence; Packer v. Sheppard, 127 Ill. App. 599, holding same where a prima facie case is made which if uncontroverted would sustain a verdict and judgment; McLean v. Dow, 125 Ill. App. 178, holding that a motion for peremptory instruction admits all that the testimony proves as well as what it tends to prove and denies right of judge to weigh the evidence to ascertain preponderance; Von Holland v. Chicago City R. Co. 148 Ill. App. 325, holding that instruction to find for defendant should be given where the affirmative allegation of due care and caution which is essential to plaintiff's case is not proved.

Questions for jury.

Cited in Scanlan v. Chicago Union Traction Co. 127 Ill. App. 409, holding defendant entitled to an instruction on the theory of its case respecting duty of carrier as to persons on tracks between crossings where all the testimony except that of plaintiff herself goes to show that injury occurred at place other than crossing; Chicago City R. Co. v. Strong, 127 Ill. App. 474, on the same point.

44 L. R. A. 129, TUCKER v. HYATT, 151 Ind. 332, 51 N. E. 469.

Remittitur of part of verdict.

Cited in Efroymson v. Smith, 29 Ind. App. 455, 63 N. E. 328, holding instruc-

tion cured by remittitur of amount jury erroneously told to include in damages; Indianapolis Street R. Co. v. Kane, 169 Ind. 37, 80 N. E. 841, upholding power of court to require remittitur of part of damages assessed.

Cited in footnote to Central R. Co. v. Perkerson, 53 L. R. A. 210, which denies trial judge's power to order remittitur as condition of refusing new trial.

Cited in note (39 L.R.A.(N.S.) 1068) on power of trial court to cure excessive verdict by requiring or permitting reduction.

Distinguished in Nickey v. Zonker, 22 Ind. App. 218, 53 N. E. 478, holding verdict rendered on theory contrary to law not cured by remittitur of portion thereof.

Review of errors.

Cited in Pittsburgh, C. C. & St. L. R. Co. v. Hawks, 154 Ind. 549, 55 N. E. 258, holding assignments of error waived by failure to discuss same in briefs; Kelley v. Houts, 30 Ind. App. 477, 66 N. E. 408, holding right to object to judgment as defective in certain particulars not available where made for first time on appeal; Boggs v. Boggs, 45 Ind. App. 401, 90 N. E. 1040, holding that no question can be raised, on appeal, as to form of judgment for alimony, there being no motion to modify judgment.

What special verdict must contain.

Cited in note (24 L.R.A.(N.S.) 24, 33) on what special verdict must contain.

44 L. R. A. 131, FIRST NAT. BANK v. MARSHALLTOWN STATE BANK, 107 Iowa, 327, 77 N. W. 1045.

Recovery of money paid on forged paper.

Cited in Canadian Bank of Commerce v. Bingham, 30 Wash. 492, 60 L. R. A. 958, footnote p. 955, 71 Pac. 43, sustaining drawee's right to recover amount of forged check payable to fictitious person, from one cashing same on indorsement purporting to be payee's, without requiring identification; First Nat. Bank v. Bank of Cottage Grove, 59 Or. 392, 117 Pac. 293, holding that bank is bound to know signature of its depositors, and cannot recover from indorser in due course, amount of forged check; Bank of Williamson v. McDowell County Bank, 66 W. Va. 552, 36 L.R.A.(N.S.) 609, 66 S. E. 761, holding that if party take forged check payable to his order from stranger, without inquiry, and give it currency by indorsing it, drawee may recover back money; State Bank v. First Nat. Bank, 87 Neb. 355, 29 L.R.A.(N.S.) 103, 127 N. W. 344, holding that bank cashing bill is not required to communicate with drawee to learn whether bill would be accepted in order to avoid charge of negligence in accepting forged bill; Bank of Montreal v. Rex, 38 Can. S. C. 271, holding that drawee bank having made payments on checks on which the name of a customer was forged cannot recover amounts of checks from holders in due course.

Cited in footnotes to Critten v. Chemical Nat. Bank, 57 L. R. A. 530, which holds bank paying plainly altered check to clerk of drawer without asking explanation liable for loss from subsequent payment of similar checks; La Fayette v. Merchants' Bank, 68 L.R.A. 231, which sustains right of drawee paying draft on forged indorsement in ignorance of forgery on presentation bearing indorsement of collecting bank to recover back amount so paid.

Cited in notes (10 L.R.A.(N.S.) 51, 67, 73) on right of drawee to recover money paid on forged check or draft; (94 Am. St. Rep. 648) on liability of one receiving payment of check through forged indorsement.

Distinguished in Citizens' Nat. Bank v. City Nat. Bank, 111 Iowa, 215, 82 N. W. 464, holding money paid by drawee of check to an indorsee, who acquired it on a forged indorsement of payee, recoverable; Woods v. Colony Bank, 114 Ga.

685, 56 L. R. A. 931, 40 S. E. 720, holding money paid by drawee on forged signature recoverable from holder, whose negligence contributed to the fraud and tended to mislead drawee.

Recovery of money paid by mistake.

Cited in footnote to National Bank of N. J. v. Berrall, 66 L.R.A. 599 which denies right of bank to recover back as money paid by mistake amount of check paid to bona fide holder presenting check without notice that payment had been stopped.

Distinguished in Iowa State Bank v. Cereal Refund & Brokerage Co. 132 Iowa, 249, 109 N. W. 719, where money was paid inadvertently on negotiable paper not in the hands of a bona fide holder and the suit is not against such a holder.

44 L. R. A. 133, FIRST NAT. BANK v. GERMAN BANK, 107 Iowa, 543, 70 Am. St. Rep. 216, 78 N. W. 195.

Liability for negligence of notary.

Cited in footnote to Williams v. Parks, 56 L. R. A. 759, which sustains notary's liability on bond for neglecting to give notice of dishonor.

Cited in note (77 Am. St. Rep. 627) on liability of bank for negligence of notary.

Notary as agent of transmitting bank.

Cited in Plover Sav. Bank v. Moodie, 135 Iowa, 691, 110 N. W. 29, holding presentment and demand by notary, who for the time being was the agent of transmitting bank was valid.

Liability for negligence in sale of drugs.

Distinguished in Burgess v. Sims Drug Co. 114 Iowa, 277, 54 L. R. A. 365, 89 Am. St. Rep. 359, 86 N. W. 307, holding druggist firm liable for negligence of skilled and duly registered pharmacist in their employ.

Liability of bank for discharge of indorser through negligence.

Cited in footnote to Aebi v. Bank of Evansville, 68 L.R.A. 964, which holds that bank accepting check on deposit with depositor's indorsement discharges indorser from liability by failing to notify him of nonpayment for nearly a month though bank waited in hope that check sent by mail would reach destination.

44 L. R. A. 135, FIGG v. THOMPSON, 105 Ky. 509, 49 S. W. 202.

License for business of contracting for public work.

Cited in Richardson v. Mehler, 111 Ky. 430, 63 S. W. 957, holding objection to ordinance requiring bidders for public improvements to be licensed, as unconstitutional, too late after work accepted and apportionment made.

Cited in note (129 Am. St. Rep. 271) on constitutional limitations on power to impose license or occupation taxes.

44 L. R. A. 136, COUCHMAN v. COUCHMAN, 104 Ky. 680, 47 S. W. 858.

44 L. R. A. 141, BITZER v. THOMPSON, 105 Ky. 514, 49 S. W. 199.

License to purchase city obligations.

Followed in Louisville v. Simons, 133 Ky. 784, 119 S. W. 185, holding unconstitutional an ordinance requiring a license fee of a firm buying up claims against the city.

Cited in notes (88 Am. St. Rep. 319) on constitutionality of ordinance requiring license; (129 Am. St. Rep. 282) on constitutional limitations on power to impose license or occupation taxes.

44 L. R. A. 142, WIENECKE v. ARBIN, 88 Md. 182, 40 Atl. 709.

Proof of will and signature by mark.

Cited in footnotes to *Re* Thompson, 45 L. R. A. 682, which holds probate of will not prevented by witness's failure to remember facts stated in attestation clause; Finley v. Prescott, 47 L. R. A. 695, which holds good, unattested signature by mark for purpose of identifying maker as party.

44 L. R. A. 149, CONDON v. MUTUAL RESERVE FUND LIFE ASSO. 89 Md. 99, 73 Am. St. Rep. 169, 42 Atl. 944.

Interference by court with management of foreign corporations.

Cited in Stockley v. Thomas, 89 Md. 668, 43 Atl. 766, dismissing bill asking appointment of receiver of foreign insolvent corporation, where assets in state not collectible except by involving management of internal affairs of foreign corporation; Taylor v. Mutual Reserve Fund Life Asso. 97 Va. 67, 45 L. R. A. 626, footnote p. 621, 33 S. E. 375, denying right to enjoin foreign assessment company from having membership certificate declared forfeited for nonpayment of alleged illegal assessment; Howard v. Mutual Reserve Fund Life Asso. 125 N. C. 54, 45 L. R. A. 856, footnote p. 853, 34 S. E. 199, denying right to enjoin levying of assessments on resident member of foreign insurance company; Howard v. Mutual Reserve Fund L. Asso. 125 N. C. 54, 45 L. R. A. 857, 34 S. E. 199, refusing to enjoin alleged illegal assessments of foreign corporation; State ex rel. Minnesota Mut. L. Ins. Co. v. Denton, 229 Mo. 197, 138 Am. St. Rep. 417, 129 S. W. 709, holding that courts have no jurisdiction to make full examination into affairs of foreign corporation in order that it may enforce accounting between it and individual policy holders; Sprague v. Universal Voting Mach. Co. 134 Ill. App. 382, holding that local courts have no jurisdiction to decide as to whether a transfer of all the stock of a foreign corporation for the stock of another is ultra vires or not; McKean v. New York Nat. Bldg. & Loan Asso. 10 Pa. Dist. R. 198, holding that an action cannot be maintained in this state where the rights involved depend on the by-laws, rules and regulations of a foreign association and the laws of the state of its charter; Sloan v. Clarkson, 105 Md. 180, 66 Atl. 18, on the jurisdiction of local court over the internal affairs of foreign corporation.

Cited in notes (70 L.R.A. 539, 541) on right of nonresidents to sue foreign corporations; (72 Am. St. Rep. 69) as to when appointment of receiver is proper.

Distinguished in Babcock v. Farwell, 245 Ill. 33, 91 N. E. 683, where the corporation and all persons necessary to a decree are before the court and the relief sought is the requiring of resident directors to restore to corporation, on an accounting, money they unlawfully diverted, by a personal decree enforceable in the ordinary manner; Lehr v. Murphy, 136 Wis. 100, 116 N. W. 893, where the primary purpose of the action was merely to conserve corporate assets within the jurisdiction of the court for the benefit of creditors in and who may come into such jurisdiction and is not a winding up action.

Construction of foreign contracts.

Cited in McKean v. New York Nat. Bldg. & L. Asso. 24 Pa. Co. Ct. 459, holding stockholder's contract with foreign building and loan association is to be construed according to law of foreign state.

Constitution and by-laws as part of insurance contract.

Cited in Dale v. Brumbly, 96 Md. 677, 54 Atl. 655, holding assignment of benefit certificate to creditor, contrary to by-laws of society, void as to beneficiaries; Barrows v. Mutual Reserve L. Ins. Co. 81 C. C. A. 71, 151 Fed. 464, holding a complaint involving construction of insurance contract demurrable where the constitution, by-laws and regulations of the company being part of the insurance

contract are not before the court either literally in legal effect or by proper allegations of negation.

Cited in footnote to McLendon v. Sovereign Camp, W. W. 52 L. R. A. 444, which holds reasonable delay in delivering benefit certificate gives no right to recover on certificate delivered after death of insured.

44 L. R. A. 157, WATSON v. PORTLAND & C. E. R. CO. 91 Me. 584, 64 Am. St. Rep. 268, 40 Atl. 699.

Contributory negligence.

Cited in Call v. Portsmouth, K. & Y. Street R. Co. 69 N. H. 565, 45 Atl. 405, holding it question for jury whether plaintiff was negligent in accidentally stepping into open ditch in attempt to board car; Scott v. Bergen County Traction Co. 63 N. J. L. 410, 43 Atl. 1060, holding it question for jury as to what is ordinary care in case of passenger standing on platform of car preparing to alight while car is slowing down; Nieboer v. Detroit Electric R. Co. 128 Mich. 493, 87 N. W. 626 (dissenting opinion), majority holding person riding on bumper of electric car guilty of contributory negligence; Seller v. Market-Street R. Co. 139 Cal. 272, 72 Pac. 1006, holding riding upon platform of electric car not negligence, as matter of law; Huber v. Cedar Rapids & M. C. R. Co. 124 Iowa, 558, 100 N. W. 478, on riding on platform as contributory negligence; Cameron v. Lewiston, B. & B. Street R. Co. 103 Me. 492, 18 L.R.A.(N.S.) 502, 125 Am. St. Rep. 315, 70 Atl. 534, holding it not negligence per se for passenger on electric street railway to ride on running board; Kreimelmann v. Jourdan, 107 Mo. App. 72, 80 S. W. 323, holding that negligence cannot be legally inferred from use of foot board by passenger on which to ride or reseat himself when there are vacant seats in the car; Capital Traction Co. v. Brown, 29 App. D. C. 477, 12 L.R.A.(N.S.) 837, holding it not negligence per se to ride on car platform where company habitually overloads cars so that such is necessary, although danger notice is posted in car and the car at the time was not so crowded that a seat could not be found within; Brunchow v. Rhode Island Co. 26 R. I. 213, 58 Atl. 656, holding that it is not necessary for complaint to show that person injured by being thrown from platform of electric car, could not obtain a seat within; Nick v. Jersey City, H. & P. Street R. Co. 75 N. J. L. 646, 68 Atl. 158, holding that the degree of care required of street railway companies is modified to some extent by passengers riding on platform when he could obtain seat within.

Cited in footnote to Third Ave. R. Co. v. Barton, 52 L. R. A. 471, which denies right of passenger on running board of street car to recover for injuries by contact with pillar near track, while passing around conductor, also on such board.

44 L. R. A. 159, TELEGRAM NEWSPAPER CO. v. COM. 172 Mass. 294, 70 Am. St. Rep. 280, 52 N. E. 445.

Contempt by newspaper publications.

Cited in Patterson v. Colorado, 205 U. S. 463, 51 L. ed. 881, 27 Sup. Ct. Rep. 556, 10 Ann. Cas. 689, holding that a publication tending to interfere with the administration of the law by the court is as much a contempt as an interference with the jury in same manner.

Cited in footnotes to State v. Bee Pub. Co. 50 L.R.A. 195, which sustains punishment for contempt of newspaper publishing articles threatening judges with public odium if they decide pending cause in certain way; Ex parte Green, 66 L.R.A. 727, which holds criticism of manner in which trials are conducted without referring to particular case in court not punishable as contempt.

Cited in notes (19 Eng. Rul. Cas. 251) on publication in regard to pending action as a contempt; (2 Brit. Rul. Cas. 484, 490) on publication of matter derogatory to litigants as attempt to pervert or obstruct justice or as contempt.

— Criminal intent.

Cited in State v. Howell, 80 Conn. 672, 125 Am. St. Rep. 141, 69 Atl. 1057, 13 Ann. Cas. 501, holding criminal intent not essential to constitute publication of articles reflecting on the court and tending to interfere with justice a contempt, but absence of such intent may be taken in mitigation; Globe Newspaper Co. v. Com. 188 Mass. 453, 74 N. E. 682, 3 Ann. Cas. 761, holding that a wrongful publication of evidence is not justified by the fact that it was not intended to injure rights of parties, to reflect on dignity of court or interfere with justice.

Criminal contempt of court.

Cited in O'Neil v. People, 113 Ill. App. 201, holding that soliciting a bribe by juror while so acting in punishable as a contempt of court, although a statutory offense also and punishable as such.

Imputing acts to corporation.

Cited in State v. Belle Springs Creamery Co. 83 Kan. 398, — L.R.A.(N.S.) —, 111 Pac. 474, to the point that only penalty of fine can be applied to corporation for contempt of court; Fiedler v. Bambrick Bros. Constr. Co. 162 Mo. App. 541, 142 S. W. 1111, holding that statute prescribing punishment for contempts is not exclusive, and in case of corporations, punishment may be by imposition of fine; People v. Star Co. 135 App. Div. 519, 120 N. Y. Supp. 498, on the liability of corporations for offenses in which a specific intent may be an element; White v. Apsley Rubber Co. 194 Mass. 100, 8 L.R.A.(N.S.) 485, 80 N. E. 500, holding corporation liable for act of bookkeeper in abusing process to compel surrender of tenancy of corporate property under his charge.

Criminal liability of corporation.

Cited in United States v. MacAndrews & F. Co. 149 Fed. 835, upholding criminal liability of a corporation for conspiracy; People v. Rochester R. & Light Co. 195 N. Y. 106, 21 L.R.A.(N.S.) 1000, 133 Am. St. Rep. 770, 88 N. E. 22, 16 Ann. Cas. 837, on the liability of corporations for acts involving criminal intent; New York C. & H. R. R. Co. v. United States, 212 U. S. 493, 53 L. ed. 621, 29 Sup. Ct. Rep. 304, upholding subjection of corporation to criminal prosecution for the giving of rebates.

Cited in notes (4 L.R.A.(N.S.) 1004) on punishment of corporation for contempt; (133 Am. St. Rep. 778-780) on prosecution and punishment of corporation for crime; (2 Brit. Rul. Cas. 234, 241) on criminal responsibility of corporations.

Proceedings for criminal contempt.

Cited in Com. v. New York C. & H. R. R. Co. 206 Mass. 422, 92 N. E. 766, 19 Ann. Cas. 529, to the point that corporation may be proceeded against, for criminal contempt of court, upon mere motion of court against which contempt is committed; Com. v. Myers, 19 Pa. Dist. R. 1139, 59 Pittsb. L. J. 22, holding that court has power to order and district attorney to submit with its approval bill of indictment for constructive contempt, without previous information; Hughes v. Territory, 10 Ariz. 127, 6 L.R.A.(N.S.) 574, 85 Pac. 1058, holding jurisdiction of court for criminal contempt proceedings not affected by the fact that prior to order of attachment process was not had in the name of the territory; People ex rel. Atty. Gen. v. News-Times Pub. Co. 35 Colo. 390, 84 Pac. 912, holding that the absence of a verification to an information for criminal contempt is not fatal to court's jurisdiction; State ex rel. Harvey v. Newton,

16 N. D. 162, 112 N. W. 52, 14 Ann. Cas. 1035 (dissenting opinion), on issue of summons without complaint for criminal contempt by court of its own motion.

— Writ of error.

Cited in Hurley v. Com. 188 Mass. 444, 74 N. E. 677, 3 Ann. Cas. 757, holding that a judgment adjudging one guilty of criminal contempt may be reviewed on writ of error; Newton Rubber Works v. De Las Casas, 198 Mass. 157, 84 N. E. 119, holding that question raised on appeal and exceptions should be presented in case of criminal contempt by a writ of error.

44 L. R. A. 163, MAY v. CLELAND, 117 Mich. 45, 75 N. W. 129.

Validity of pledge of stock not entered on books as against executions.

Cited in note (67 L.R.A. 680) on validity of pledge or other transfer of stock when not made in books of corporation, as against attachments, executions, or subsequent transfers.

44 L. R. A. 164, PEOPLE v. DETTENTHALER, 118 Mich. 595, 75 N. W. 129.

Constitutional requirements as to enactment of laws.

Cited in People ex rel. Kent County v. Loomis, 135 Mich. 562, 98 N. W. 262, 3 Ann. Cas. 751, on constitutional provisions respecting the passage of bills and resolutions as being mandatory; Olds v. State Land Office Commissioner, 134 Mich. 446, 86 N. W. 956, upholding a joint resolution authorizing a creditor of state to select certain land in payment in absence of requirement that all joint resolutions be enacted same as bill.

Distinguished in State ex rel. Gough v. Burrow, 119 Tenn. 388, 104 S. W. 526, 14 Ann. Cas. 809, construing constitutional provision that "the style of the laws of this state shall be" as meaning that the style "must" be but holding substantial compliance sufficient.

Necessity of enacting clause.

Cited in Re Opinion to Governor, 43 Fla. 310, 31 So. 348, holding an appropriation of money by state legislature lacking an enacting clause is invalid.

Distinguished in Smith v. Jennings, 67 S. C. 331, 45 S. E. 821, holding that a joint resolution enacted by the words "Be it resolved" is a sufficient compliance with constitutional provision that all laws be enacted by the words "Be it enacted."

Conclusiveness of enrolled bill.

Cited in note (40 L.R.A.(N.S.) 30, 32) on conclusiveness of enrolled bill.

44 L. R. A. 167, BELIVEAU v. AMOSKEAG MFG. CO. 68 N. H. 225, 73 Am. St. Rep. 577, 40 Atl. 734.

Who may compromise action.

Cited in notes (21 L.R.A.(N.S.) 340) on right of parent, guardian, or next friend to compromise infant's cause of action for personal injuries; (132 Am. St. Rep. 167, 174) on implied authority of attorney to compromise or settle litigation.

Disapproved in effect in Fletcher v. Parker, 53 W. Va. 425, 97 Am. St. Rep. 991, 44 S. E. 422, holding that next friend of infant cannot compromise judgment obtained by him in name of infant.

—Necessity for court's approval.

Distinguished in Wallace v. Wallace, 74 N. H. 260, 67 Atl. 580, 13 Ann. Cas. 293, where the decree is for alimony by agreement and requires judicial sanction of the court.

44 L. R. A. 170, BUCHANAN v. TILDEN, 158 N. Y. 109, 70 Am. St. Rep. 454, 52 N. E. 724.

Contracts for benefit of third persons.

Approved in Rochester Dry Goods Co. v. Fahy, 111 App. Div. 753, 97 N. Y. Supp. 1013, holding that an agreement between stockholder and a prospective purchaser of stock in which stockholder agreed to reimburse corporation should a certain claim be enforced against it cannot be enforced by the corporation.

Cited in Bouton v. Welch, 170 N. Y. 557, 63 N. E. 539, Affirming 48 App. Div. 388, 63 N. Y. Supp. 80, holding oral agreement to assign mortgage, made between mortgagor and mortgagee for benefit of mortgagor's wife, adequate consideration having been given by mortgagor, enforceable by wife; Priester v. Hohloch, 70 App. Div. 260, 75 N. Y. Supp. 405, holding agreement in lease to pay rent to widow of lessor, in case of lessor's death before expiration of lease, not enforceable by widow; Huggins v. Lewis, 31 Misc. 293, 64 N. Y. Supp. 355, refusing to require trustee to sell portion of estate for benefit of testator's child, will giving testator's widow life use of estate and permitting her to use a portion of principal in case of need, for assisting children remaindermen; Opper v. Hirsh, 33 Misc. 561, 68 N. Y. Supp. 879, holding mother a proper party plaintiff in action by her son to enforce contract by which latter agreed to perform services for her judgment creditor in consideration for not entering judgment, although such contract not enforceable by the mother; Flagg v. Fisk, 93 App. Div. 173, 87 N. Y. Supp. 530, holding contract with surviving partner by widow of deceased partner for payment of partnership debt owed her mother, enforceable on behalf of latter; Rosseau v. Rouss, 91 App. Div. 234, 86 N. Y. Supp. 497, holding that illegitimate child may have enforced in its behalf, contract between his mother and putative father for its support; Wait v. Wilson, 86 App. Div. 487, 83 N. Y. Supp. 834, holding agreement by wife with husband to will, after his death, so much of his estate as not used by her, to her stepson, not enforceable by latter; Knights of Modern Maccabees v. Sharp, 163 Mich. 455, 33 L.R.A.(N.S.) 783, 128 N. W. 786, holding that person for whose benefit contract is made, except in case of provision for children in marriage settlement, may not enforce performance; Smyth v. New York, 203 N. Y. 113, 96 N. E. 409, holding that contractor is liable to abutting owner for negligence of subcontractor in causing injury to property in construction of subway where contractor agreed with city to pay such damages; Continental Asphalt Paving Co. v. Hudson & M. R. Co. 143 App. Div. 342, 128 N. Y. Supp. 226, holding that where, as condition for grant of franchise for underground railroad, railroad company agreed to make good to city all damages, railroad is liable for damage to one who installed watermains under contract with city; Case v. Case, 137 App. Div. 396, 121 N. Y. Supp. 746, holding that promise of son to support aged mother, made in consideration of lands from another brother who was then supporting mother from whom he had received lands in consideration of support inures to benefit of son making conveyance, and will support action by him for breach of promise; Haefelin v. McDonald, 96 App. Div. 222, 89 N. Y. Supp. 395, holding that a property owner cannot enforce covenants in contract between city and contractor, respecting liability for damage to abutters in subway construction, against the contractor; Marklove v. Utica, C. & B. R. Co. 48 Misc. 268, 96 N. Y. Supp. 795, holding that where a railroad company issued stock and guaranteed dividend thereon in favor of city and secured same by rental from a lessee and the latter company guaranteed payment of dividends at rate fixed, the city may enforce contract of guaranty by lessee though not a party to the agreement; Pond v. New Rochelle Water Co. 183 N. Y. 338, 1 L.R.A.(N.S.) 962, 76 N. E. 211, 5

Ann. Cas. 504, holding that a resident of city may enforce a water contract made between city and water company to which city had granted a franchise; Phalen v. United States Trust Co. 186 N. Y. 186, 7 L.R.A.(N.S.) 737, 78 N. E. 943, 9 Ann. Cas. 595, holding that son can maintain an action on a formal marriage agreement by which his father agrees with his father-in-law and bride that he will make equal disposition of his property among his children.

Cited in footnotes to Morgan v. Randolph-Clowes Co. 51 L. R. A. 653, which denies right of firm creditor to sue corporation assuming firm debts; Ferris v. American Brewing Co. 52 L. R. A. 305, which sustains right of action of one for whose benefit stipulation in lease was made, against sale on premises of other person's beer; Capital Traction Co. v. Offutt, 53 L. R. A. 390, which denies liability of street railway company for debts of other company whose property and franchises bought; Electric Appliance Co. v. United States Fidelity & G. Co. 53 L. R. A. 609, which denies right of action of one furnishing materials to contractor to sue on bond by latter to city, conditioned on turning over building free of claims for materials; Boston Ins. Co. v. Chicago, R. I. & P. R. Co. 59 L. R. A. 796, which denies right of action against railroad company carrying mail under contract with government, by sender of registered mail destroyed through negligence of its employees; Tweeddale v. Tweeddale, 61 L. R. A. 509, which sustains right of third person to enforce contract made for his benefit; Voorhees, M. & Co. v. Porter, 65 L.R.A. 736, which sustains right of creditors of vendor of goods to sue purchaser on agreement with vendor to pay such creditors out of the purchase money.

Cited in note (71 Am. St. Rep. 185, 205) on right of third person to sue on contract made for his benefit.

Distinguished in Borland v. Welch, 162 N. Y. 110, 56 N. E. 556, holding antenuptial settlement by wife, with provision for her collateral heirs in certain contingency, not enforceable by such collaterals so far as property acquired after termination of coverture is concerned; Glauatz v. People's Guaranty Search Co. 49 App. Div. 469, 63 N. Y. Supp. 691, holding action not maintainable on guaranty of accuracy of search made to purchaser of property by a subsequent grantee, to whom abstract of title was delivered; Sullivan v. Sullivan, 161 N. Y. 557, 56 N. E. 116, holding deposit made payable by order of depositor to herself, or in case of death to a niece, not a contract enforceable against bank by niece after depositor's death; Everdell v. Hill, 58 App. Div. 158, 68 N. Y. Supp. 719, holding contract between three persons to will their property to their survivors, the last survivor of them to will to certain nieces, not enforceable by latter.

44 L. R. A. 177, NORTH CHICAGO STREET R. CO. v. ACKLEY, 171 Ill. 100, 49 N. E. 222.

Appeal from judgment pro confesso.

Cited in Monarch Brewing Co. v. Wolford, 179 Ill. 255, 53 N. E. 583, upholding right of defendant where default and decree *pro confesso* have been entered, to contest sufficiency of bill itself on appeal.

Real party in interest.

Cited in Chicago, B. & Q. R. Co. v. Murowski, 78 Ill. App. 662, holding objection that real plaintiff had no interest in cause of action, raised for first time in reply brief, waived; Chicago General R. Co. v. Capek, 82 Ill. App. 170, holding judgment awarding damages for personal injuries to person injured, for use of assignee, erroneous; West Chicago Street R. Co. v. Lundahl, 82 Ill. App. 556, holding words "for use of" assignee, surplusage, in action for personal injuries brought in name of injured person.

Distinguished in Williams v. West Chicago Street R. Co. 199 Ill. 61, 64 N. E. 1024, upholding validity of assignment of judgment for personal injuries, signed and acknowledged before judgment was entered.

Contracts against public policy.

Followed without comment in Geer v. Frank, 79 Ill. App. 195.

Cited in Cameron v. Boeger, 200 Ill. 92, 93 Am. St. Rep. 165, 65 N. E. 690, denying right of attorney, in absence of contract, to lien on judgment for fees; London Guarantee & Acci. Co. v. Horn, 101 Ill. App. 363, holding agreement between insurer against accidents to employees, and assured, which would deprive latter of right to settle without consent of former, void; Davis v. Webber, 66 Ark. 197, 45 L. R. A. 199, 74 Am. St. Rep. 81, 49 S. W. 822, holding stipulation in contract with attorney for services, depriving client of right to settle suit without consent of attorney, void; Ritchie v. Krueger, 102 Ill. App. 654, upholding lien for fees and right of client to dismiss suit when he will; Maires's Disbarment, 189 Pa. 108, 41 Atl. 938, Affirming 21 Pa. Co. Ct. 77, holding agreement by attorney to conduct suit for client for half of amount recovered, after deducting expenses, champertous; Potter v. Ajax Min. Co. 19 Utah, 436, 57 Pac. 270 (dissenting opinion), majority denying right of client having agreement with attorney to conduct suit for contingent fee, to settle action in fraud of attorney's rights; Rose v. Fretz, 109 Fed. 812, upholding right of defendant to settle suit with complainant for infringement of patent, although he had knowledge that complainant's attorney was to receive half of proceeds for services; Davis v. Chase, 159 Ind. 244, 95 Am. St. Rep. 294, 64 N. E. 88, holding contract by which attorney agrees to prosecute suit for percentage fee, and client agrees not to settle without attorney's consent, void; Brush v. Carbondale, 229 Ill. 154, 82 N. E. 252, 11 Ann. Cas. 121, holding that an agreement by which plaintiff was to be allowed to prosecute a case to final settlement is unenforceable since the law favors settlements and the contract took away the right of defendant to settle; Davy v. Fidelity & C. Ins. Co. 78 Ohio St. 267, 17 L.R.A.(N.S.) 447, 125 Am. St. Rep. 694, 85 N. E. 504; Jackson v. Stearns, 48 Or. 28, 5 L.R.A.(N.S.) 392, 84 Pac. 798; Kansas City Elev. R. Co. v. Service, 77 Kan. 318, 14 L.R.A. (N.S.) 1106, 94 Pac. 262,—holding void a contract between attorney and client by which client agrees not to settle case without consent of attorney; Re Snyder, 190 N. Y. 74, 14 L.R.A.(N.S.) 1105, 123 Am. St. Rep. 533, 82 N. E. 742, 13 Ann. Cas. 441, holding that attorney cannot recover on a quantum meruit for services rendered where client settled case against stipulation in agreement, on the theory that the stipulation was valid and that a breach of contract occurred; Paulson v. Lyson, 12 N. D. 357, 97 N. W. 533, 1 Ann. Cas. 245, holding that court cannot refuse to make a settlement of case without cost on demand of the parties simply because defendant has agreed with his attorney of record not to settle or discontinue; Papineau v. White, 117 Ill. App. 53, holding contract between attorney and client void if it takes from client freedom of the right to settle and that therefore evidence tending to prove restriction of freedom can be elicited on cross-examination; Re Maires, 43 W. N. C. 316, 41 Atl. 988, Affirming 7 Pa. Dist. R. 302, 4 Lack. Leg. News, 148, on the validity of agreements between attorney and client by which client surrenders his right to make a settlement of case without assent of attorney.

Cited in footnote to Tompkins v. Nashville, C. & St. L. R. Co. 61 L. R. A. 340, which sustains plaintiff's right to dismiss suit, notwithstanding lien of attorney.

Cited in notes (14 L.R.A.(N.S.) 1101) on validity of provision, in contract for contingent fee, forbidding client to settle without attorney's consent; (83 Am. St. Rep. 181, 182) on contracts between attorneys and clients; (93 Am.

St. Rep. 173, 175) on extent to which litigant may control cause in which he has appeared by attorney; (117 Am. St. Rep. 524) on contracts, consideration for which has partly failed, or is partly illegal.

Distinguished in Granat v. Kruse, 114 Ill. App. 490, where contract was separable into a void and a valid part.

Disapproved in Corson v. Lewis, 77 Neb. 453, 114 N. W. 281, holding that where a pending personal injury action is dismissed on settlement after notice to defendant of attorney's lien, payment will not operate to defeat attorney's rights.

When bill sufficient to support decree.

Cited in Winnetka v. Chicago & M. Electric R. Co. 107 Ill. App. 122, holding allegation in bill that trestle work was authorized by ordinance, broad enough to sustain injunction against interference with it, granted on ground of acquiescence by village in the construction, although ordinance void.

Assignability of cause of action.

Cited in Cameron v. Illinois Steel Co. 162 Ill. App. 466, holding that cause of action to recover damages for injury to person is not assignable.

Cited in note (27 L.R.A.(N.S.) 406) on effect of statute declaring cause of action for death survivable, to render it assignable.

44 L. R. A. 193, DANEHOWER v. DAWSON, 65 Ark. 129, 46 S. W. 131.

Right of purchaser at foreclosure to possession during redemption period.

Followed in Vaughan v. Walton, 66 Ark. 573, 52 S. W. 437, holding purchaser at foreclosure sale entitled to possession during period allowed for redemption.

Cited in Longino v. Ball-Warren Commission Co. 84 Ark. 527, 106 S. W. 682, on the right of possession of mortgaged premises after sale and during period of redemption.

Mortgage deed as instrument of title.

Cited in Perry County Bank v. Rankin, 73 Ark. 592, 84 S. W. 725, on mortgage deed passing legal title to mortgagee, subject to redemption but denying that assignment of debt carries the title.

Right to redeem land.

Cited in Pulaski County v. Hill, 97 Ark. 455, 134 S. W. 973, holding that recovery of possession in ejectment by tax purchaser will not preclude defendant from thereafter suing to redeem land from tax sale.

44 L. R. A. 197, STATE *ex rel.* SOUTHEY v. LASHAR, 71 Conn. 540, 42 Atl. 636.

44 L. R. A. 202, OWENSBORO v. COM. 105 Ky. 344, 49 S. W. 320.

Public property exempt from taxation.

Cited in Smith v. Sewerage Comrs. 146 Ky. 565, 38 L.R.A.(N.S.) 156, 143 S. W. 3, to the point that property held in trust by board of park commissioners for use of public is not subject to taxation.

Cited in footnote to Gate City Guards v. Atlanta, 54 L. R. A. 806, which denies exemption, as public property, to armory owned by volunteer military force.

Cited in notes (132 Am. St. Rep. 324) on exemption from taxation or assessment of lands owned by governmental bodies, or in which they have an interest; (22 Eng. Rul. Cas. 448) on exemption of public property from taxation.

Franchise tax as to municipal corporations.

Cited in Newport v. Com. 106 Ky. 441, 45 L. R. A. 520, 50 S. W. 845, holding municipal corporation owning waterworks plant, subject to franchise tax.

What constitutes a public purpose.

Cited in Lexington v. Kentucky Chautauqua Assembly, 114 Ky. 786, 71 S. W. 943, holding the acquisition of park property an authorized city purpose for benefit of public; Park Comrs. v. Prinz, 127 Ky. 466, 105 S. W. 948, holding park commissioners not liable for negligence of park employee, the park system being maintained for a public purpose; Schwalk v. Louisville (Columbia Finance & T. Co. v. Louisville) 135 Ky. 575, 25 L.R.A.(N.S.) 93, 122 S. W. 860, holding same with respect to liability of city for negligence of city hall employee; Ryan v. Louisville, 133 Ky. 718, 118 S. W. 992, holding city water works system public property and as such exempt from taxation; Com. v. Covington, 128 Ky. 40, 14 L.R.A.(N.S.) 1215, 107 S. W. 231, holding same though water rents are paid by consumers; Com. ex rel. Albritton v. Lebanon Waterworks (Com. ex rel. Albritton v. Rubel) 130 Ky. 65, 20 L.R.A.(N.S.) 225, 112 S. W. 1128, holding that a sinking fund created to liquidate an indebtedness incurred by purchase of waterworks and invested in interest-bearing stocks and bonds is for a public purpose and not taxable; Com. v. Louisville, 133 Ky. 850, 119 S. W. 161, holding city wharf property to be public property exempt from taxation.

44 L. R. A. 205, MILHOLLAND v. WHALEN, 89 Md. 212, 43 Atl. 43.

Trusts and gifts.

Approved in Littig v. Mt. Calvary Protestant Episcopal Church, 101 Md. 495, 61 Atl. 635, holding that the placing of money in bank with entry "Mt. Calvary church subject to order of Kate Lettig trustee" is a declaration of trust.

Cited in Snader v. Slingluff, 95 Md. 366, 52 Atl. 510, holding trust established by written declaration of trustee as to its terms at about date of delivery of property to him, and letters of settler showing intention to create such trust; De Grange v. De Grange, 96 Md. 615, 54 Atl. 663, holding promissory note delivered to payee as gift not enforceable against maker's estate; Mulfinger v. Mulfinger, 114 Md. 467, 79 Atl. 1089, holding that where money is deposited in savings bank in trust for depositor and another, subject to right of either to draw, balance at death of either to belong to survivor, upon death of depositor balance belongs to other party; Candee v. Connecticut Sav. Bank, 81 Conn. 375, 22 L.R.A.(N.S.) 570, 71 Atl. 551, holding that an order prepared and accepted by bank and signed by depositor to pay entire amount on deposit to holder of order constitutes a good delivery as a gift though not accompanied with pass book; Clark v. Callahan, 105 Md. 615, 10 L.R.A.(N.S.) 621, 66 Atl. 618, 12 Ann. Cas. 162, holding that a trust is created in favor of plaintiff where another is made beneficiary of an insurance policy with directions that the proceeds are to be shared with plaintiff.

Cited in footnote to Whalen v. Milholland, 44 L. R. A. 208, which holds valid gift not made by deposit in savings bank in name of donor and donee as joint owners, payable to order of either or survivor, where donor retains pass book.

Cited in notes (1 L.R.A.(N.S.) 791) on bank deposit for other person as gift or transfer of title; (10 L.R.A.(N.S.) 617) on necessity of beneficiary's knowledge of trust; (12 L.R.A.(N.S.) 549) on sufficiency of declaration to establish voluntary trust where title retained by settlor; (105 Am. St. Rep. 742) on deposits in trust for another.

44 L. R. A. 208, WHALEN v. MILHOLLAND, 89 Md. 199, 43 Atl. 45.

Trusts and gifts.

Cited in Denigan v. San Francisco Sav. Union, 127 Cal. 150, 78 Am. St. Rep. 35, 59 Pac. 390, and Denigan v. Hibernia Sav. & L. Soc. 127 Cal. 141, 59 Pac. 389,

holding gift not established by placing of bank account of separate property of wife in alternative names of husband and wife, latter retaining right to withdraw whole fund; Main's Appeal, 73 Conn. 642, 48 Atl. 965, holding invalid as gift, deposit in name of owner of money and daughters, intended to operate to transfer title of fund in bank to daughters after death of donor; *Re* Bauernschmidt, 97 Md. 59, 54 Atl. 637, holding rental of safe deposit box in joint names of husband and wife, husband delivering one key to wife and keeping one himself, not gift of securities contained in box; Gerting v. Wells, 103 Md. 641, 64 Atl. 433 (dissenting opinion), on requisites of declaration of gift inter vivos; Jones v. Crisp, 109 Md. 35, 71 Atl. 515, holding a deposit placed in name of depositor payable to a third person in case of death of depositor does not constitute gift inter vivos even though pass book is given to third person; State Bank v. Johnson, 151 Mich. 544, 115 N. W. 464, holding that the delivery of a certificate of deposit by owner indorsed with instructions to make out new certificate to donee and himself "or survivor of them" constitutes a good gift inter vivos as to donee's interest and to the whole as causa mortis in case of donor's death; Industrial Trust Co. v. Scanlon, 26 R. I. 230, 58 Atl. 786, 3 Ann. Cas. 863, holding that where money was redeposited in name of original depositor and his brother and brother was afterward given deposit book and told that he could draw the money in whole or part, the brother became joint owner and entitled to whole on death of depositor.

Cited in footnotes to Milholland v. Whalen, 44 L. R. A. 205, which holds valid trust created by deposit in savings bank in trust for owner and another, payable to order of either, with balance to survivor; Murphy v. Bordwell, 52 L. R. A. 849, which holds gift of bank deposit consummated by power of attorney to donee, giving right to draw in donor's name; Lord v. New York L. Ins. Co. 56 L. R. A. 597, which sustains gift of policy found among papers of insured at his death, on proof of his declarations that it was donee's.

Cited in notes (12 L.R.A.(N.S.) 355) on deposit in joint names as gift to codepositor; (99 Am. St. Rep. 903, 905, 915) on gifts causa mortis; (105 Am. St. Rep. 739) on joint deposits; (105 Am. St. Rep. 753, 754) on duty of savings bank as to repayment of deposit where it is claimed as gift.

Ownership by the entirety.

Distinguished in Brewer v. Bowersox, 92 Md. 570, 48 Atl. 1060, holding that certificate of deposit acknowledged to have been received from husband or wife, interest payable "to them or their order," creates ownership by the entirety.

Character of savings bank book.

Cited in note (105 Am. St. Rep. 743, 744) on character of savings bank book.

Revocation of agency by death.

Cited in Renehan v. McAvoy, 116 Md. 365, 38 L.R.A.(N.S.) 949, 81 Atl. 586, holding that where person in whose custody deed is placed by grantor, to be put upon record after his decease, is agent of grantor, upon death of latter agency is revoked and cannot be executed.

44 L. R. A. 213, TRENTON PASS. R. CO. v. GUARANTORS' LIABILITY INDEMNITY CO. 60 N. J. L. 246, 37 Atl. 609.

Validity of contracts of indemnity.

Cited in Kansas City, M. & B. R. Co. v. Southern R. News Co. 151 Mo. 386, 45 L. R. A. 385, 74 Am. St. Rep. 545, 52 S. W. 205, upholding contract in which news company, for valid consideration, agreed to indemnify carrier for loss sustained by injury to news company's agents through carrier's negligence; Illinois C. R. Co. v. J. L. Fulton Co. 108 Ill. App. 239, upholding contract between railroad

company and contractor performing work for it, relieving former from liability for injury to contractor's employees; Lexington v. Ætna Indemnity Co. 155 N. C. 228, 71 S. E. 214, holding that it is not against public policy to indemnify city against loss sustained by negligent act of one who contracts with it to improve streets; Breeden v. Frankford M. Acci. & Plate Glass Ins. Co. 220 Mo. 429, 119 S. W. 576, holding that an insurance contract of indemnity against insured's own negligence is not against public policy; Breeden v. Frankford M. Acci. & Plate Glass Ins. Co. 220 Mo. 347, 119 S. W. 576, on validity of contract to indemnify common carrier against losses as affected by reference to losses caused by negligence of itself or servants.

Construction of contracts.

Cited in footnotes to Holmes v. Phenix Ins. Co. 47 L. R. A. 308, which holds damage by hail accompanied by wind storm not covered by policy against wind storms; *Re* Hogan, 45 L. R. A. 166, which holds contract guaranteeing a certain revenue per acre from crops, insurance; People *ex rel.* Kasson v. Rose, 44 L. R. A. 124, which holds guaranteeing fidelity of officers and performance of contracts, insurance.

Cited in note (1 L.R.A.(N.S.) 675) on risks of negligence assumed by contract with carrier as including gross negligence.

44 L. R. A. 216, LAIDLAW v. SAGE, 158 N. Y. 73, 52 N. E. 679.

Evidence insufficient to support finding or verdict.

Cited in Jefferson County Nat. Bank v. Townley, 159 N. Y. 496, 54 N. E. 74, holding finding that assignment was made to evade statute not supported by mere scintilla of evidence on the question; Shotwell v. Dixon, 163 N. Y. 53, 57 N. E. 178, holding mere conjecture or surmise that creditor knew of contemplated general assignment of debtor not sufficient to justify finding that such knowledge existed; Lopez v. Campbell, 163 N. Y. 348, 57 N. E. 501, holding evidence which might justify court in suspecting that corporation suffered judgments against it for purpose of granting illegal preference, insufficient to warrant setting such judgments aside; Cassidy v. Uhlmann, 170 N. Y. 534, 63 N. E. 554, dissenting opinion by Martin, J., who holds evidence in case as to fraud of bank director in permitting receipt of deposits after insolvency, merely conjectural; Weidinger v. Third Ave. R. Co. 40 App. Div. 199, 57 N. Y. Supp. 851, holding it error to submit question to jury as to fracture of plaintiff's leg, where there was no evidence upon the point; Albring v. New York C. & H. R. R. Co. 46 App. Div. 465, 61 N. Y. Supp. 763, holding evidence that brakeman's head might have passed through opening in defective telltales not sufficient to render carrier liable for killing of brakeman by being struck by overhead bridge; Connor v. Metropolitan Street R. Co. 48 App. Div. 584, 63 N. Y. Supp. 509, denying liability of street railroad company for injury due to running away of horse struck and frightened by flying piece of snow which driver testified came from direction of defendant's street sweeper; Grockie v. Hirshfield, 50 App. Div. 91, 63 N. Y. Supp. 365, holding direction of verdict in favor of defendant not warranted, where evidence did not so preponderate in his favor that court would have been justified in setting aside verdict for plaintiff; McAllister v. Ferguson, 50 App. Div. 530, 64 N. Y. Supp. 197, holding question whether there was any evidence of permanent injury in negligence action improperly submitted to jury; Craig v. Laflin & R. Powder Co. 55 App. Div. 54, 67 N. Y. Supp. 74, denying right of recovery where plaintiff's intestate was killed as result of two explosions, second being the one on which negligence was based, and evidence being conjectural as to which caused death; Casper v. Dry Dock, E. B. & B. R. Co. 56 App. Div. 375, 67

N. Y. Supp. 805, holding mere presumption of negligence arising from fact that pedestrian caught foot in loose rail rebutted by evidence of due diligence in spiking same upon discovery by inspector; Nelson v. Masonic Mut. Life Asso. 57 App. Div. 217, 68 N. Y. Supp. 290, holding evidence that insured's clothes were found in bathing house and that he had asked two friends to go swimming with him insufficient to go to jury upon theory of drowning; Maimone v. Dry Dock, E. B. & B. R. Co. 58 App. Div. 387, 68 N. Y. Supp. 1073, holding testimony of physician that plaintiff's condition might be result of constitutional ailment, or might be result of injury complained of, too speculative to afford basis of award by jury; McConnell v. New York C. & H. R. R. Co. 63 App. Div. 548, 71 N. Y. Supp. 616, holding verdict for plaintiff, where intestate was killed by being struck by piece of coal falling from passing locomotive tender, not supported by evidence of one witness that coal was piled 3 feet above edges of tender; Marshall v. Buffalo, 63 App. Div. 606, 71 N. Y. Supp. 719, holding disputed questions of fact must be submitted to jury, although verdict for plaintiff would not be permitted to stand; Walters v. Syracuse Rapid Transit R. Co. 64 App. Div. 155, 71 N. Y. Supp. 853, holding uncorroborated evidence of plaintiff that he received shock from live wire while riding rubber-tired bicycle on dry asphalt pavement insufficient to support verdict where defendant's testimony showed that wire was dead, and that rubber and dry asphalt were nonconductors; Hoyt v. Metropolitan Street R. Co. 73 App. Div. 256, 76 N. Y. Supp. 832 (dissenting opinion), majority holding evidence that plaintiff suffered fracture of skull, destruction of ear, paralysis on one side, deafness, loss of eyesight, memory, sexual power, and was rendered mildly insane, sufficient to warrant damages for permanent injury, although receiving same wages after as before accident; Johnson v. New York C. & H. R. R. Co. 173 N. Y. 83, 65 N. E. 946, reversing verdict in favor of trespasser claiming to have been injured by being kicked off train, where there was no evidence that he was thus assaulted by any of carrier's servants; Gray v. Metropolitan Street R. Co. 39 App. Div. 542, 57 N. Y. Supp. 587 (dissenting opinion), majority holding evidence sufficient to warrant jury in finding that plaintiff was injured by being crowded off platform of car by act of conductor in attempting to board same; Monahan v. Eidlitz, 59 App. Div. 229, 69 N. Y. Supp. 335 (dissenting opinion), as to insufficiency of mere scintilla of proof to sustain claim of party upon whom burden of proof rests; Taylor v. Commercial Bank, 174 N. Y. 192, 62 L. R. A. 788, 95 Am. St. Rep. 564, 66 N. E. 726, holding mere conjecture that false representation was made with fraudulent purpose, not sufficient to support finding to that effect; Carter v. Nunda, 55 App. Div. 507, 66 N. Y. Supp. 1059, holding mere evidence that one is still suffering from shock of fall insufficient to support recovery on basis of permanent injury; White v. Lewiston & Y. Frontier R. Co. 94 App. Div. 7, 87 N. Y. Supp. 901, holding verdict for personal injuries not supported by evidence that carrier employed incompetent motorman, who intrusted power to another, whose negligence caused accident; Scherer v. Schlaberg, 18 N. D. 428, 24 L.R.A.(N.S.) 524, 122 N. W. 1000, holding that when nature of evidence, in action for damages, is such that no verdict for plaintiff can be returned except based upon mere conjecture, it is proper to direct verdict for defendant; Cooper v. Brooklyn Trust Co. 109 App. Div. 217, 96 N. Y. Supp. 56, holding that where evidence of plaintiff is just as consistent with a voluntary promise to reward a faithful servant as with an agreement to pay for services rendered plaintiff cannot recover on the former theory; Scherer v. Schlaberg, 18 N. D. 428, 24 L.R.A.(N.S.) 524, 122 N. W. 1000, directing verdict for defendant who by mistake prepared a poisonous prescription for dangerously ill child which afterwards died, the cause of death being

ascertainable only by conjecture; Nelson v. New York, 101 App. Div. 20, 91 N. Y. Supp. 763, holding uncontradicted evidence of dangerous chemical quality of water used in boiler advanced on theory as to cause of explosion sufficient to sustain verdict of cause though several other causes could have been responsible.

Cited in note (18 Eng. Rul. Cas. 711) on sufficiency of evidence of negligence.

Distinguished in Ivey v. Brooklyn Heights R. Co. 63 App. Div. 315, 71 N. Y. Supp. 633, upholding refusal of court to recall jury and charge them that there was no question of permanent injury in case, where there was evidence that plaintiff's disabilities would continue for some time to come.

Dismissal of complaint by court.

Cited in Peggo v. Dinan, 72 App. Div. 437, 76 N. Y. Supp. 565 (dissenting opinion), majority denying power of court at close of defendant's evidence to dismiss complaint "upon the merits."

Master's duty to furnish safe machinery.

Cited in Whitney v. Queen City Ice Co. 49 App. Div. 493, 63 N. Y. Supp. 535, sustaining judgment for plaintiff hurt by slipping between slats of ice conveyor, which could not be stopped in time because of defective clutch.

Sympathy.

Approved in Crenshaw v. Asheville & B. Street R. & Transp. Co. 144 N. C. 327, 56 S. E. 945, holding that sympathy for the person injured should not be allowed to enter into consideration of case by judge or jury.

Damages.

Distinguished in Crichfield v. Julia, 77 C. C. A. 297, 147 Fed. 73, where plaintiff seeks to recover value of preferred stock having no market value from the fact that none had ever been issued.

Proximate cause.

Followed in Gray v. Weir, 113 App. Div. 481, 99 N. Y. Supp. 252, holding that where one negligently falls down and is then run into and injured, he cannot recover unless with reasonable certainty he would have sustained same injuries had he not been negligent.

Cited in Schoepflin v. Coffey, 162 N. Y. 18, 56 N. E. 502, holding speaking of slanderous words in presence of newspaper reporters not proximate cause of damage resulting from subsequent publication of same; Seifter v. Brooklyn Heights R. Co. 169 N. Y. 258, 62 N. E. 349, holding fractured bone not proximate cause of death four months later from septic pneumonia, there being no proof of septic condition at point of fracture after bone had united; Rider v. Syracuse Rapid Transit R. Co. 171 N. Y. 161, 58 L. R. A. 133, 63 N. E. 836, dissenting opinion by Vann, J., who holds failure to stop car after striking wagon, proximate cause of resulting injury; Hutchinson v. Charles F. Parker & Co. 39 App. Div. 138, 57 N. Y. Supp. 168, denying right of injured servant to recover from master for injury from explosion of dynamite proximately caused by negligence of coemployee; Marks v. Rochester R. Co. 41 App. Div. 76, 58 N. Y. Supp. 210, holding act of conductor in attempting to drive boys from platform of car not proximate cause of injury to another boy, on platform by conductor's invitation, who was pushed off platform by boys seeking to escape conductor; Rusk v. Manhattan R. Co. 46 App. Div. 104, 61 N. Y. Supp. 384, holding depression in platform covered with ice not proximate cause of injury to person who slipped thereon and fell; Thomson v. Seaman, 67 App. Div. 63, 73 N. Y. Supp. 488, holding instruction that if defendants' witnesses were believed, verdict must be for defendant, erroneous where evidence presented questions whether contributory negligence proximate cause of injury; Hoey v. Metropolitan Street R. Co. 70 App.

Div. 63, 74 N. Y. Supp. 1113, holding death from acute pulmonary tuberculosis not proximately caused by injuries due to collision; Koch v. Fox, 71 App. Div. 295, 75 N. Y. Supp. 913, holding failure to erect covering over sidewalk by owner of property not proximate cause of injury caused by negligence of employee of contractor in letting brick fall; Koch v. Zimmermann, 85 App. Div. 375, 83 N. Y. Supp. 339, holding blow on head from brick not proximate cause of death three months later from pneumonia, due to wetting received by jumping into river; Lersner v. McDonald, 38 Misc. 735, 78 N. Y. Supp. 1125, holding blast breaking water main is proximate cause of damages caused by water flowing from broken pipe; Southern P. Co. v. Yeargin, 48 C. C. A. 506, 109 Fed. 445, holding question whether proximate cause of collision was failure of engineer to understand despatch, or failure to equip tender with proper light, for jury; Leeds v. New York Teleph. Co. 178 N. Y. 121, 70 N. E. 219, Reversing 79 App. Div. 124, 80 N. Y. Supp. 114 (former appeal in 64 App. Div. 489, 72 N. Y. Supp. 250, Which Affirmed 32 Misc. 672, 66 N. Y. Supp. 457), holding injury due to falling bricks proximately caused by derrick striking wire, which pulled down chimney; Suse v. Metropolitan Street R. Co. 80 App. Div. 28, 80 N. Y. Supp. 513, condemning instruction that negligence on the part of defendant's motorman might render it liable for plaintiff's injury, even though such negligence did not contribute to the accident which caused the injury; Roedecker v. Metropolitan Street R. Co. 87 App. Div. 229, 84 N. Y. Supp. 300, holding fall of street car horse not proximate cause of kicking of passenger by it while trying to get up; Murphy v. New York, 89 App. Div. 98, 85 N. Y. Supp. 445, holding break in gas main not proximate cause of death of one suffocated by gas while entering manhole to rescue workman overcome while looking for the leak; Wheeler v. Norton, 92 App. Div. 373, 86 N. Y. Supp. 1095, holding breaking of pipe by blasting, proximate cause of injury from resulting escape of water; Berman v. Schultz, 40 Misc. 213, 81 N. Y. Supp. 647, holding owner of electric delivery wagon not liable for injuries resulting from collision proximately caused by starting of wagon by boys, while chauffeur was away; Cole v. German Sav. & L. Soc. 63 L. R. A. 423, 59 C. C. A. 601, 124 Fed. 121, holding opening of door to elevator well by strange boy, proximate cause of injury to one stepping through and falling into shaft; Hartman v. Berlin & J. Envelope Co. 71 Misc. 36, 127 N. Y. Supp. 187, holding that proximate cause of injury to employee caused by revolving fly-wheel belt, against which he was thrown by slipping while attempting to lift a barrel, was unguarded condition of belt, and not his slipping or fall of barrel; Penny v. Atlantic Coast Line R. Co. 153 N. C. 302, 32 L.R.A.(N.S.) 1212, 69 S. E. 238, holding that railroad company was not liable to passenger for injury caused by shooting with pistol borrowed from baggage master as loaning of pistol was not proximate cause; Troutman v. P. R. Co. 59 Pittsb. L. J. 126, holding that when damages claimed are occasioned by one of two causes for one only of which defendant is responsible, plaintiff must fail if his evidence does not show that damage was produced by cause for which defendant is responsible; McVay v. Brooklyn Q. C. & Suburban R. Co. 113 App. Div. 726, 99 N. Y. Supp. 266, holding the act of third person in pushing passenger, standing on steps of over-crowded car, to the ground to be the proximate cause of resulting injury and not the over-crowding of car; Dulfer v. Brooklyn Heights R. Co. 115 App. Div. 671, 101 N. Y. Supp. 207, holding the act of motorman, a fellow servant, suddenly shooting car ahead into shop dragging conductor into repair pit to be proximate cause of injury; Ship v. Fridenberg, 132 App. Div. 784, 117 N. Y. Supp. 599, holding father not liable where he knew the existence of a loaded revolver which his son took from drawer and wounded plaintiff the knowledge having nothing

to do with act of son; Stafford v. Canavan Bros. Co. 135 App. Div. 891, 120 N. Y. Supp. 314, holding that the leaving a tree trunk near an excavation was not the proximate cause of injury caused by act of employee knocking it into excavation onto fellow employee; Vaccarini v. New York, 54 Misc. 605, 104 N. Y. Supp. 928, holding slipping of horse on pavement causing it to get its hoof wedged into a sewer opening in edge of sidewalk, to be proximate cause of injury therefrom and not the presence of the opening; Mella v. Northern S. S. Co. 162 Fed. 505, holding that death of person negligently injured where chloroform is unnecessarily administered to treat the injury and patient dies of heart paralysis, is not the proximate result of the injury; Sallie v. New York City R. Co. 110 App. Div. 667, 97 N. Y. Supp. 491, holding negligent injury the proximate cause of death when deceased before accident was in good health and thereafter plurisy set in at place of injury, followed by tuberculosis and death within nine weeks; Horning v. Hudson River Teleph. Co. 111 App. Div. 130, 97 N. Y. Supp. 625, holding failure to protect against contact of wires to be proximate cause of injury though contact was caused by burning of a building to which the fallen wires were attached; The Wilkesbarre, 151 Fed. 502, holding the absence of lookout the proximate cause of collision of vessels although had the steersman not fainted no collision would have occurred; Evansville Hoop & Stave Co. v. Bailey, 43 Ind. App. 157, 84 N. E. 549, defining proximate cause; Cleveland v. Cromwell, 128 App. Div. 241, 112 N. Y. Supp. 643; Perrin v. Smith, 135 App. Div. 330, 119 N. Y. Supp. 990 (dissenting opinion); Conroy v. Acken, 110 App. Div. 51, 96 N. Y. Supp. 530 (dissenting opinion),—on proximity of cause.

Cited in notes (45 L.R.A. 91) on rule of proximate cause in case of malicious torts; (18 Eng. Rul. Cas. 712) on burden of showing proximate cause of injury.

Liability for acts done under pressing danger.

Cited in Filippone v. Reisenburger, 135 App. Div. 709, 119 N. Y. Supp. 632, holding defendant not liable for injury caused to plaintiff where defendant in the act of falling into an excavation caught hold of plaintiff throwing him down.

Cited in note (37 L.R.A.(N.S.) 64) on care required in sudden emergency.

Objection to evidence available on appeal.

Cited in Jarvis v. Metropolitan Street R. Co. 65 App. Div. 492, 72 N. Y. Supp. 829, holding objection to evidence offered to perfect hypothetical question must be made before, and renewed after, to be available on appeal.

Extent of cross-examination of defendant.

Cited in National Supply Co. v. Jebb, 142 App. Div. 260, 127 N. Y. Supp. 52, holding that in action for goods sold and delivered it is error to allow plaintiff to cross-examine defendant as to independent transactions, by showing that he defended action on note, etc.

44 L. R. A. 227, UNION INS. CO. v. CENTRAL TRUST CO. 157 N. Y. 633, 52 N. E. 671.

Revocation of arbitration agreement.

Cited in Magoun v. Magoun, 84 App. Div. 234, 82 N. Y. Supp. 820, holding code remedy for recovery of damages for revocation of arbitration agreement not exclusive.

Joint or several liability.

Distinguished in Walter v. Rafalsky, 113 App. Div. 225, 98 N. Y. Supp. 915, where an agreement that one of the parties of the first part should purchase

certain stocks of party of the second part and that thereby certain obligations of other parties of the first part should be cancelled was held to be a joint obligation.

44 L. R. A. 236, KERSHAW v. LADD, 34 Or. 375, 56 Pac. 402.

Sending of commercial paper by collecting bank directly to drawee bank.

Cited in Citizens' Bank v. First Nat. Bank, 135 Iowa, 609, 13 L.R.A.(N.S.) 308, 113 N. W. 481, holding the mailing of check for collection direct to drawee bank does not release indorser where payment refused for lack of funds and no prejudice results from such presentment; R. H. Herron Co. v. Mawby, 5 Cal. App. 43, 89 Pac. 872, holding that the sending of check directly to drawee bank by collecting bank in absence of custom or usage and where another competent collection agent could be had is negligence and releases indorsers and maker for nonpresentment.

Cited in footnotes to Minneapolis Sash & Door Co. v. Metropolitan Bank, 44 L. R. A. 504, which denies bank's right to send check for collection directly to drawee, notwithstanding custom; Givan v. Bank of Alexandria, 47 L. R. A. 270, which holds sending check directly to drawee bank for collection, negligence; First Nat. Bank v. Citizens' Sav. Bank, 48 L. R. A. 583, which holds collecting bank impliedly instructed to send certificate of deposit directly to bank making it, which is only bank in place; Second Nat. Bank v. Merchants' Nat. Bank, 55 L. R. A. 273, which holds bank negligent in sending note for collection to bank whose cashier is treasurer of corporation maker, without hearing from similar note previously sent.

Cited in notes (2 L.R.A.(N.S.) 196) on validity of custom to send paper to drawee for collection; (77 Am. St. Rep. 624, 625; 18 L.R.A.(N.S.) 443) on sending check directly to drawee bank.

Disapproved in Winchester Mill. Co. v. Bank of Winchester, 120 Tenn. 239, 18 L.R.A.(N.S.) 447, 111 S. W. 248, holding it negligence to send paper for collection directly to drawee bank even though there is no other bank at the place of collection and that transmitting bank is liable in damages.

Papers deposited for collection as gratuitous bailment.

Distinguished in Sherwood v. Home Sav. Bank, 131 Iowa, 535, 109 N. W. 9, where note and mortgage deposited for safe keeping and collection of interest thereon merely incidental and of inconsiderable value to bank.

Effect of transfer, without indorsement, of worthless check.

Cited in note (10 L.R.A.(N.S.) 535, 536) on effect of transfer, without indorsement, of worthless check, or note of third person.

44 L. R. A. 242, KEYES v. KONKEL, 119 Mich. 550, 75 Am. St. Rep. 423, 78 N. W. 649.

Rights as to disposal and burial of dead body.

Cited in Louisville & N. R. Co. v. Hull, 113 Ky. 569, 57 L. R. A. 773, 68 S. W. 433, holding that mental suffering may be considered as element of damages in action against carrier for breach of contract to transport corpse; Koerber v. Patek, 123 Wis. 457, 68 L.R.A. 958, 102 N. W. 40, discussing at length the doctrine of property rights in dead bodies and sustaining action for interference with right of burial.

Cited in footnotes to Enos v. Snyder, 53 L. R. A. 221, which holds next of kin entitled to decedent's body for burial, as against disposition by will; Wright v. Hollywood Cemetery Corp. 52 L. R. A. 621, which sustains right of grandmother

of orphan child living with her, to determine place of burial; Thompson v. State, 51 L. R. A. 883, which holds attempt to make unauthorized sale of dead body of human being a misdemeanor; Doxtator v. Chicago & W. M. R. Co. 45 L. R. A. 535, which denies employer's liability for cremation, according to custom of hospital, of fragments amputated in unsuccessful attempt to save employee's life.

44 L. R. A. 243, YELLOWSTONE NAT. BANK v. GAGNON, 19 Mont. 402, 61 Am. St. Rep. 520, 48 Pac. 762.

Report of later appeal in 25 Mont. 270, 64 Pac. 664.

Bona fide holder for value.

Cited in Lewis v. Lindley, 19 Mont. 441, 48 Pac. 765, holding burden upon wife purchasing real estate from her husband to show bona fides and lack of notice of equitable lien; Commercial Bank v. Toklas, 21 Wash. 40, 56 Pac. 927, holding bank bona fide holder of note given in payment of prior note and wrongfully pledged by payee, at least to extent of indebtedness secured.

44 L. R. A. 252, WILKES COUNTY v. CALL, 123 N. C. 308, 31 S. E. 481.

Estoppel by recitals in bonds.

Cited in Uncas Nat. Bank v. Superior, 115 Wis. 351, 91 N. W. 1004, holding city not estopped by recitals in bonds from defense of utter lack of power to issue same.

Cited in footnotes to Independent School District v. Rew, 55 L. R. A. 364, which holds municipal corporation estopped to deny truth of recitals in bonds held by innocent purchaser; Huron v. Second Ward Sav. Bank, 49 L. R. A. 534, which holds city estopped by recitals in bonds as to purpose of issuance.

County aid to railroads.

Cited in Graves v. Moore County, 135 N. C. 54, 47 S. E. 134, holding power given to counties by Code to subscribe stock to aid in completion of railroad not to include power to subscribe for purpose of "construction" and equipment of railroad; Henderson County v. Travelers' Ins. Co. 63 C. C. A. 474, 128 Fed. 824, holding bonds in aid of railroad, valid under prior decisions of state courts, not invalidated by later decisions reversing former rulings.

Formalities required in passage of legislative bills.

Followed in Wilkes County v. Coler, 180 U. S. 515, 45 L. ed. 649, 21 Sup. Ct. Rep. 458, Same case in Circuit Court of Appeals in 51 C. C. A. 400, 113 Fed. 726; Stanly County v. Coler, 37 C. C. A. 490, 96 Fed. 290, holding that Federal court must follow decisions of state courts as to whether provisions of state Constitution respecting passage of statute are mandatory.

Cited in Smathers v. Madison County, 125 N. C. 486, 34 S. E. 554, and Debnam v. Chitty, 131 N. C. 678, 43 S. E. 3, holding provision of Constitution as to recording of yeas and nays, mandatory; Glenn v. Wray, 126 N. C. 732, 36 S. E. 167, holding act not invalid because immaterial amendment was inserted on third reading, where constitutional requirement as to recording of yea and nay vote had been complied with; New Hanover County v. De Rosset, 129 N. C. 280, 40 S. E. 43, holding judgment sustaining validity of bonds purported to have been authorized by legislative act, erroneous, record merely showing number of yeas and nays; Rodman-Heath Cotton Mills v. Waxhaw, 130 N. C. 294, 41 S. E. 488, holding town charter not passed in constitutional manner confers no power of taxation.

Correctness of legislative journals.

Cited in footnote to State *ex rel.* Brickman v. Wilson, 45 L. R. A. 772, which

denies right of clerk of House of Representatives to expunge false entries from journal after delivery to Secretary of State.

Conclusiveness of enrolled bill.

Cited in note (40 L.R.A.(N.S.) 8, 11, 21) on conclusiveness of enrolled bill.

Nullity of unauthorized municipal indebtedness.

Cited in Burgin v. Smith, 151 N. C. 570, 66 S. E. 607, holding notes issued for county improvement beyond the statutory limit for that purpose are invalid though improvement accepted and county benefited thereby.

44 L. R. A. 261, HALE v. CAIRNS, 8 N. D. 145, 73 Am. St. Rep. 746, 77 N. W. 1010.

Credits to be allowed borrowing members of insolvent loan association.

Cited in Clarke v. Olson, 9 N. D. 366, 83 N. W. 519, holding that in action by receiver of insolvent building and loan association to foreclose mortgage, monthly dues should be deducted from amount agreed to be paid; Hale v. Gullick, 13 S. D. 645, 84 N. W. 196, holding that in winding up building association, where there is no finding of insolvency, stockholder should be permitted to offset amount paid as dues on stock against balance due on loan; Hale v. Phillips, 68 Ark. 389, 59 S. W. 35, holding that borrowing member of insolvent building and loan association should be credited with interest and premiums, but not with dues; Hale v. Kline, 113 Iowa, 527, 85 N. W. 814; Phelps v. American Sav. & L. Asso. 121 Mich. 355, 80 N. W. 120, denying right of stockholder of insolvent savings and loan association to offset amount paid as dues on unmatured stock against balance due on loan; Reddick v. United States Bldg. & L. Asso. 106 Ky. 112, 49 S. W. 1075, denying right of borrowing member of insolvent building and loan association to be credited with value of stock, unless such value is shown with reasonable certainty; Coltrane v. Baltimore Bldg. & L. Asso. 110 Fed. 305, holding borrowing member of insolvent building and loan association entitled to be credited with all premiums paid, and interest; People's Bldg. & L. Asso. v. McPhillamy, 81 Miss. 84, 59 L. R. A. 746, footnote p. 743, 95 Am. St. Rep. 693, 32 So. 1001, requiring stock payments of borrowing member to share losses and expenses of winding up loan association; Georgia State Bldg. & L. Asso. v. Shannon, 80 Miss. 643, 31 So. 900, holding question whether foreign loan is usurious to be determined by law of state where mortgaged land situated and debt to be paid; Anselme v. American Sav. & L. Asso. 63 Neb. 529, 88 N. W. 665, holding borrowing member of insolvent building association to be credited with payments of interest, or premiums and interest thereon, but not with dues; Taylor v. Clark, 74 Ark. 222, 85 S. W. 231, holding borrowing member of insolvent loan association entitled to have instalment stock payments credited on the amount due but not entitled to credit on premium payments made; Scaife v. Scammon Invest. & Sav. Asso. 71 Kan. 408, 80 Pac. 957, holding borrowing member of insolvent loan association not entitled to have amounts paid in "dues" credited on his indebtedness to association.

Cited in footnote to Ottensoser v. Scott, 66 L.R.A. 346, which holds borrowing members of insolvent loan association entitled to be credited only for such pro rata amount of full face or book value of stock as actual conditions may warrant based on net assets in receiver's hands.

44 L. R. A. 264, SILBERMAN v. HEY, 59 Ohio St. 582, 53 N. E. 258.

Constitutional requirement as to uniformity of general laws.

Cited in Watkins v. Schlecter, 7 Ohio N. P. 44, holding act relating to jurisdiction of justices of peace, not of uniform application unconstitutional;

State v. Spellmire, 67 Ohio St. 82, 65 N. E. 619, declaring act creating special school district unconstitutional; Re Roberg & Co. 18 Ohio C. C. 370, 10 Ohio C. D. 109, holding act governing jurisdiction and appeal in insolvency cases unconstitutional, where applicable to certain counties only; Slatmyer v. Springborn, 5 Ohio C. C. N. S. 93, 26 Ohio C. C. 104, holding that subject matter of law governs question whether it is of a general nature.

Distinguished in State v. Madigan, 8 Ohio C. C. N. S. 555, 28 Ohio C. C. 675, holding valid act giving counties power to extend time of payment of taxes though applicable only to a certain class of counties; Cincinnati, M. & L. Traction Co. v. Felix, 5 Ohio C. C. N. S. 271, 25 Ohio C. C. 394, holding valid statute governing costs in jury trials.

44 L. R. A. 266, STATE v. RENICK, 33 Or. 584, 72 Am. St. Rep. 758, 56 Pac. 275.

Obtaining money by false representations as to marriage.

Cited in footnote to Leffler v. State, 45 L. R. A. 424, which holds obtaining money on false representation by man that he is unmarried, indictable false pretense.

Corroborative proof of false pretense.

Cited in State v. Germain, 54 Or. 401, 103 Pac. 521, holding that where false pretense is in writing parol evidence of conversation had between the parties at the time is admissible in corroboration.

44 L. R. A. 269, CHESTER TRACTION CO. v. PHILADELPHIA, W. & B. R. CO. 188 Pa. 105, 41 Atl. 449.

Followed on similar state of facts in Union R. Co. v. Philadelphia, W. & B. R. Co. 188 Pa. 115, 41 Atl. 1119.

Grade crossings.

Cited in Pittsburg & L. E. R. Co. v. Lawrence County, 198 Pa. 7, 47 Atl. 955, enjoining construction of county bridge where plan of construction would necessitate grade crossings of railroad tracks; Baltimore & O. R. Co. v. Butler Pass. R. Co. 207 Pa. 417, 56 Atl. 959, refusing to permit grade crossing of street railway over steam railway tracks on busy street and at point where many trains pass daily; Lancaster, P. & M. R. Co. v. Reading & C. R. Co. 24 Lanc. L. Rev. 182, holding that excessive cost of overhead crossing compared to income of railroad company will not be held to justify grade crossing; Delaware, L. & W. R. Co. v. Danville & B. Street R. Co. 221 Pa. 151, 70 Atl. 578, holding that an act proving that if in the judgment of the court grade crossings can in reasonable practice be avoided they must be avoided in effect prohibits grade crossings unless avoiding is unpractical and unless such crossing is an imperative necessity; Allen Street R. Co. v. Lehigh & N. E. R. Co. 11 North. Co. Rep. 189, 17 Pa. Dist. R. 814, holding that under statute grade crossing should be avoided, the court not taking into consideration cost of elevation, public sentiment, unsightliness, nor that damages have to be paid private owners as result thereof.

44 L. R. A. 272, POST PRINTING & PUB. CO. v. INSURANCE CO. OF N. A. 189 Pa. 300, 42 Atl. 192.

44 L. R. A. 273, ADAMS v. UNION R. CO. 21 R. I. 134, 42 Atl. 515.

Ejection from street car for refusal to pay fare.

Cited in footnotes to Nashville Street R. Co. v. Griffin, 49 L. R. A. 451, which denies authority to eject passenger who, after paying fare inside station, enters

car which has stopped just outside station; Kiley v. Chicago City R. Co. 52 L. R. A. 626, which denies recovery for injuries in resisting ejection from street car by one having incorrect transfer given him by former conductor; Southern R. Co. v. Wood, 55 L. R. A. 536, which holds carrier liable for ejection of passenger whose round-trip ticket unstamped from inability to find agent.

Moot case.

Cited in State v. First Catholic Church, 88 Neb. 7, 128 N. W. 657, holding that fact that suit is friendly one, would not of necessity render suit moot case; Ex parte Steele, 162 Fed. 702, as defining moot case; Munger's Laundry Co. v. Rankin, 8 Cal. App. 449, 97 Pac. 95, holding that where an appeal is taken from judgment respecting right of person to work for six months after certain period, after such six months are up, the question arising is abstract and a moot case results; State ex rel. Jackson v. Dolley, 82 Kan. 537, 108 Pac. 846, holding that an action brought about is not fictitious because based on refusal of state official to perform a duty under a statute where such refusal is merely to test validity of statute and refusing officer believes it valid but wishes a judicial determination; Carlson v. Helena, 38 Mont. 589, 101 Pac. 163, refusing to dismiss appeal brought to test validity of bond issue where not done in collusion with other party though counsel of both parties co-operated in making complaint.

Cited in note (12 L.R.A.(N.S.) 498) on motive of plaintiff as affecting right to recover statutory penalty from carrier.

Distinguished in Thomas v. Van Zandt, 56 Wash. 602, 106 Pac. 141, where the rights involved are real and the office in dispute is unexpired and the contenders therefor are living and the cause is still pending and undetermined.

Availability of promise made to another.

Cited in Waterhouse v. Waterhouse, 29 R. I. 489, 22 L.R.A.(N.S.) 642, 72 Atl. 642, holding that plaintiff can recover one half of proceeds of insurance on promise of beneficiary made to insured that he would pay such part to plaintiff wherefore insured forbore to have policy changed as to beneficiaries.

Distinguished in Smith v. Union Ins. Co. 25 R. I. 268, 105 Am. St. Rep. 882, 55 Atl. 715, holding that mortgagee may sue in his own name where insurance is maintained by mortgagor and in the contract of insurance promise to pay is made directly to mortgagee.

Meaning of "rate of fare."

Cited in Philadelphia v. Philadelphia Rapid Transit Co. 228 Pa. 332, 77 Atl. 501, 21 Ann. Cas. 87 (dissenting opinion), on meaning of "rate of fare" as used in statute regulating railroad fares.

44 L. R. A. 277, ANDERSON v. YOUNG, 54 S. C. 388, 32 S. E. 448.

Right to custody and services of minors.

Cited in State v. Rhody, 67 S. C. 288, 45 S. E. 205, holding that a father may, by contract, transfer his rights to minor child's service; Ex parte Tillman, 84 S. C. 562, 26 L.R.A.(N.S.) 786, 66 S. E. 1049, holding statute giving father right of disposal of custody of children against mother's and children's wishes without right to a judicial investigation is invalid; Ex parte Reynolds, 73 S. C. 303, 114 Am. St. Rep. 86, 53 S. E. 490, 6 Ann. Cas. 936, holding father entitled to regain custody of children where he having failed to provide for them for some time has reformed and is in a fit financial and moral condition to properly provide for them.

Cited in footnotes to Hibbette v. Bains, 51 L. R. A. 839, which sustains father's right to custody of child, notwithstanding assent to wife's deathbed contract to give custody to her relatives; Stapleton v. Poynter, 53 L. R. A. 784, which

upholds taking of custody of child against its will from wealthy grandparent and giving to parent of moral habits; State *ex rel.* Lasserre v. Michel, 54 L. R. A. 927, which denies father's absolute right to custody of minor child; Fletcher v. Hickman, 55 L. R. A. 896, which holds father bound by agreement intrusting custody of infant child to another; Jones v. Bowman, 67 L.R.A. 860, which holds that religious belief will not in absence of statutory requirement be considered in determining the proper custodian of an infant.

Cited in note (88 Am. St. Rep. 870) on contracts for transfer of parental custody and responsibility.

— Discretion of court.

Cited in Brown v. Robertson, 76 S. C. 153, 9 L.R.A.(N.S.) 1175, 56 S. E. 786, holding it to be within discretion of court as to whether it will remove an infant from charge of a person alleged to be immoral on petition of stranger prompted by humanity.

44 L. R. A. 279, TEXAS LOAN AGENCY v. FLEMING, 92 Tex. 458, 49 S. W. 1039.

Followed on subsequent appeal in 24 Tex. Civ. App. 203, 58 S. W. 971.

Liability of landlord for defective condition of leased premises.

Cited in footnotes to Towne v. Thompson, 46 L. R. A. 748, which denies boarding-house lessee's liability to tenant's boarders for illness from unsanitary condition of premises; Smith v. State, 51 L. R. A. 772, which denies landlord's liability for injury to subtenant's child from defective balustrade on porch; Brady v. Klein, 62 L. R. A. 909, which denies right of action by licensee of tenant on landlord's covenant to repair, for injury due to defective condition of premises; Langenbaugh v. Anderson, 62 L. R. A. 948, which denies liability of lessor of lot for production of oil or gas therefrom, for injury to adjoining owner's property through escape of oil by lessee's negligence.

Cited in notes (17 L.R.A.(N.S.) 1163) on liability of owner for injury to tenant's guests or employees by defect in premises; (92 Am. St. Rep. 519) on liability to third persons of lessors of real or personal property.

Insufficient evidence to take case to jury.

Cited in Texas & P. R. Co. v. Ball, 96 Tex. 625, 75 S. W. 4, holding mere scintilla of evidence not sufficient to take case to jury on question whether engineer saw trespasser on track in time to have avoided hitting him; Cobb v. Bryan, 37 Tex. Civ. App. 341, 83 S. W. 887, holding that evidence which merely raises a surmise or suspicion as to fact that grantee in deed was misnamed will not support a verdict; Magerstadt v. Lambert, 39 Tex. Civ. App. 473, 87 S. W. 1068, holding it the duty of court to peremptorily instruct for plaintiff where undisputed evidence shows beyond a doubt that plaintiff was in continuous adverse possession for over ten years and that when in such actual possession he was dispossessed by defendant.

Repairs by landlord as acceptance of tenant's surrender.

Cited in note (35 L.R.A.(N.S.) 1134) on caring for and repair of premises by landlord as acceptance of surrender.

44 L. R. A. 285, CROCO v. OREGON SHORT-LINE R. CO. 18 Utah, 311, 54 Pac. 985.

Jurisdiction of supreme court on appeal.

Cited in Kennedy v. Oregon Short-Line R. Co. 18 Utah, 329, 54 Pac. 988, holding court without jurisdiction to consider alleged error in amount of verdict for causing death of plaintiff's husband; Burt v. Utah Light & P. Co. 26 Utah,

161, 72 Pac. 497, holding that supreme court cannot review facts in case at law, except so far as may be necessary to determine questions of law; Oregon Short Line R. Co. v. Russell, 27 Utah, 461, 76 Pac. 345, on power of court to set aside verdict for excessiveness on appeal: Hoggan v. Cahoon, 31 Utah, 175, 87 Pac. 164, holding that a verdict rendered after a hearing of conflicting evidence cannot be set aside as not justified by the evidence where there is some evidence on which a verdict might rest.

Damages provable under general allegations of complaint.

Cited in North Point Consol. Irrig. Co. v. Utah & S. L. Canal Co. 23 Utah, 200, 63 Pac. 812, holding plaintiff entitled, under general allegation of damage, to recover all damages which are natural and proximate result of act complained of; Youngblood v. South Carolina & G. R. Co. 60 S. C. 15, 85 Am. St. Rep. 824, 38 S. E. 232, holding direct effects of injury charged to have been caused by defendant's negligence provable without being specially alleged; Denver & R. G. R. Co. v. Roller, 49 L. R. A. 90, 41 C. C. A. 42, 100 Fed. 758, holding aggravation of plaintiff's injuries due to fright, the proximate effect of collision, provable under general allegation as to bodily injury; Nichols v. Oregon Short Line R. Co. 28 Utah, 328, 78 Pac. 866, holding evidence of impairment of memory admissible under allegation that plaintiff "was sorely bruised and wounded" and "has otherwise become sick, sore and disabled physically, mentally, internally and permanently."

Distinguished in Pugmire v. Oregon Short Line R. Co. 33 Utah, 41, 13 L.R.A. (N.S.) 571, 126 Am. St. Rep. 805, 92 Pac. 762, 14 Ann. Cas. 384, where all the allegations of injury were specific furnishing no notice to opposite party of injury sought to be proved.

Explained in McKinney v. Carson, 35 Utah, 189, 99 Pac. 660, holding that expenditures to care for lambs and their death cannot be proved under a special allegation of damage caused by lambs being inferior in quality because born at an unseasonable time.

Champerty; contingent fee contracts of attorneys.

Cited in *Re* Evans, 22 Utah, 380, 53 L. R. A. 958, 83 Am. St. Rep. 794, 62 Pac. 913, and Nelson v. Evans, 21 Utah, 205, 60 Pac. 557, holding contract by which attorney agrees to pay expenses of litigation in consideration of payment of half of amount recovered, champertous; Potter v. Ajax Min. Co. 22 Utah, 293, 61 Pac. 999, upholding right of attorney, agreeing to prosecute plaintiff's case for half of recovery, to prosecute same, after compromise by plaintiff without attorney's consent; Potter v. Ajax Min. Co. 19 Utah, 436, 57 Pac. 270, holding that satisfaction and dismissal of action in fraud of attorney for plaintiff, whose compensation is contingent upon recovery, may be set aside by court; Prosky v. Clark, 32 Nev. 446, 35 L.R.A.(N.S.) 517, 109 Pac. 793, holding that rule rendering contracts void for champerty cannot be invoked except between parties to agreement; Smits v. Hogan, 35 Wash. 294, 77 Pac. 390, 1 Ann. Cas. 297, holding legal a contract whereby attorney agrees to pay costs and prosecute an action for a percentage of the recovery.

Cited in footnotes to Geer v. Frank, 45 L. R. A. 110, which holds champertous, agreement by attorney to pay costs and expenses of litigation; Davis v. Webber, 45 L. R. A. 196, which sustains agreement to give statutory penalty on sheriff's bond as attorney's compensation; Newman v. Freitas, 50 L. R. A. 548, which holds void, contract to pay attorney one third of all amounts recovered in divorce suit; Irwin v. Curie, 58 L. R. A. 830, which sustains right of person placing demands in attorney's hands to recover agreed compensation, though statute forbids such agreements; Dorr v. Camden, 65 L.R.A. 348, which holds

that contract for contingent fee must, in order to be sustained, be shown to have been entered into by the client after full knowledge of the facts and circumstances justifying such contract.

Cited in notes (35 L.R.A.(N.S.) 513) on right of third persons to take advantage of champerty; (83 Am. St. Rep. 163, 164, 169, 170, 174, 175) on contracts between attorneys and clients.

44 L. R. A. 289, HARMAN v. NORFOLK & W. R. CO. 91 Va. 601, 50 Am. St. Rep. 855, 22 S. E. 490.

Duty of carrier to provide facilities for transporting stock.

Cited in Chesapeake & O. R. Co. v. American Exch. Bank, 92 Va. 500, 44 L. R. A. 454, 1 S. E. 935, holding carrier liable for failure to provide owner with proper facilities for loading, unloading, feeding, and watering stock; Flint v. Boston & M. R. Co. 73 N. H. 145, 59 Atl. 938, holding railroad liable for injuries to live stock where they escaped from defective cattle yards.

Cited in footnotes to Illinois C. R. Co. v. Harris, 48 L. R. A. 175, which holds carrier liable for communication of Texas fever by infected cars to cattle transported.

Cited in note (63 Am. St. Rep. 552, 558) on respective duties of carriers and shippers of live stock.

Distinguished in Moore v. Baltimore & O. R. Co. 103 Va. 194, 48 S. E. 887, holding a railroad is entitled to a reasonable time to furnish cars for shipment of poultry.

Liability for injury to stock.

Cited in Bemhorn v. Griswold, 59 L.R.A. 551, which denies liability of owner of unfenced land for death of trespassing animals by drinking poisonous liquids used in his business.

Cited in note (130 Am. St. Rep. 446, 450, 454) on carrier's liability for loss of, or injury to live stock.

Contracts to limit liability.

Cited in footnotes to Tecumseh Mills v. Louisville & N. R. Co. 49 L. R. A. 558, which holds prohibition against carriers' limiting liability inapplicable to contract by domestic corporation in other state for transportation entirely outside of state; Central R. Co. v. Murphey, 53 L. R. A. 720, which holds negligent carrier liable for true value, notwithstanding arbitrary preadjustment in bill of lading assented to by shipper; Ullman v. Chicago & N. W. R. Co. 56 L. R. A. 246, which sustains carrier's right to secure entire exemption from liability as insurer for loss not due to negligence or misfeasance; Mears v. New York, N. H. & H. R. Co. 56 L. R. A. 884, which authorizes carrier to stipulate for exemption from liability for wet; Rosenthal v. Weir, 57 L. R. A. 527, which holds failure to comply with agreement for stoppage *in transitu* not within contract limiting liability to specified amount; Parker v. Atlantic Coast Line R. Co. 63 L. R. A. 827, which holds requirement that perishable freight must be carried at owner's risk, void where no other terms offered by carrier; Bosley v. Baltimore & O. R. Co. 66 L.R.A. 871, which denies right of carrier of live stock to exempt itself from liability for loss by delay in transportation occasioned by its negligence or misfeasance by contract providing that shippers shall accept as full compensation in case of unusual detention amount actually expended in purchase of food and water while so detained.

Cited in notes (36 L.R.A.(N.S.) 415) on validity of provision in carrier's contract imposing responsibility of inspecting cars upon shipper; (88 Am. St. Rep. 97, 105) on limitation of carrier's liability in bills of lading.

Incidents of railway service.

Cited in Norfolk & P. Belt Line R. Co. v. Com. 103 Va. 297, 49 S. E. 39, holding by analogy that the furnishing of car-weighing facilities by a railroad transfer company is an incident of the public service and subject to state regulation.

Statutes regulating duties of carriers of live stock.

Cited in footnote to Atchison, T. & S. F. R. Co. v. Campbell, 48 L. R. A. 251, which holds void, statute for free transportation of shippers of stock.

Liability of connecting carrier for loss beyond line.

Cited in notes (19 L.R.A.(N.S.) 1013) on liability of goods carried for loss on connecting line due to its own negligence; (31 L.R.A.(N.S.) 80, 84) on liability of connecting carrier for loss beyond own line; (106 Am. St. Rep. 610) on liability of initial carrier for torts or negligence of connecting lines.

44 L. R. A. 297, SOUTHERN R. CO. v. FRANKLIN & P. R. CO. 96 Va. 693, 32 S. E. 485.

Contracts enforceable in equity.

Cited in Pacific States Sav. Loan & Bldg. Co. v. Green, 59 C. C. A. 170, 123 Fed. 46, holding contract between loan association and borrowing member, in absence of fraud, misrepresentation, deceit, mistake, or undue influence, enforceable in equity; Hubbard City v. Bounds, — Tex. Civ. App. —, 95 S. W. 69, holding specific performance proper to enforce contract to supply water for fire protection since no adequate remedy exists at law; Bounds v. Hubbard City, 47 Tex. Civ. App. 240, 105 S. W. 56, adhering to same view.

— Contract to operate railway.

Cited in Taylor v. Florida East Coast R. Co. 54 Fla. 651, 16 L.R.A.(N.S.) 315, 127 Am. St. Rep. 155, 45 So. 574, 14 Ann. Cas. 472, enforcing specific performance of a contract by a railroad company to run a spur track and maintain trains thereon in consideration of conveyance of land for right of way, there being no adequate remedy at law.

Distinguished in Lone Star Salt Co. v. Texas Short Line Co. 99 Tex. 446, 3 L.R.A.(N.S.) 836, 90 S. W. 863, denying specific performance of a contract to furnish tonnage in consideration of construction of railway since such decree would involve the court's enforcement of obligation of shipper to furnish freight and of carrier to haul same and supervision of the two businesses.

— Future rights.

Cited in Dulaney v. Dulaney, 105 Va. 432, 54 S. E. 40, holding equity has jurisdiction of bill to determine future rights of widow under ante-nuptial contract.

Power to enforce specific performance by injunction.

Cited in American Electrical Works v. Varley Duplex Marget Co. 26 R. I. 297, 58 Atl. 977, 3 Ann. Cas. 975, granting an injunction to restrain defendant from removing machinery where plaintiff had contract for its use and where such removal would work damage to his reputation; Taylor v. Florida East Coast R. Co. 54 Fla. 653, 16 L.R.A.(N.S.) 315, 127 Am. St. Rep. 155, 45 So. 574, 14 Ann. Cas. 472, holding court of equity will grant mandatory injunction in an action for specific performance of contract to maintain a spur line of railroad where such specific performance requires it.

Cited in note (90 Am. St. Rep. 644) on injunction against breach of contract.

Incidental rights implied from contract.

Cited in Cranes Nest Coal & Coke Co. v. Virginia Iron, Coal & Coke Co. 105

Va. 790, 54 S. E. 884, holding a right, under a lease, to transport coal through haulways on demised land confers the incidental right to bring coal from adjoining lands to haulways; John v. Elkins, 63 W. Va. 165, 59 S. E. 961, on the enforcement of implied obligations in contracts.

Distinguished in Grand Trunk Western R. Co. v. Chicago & E. I. R. Co. 73 C. C. A. 43, 141 Fed. 802, as not strictly applicable where the contract under consideration was for running rights over tracks and not legally a lease of the property.

Construction of contracts.

Cited in Albert v. Tidewater R. Co. 107 Va. 260, 58 S. E. 575, on the construction of contracts according to the known intention of the parties thereto; Superior Oil & Gas. Co. v. Mehlin, 25 Okla. 817, 138 Am. St. Rep. 942, 108 Pac. 545, holding that owing to peculiar nature of oil and gas, and danger of loss to owner of drainage by surrounding wells, lease of gas or oil lands is construed most strongly against lessee.

44 L. R. A. 305, NEW YORK L. INS. CO. v. DAVIS, 96 Va. 737, 32 S. E. 475.

Right of assignee of policy to proceeds.

Cited in Tate v. Commercial Bldg. Asso. 97 Va. 78, 45 L. R. A. 245, 75 Am. St. Rep. 770, 33 S. E. 382, denying right of assignee of life insurance policy, without insurable interest, to more than reimbursement from proceeds for premiums paid, expenses, and interest; First Nat. Bank v. Terry, 99 Va. 196, 37 S. E. 843, holding assignee creditor's interest in proceeds of life insurance policy limited to amount of liability together with premiums paid and interest.

Cited in notes (87 Am. St. Rep. 512) on right of assignee of life insurance policy to proceeds; (3 L.R.A.(N.S.) 948) on validity of assignment of interest in life insurance to one paying premiums.

Effect of killing or suicide of insured upon payment of policy.

Cited in Anderson v. Life Ins. Co. 152 N. C. 2, 67 S. E. 53, holding recovery on an insurance policy may be had by personal representation of insured in favor of the estate where the beneficiary murdered the insured; Metropolitan L. Ins. Co. v. Shane, 98 Ark. 138, 135 S. W. 836, holding that beneficiary in insurance policy who intentionally kills insured cannot recover on policy.

Cited in footnotes to Schmidt v. Northern Life Asso. 51 L. R. A. 141, which sustains right of estate of insured, murdered by beneficiary, to recover insurance; Lanier v. Box, 64 L. R. A. 458, which sustains right of wife's distributees to proceeds of policy on husband's life, payable to wife if she survived husband, although latter murdered her and afterwards took his own life; Supreme Lodge K. & L. of H. v. Menkhausen, 65 L.R.A. 508, which holds those entitled to fund in absence of beneficiary entitled to enforce benefit certificate where beneficiary has lost the right by murdering the insured.

Cited in note (3 L.R.A.(N.S.) 728) on homicide as affecting devolution of property as applied to life insurance.

Forfeiture of policy.

Cited in Ley v. Metropolitan L. Ins. Co. 120 Iowa, 209, 94 N. W. 568, holding fraudulent concealment by insured of fact that he had suffered hemorrhage of stomach not clearly enough established by evidence to warrant forfeiture of policy.

Insurable interest.

Cited in Woody v. Schaaf, 106 Va. 802, 56 S. E. 807, holding a creditor may

take out a policy on the life of his debtor, to the amount of his debt, as indemnity.

Presumption against fraud.

Cited in Shoemaker v. Chapman Drug Co. 112 Va. 614, 72 S. E. 121, holding that fraud is never presumed, but must be distinctly and clearly proved; Burrows v. Fitch, 62 W. Va. 119, 57 S. E. 283, holding fraud must be proved to set aside a lease where lessee denied knowledge of oil discovery when leasing lands.

Cited in note (33 L.R.A.(N.S.) 839) on degree of certainty necessary to establish fraud in civil action.

44 L. R. A. 306, MERCHANTS' BANK v. BALLOU, 98 Va. 112, 81 Am. St. Rep. 715, 32 S. E. 481.

Retroactive statutes.

Cited in Cassard v. Tracy, 52 La. Ann. 848, 49 L. R. A. 277, 27 So. 368, holding provisions of Constitution of 1898 conferring jurisdiction upon appellate courts of law and fact not retroactive; Evans-Snider-Buel Co. v. McFadden, 105 Fed. 304, 44 C. C. A. 505, 58 L. R. A. 906, upholding act validating certain prior mortgages of personal property, in suit by creditor attaching property before passage of curative act; Spremich v. Maurepas Land & Lumber Co. 114 La. 1055, 38 So. 827, holding a statute providing for the transfer of appeals erroneously taken has no application to a case wherein the right to appeal had expired.

Cited in note (31 L.R.A.(N.S.) 1082) on constitutionality of statutes curing defective acknowledgments of conveyances.

Effect of notice to trustee.

Cited in Lobban v. Ely, 69 W. Va. 618, 72 S. E. 748, holding that in action to set aside trust deed as one made to defraud creditors, it must be shown that trustee or beneficiary participated in unlawful intent.

44 L. R. A. 311, FRANKENTHAL v. SOLOMONSON, 20 Wash. 460, 72 Am. St. Rep. 116, 55 Pac. 754.

Competency of wife as witness against husband.

Cited in *Re* Jefferson, 96 Fed. 827, denying right to compel wife in bankruptcy proceedings to disclose communications made by her husband concerning his property or income.

Cited in footnote to State v. Kodat, 51 L. R. A. 509, which holds that divorce does not make wife competent witness against husband as to crime previously committed.

Distinguished in Belknap v. Platter, 54 Wash. 3, 132 Am. St. Rep. 1097, 103 Pac. 432, holding the statutory provision prohibiting a husband testifying against his wife without her consent has no application to supplemental proceedings on a judgment for a community debt.

44 L. R. A. 313, TROXLER v. SOUTHERN R. CO. 124 N. C. 189, 70 Am. St. Rep. 580, 32 S. E. 550.

Duty to furnish safe places and appliances.

Cited in Gerringer v. North Carolina R. Co. 146 N. C. 36, 59 S. E. 152 (separate opinion), on the duty of railroad to safeguard life and limb; Bottoms v. Seaboard Air Line R. Co. 136 N. C. 473, 49 S. E. 348, holding an instruction by the court that failure of railroad companies to equip their engines with best approved appliances for arresting sparks is negligence, was erroneous.

— Duty of master.

Followed in Elmore v. Seaboard Air Line R. Co. 130 N. C. 506, 41 S. E. 786, holding railroad company liable for injury to employee due to defective coupling; Hairston v. United States Leather Co. 143 N. C. 516, 55 S. E. 847, 10 Ann. Cas. 698, holding the failure of railroad company to equip its cars with automatic couplers was negligence per se.

Cited in Lloyd v. Hanes, 126 N. C. 362, 35 S. E. 611, holding master only bound to furnish such safety devices as are in general use; Harden v. North Carolina R. Co. 129 N. C. 355, 55 L. R. A. 785, 85 Am. St. Rep. 747, 40 S. E. 184, holding failure of railroad company to equip cars with automatic couplers, negligence *per se;* Wright v. Southern R. Co. 127 N. C. 227, 37 S. E. 221, holding question whether train was equipped with proper brakes to prevent derailment, for jury; Elmore v. Seaboard Air Line R. Co. 132 N. C. 875, 44 S. E. 620, on Second Rehearing, Reversing First Rehearing 131 N. C. 573, 42 S. E. 989, Affirming Original Opinion, 130 N. C. 506, 41 S. E. 786, and holding that where law requires railroad to use automatic coupler, allowing same to be out of repair for unreasonable time is continuing negligence, and cuts off defense of contributory negligence; Orr v. Southern Bell Teleph. & Teleg. Co. 132 N. C. 693, 44 S. E. 401, holding master liable for injury resulting from failure to furnish safe tools for taking down telegraph poles; Walker v. Carolina C. R. Co. 135 N. C. 741, 47 S. E. 675, holding carrier liable for injuries due to defective sand-drier; McGinn v. McCormick, 109 La. 402, 33 So. 382, holding master liable for injury partly due to failure to furnish safe spring for hand car; Fleming v. Southern R. Co. 131 N. C. 481, 42 S. E. 905, holding negligence of master in not providing automatic coupler not excused by contributory negligence of servant making coupling; Phillips v. Salem Iron Works, 146 N. C. 217, 59 S. E. 660, holding the failure of a manufacturer of "dry cans" to provide safety valves was negligence where such valves were in general use; Stewart v. Raleigh & A. Air Line R. Co. 141 N. C. 275, 53 S. E. 877, upholding the refusal of court, in personal injury case, to charge the jury that upon the evidence defendant was not negligent in its failure to use block system; Harton v. Forest City Teleph. Co. 141 N. C. 468, 54 S. E. 299 (dissenting opinion) on continuing negligence precluding defense of contributory negligence.

Cited in footnote in Chicago, M. & St. P. R. Co. v. Voelker, 70 L.R.A. 264, which holds it actionable negligence for railroad company to permit use of car whose coupler is so defective that it cannot be prepared for use without going between drawbars of cars using both hands and consuming extra amount of time.

Cited in notes (1 L.R.A.(N.S.) 670) on negligence of servant in sending out unsafe street cars causing injury to other servants; (6 L.R.A.(N.S.) 499) on standard of master's duty as to selection between different styles or makes of appliances; (16 L.R.A.(N.S.) 134) on furnishing servant article in general use as measure of master's duty.

Distinguished in Dermid v. Southern R. Co. 148 N. C. 184, 61 S. E. 657, holding the failure of railroad company to provide automatic couplings has no application where conductor is killed by recklessly walking between cars.

Limited in Hicks v. Naomi Falls Mfg. Co. 138 N. C. 335, 50 S. E. 703, as decided with reference to a particularly dangerous occupation and holding that master's negligence does not in all instances bar defense of contributory negligence.

Injury resulting from breach of legal duty.

Cited in Rolin v. R. J. Reynolds Tobacco Co. 141 N. C. 314, 7 L.R.A.(N.S.)

343, 53 S. E. 891, 8 Ann. Cas. 638, holding the employment of a child under twelve years of age, in violation of a statute gives a right of action for damages in case of injury.

Vice principalship.

Cited in notes (54 L.R.A. 71) on vice principalship as determined with reference to character of act which caused injury; (75 Am. St. Rep. 606) on who is a vice principal.

Assumed risks of employment.

Cited in Coley v. North Carolina R. Co. 128 N. C. 537, 129 N. C. 415, 57 L. R. A. 824, 843, 39 S. E. 43, 40 S. E. 195, holding rule as to assumed risks no longer applicable under special statutes; Ausley v. American Tobacco Co. 130 N. C. 40, 40 S. E. 819 (dissenting opinion), majority holding machinist employed to run machinery assumes risks incident to master's failure to handle or fix cogwheels; Britt v. Carolina & N. R. Co. 144 N. C. 256, 56 S. E. 910, holding a servant who notifies employer of defective condition of logging apparatus must use it with regard for its defective condition; Pressly v. Dover Yarn Mills, 138 N. C. 423, 51 S. E. 69, on assumption of risk as inapplicable to injuries resulting from defective railway appliances.

Cited in note (97 Am. St. Rep. 886) on right of recovery by employees accepting extra hazardous duties.

44 L. R. A. 316, PIERCE v. NORTH CAROLINA R. CO. 124 N. C. 83, 32 S. E. 399.

Liability of master for acts of servant within apparent scope of authority.

Cited in Cook v. Southern R. Co. 128 N. C. 333, 38 S. E. 925, holding railroad company liable for acts of flagman and brakeman assaulting person, who was forced to jump from train and was thereby injured; Dorsey v. Kansas City, P. & G. R. Co. 104 La. 481, 52 L. R. A. 94, footnote p. 92, 29 So. 177, holding carrier liable for death of trespasser falling under wheels in escaping from rocks thrown by brakeman; McNeill v. Durham & C. R. Co. 135 N. C. 721, 67 L. R. A. 229, 47 S. E. 765 (dissenting opinion), Reversing on Rehearing 132 N. C. 514, 95 Am. St. Rep. 641, 44 S. E. 34, majority holding that one riding on pass, contrary to law, may recover damages for injuries due to carrier's negligence; Lewis v. Norfolk & W. R. Co. 132 N. C. 387, 43 S. E. 919, holding carrier liable for injury to trespasser, knocked off moving train by brakeman; Dover v. Mayes Mfg. Co. 157 N. C. 327, 46 L.R.A.(N.S.) 201, 72 S. E. 1067, holding that master is not liable for injury to person riding with servant in lumber wagon, caused by servant's negligently letting team run away; May v. Western U. Teleg. Co. 157 N. C. 421, 37 L.R.A.(N.S.) 916, 72 S. E. 1059, holding that one having right to enter upon another's property to remove telegraph poles is liable for injury to wife of one in possession thereof, frightened because of loud, profane and lewd language used by servants, and their entry of dwelling without right; Folley v. Chicago, R. I. & P. R. Co. 16 Okla. 39, 84 Pac. 1090, holding railroad company is liable for injuries caused trespasser through ejection by conductor from moving train; Hayes v. Southern R. Co. 141 N. C. 198, 53 S. E. 847, holding railroad company is liable for injuries to boy stealing ride when violence of brakeman forced him to leave train while in motion; Dwyer v. St. Louis Transit Co. 108 Mo. App. 160, 83 S. W. 303, holding a conductor of street car who had passenger arrested for nonpayment of fare was acting within the scope of his authority; Jackson v. American Telegraph Co. 139 N. C. 354, 70 L.R.A. 741, 51 S. E. 1015, holding telegraph company is liable

for false imprisonment of land owner by servant where such arrest was made to enable company to erect poles: Stewart v. Cary Lumber Co. 146 N. C. 60, 59 S. E. 545, on the liability of railroad company for negligent act of servant done within the scope of his authority; Roberts v. Southern R. Co. 143 N. C. 178, 8 L.R.A.(N.S.) 801, 55 S. E. 509, 10 Ann. Cas. 375, holding it is not error for court to charge that master is liable for servant's wrongful acts if committed in scope of servant's employment and for master's interest; Collette v. Rebori, 107 Mo. App. 719, 82 S. W. 552, holding master is not liable where agent, employed to collect accounts, assaults a creditor; Jones v. Seaboard Air-Line R. Co. 150 N. C. 477, 64 S. E. 205, on the liability of railroad company for wanton acts of servant; Bowen v. Illinois C. R. Co. 70 L.R.A. 921, 69 C. C. A. 444, 136 Fed. 312, holding railroad company is not liable for death of person who was murdered by employee.

Cited in footnotes to Galveston, H. & S. A. R. Co. v. Zantzinger, 44 L. R. A. 553, which sustains right to recover from company for engineer throwing steam and water on trespasser negligently standing on footboard between engine and flat car; Nelson Business College Co. v. Lloyd, 46 L. R. A. 314, which holds employer liable for servant's wilful or malicious acts in course of employment; Galveston, H. & S. A. R. Co. v. Zantzinger, 47 L. R. A. 282, which sustains liability for injuries from engineer's ejection of trespasser from footboard of engine; Enright v. Pittsburgh Junction R. Co. 53 L. R. A. 330, which denies right to eject or frighten ten-year-old boy from rapidly moving train; Lamb v. Littman, 53 L. R. A. 852, which holds employer liable for assault by cruel overseer on minor employee; Lynch v. Florida C. & P. R. Co. 54 L. R. A. 810, which denies company's liability for assault by station agent as result of personal quarrel; Guille v. Campbell, 55 L. R. A. 111, which denies master's liability for injury to bystander by slipping of hook from servant's hand while pretending to throw at boys playing on cotton bales; Alsever v. Minneapolis & St. L. R. Co. 56 L. R. A. 748, which sustains liability for injuries by engineer operating blow-off cock to frighten children; Palmisano v. New Orleans City R. Co. 58 L. R. A. 405, which denies master's liability for injury to boy running blindly against moving car after release by employee, who had caught and lectured him; Southern R. Co. v. James, 63 L. R. A. 257, which holds master liable for injury by night watchman shooting trespasser while running away after being arrested by him; Evers v. Krouse, 66 L.R.A. 593, which holds servant alone responsible for act by him while engaged in master's work but entirely disconnected therefrom.

Distinguished in Adams v. Southern R. Co. 125 N. C. 566, 34 S. E. 642, holding carrier not liable for services of physicians employed by its conductor to treat injured trespassers; Palmer v. Winston-Salem R. & Electric Co. 131 N. C. 252, 42 S. E. 604, holding carrier not liable for assault by motorman upon passenger after latter had left car at termination of his passage; Julian v. Central Trust Co. 193 U. S. 108, 48 L. ed. 637, 24 Sup. Ct. Rep. 399, holding that corporation property does not continue liable for debts of corporation accruing after foreclosure sale.

Carrier's duty to trespassers.

Cited in footnotes to McNamara v. St. Louis Transit Co. 66 L.R.A. 486, which holds exemplary damages against street car company justified by conductor's intentional and unjustified kicking of boy attempting to board car; Dixon v. Northern P. R. Co. 68 L.R.A. 895, which sustains master's liability for injuries caused by brakeman wantonly and wilfully kicking trespasser from moving car; Bowen v. Illinois Central R. Co. 70 L.R.A. 915, which holds railroad com-

pany not liable for wanton act of station agent in killing a person who had come to station to inquire about demurrage on car of coal and whom agent shot as he was about to sign receipt for a package.

Cited in note (13 L.R.A.(N.S.) 365, 369) on liability of railroad for negligence in ejecting trespasser from moving train.

Distinguished in McNeill v. Durham & C. R. Co. 132 N. C. 514, 67 L.R.A. 229, 95 Am. St. Rep. 641, 44 S. E. 34, holding a railroad company is not liable for injuries received through its negligence when person injured was traveling on expired pass and contrary to law.

Liability of lessor of railroad for negligence of lessee.

Cited in Denver & R. G. R. Co. v. Roller, 49 L. R. A. 83, 41 C. C. A. 30, 100 Fed. 746; Harden v. North Carolina R. Co. 129 N. C. 359, 55 L. R. A. 786, 85 Am. St. Rep. 747, 40 S. E. 184; Perry v. Western North Carolina R. Co. 129 N. C. 335, 40 S. E. 191, — holding railroad company leasing its road liable for negligence of lessee in operation of road; Carleton v. Yadkin R. Co. 143 N. C. 47, 55 S. E. 429, 10 Ann. Cas. 348, holding a railroad company which has leased its road-bed, track and rolling stock to another corporation is liable for injuries to a passenger through the negligence of lessee; Carolina Coal & Ice Co. v. Southern R. Co. 144 N. C. 747, 57 S. E. 444, on liability of lessor of railroad for wrongs committed by lessee.

Broadside exceptions.

Cited in Streator v. Streator, 145 N. C. 339, 59 S. E. 112, holding exception to charge of court "for errors therein contained" is a "broadside exception" which will not be considered.

44 L. R. A. 319, HALL v. FIRST NAT. BANK, 173 Mass. 16, 73 Am. St. Rep. 255, 53 N. E. 154.

Oral agreements relating to negotiable paper.

Followed in Commonwealth Trust Co. v. Coveney, 200 Mass. 381, 86 N. E. 895, denying the right of indorser, in an action by indorsee, to prove oral agreement to renew in a manner inconsistent with wording of note.

Cited in Equitable Marine Ins. Co. v. Adams, 173 Mass. 438, 53 N. E. 883, denying right of defendant to prove that when he indorsed promissory note, he understood it was merely in his representative character as assignee of insolvent; Henry Wood's Sons Co. v. Schaefer, 173 Mass. 445, 73 Am. St. Rep. 305, 53 N. E. 881, denying right of maker of promissory note to prove agreement made at delivery of note by payee not to enforce it according to its tenor; Kelley v. Thompson, 175 Mass. 429, 56 N. E. 713, denying right of maker of promissory note to prove oral agreement as to discount to be made by payee upon payment of note; Cantwell v. Johnson, 236 Mo. 597, 139 S. W. 365, holding that oral agreement to indorse original and renewal note of plaintiff at $50 per indorsement, would not support action under statute of frauds.

44 L. R. A. 321, HOADLEY v. SAVINGS BANK, 71 Conn. 599, 42 Atl. 667.

Sale of property through inducement of brokers.

Cited in Hartman v. Warner, 75 Conn. 200, 52 Atl. 719, holding real estate broker, in absence of agreement fixing amount, entitled to customary commissions or to reasonable compensation, where customary rate not established; Adams v. McLaughlin, 159 Ind. 25, 64 N. E. 462, holding broker's right to commissions on finding purchaser not affected by fact that another broker was also employed for same purpose; and referring particularly to annotation in 44 L.R.A. 321; Goldsmith v. Coxe, 80 S. C. 347, 61 S. E. 555; Rigdon v. More, 226 Ill. 388, 80 N. E.

901,—holding a principal is liable to a broker for commissions where the broker began the transactions which resulted in a sale though the principal took up and completed the negotiations and also citing annotation on this point; Colonial Trust Co. v. Pacific Packing & Nav. Co. 85 C. C. A. 539, 158 Fed. 281, holding broker is entitled to commission for inducement of purchase of salmon though owner closed deal on different basis and without knowledge of broker's authority; Johnson v. Dysert, 70 Kan. 734, 79 Pac. 652, holding it not error for court, in action by brokers to recover commission, to instruct jury that plaintiffs could not recover unless their efforts were primary and producing cause of sale.

Annotation cited in Southwestern Port Huron Co. v. Wilber, 75 Kan. 178, 88 Pac. 892, holding a machine company was liable for commission to agent who sent in a list of prospective customers to whom the company, after dismissing agent, sold machines; Stiewel v. Lally, 89 Ark. 203, 115 S. W. 1134, holding broker is entitled to commission for inducement of purchase though owner consummated deal without knowledge of broker's effort and on different terms than those on which broker was authorized to sell.

Cited in footnotes to Cadigan v. Crabtree, 55 L. R. A. 77, which denies broker's right to commissions for procuring offer of lease, subsequently accepted and contract executed through other broker; Livermore v. Crane, 57 L. R. A. 402, which holds purchaser refusing to complete purchase liable to broker for loss of commissions from seller; Bradley v. Gorham, 66 L.R.A. 934, which holds bill sent by broker to customer for commissions alleged to have been earned on sale admissible in support of his claim to have acted as agent for latter; Cadigan v. Crabtree, 66 L.R.A. 982, which holds real estate broker not entitled to commission where after producing customer willing to negotiate for lease principal in good faith decides not to lease and discharges broker, although he subsequently decides to lease and makes contract with the person produced by the broker.

Cited in notes (43 L. R. A. 606) on real estate broker's commissions as affected by negligence, fraud, or default of principal, and a defective title; (44 L. R. A. 593, 600, 608, 611) on performance by real estate broker of his contract to find a purchaser or effect an exchange of his principal's property; (45 L. R. A. 33) on fraud and secret dealings or interest of real estate brokers as affecting their commissions; (53 L. R. A. 243) on duty of broker to disclose identity of purchaser to his principal; (23 L.R.A.(N.S.) 164; 27 L.R.A.(N.S.) 195) on right to commissions as between several real-estate brokers instrumental in effecting sale; (34 L.R.A.(N.S.) 1050) on effect upon right to commission, of fact that owner sells to broker's customer at reduced price; (139 Am. St. Rep. 245) as to when broker has earned his commissions.

Right of owner to supersede broker.

Annotation distinguished in Blumenthal v. Bridges (Bluthemthal v. Bridges) 91 Ark. 214, 24 L.R.A.(N.S.) 282, 120 S. W. 974, holding a broker has an exclusive right to sell property where he is given an unqualified power to sell terminable at a stated time, with no right of revocation expressed.

Findings of fact by trial court.

Cited in Post v. Hartford Street R. Co. 72 Conn. 365, 44 Atl. 547, refusing to review assignments of alleged error in finding, or to find certain facts from conflicting evidence; Fox v. Kinney, 72 Conn. 406, 44 Atl. 745, refusing to correct finding when fact relied on was not admitted or undisputed or necessary to present a question of law decided adversely to appellant; Duncan v. Kearney, 72 Conn. 586, 45 Atl. 358, refusing to disturb finding of fact that plaintiff was pro-

curing cause of sale of real estate; Morris v. Winchester Repeating Arms Co. 73 Conn. 686, 49 Atl. 180, holding finding by trial court of facts upon which judgment was based, accompanying judgment file, where no other findings were made, should be treated as part of judgment record; Hyde v. Mendel, 75 Conn. 142, 52 Atl. 744, refusing to consider claim that trial court erred in weighing the evidence supporting facts on which its judgment was founded; Williams v. Clowes, 75 Conn. 160, 52 Atl. 820, holding findings of trial court upon facts, conclusive, where not shown to have been unreasonable.

Cited in footnote to Corbett v. Matz, 48 L. R. A. 217, which denies power of court to make part of record, finding of facts made after term expires.

Record on appeal.

Cited in Phœnix Ins. Co. v. Carey, 80 Conn. 433, 68 Atl. 993, holding that a stipulation of fact cannot be reviewed unless the error is disclosed by the pleadings, the judgment roll or a finding of fact signed by the trial judge: Honrigan v. Norwich, 77 Conn. 370, 59 Atl. 487, refusing to retry questions of fact upon certified evidence and to substitute in the findings facts so found.

Statement of conditions of admissibility of evidence.

Cited in Standard Cement Co. v. Windham Nat. Bank, 71 Conn. 680, 42 Atl. 1006, holding that where record contains full statement of conditions as to admissibility of certain evidence, certified by judge, recital in finding may be read in the light of that statement.

Court's discretion as to time of admitting evidence.

Cited in Mahoney v. Hartford Invest. Corp. 82 Conn. 288, 73 Atl. 766, holding the admission of evidence in rebuttal instead of in chief is within the discretion of the court.

44 L. R. A. 353, LITTLE ROCK & FT. S. R. CO. v. OPPENHEIMER, 64 Ark. 271, 43 S. W. 150.

Statute imposing penalty.

Cited in State v. International Harvester Co. 79 Ark. 521, 96 S. W. 119, holding a statute requiring incorporated companies doing business in the state to furnish affidavit and directing state officers to proceed for recovery of money forfeited under the act in case of failure, creates no public offense and imposes no penalty.

Construction of penal statutes.

Cited in State v. Arkadelphia Lumber Co. 70 Ark. 331, 67 S. W. 1011, denying liability of ferryman for penalty for failure to post rates, where clerk failed to give him copy of rates, as required by statute; Hartford F. Ins. Co. v. State, 76 Ark. 315, 89 S. W. 42 (dissenting opinion), on the extension of statutes by implication.

Duty of common carrier to accept shipments.

Cited in Missouri & N. A. R. Co. v. Sneed, 85 Ark. 299, 107 S. W. 1182, holding, in an action for damages for failure to furnish cars, it is no defense to plead an unprecedented rush of business unless it be shown that reasonable facilities were provided.

Cited in note (8 L.R.A.(N.S.) 112) on duty of carrier to furnish cars.

— Discrimination.

Cited in St. Louis, I. M. & S. R. Co. v. Wynne Hoop & Cooperage Co. 81 Ark. 388, 99 S. W. 375; St. Louis Southwestern R. Co. v. Clay County Gin Co. 77 Ark. 362, 92 S. W. 531,—holding under statute, it is no discrimination for railroad company to delay furnishing of cars to all shippers when an unprecedented

demand causes shortage of cars; Cox v. Atlantic Coast Line R. Co. 148 N. C. 460, 62 S. E. 556, holding defendant railroad company was not liable, under the statute against discrimination, for refusing to accept shipment for train about to leave; Choctaw, O. & G. R. Co. v. State, 73 Ark. 374, 84 S. W. 502, holding it not actionable discrimination, under statute, for railroad company to refuse to furnish cars on its track to shipper to load by wagon while it was furnishing cars to shippers on private spurs to load by tipple.

Distinguished in Ocean S. S. Co. v. Savannah Locomotive Works & Supply Co. 131 Ga. 835, 20 L.R.A.(N.S.) 870, 127 Am. St. Rep. 265, 63 S. E. 577, 15 Ann. Cas. 1044, granting injunction against steamship company's booking of cotton shipments in preference to other merchandise not more hazardous.

44 L. R. A. 364, *Re* ROYER, 123 Cal. 614, 56 Pac. 461.

Status of public institutions.

Cited in People *ex rel.* Stone v. Jefferds, 126 Cal. 301, 58 Pac. 704, holding irrigation district not sovereign so as to be relieved from imputation of laches; State ex rel. Wyoming Agri. College v. Irvine, 14 Wyo. 380, 84 Pac. 90; State ex rel. Johnson v. Clausen, 51 Wash. 552, 99 Pac. 743,—holding a state college within the state created and existing by virtue of the laws of the state is a state institution.

Cited in footnote to Watson Seminary v. County Court, 45 L. R. A. 675, which holds charter provisions of educational corporation changeable at will of legislature.

Charitable trusts.

Cited in Fay v. Howe, 136 Cal. 603, 69 Pac. 423, holding gift of fund to trustee "in aid of deserving, aged, native-born" inhabitants in specified town, needing such aid, to be used as in his judgment he may think best, valid trust; City Street Improv. Co. v. University of California, 153 Cal. 779, 18 L.R.A. (N.S.) 454, 96 Pac. 801, holding lands held in trust by regents of state university and which are not being used for school purposes are subject to street assessment.

Construction of statutes as affecting state.

Cited in Reclamation Dist. No. 551 v. Sacramento County, 134 Cal. 480, 66 Pac. 668, holding state not bound by general words in Code upon subject of taxation; Re Beck, 44 Mont. 573, 121 Pac. 784, on right of legislature to create by special act public or quasi-public corporation.

44 L. R. A. 369, HEARD v. PHILLIPS, 101 Ga. 691, 31 S. E. 216.

Computation of time.

Cited in footnote to Occumpaugh v. Norton, 68 L.R.A. 272, which holds that aggregate of half holidays shall be added in computing time for taking appeals under statute excluding holidays from number of days specified.

Cited in notes (49 L.R.A. 221) on rule as to first and last days in computation of time; (78 Am. St. Rep. 379) on computation of time.

Competency of witness to testify to transaction with deceased person.

Cited in Boynton v. Reese, 112 Ga. 358, 37 S. E. 437, holding grantee of deed sought to be canceled by heir at law of grantor not disqualified to testify to transactions and communications between deceased and witness; Turner v. Woodward, 136 Ga. 276, 71 S. E. 418, holding that husband was incompetent as witness to testify to transactions between himself and deceased wife, in action by husband to set aside deed to his daughter made by wife of land held by her under deed from husband to secure indebtedness which was paid.

Sale by administrator of land in adverse possession of another.

Cited in Lowe v. Bivins, 112 Ga. 342, 37 S. E. 374, and Hanesley v. Bagley, 109 Ga. 348, 34 S. E. 584, holding title not acquired by administrator's sale of land in possession of another holding adversely to him; Davitte v. Southern R. Co. 108 Ga. 668, 34 S. E. 327, holding that administrator must first obtain possession before he can sell property of his intestate held adversely; Downing Lumber Co. v. Medlin, 136 Ga. 667, 72 S. E. 22, holdnig that sale of land other than "wild land" by administrators, while in adverse possession of others, conveys no title.

Cited in note (35 L.R.A.(N.S.) 750) on effect of conveyance of land held adversely.

44 L. R. A. 372, EXCHANGE BANK v. LOH, 104 Ga. 446, 31 S. E. 459.

Followed without comment in West v. Sanders, 104 Ga. 728, 31 S. E. 619.

Rights of creditors and representatives of insured to proceeds of policy.

Cited in Morris v. Dodd, 110 Ga. 611, 50 L. R. A. 43, 78 Am. St. Rep. 129, 36 S. E. 83, holding that insurance policy on life of bankrupt, not having cash surrender value, does not vest in trustee as assets; Morris v. Georgia Loan, Sav. & Bkg. Co. 109 Ga. 18, 46 L. R. A. 510, footnote p. 506, 34 S. E. 378, holding creditor taking assignment of policy entitled to retain from proceeds sufficient to pay debt and advances only; Strode v. Meyer Bros. Drug Co. 101 Mo. App. 635, 74 S. W. 379, holding that creditor receiving proceeds of policy must account to estate of insured for amount above that necessary for his reimbursement; Deal v. Hainley, 135 Mo. App. 514, 116 S. W. 1, holding a beneficiary who has no insurable interest in life of assured except as creditor, can only retain an amount equal to his claim against assured's estate.

Cited in footnotes to Fisher v. Donovan, 44 L. R. A. 383, which denies insured's right to impress with trust in creditors' favor proceeds of certificate payable to widow; Tate v. Commercial Bldg. Asso. 45 L. R. A. 243, which holds void, policy on life of member of loan association assigned to secure loan.

Insurable interest.

Cited in footnote to Gordon v. Ware Nat. Bank, 67 L.R.A. 550, which holds that creditor has an insurable interest in life of debtor.

Cited in note (128 Am. St. Rep. 304, 322) on life insurance in favor of persons having no insurable interest.

Distinguished in Doody Co. v. Green, 131 Ga. 570, 62 S. E. 984, upholding the validity of life insurance policy where assured, acting in good faith, took out a policy payable to a relative having no insurable interest in life of assured: Rylander v. Allen, 125 Ga. 211, 6 L.R.A.(N.S.) 133, 53 S. E. 1032, 5 Ann. Cas. 355, upholding the validity of assignment of life insurance to one having no insurable interest in insured when policy was taken out by insured without knowledge of assignee.

Nature of insurance contract.

Cited in Fireman's Fund Ins. Co. v. Pekor, 106 Ga. 10, 31 S. E. 779, upholding stipulation in policy requiring insured to carry insurance to extent of 75 per cent of value of property or be considered coinsurer to extent of deficiency.

Wagering policies.

Cited in Quillian v. Johnson, 122 Ga. 56, 49 S. E. 801, holding an assignment of life insurance policy by insured whereby the assignee is to be paid

amount of policy if he pays premium when due is a wagering contract and unenforceable.

Cited in note (3 L.R.A.(N.S.) 950) on validity of assignment of interest in life insurance to one paying premiums.

Contract of assignment and indorsement.

Cited in Sanders Mfg. Co. v. Dollar Sav. Bank, 110 Ga. 563, 35 S. E. 777, holding fact that indorsement was made with secret intention merely to pass title cannot affect rights of indorsee with knowledge of such intent.

44 L. R. A. 383, FISHER v. DONOVAN, 57 Neb. 361, 77 N. W. 778.

Nature of interest of insured in benefit certificate.

Cited in Warner v. Modern Woodmen, 67 Neb. 237, 61 L.R.A. 606, 93 N. W. 397, holding that estate of insured has no property interest in certificate of benefit association upon failure of beneficiaries; Pilcher v. Puckett (Modern Woodmen v. Puckett) 77 Kan. 288, 17 L.R.A.(N.S.) 1089, 94 Pac. 132, holding an insured in a mutual benefit society has no interest in the fund but a mere power of appointment which must be exercised to be operative.

Beneficiary's interest in benefit certificate.

Approved in Woodmen Acci. Asso. v. Hamilton, 70 Neb. 31, 97 N. W. 1017, holding a beneficiary of a mutual benefit association acquires no vested interest in the fund by an accident which ultimately results in death.

Rules as to change of beneficiary.

Cited in Counsman v. Modern Woodmen, 69 Neb. 713, 96 N. W. 672, holding a change of beneficiaries by assured contrary to the laws of a mutual benefit society is void and leaves the right to the fund in beneficiaries named in certificate of insurance; Urick v. Western Travelers Acci. Asso. 81 Neb. 335, 116 N. W. 48, holding a request to a mutual accident society to change beneficiaries was ineffectual where assured, upon request by society to fill out proper blanks, made no further move.

Who may be beneficiary.

Cited in Pilcher v. Puckett, 77 Kan. 292, 17 L.R.A.(N.S.) 1090, 94 Pac. 132, holding a person cannot be a beneficiary under a life insurance policy in a mutual benefit society, who is not of the class for whose benefit the society was organized; Foss v. Petterson, 20 S. D. 97, 104 N. W. 915, holding a change of beneficiary by insured holding certificate in benefit society is ineffectual where the new beneficiary is not of the class for whose benefit the society was organized.

Cited in note (37 L.R.A.(N.S.) 1192) as to who is "dependent" within definitions of beneficiaries of mutual benefit societies.

Insurable interest.

Cited in footnotes to Exchange Bank v. Loh, 44 L. R. A. 372, which holds creditor's insurable interest limited to amount of indebtedness; Morris v. Georgia Loan, Sav. & Bkg. Co. 46 L. R. A. 506, which holds creditor taking assignment of policy entitled to retain from proceeds sufficient to pay debt and advances only; Sternberg v. Levy, 53 L. R. A. 438, which sustains right as against creditors, to procure with exempt wages insurance for sister and her children, constituting family.

Presumption as to law of sister state.

Cited in footnote to Aslanian v. Dostumian, 47 L. R. A. 495, which denies presumption that law merchant as to protest of draft prevails in Asiatic Turkey.

Cited in notes (67 L.R.A. 50) on how case determined when proper foreign

law not proved; (113 Am. St. Rep. 880) on proof of foreign laws and their effect.

Parol promise to answer for debt or default of another.

Cited in footnote to Hartley v. Sandford, 55 L. R. A. 206, which holds void, father's oral promise to reimburse surety for son if latter fails to pay debt.

Cited in note (40 L.R.A.(N.S.) 693) on promise by beneficiary to pay proceeds of life insurance to third person.

44 L. R. A. 387, BLOOMFIELD STATE BANK v. MILLER, 55 Neb. 243, 70 Am. St. Rep. 381, 75 N. W. 569.

Statute of frauds.

Cited in Kendall v. Garneau, 55 Neb. 408, 75 N. W. 852, holding grantee in deed bound by covenant to pay encumbrances not due for more than year from delivery of deed, although deed not subscribed by him.

Deposit of title deeds as equitable mortgage.

Cited in Re Snyder, 138 Iowa, 556, 19 L.R.A.(N.S.) 210, 114 N. W. 615, holding the deposit of title deeds as security for a debt does not create an equitable mortgage.

Cited in note (19 L.R.A.(N.S.) 207, 210) on equitable mortgage by deposit of title deeds.

44 L. R. A. 392, PUGH v. HIGHLEY, 152 Ind. 252, 71 Am. St. Rep. 327, 53 N. E. 171.

Prior equities as affecting purchaser at judicial sale.

Cited in Union Cent. L. Ins. Co. v. Dodds, 155 Ind. 368, 58 N. E. 258, holding judgment creditor purchasing at sheriff's sale, on same footing as stranger as to unrecorded titles and secret claims; Dodds v. Winslow, 26 Ind. App. 656, 60 N. E. 458, holding purchaser at judicial sale, buying in good faith and without notice, protected against prior equities and unrecorded deeds; Blumenthal v. Tibbits, 160 Ind. 72, 66 N. E. 159, holding purchaser at sheriff's sale without notice not affected by prior equity; F. A. Ames Co. v. Slocomb Mercantile Co. 165 Ala. 103, 51 So. 994, holding that purchaser at execution sale against buyer in conditional sale contract is within protection of recording statute as to conditional sales; Krotz v. A. R. Beck Lumber Co. 34 Ind. App. 592, 73 N. E. 273, holding holders of mechanic's lien and lien for materials who purchase property at their own execution sale do not take subject to prior secret equities; Mitchell v. Koch, 175 Ind. 669, 95 N. E. 231, holding that mortgage executed by husband and wife on husband's land, and taken without notice of wife's equitable interest in land, may be enforced by purchaser thereof as against wife though purchaser knew of wife's interest.

Cited in footnote to Johnson v. Equitable Securities Co. 56 L. R. A. 933, which holds bona fide purchaser paying purchase money protected from unknown equities.

Cited in note (79 Am. St. Rep. 948, 950, 952) on title acquired by one purchasing at his own execution sale.

Subordination of judgment lien to inchoate right of dower.

Cited in Higgins v. Ormsby, 156 Ind. 86, 59 N. E. 321, denying lien of judgment against husband on land conveyed to wife in consideration of release of dower in other land.

Rights of purchaser without notice of unrecorded assignment of mortgage.

Cited in Artz v. Yeager, 30 Ind. App. 681, 66 N. E. 917, holding purchaser of real estate from assignee of mortgage of record takes same free from lien of unrecorded assignment of mortgage.

44 L. R. A. 397, HAMLIN v. SIMPSON, 105 Iowa, 125, 74 N. W. 906.

Prompt presentment of checks and drafts for collection.

Cited in First Nat. Bank v. German Bank, 107 Iowa, 544, 44 L. R. A. 134, 70 Am. St. Rep. 216, 78 N. W. 195, denying liability of bank to which draft had been delivered for collection, for negligence of its cashier while acting in capacity of notary; Burns v. Yocum, 81 Ark. 133, 98 S. W. 956, holding drawer of check not liable thereon where payee neglects to present for five days when bank becomes insolvent.

Cited in footnote to Edminsten v. Herpolsheimer, 59 L. R. A. 934, which requires check to be presented not later than day after receipt to hold drawer.

Availability of statute of frauds.

Cited in note (127 Am. St. Rep. 759) on persons to whom statute of frauds is available.

44 L. R. A. 400, GOWDY v. JOHNSON, 104 Ky. 648, 47 S. W. 624.

Effect of loss of family on homestead right.

Cited in footnote to Lyons v. Andry, 55 L. R. A. 724, which holds eighteen-year-old daughter working for father, dependent person within homestead law.

Cited in note (16 L.R.A.(N.S.) 113) on continuance of family as condition of continuance of homestead, where a condition of inception.

Right of alienation of homestead.

Cited in Bushnell v. Loomis, 234 Mo. 392, 36 L.R.A.(N.S.) 1038, 137 S. W. 257, holding that where man has no power to convey his homestead without joinder by his wife, failure promptly to move to set aside deed made while she was insane, after her recovery, will not estop either from denying validity of conveyance.

Increase in value as affecting homestead.

Cited in Morton v. Jones, 136 Ky. 801, 125 S. W. 247, holding a homestead set aside for debtor, under statute, cannot afterward be reached by creditors because of its appreciation in value; Brewington v. Brewington, 211 Mo. 59, 109 S. W. 723, on the revaluation of homestead once set out.

Cited in note (16 L.R.A.(N.S.) 728) on revaluation or reassignment of homestead for appreciation or depreciation.

Statute of limitations as defense.

Cited as overruled in Yager v. Kentucky Bank, 125 Ky. 183, 100 S. W. 848, holding defendant relying upon statute of limitations must plead it although plaintiff's petition shows that action is barred.

44 L. R. A. 405, ADDYSTON PIPE & STEEL CO. v. CHICAGO, 170 Ill. 580, 48 N. E. 967.

Subjection of moneys owing by municipality to payment of debts.

Cited in Chicago v. People, 98 Ill. App. 521, holding assignment by police officer of unearned salary to creditor, void; Geist v. St. Louis, 156 Mo. 649, 79 Am. St. Rep. 545, 57 S. W. 766, denying right of creditor to compel city to pay officer's salary in satisfaction of judgment, after return of execution un-

satisfied; Clarksdale Compress Co. v. Caldwell Co. 80 Miss. 348, 31 So. 790, denying right of creditor to garnish municipality as debtor of nonresident creditor.

Cited in footnote to Portsmouth Gas Co. v. Sanford, 45 L. R. A. 246, which authorizes garnishment of city for money due nonresident contractor.

Cited in notes (54 L.R.A. 574) on exemption of officer's salary from claims of his creditors; (96 Am. St. Rep. 448) on same point.

Proceedings against executors for debt.

Cited in Williams v. Smith, 117 Wis. 146, 93 N. W. 464, holding that creditors' suits on supplementary proceedings cannot be maintained against executors of debtor's estate.

44 L. R. A. 407, SNYDER v. MT. PULASKI, 176 Ill. 397, 52 N. E. 62.

Control of municipality over its streets.

Cited in McGann v. People, 194 Ill. 539, 62 N. E. 941, denying right of common council to permit individual to lay railroad tracks in street without petition of property owners; Macon Consol. Street R. Co. v. Macon, 112 Ga. 787, 38 S. E. 60, denying right of city to contract so as to devest itself of discretionary power as to location of railway tracks in street; People *ex rel.* Kocourek v. Chicago, 193 Ill. 565, 62 N. E. 187 (dissenting opinion), majority refusing to take original jurisdiction of suit for writ of mandamus to compel city to remove bridge over an alley connecting mercantile buildings; Cedar Rapids Water Co. v. Cedar Rapids, 118 Iowa, 254, 91 N. W. 1081, holding no rights in streets acquired by grant of franchise by city which it was without power to grant; Ashland v. Northern P. R. Co. 119 Wis. 219, 96 N. W. 688 (dissenting opinion), majority holding city not estopped from claiming streets not vacated after passage of ordinance not complying with statutory requirements, vacating same; Winnetka v. Chicago & M. Electric R. Co. 107 Ill. App. 125, restraining village from interfering with railroad trestlework constructed in part of highway, under void ordinance but with consent of municipality; People *ex rel.* Faulkner v. Harris, 203 Ill. 282, 96 Am. St. Rep. 304, 67 N. E. 785, denying power of city to authorize bay window extending 18 inches into street; Chicago v. Rothschild & Co. 130 Ill. App. 558, holding city council has power to order removal of platform in city street connecting elevated road with private store though such platform was erected under an ordinance; Lacy v. Oskaloosa, 143 Iowa, 710, 31 L.R.A.(N.S.) 857, 121 N. W. 542, denying writ of injunction to restrain city from removing hitching posts from streets when such posts were erected by virtue of license and have been maintained many years; State ex rel. Townsend v. Park Comrs. 100 Minn. 154, 9 L.R.A.(N.S.) 1048, 110 N. W. 1121, denying writ of mandamus to compel city park board to maintain street as a boulevard where abutting property owners on city street had dedicated land under agreement that boulevard should be maintained; Chicago, R. I. & P. R. Co. v. People, 222 Ill. 435, 78 N. E. 790, declaring void a city ordinance granting to railroad company the use of public streets and levee to exclusion of public and adjacent property owners; Ryan v. Allen, 138 Ill. App. 55, which held void a contract whereby an owner of city property demised the right of using public sidewalk in front of property for dispensing lunches.

Cited in footnotes to Wright v. Austin, 65 L.R.A. 949, which holds that highway easement does not include the right to bore wells within highway limits to obtain water for sprinkling and keeping roads in repair; Bonsal v. Yellott, 69 L.R.A. 914, which holds appropriations to aid the counties in constructing public

roads not forbidden by constitutional provision against involving state in construction of works of internal improvement.

Cited in note (25 L.R.A.(N.S.) 401) on power of municipality to grant or lease space on street or sidewalk.

Disapproved in Krause v. El Paso, 10 Tex. 216, 14 L.R.A.(N.S.) 584, 130 Am. St. Rep. 831, 106 S. W. 121, holding city estopped from removing building projecting over street line where such building was erected on line given by city engineer and had been maintained twenty years without objection.

Notice of limitations chargeable to person dealing with municipality.

Cited in Burgin v. Smith, 151 N. C. 570, 66 S. E. 607, holding money paid public contractor by county commissioners who have already exceeded the legal appropriation cannot be retained on ground that benefits have been conferred; May v. Chicago, 222 Ill. 600, 78 N. E. 912, holding, under statute, regular clerk in city's employ, cannot collect for additional duties performed.

Estoppel of municipality.

Cited in note (137 Am. St. Rep. 367) on estoppel of municipal corporation to contest illegal claims or expenditures.

44 L. R. A. 410, CHICAGO & E. I. R. CO. v. ROUSE, 178 Ill. 132, 52 N. E. 951.

Conflict of laws relating to liability for negligence.

Followed in Fitzgerald v. Cleveland, C. C. & St. L. R. Co. 151 Ill. App. 35, holding a statute of Indiana governing actions for wrongful death will be enforced in Illinois where servant of railroad was killed in Indiana.

Cited in Maloney v. Winston Bros. Co. 18 Idaho, 762, 47 L.R.A.(N.S.) 642, 111 Pac. 1080, to the point that in personal injury cases plaintiff is bound by law of place where injury occurred; Morrissette v. Canadian P. R. Co. 76 Vt. 272, 56 Atl. 1102, where it was held that the law of Quebec, which requires a master to protect servant against own mistakes, will be enforced in Vermont when injury occurred in Quebec; Stephen v. Illinois C. R. Co. 128 Ill. App. 101, holding the courts of Illinois will enforce the provisions of Tennessee statutes governing wrongful death, where employee was killed on railroad in Tennessee; Brennan v. Electrical Installation Co. 120 Ill. App. 468, holding a statute of Mississippi granting right of action in survivor and abrogating fellow servant rule will be enforced in Illinois where deceased was killed in Mississippi; Missouri, K. & T. R. Co. v. Kellerman, 39 Tex. Civ. App. 279, 87 S. W. 401, holding a statute of Kansas governing liability of railroad companies for injuries to their employees will be enforced in Texas when injury occurs in Kansas; Wabash R. Co. Hassett, 170 Ind. 381, 83 N. E. 705, holding that the courts of Indiana will take jurisdiction of cases of negligence arising in Illinois though that state forbids its courts trying wrongful death cases occurring in other states; Ginsburg v. Adams Exp. Co. 160 Ill. App. 569, holding that law of place of contract will be enforced here, unless enforcement would contravene our criminal laws, or would sanction vice, or be opposed to general interest of citizens.

Cited in footnotes to Kansas City, Ft. S. & M. R. Co. v. Becker, 46 L. R. A. 814, which holds servant's assumption of risks from fellow servant's negligence governed by laws of state where injury occurs; Jones v. Chicago, St. P. M. & O. R. Co. 49 L. R. A. 640, which holds statute of state where railroad employee injured, as to presumptive evidence of employer's knowledge of defect in appliance, not govern in action in another state; Baltimore & O. S. W. R. Co. v. Read, 56 L. R. A. 468, which denies right to recover in another state for injury from fellow servant's negligence in state where no remedy given.

Cited in note (56 L. R. A. 196, 204, 220) on conflict of laws as to action for death or bodily injury.

44 L. R. A. 413, CLARK v. RENNINGER, 89 Md. 66, 42 Atl. 928.

44 L. R. A. 415, RUDELL v. OGDENSBURG TRANSIT CO. 117 Mich. 568, 76 N. W. 380.

Contracts of shipment between shipper and agent of carrier.

Cited in Stoner v. Chicago G. W. R. Co. 109 Iowa, 554, 80 N. W. 569, holding railroad company bound by contract of agent within apparent scope of authority, for delivery of car at specified place within specified time; Hayes v. Wabash R. Co. 163 Mich. 177, 31 L.R.A.(N.S.) 234, 128 N. W. 217, holding that city passenger and ticket agent of railroad has implied authority to guarantee connections by one of its regular trains.

Cited in footnote to Seasongood v. Tennessee & O. River Transp. Co. 49 L. R. A. 270, which holds carrier bound by act of person permitted to act as its agent.

Distinguished in Jacob v. Western U. Teleg. Co. 135 Mich. 603, 98 N. W. 402, holding an instruction by sender of telegram to messenger to deliver telegram at certain time is no part of contract when conditions on telegraph blank prohibited employee to vary company's regulations.

Bill of lading as affecting contract of carriage.

Distinguished in Waltham Mfg. Co. v. New York & T. S. S. Co. 204 Mass. 256, 90 N. E. 550, 17 Ann. Cas. 837, holding a bill of lading is the contract between a shipper and a carrier in absence of any previous agreement.

Reinstatement of verdict.

Cited in McQuisten v. Detroit Citizens' Street R. Co. 147 Mich. 68, 110 N. W. 118, upon reinstatement of verdict by supreme court.

44 L. R. A. 417, STEINBACK v. DIEPENBROCK, 158 N. Y. 24, 70 Am. St. Rep. 424, 52 N. E. 662.

Assignment of life insurance policies.

Cited in Morschauser v. Pierce, 64 App. Div. 559, 72 N. Y. Supp. 328, holding that policy of life insurance assigned by husband to wife passes, on latter's death intestate, to her administrator; Dannhauser v. Wallenstein, 28 Misc. 693, 60 N. Y. Supp. 50, upholding validity of assignment of policy by wife, although without written consent of husband, where latter induced her to assign it for his own benefit; McDonough v. Ætna L. Ins. Co. 38 Misc. 628, 78 N. Y. Supp. 217, upholding right of insured to assign life policy to one having no insurable interest; Maynard v. Life Ins. Co. 132 N. C. 714, 44 S. E. 405, denying right of intervener claiming proceeds of policy as against assignee thereof, to assail validity of policy; Rahders v. People's Bank, 113 Minn. 499, 130 N. W. 16, Ann. Cas. 1912A, 299, holding that insurance contract issued upon life of member of copartnership may be assigned by firm to corporation organized to succeed firm in business; Hardy v. Ætna L. Ins. Co. 152 N. C. 289, 67 S. E. 767, upholding the validity of an assignment of policy by assured to one having no insurable interest in assured's life, where policy was not taken out at suggestion of assignee; McNevins v. Prudential Ins. Co. 57 Misc. 610, 108 N. Y. Supp. 745, holding a delivery of a policy by husband to wife with instructions to pay the premium operated as an assignment of the policy where it was payable to any blood relative equitably entitled to benefits; Bromley v. Washington L. Ins. Co. 122 Ky. 405, 5 L.R.A.(N.S.) 450, 121 Am. St. Rep. 467, 92 S. W. 17, 12 Ann. Cas. 685, holding insurance policy absolutely void where, in accordance with contract with party having no insurable interest in his life, assured takes out

a policy payable to his estate and assigns it to the third party for a consideration.

Cited in footnotes to Chamberlain v. Butler, 54 L. R. A. 338, which sustains right to assign policy on own life to one without insurable interest; McQuillan v. Mutual Reserve Fund Life Asso. 56 L. R. A. 233, which sustains right to provide that assigned policy shall be void as to all above debt due assignee; Steele v. Gatlin, 59 L. R. A. 129, which holds complete gift not made by verbal assignment of life policy, accompanied with words indicating intent to give, and delivery of policy; Opitz v. Karel, 62 L. R. A. 982, which sustains right of one taking policy on his own life to make valid gift of proceeds by mere delivery of policy; American Mut. L. Ins. Co. v. Bertram, 64 L. R. A. 935, which sustains right of assignee, without knowledge of facts, of policy void because taken out without consent of insured by one having no insurable interest, to recover from company premiums paid by him; Hinton v. Mutual Reserve Fund L. Asso. 65 L.R.A. 161, which holds insurance company not liable on policy issued to wife of mortgagor and assigned by her to mortgagee as security for the debt; Gordon v. Ware Nat. Bank, 67 L.R.A. 550, which holds assignment of life policy immediately on its issue to evade rule against issuing policy to one without insurable interest renders assignment void.

Cited in notes (3 L.R.A.(N.S.) 937, 946) on validity of assignment of interest in life insurance to one paying premiums; (87 Am. St. Rep. 509) on assignment of life insurance policies.

Insurable interest.

Cited in Mechanics Nat. Bank v. Comins, 72 N. H. 17, 101 Am. St. Rep. 650, 55 Atl. 191, holding that one furnishing money to carry on business of corporation has insurable interest in life of its manager; New York L. Ins. Co. v. Neal, 114 La. 661, 38 So. 485, holding that where man living in state of concubinage took out policy for benefit of his mistress she could recover a tenth under statute, the balance going to deceased's children by lawful marriage; Victor v. Mills & Travelers' Ins. Co. 148 N. C. 117, 16 L.R.A.(N.S.) 1025, 61 S. E. 648, 16 Ann. Cas. 291, holding a stockholder has a right to enjoin the payment of premiums upon a policy taken out by corporation upon life of president who has since severed his relation with corporation.

44 L. R. A. 420, PEOPLE *ex rel.* PUBLIC CHARITIES & C. COMRS. v. CULLEN, 153 N. Y. 629, 47 N. E. 894.

Jurisdiction of court of appeals.

Cited in People v. Malone, 169 N. Y. 570, 62 N. E. 665, holding reversal by appellate division of conviction under Pen. Code, § 292, not appealable; People v. Helmer, 154 N. Y. 616, 49 N. E. 249 (dissenting opinion); majority holding questions of fact or sufficiency of evidence not reviewable by court of appeals on appeal from conviction for exhibiting false books to bank examiner.

Explained in People v. Johnston, 187 N. Y. 320, 79 N. E. 1018, as decided under statute applicable only to city and county of New York.

Penal prosecution for abandonment.

Cited in People *ex rel.* Feeney v. Dershem, 78 App. Div. 626, 79 N. Y. Supp. 612, holding offer in good faith of home and maintenance, good defense to penal proceeding against husband for abandonment; People v. Crouse, 86 App. Div. 354, 83 N. Y. Supp. 812, holding refusal of husband in New York to support wife after separation in another state not desertion in New York; People v. Cobucci, 68 Misc. 46, 124 N. Y. Supp. 891, as to what constitutes abandonment of wife and children under statute; People ex rel. Commissioner of Public Charities v.

Duffin, 68 Misc. 292, 125 N. Y. Supp. 71, holding that where husband gives bond to support wife and children for one year, failure for eighteen days after expiration of year to furnish her with money, she not offering to live with him does not justify conviction for abandonment; Goetting v. Normoyle, 191 N. Y. 371, 84 N. E. 287, holding a statute requiring a bond of persons abandoning or threatening to abandon wife or children is highly penal and requires strict construction; Weigand v. Weigand, 103 App. Div. 44, 92 N. Y. Supp. 679; People ex rel. Demos v. Demos, 115 App. Div. 412, 100 N. Y. Supp. 968,—holding, under statute, no action for abandonment will lie against husband where wife refuses to live with him because of cruel treatment; Dennison v. Dennison, 52 Misc. 40, 102 N. Y. Supp. 621, holding an action for abandonment will not lie when husband and wife are living apart according to terms of ante-nuptial agreement.

Provisions by court for maintenance and expense of wife on separation or divorce.

Cited in Hauscheld v. Hauscheld, 33 App. Div. 299, 53 N. Y. Supp. 831, upholding order of court granting alimony where judgment for absolute divorce ten years before, reserved question for future consideration of court; Livingston v. Livingston, 74 App. Div. 264, 77 N. Y. Supp. 476, holding judgment of divorce providing for alimony, court not reserving power to modify its provisions, fixed obligation of husband not changeable by court or legislature; Cullen v. Cullen, 23 Misc. 81, 50 N. Y. Supp. 433, granting alimony upon application of wife under right reserved in decree of separation; Naumer v. Gray, 28 App. Div. 534, 51 N. Y. Supp. 222, holding action maintainable for legal services against husband by attorney for wife suing for separation because of cruel and inhuman treatment; Chapman v. Parsons, 66 W. Va. 312, 24 L.R.A.(N.S.) 1018, 135 Am. St. Rep. 1033, 66 S. E. 461, 19 Ann. Cas. 453, holding that after a decree of absolute divorce without alimony, the law imposes no duty upon the husband to support the wife; Hayes v. Hayes, 74 Misc. 536, 134 N. Y. Supp. 482, holding that defendant in divorce brought by wife may be punished for contempt, after dismissal of action on plaintiff's default for his failure to pay alimony due under order made prior to dismissal.

Protection of courts against legislative changes.

Cited in footnote to Love v. Liddle, 62 L. R. A. 482, which denies power to regulate jurisdiction of justices of peace by classification of cities in which they reside.

44 L. R. A. 424, PRETZFELDER v. MERCHANTS INS. CO. 123 N. C. 164, 31 S. E. 470.

Submission of issues to jury.

Cited in Vanderbilt v. Brown, 128 N. C. 499, 39 S. E. 36, and Kendrick v. Mutual Ben. L. Ins. Co. 124 N. C. 321, 70 Am. St. Rep. 592, 32 S. E. 728, upholding refusal to submit other issues where, under issue submitted by court, every phase of defendant's contention was presented without prejudice; Bradley v. Ohio River & C. R. Co. 126 N. C. 739, 36 S. E. 181, holding that when issues submitted arise on pleadings, and every phase of contentions of parties can be presented thereunder, they are not subject to review; Hatcher v. Dabbs, 133 N. C. 241, 45 S. E. 562, holding submission of issue "what damages, if any," plaintiff entitled to recover, in action for services rendered decedent, erroneous; Ray v. Long, 132 N. C. 893, 44 S. E. 652, holding issue submitted whether purchase money furnished equally by husband and wife, sufficient, in ejectment by husband and wife for land sold under execution against husband; Gallimore v. Grubb, 156 N. C. 577, 72 S. E. 628, holding that there is no reversible error in

refusing proper issues tendered when those submitted by trial judge were sufficient to enable parties to present every phase of controversy; St. Paul F. & M. Ins. Co. v. Mittendorf, 24 Okla. 662, 28 L.R.A.(N.S.) 657, 104 Pac. 354, holding that question of waiver of requirement to furnish proofs of loss is one for court where evidence as to waiver is uncontradicted; Busbee v. Western North Carolina Land & Lumber Co. 151 N. C. 515, 66 S. E. 577, holding submission of single issue, "What damages if any" plaintiff entitled to recover in action for trespass upon land, was erroneous; Dortch v. Atlantic Coast Line R. Co. 148 N. C. 576, 62 S. E. 616; Tuttle v. Tuttle, 146 N. C. 487, 125 Am. St. Rep. 481, 59 S. E. 1008,—holding it not reversible error to refuse to submit a separate issue where the court properly submitted the question to the jury under different issue; St. Paul F. & M. Ins. Co. v. Mittendorf, 24 Okla. 662, 28 L.R.A.(N.S.) 657, 104 Pac. 354, holding a question of waiver of proof of loss, in action on fire insurance policy, is one of law when there is no conflict in the evidence.

Rule as to reconsideration of issues determined on appeal.

Cited in Hendon v. North Carolina R. Co. 127 N. C. 112, 37 S. E. 155, denying right of defendant on second appeal to attack act decided to be valid on first appeal; Kramer v. Southern R. Co. 128 N. C. 270, 38 S. E. 872, and Wright v. Southern R. Co. 128 N. C. 79, 38 S. E. 283, denying right on second appeal to review point decided on first appeal; Setzer v. Setzer, 129 N. C. 297, 40 S. E. 62, and Jones v. Wilmington & W. R. Co. 131 N. C. 135, 42 S. E. 559, holding that questions adjudicated on appeal cannot be readjudicated except on rehearing; Perry v. Western North Carolina R. Co. 129 N. C. 334, 40 S. E. 191, and Carter v. White, 134 N. C. 470, 101 Am. St. Rep. 853, 46 S. E. 983, holding questions decided on appeal cannot be again heard under form of a second appeal; Roberts v. Baldwin, 155 N. C. 280, 71 S. E. 319, holding that matters decided on appeal will not be considered on subsequent appeal of same cause of action; Holland v. Seaboard Air Line R. Co. 143 N. C. 437, 55 S. E. 835; Green v. Green, 143 N. C. 410, 55 S. E. 818,—denying right of party by second appeal to review a former decree of the court.

Records not complying with rules.

Cited in Sigman v. Southern R. Co. 135 N. C. 182, 47 S. E. 420, holding that appeal will be dismissed where record without index or marginal references.

Right of action following failure of arbitration.

Cited in Bernhard v. Rochester German Ins. Co. 79 Conn. 396, 65 Atl. 134, 8 Ann. Cas. 298, holding an action will lie against insurance company on fire insurance policy where arbitration has failed, through no fault of assured and company has repudiated liability.

Sifting out useless exceptions.

Cited in State v. Matthews, 142 N. C. 623, 55 S. E. 342, holding an appellant may elect to abandon any exception which he took in lower court as mere matter of caution.

44 L. R. A. 427, THRIFT v. ELIZABETH CITY, 122 N. C. 31, 30 S. E. 349.

Powers of municipality.

Cited in Henderson Water Co. v. Henderson Graded Schools, 151 N. C. 176, 65 S. E. 927, on ultra vires contracts of municipal corporations.

Cited in note (25 Eng. Rul. Cas. 296) on power of municipality to levy taxes.

— Franchises for use of streets.

Cited in Elizabeth City v. Banks, 150 N. C. 411, 22 L.R.A.(N.S.) 930, 64 S. E.

189, holding invalid a municipal ordinance granting to individual franchise to use streets to supply light and heat for a period of thirty years with fixed rentals, where no express power to grant was given by legislature.

— Municipal water supply.

Cited in Cedar Rapids Water Co. v. Cedar Rapids, 118 Iowa, 241, 91 N. W. 1081, holding grant of franchise beyond statutory period void for period in excess of time allowed by statute; Scott v. Laporte, 162 Ind. 59, 69 N. E. 675, holding invalid as monopolistic an ordinance granting franchise to water company for 21 years coupled with an agreement to use designated number of gallons per month at a fixed price.

Cited in footnotes to Skaneateles Waterworks Co. v. Skaneateles, 46 L. R. A. 687, which denies power of village establishing own waterworks as against existing water company to impose rates for fire protection on property where village works not used; Fawcett v. Mt. Airy, 63 L. R. A. 870, which sustains municipality's power to incur expense of owning and operating water and electric light plants without submitting proposition to voters; Westminster Water Co. v. Westminster, 64 L. R. A. 630, which denies city's power to contract to pay water company specified percentage of assessed valuation in perpetuity for water supply.

Cited in note (61 L. R. A. 34, 81) on establishment and regulation of municipal water supply.

Distinguished in Tahlequah v. Guinn, 5 Ind. Terr. 513, 82 S. W. 886, holding valid a franchise granted to water company by municipality for 60 years with fixed rentals for public use where act of Congress empowered municipalities to grant such privileges.

Mandatory provisions of Constitution.

Cited in Rodman-Heath Cotton Mills v. Waxhaw, 130 N. C. 294, 41 S. E. 488, holding power of taxation not authorized by portion of charter not passed in compliance with constitutional requirement as to reading and recording of yea and nay vote.

Necessary expenses of municipality.

Cited in Wadsworth v. Concord, 133 N. C. 592, 45 S. E. 948, raising, but not deciding, question whether providing lights for city is necessary expense.

44 L. R. A. 430, BOND v. MARTIN, 33 Or. 551, 54 Pac. 158.

Application of exemption laws to nonresidents.

Cited in Himmel v. Eichengreen, 107 Md. 615, 69 Atl. 511, holding a statute exempting money payable by fraternal society to beneficiary is applicable to nonresidents where no words of distinction are used.

44 L. R. A. 432, KRAMER v. KISTER, 187 Pa. 227, 42 W. N. C. 392, 40 Atl. 1008.

Acts affecting validity of verdicts in criminal causes.

Cited in Hechter v. State, 94 Md. 444, 56 L. R. A. 461, footnote p. 457, 50 Atl. 1041, holding sealed verdict of guilty on some counts of indictment not invalidated by adding not guilty as to others, before recording; Blake v. Hunsberger, 46 Pa. Super. Ct. 40, 26 Montg. Co. L. Rep. 115, holding that where sealed verdict is returned in favor of plaintiff and court sends jury back to find amount and jury returns with amount calculated, such amount is properly entered as verdict, if they had not discussed amount during separation; Com. v. Huston, 46 Pa. Super. Ct. 220, holding that where jury returns verdict de-

fective in substance, court may send jury back to find such verdict as they think proper.

Distinguished in Com. v. Price, 10 Kulp, 42, holding right to new trial waived by defendant not objecting to resubmission to jury after one juror had disagreed upon coming into court after jury had separated.

Oral or written verdict.

Cited in Rottmund v. Pennsylvania R. Co. 225 Pa. 414, 74 Atl. 341, 26 Lanc. L. Rev. 268, Affirming 26 Lanc. L. Rev. 132, holding that the only verdict is that which the jury announce orally in court and which alone is received and recorded as the jury's finding, and not the written verdict handed in; Henning v. Keiper, 37 Pa. Super. Ct. 491, holding that the oral verdict is the only verdict and a written memorandum tendered by the jury is no part of the record though received and filed.

44 L. R. A. 435, KELLEY v. SCHUYLER, 20 R. I. 29, 78 Am. St. Rep. 887, 39 Atl. 893.

Invasion of dwelling house.

Cited in Gusdorff v. Duncan, 94 Md. 169, 50 Atl. 574, holding officer not authorized by writ of replevin to enter house of stranger against his will, where goods covered by writ are not located there; Hillman v. Edwards, 28 Tex. Civ. App. 309, 66 S. W. 788, holding levy on piano in dwelling house entered by officer climbing through window, void.

Cited in notes (86 Am. St. Rep. 405, 407, 409) on breaking into house to serve writ of replevin as abuse of lawful process and liability therefor; (95 Am. St. Rep. 128) on right of officer to break into house to execute civil process.

44 L. R. A. 438, WESTERN TWINE CO. v. WRIGHT, 11 S. D. 521, 78 N. W. 942.

Proof of contents of telegram.

Approved in People v. Hammond, 132 Mich. 427, 93 N. W. 1084, holding answer to telegram admissible where original telegram has been destroyed.

Cited in note (110 Am. St. Rep. 766, 767, 769) on admissibility of telegrams as evidence.

Distinguished in Distad v. Shanklin, 15 S. D. 512, 90 N. W. 151, holding copy of telegram admissible where copy had been received without objection on former trial and letter to plaintiff acknowledged a telegram reading same as copy.

Evidence as to quality of binding twine.

Cited in Standard Rope & Twine Co. v. Olmen, 13 S. D. 301, 83 N. W. 271, holding evidence that quality of binding twine rendered it susceptible to action of crickets, which destroyed it after grain was bound, admissible on behalf of defendant in action for price of twine.

Damages for breach of warranty.

Cited in C. H. Dean Co. v. Standifer, 37 Tex. Civ. App. 185, 83 S. W. 230, holding payment of part of purchase price, or resale of the article at a profit to be no bar to recovery; Denton Bros. v. Gill (Denton v. Fisher) 102 Md. 405, 3 L.R.A.(N.S.) 469, 62 Atl. 627, holding that where purchaser of goods deficient as to quality resells them, he may maintain suit against his vendee for the amount for which he is liable to the subvendee for such deficiency though he has not actually paid the claim.

Cited in notes (5 L.R.A.(N.S.) 1151) on price on resale as affecting measure

of damages for breach of warranty as to quality; (23 Eng. Rul. Cas. 573) on measure of damages for breach of warranty for goods sold.

Harmless error.

Cited in Koester v. Northwestern Port Huron Co. 24 S. D. 562, 124 N. W. 740, holding that error in allowing amendment of complaint was not reversible, under Code directing disregard of error not affecting substantial right, where transaction alleged was same as set up in answer; Mader v. Plano Mfg. Co. 17 S. D. 556, 97 N. W. 843, holding joinder of unnecessary party as plaintiff no ground for demurrer where defendant could not be prejudiced thereby; Kinkade v. Howard, 18 S. D. 63, 99 N. W. 91, holding deposition taken before notary admissible though technically defective in that signature and seal appeared on page preceding the certificate.

Contracts by telegraph.

Cited in note (110 Am. St. Rep. 746) on contracts by telegraph.

Burden of proof of lack of consideration.

Cited in Grimsrud Shoe Co. v. Jackson, 22 S. D. 122, 115 N. W. 656; Frick Co. v. Hoff, 26 S. D. 363, 128 N. W. 495,—holding that burden of proof to show lack of consideration is upon party seeking to invalidate it for lack of consideration.

Right of purchaser who had resold to recover for breach of warranty.

Cited in note (3 L.R.A.(N.S.) 466) on right of purchaser who has resold to recover for breach of warranty as to quantity or quality, where he had not actually made good to his vendees.

44 L. R. A. 442, CONNECTICUT MUT. L. INS. CO. v. SPRATLEY, 99 Tenn. 322, 42 S. W. 145.

Affirmed in 172 U. S. 602, 43 L. ed. 569, 19 Sup. Ct. Rep. 308.

Due service of process.

Cited in Guthrie v. Connecticut Indemnity Asso. 101 Tenn. 651, 49 S. W. 829, holding jurisdiction of foreign corporation after withdrawal from business in state not acquired by service of process on former local agent; Thach v. Continental Travelers' Mut. Acci. Asso. 114 Tenn. 279, 87 S. W. 255, holding that service upon resident attorney insufficient in case of foreign corporation having no place of business and no agents within the state; Groel v. United Electric Co. 69 N. J. Eq. 415, 60 Atl. 822; Venner v. Denver Union Water Co. 40 Colo. 222, 122 Am. St. Rep. 1036, 90 Pac. 623,—holding that statute requiring foreign corporation to designate agent to receive service of process, does not limit service exclusively to such agent; Groel v. United Electric Co. 69 N. J. Eq. 409, 60 Atl. 822, holding that statute governing service of process upon corporation does not create a contract but creates a status only.

Cited in footnotes to Mutual Reserve Fund Life Asso. v. Boyer, 50 L. R. A. 538, which denies right to serve process on state officer designated by foreign insurance company which has ceased to do business in state; Abbeville Electric Light & P. Co. v. Western Electrical Supply Co. 55 L. R. A. 146, which authorizes service on traveling salesman of foreign corporation sent to investigate controversy out of which cause of action arose; Buie v. Chicago, R. I. & P. R. Co. 55 L. R. A. 861, which authorizes service of railroad company by serving in other state, officers of company organized to construct extension of system.

Cited in notes (50 L.R.A. 590, 594) on what service of process is sufficient to constitute due process of law; (5 L.R.A.(N.S.) 298) on exclusiveness of mode of service provided by statute requiring foreign corporations to designate person

for purpose; (30 L.R.A.(N.S.) 679) on revocation by foreign corporation of appointment of agent to receive service; (47 L. ed. U. S. 987) on service on state officer as service on foreign corporations.

What constitutes doing business within state by foreign corporation.

Cited in Atlantic Coast Line R. Co. v. Richardson, 121 Tenn. 456, 117 S. W. 496, holding that railroad company operating line wholly without the state and having only soliciting agent within the state is not "doing business within the state."

Distinguished in State v. Connecticut Mut. L. Ins. Co. 106 Tenn. 288, 61 S. W. 75, holding receipt of premiums by foreign insurance company which has ceased to solicit new insurance and has withdrawn agents, not "doing business" within state so as to render it liable to payment of privilege tax.

44 L. R. A. 446, STATE *ex rel.* GOODELL v. McGEARY, 69 Vt. 461, 38 Atl. 165.

Residence for purpose of voting.

Cited in Welsh v. Shumway, 232 Ill. 81, 83 N. E. 549, holding elector entitled to vote at place of residence, though he had arranged for new place to reside and intended to move immediately after the election.

Cited in note (33 L.R.A.(N.S.) 767) on gaining new residence before abandoning occupation of old by purchasing or hiring property in new locality.

Effect of ineligibility of successful candidate.

Cited in State ex rel. Bancroft v. Frear, 144 Wis. 88, 140 Am. St. Rep. 992, 128 N. W. 1068, holding that under statute votes cast for deceased candidate for nomination must be counted and returned and if they are greater in number than vote cast for any other candidate no nomination is made.

Cited in notes (34 L.R.A.(N.S.) 241) on right of candidate standing second where person receiving largest vote ineligible; (124 Am. St. Rep. 211, 215) on effect of election where successful candidate is ineligible.

44 L. R. A. 449, CHESAPEAKE & O. R. CO. v. AMERICAN EXCH. BANK, 92 Va. 495, 23 S. E. 935.

Pleadings.

Cited in Chesapeake & O. R. Co. v. Rison, 99 Va. 28, 37 S. E. 320, holding that special replication should be rejected after filing of general replication not withdrawn; Camden Clay Co. v. New Martinsville, 67 W. Va. 528, 68 S. E. 118, holding that though demurrer to plea is not formally withdrawn after it is overruled, it will be considered as having been withdrawn if defendant permits issue of fact to be joined by replication to plea without objection.

Transportation of live stock and caretakers.

Cited in Brockway v. American Exp. Co. 168 Mass. 259, 47 N. E. 87, holding express company liable for negligence in keeping horses in car without food and drink for forty-nine hours; Burns v. Chicago, M. & St. P. R. Co. 104 Wis. 655, 80 N. W. 927, holding failure to perform statutory duty of unloading, feeding, and watering stock actionable negligence; Illinois C. R. Co. v. Eblin, 114 Ky. 825, 71 S. W. 919, holding carrier liable for failure to provide shipper with facilities for watering and feeding stock, which he accompanied and agreed to water and feed; Illinois C. R. Co. v. Curry, 127 Ky. 654, 106 S. W. 294, holding it to be duty of carrier to be prepared to feed and care for cattle at places where required by statute to unload, rest and feed.

Cited in footnotes to Illinois C. R. Co. v. Harris, 48 L. R. A. 175, which holds carrier liable for communication of Texas fever by infected cars to cattle

transported; Atchison, T. & S. F. R. Co. v. Campbell, 48 L. R. A. 251, which holds void, statute for free transportation of shippers of stock; Chicago, B. & Q. R. Co. v. Williams, 55 L. R. A. 289, which holds carrier liable for failure to properly provide for live stock knowingly taken without caretaker.

Cited in notes (44 L. R. A. 295) on duties of carriers of live stock as to pens or yards at station; (48 L. R. A. 34) on administration of Federal laws in state courts, as to transportation of live stock; (63 Am. St. Rep. 555, 557, 558, 565) on respective duties of carrier and shippers of live stock; (130 Am. St. Rep. 455) on carrier's liability for loss of, or injury to, livestock.

Distinguished in Moore v. Baltimore & O. R. Co. 103 Va. 194, 48 S. E. 887, holding that railway company must be given reasonable time to furnish suitable cars for transportation of live stock.

Incidents of railroad service.

Cited in Baker v. Boston & M. R. Co. 74 N. H. 110, 124 Am. St. Rep. 937, 65 Atl. 386, 12 Ann. Cas. 1072, holding it to be the duty of railroad transporting milk to furnish suitable cars and also servants to care for it during transportation; Norfolk & P. Belt Line R. Co. v. Com. 103 Va. 297, 49 S. E. 39, holding that placing cars upon private track scales is such part of railroad transportation as to be under jurisdiction of Railway commission.

Construction of statute.

Cited in Gates & Son Co. v. Richmond, 103 Va. 706, 49 S. E. 965, holding ordinance against obstructions and incroachments on street, not applicable to mere temporary obstruction.

Limitation of carrier's liability.

Cited in notes (88 Am. St. Rep. 105) on limitation of carrier's liability in bills of lading; (42 L. ed. U. S. 691) on validity and construction of contracts exempting carriers from liability for negligence.

Jurisdiction of state court of actions under federal acts.

Cited in Lemon v. Louisville & N. R. Co. 137 Ky. 281, 125 S. W. 701, holding that state courts have concurrent jurisdiction with Federal courts of actions in actions to recover damages under Federal employer's liability act.

Locality of jurisdiction of state court over foreign corporation.

Cited in note (70 L.R.A. 700) on locality of jurisdiction of state court over foreign corporation.

44 L. R. A. 459, PACE v. PACE, 95 Va. 792, 30 S. E. 361.

Contribution between co-obligors.

Cited in Sands v. Durham, 99 Va. 269, 54 L. R. A. 624, 86 Am. St. Rep. 884, 38 S. E. 145, holding partner, upon payment of firm debts after dissolution of partnership out of his individual means, entitled to subrogation to creditor's rights as against remaining partners.

Cited in note (68 L.R.A. 557) on subrogation of surety to primary securities.

Claims against insolvents.

Cited in First Nat. Bank v. William R. Trigg Co. 106 Va. 345, 56 S. E. 158, holding that creditor may prove his entire debt against insolvent corporation though he has a specific lien for a part thereof; Virginia Carolina Chemical Co. v. Edwards, 136 N. C. 77, 48 S. E. 568, on same point.

44 L. R. A. 464, FARRELLY v. COLE, 60 Kan. 356, 56 Pac. 492.

Constitutional law.

Cited in People *ex rel.* State Harbor v. Mullender, 132 Cal. 222, 64 Pac. 299,

holding act providing for establishment of board of state harbor commissioners for bay of San Diego not abuse of discretion as to enactment of local and special law; Woman's Relief Corps Home Asso. v. Nye, 8 Cal. App. 543, 97 Pac. 208, holding that where general law cannot be made applicable the legislature has power to pass a special law to meet the particular case.

Cited in note (93 Am. St. Rep. 108) on constitutional inhibition against special legislation where general law can be made applicable.

Judicial review of administrative acts.

Cited in Coyle v. Smith, 28 Okla. 124, 113 Pac. 944, holding that action of governor in convoking legislature at another place than seat of government is not reviewable by court when concurred in separately by two-thirds vote of all members elected to each branch; Ward v. Kansas State Agri. College, 70 C. C. A. 512, 138 Fed. 378, on exercise of discretionary power by administrative officer as not being reviewable by court.

Special session of legislature.

Cited in State v. Fair, 35 Wash. 133, 102 Am. St. Rep. 897, 76 Pac. 731, holding that extra session called for a particular purpose is not limited to legislation on the subject specified in the call.

44 L. R. A. 474, CLAYTON v. HENDERSON, 103 Ky. 228, 44 S. W. 667.

Report of second appeal in 22 Ky. L. Rep. 283, 53 L. R. A. 146, 57 S. W. 1.

Liability for acts of municipal officials done to prevent spread of disease.

Cited in Paducah v. Allen, 111 Ky. 367, 98 Am. St. Rep. 422, 63 S. W. 981, holding city liable for injury to adjoining land caused by the location of a pest house.

Cited in footnotes to Frazer v. Chicago, 51 L. R. A. 306, which holds establishment of smallpox hospital not taking or damaging of adjoining property; Nicholson v. Detroit, 56 L. R. A. 601, which denies city's liability for death of unwarned employee from smallpox contracted in tearing down smallpox hospital; Henderson v. O'Haloran, 59 L. R. A. 718, which holds city liable for contraction of smallpox by guest from inmate of house contracting disease from unlawful location of pesthouse near.

Cited in notes (5 L.R.A.(N.S.) 1029) on right of property owner to complain of location of contagious disease hospital in neighborhood; (93 Am. St. Rep. 849) on liability of municipality for communication of contagious or infectious disease.

Distinguished in Twyman v. Frankfort, 117 Ky. 523, 64 L.R.A. 573, 78 S. W. 446, holding municipal corporation not liable for death caused by removal of small-pox patient to overcrowded pesthouse; Arnold v. Stanford, 113 Ky. 855, 69 S. W. 726, holding city of fifth class not liable for injury to property by erection of pesthouse within city limits.

Disapproved in White v. San Antonio, 94 Tex. 316, 60 S. W. 426, holding city not liable for acts of its officers in taking possession of plaintiff's hotel and detaining guests suspected of having been exposed to infection from yellow fever.

Liability of sureties for wrongful acts of municipal officials.

Cited in footnote to State *ex rel.* McLauren v. McDaniel, 50 L. R. A. 118, which holds sureties on mayor's bond liable for his causing arrest without warrant, and trying and sentencing for offense not punishable by city ordinance.

Municipal liability for tort.

Cited in Bowling Green v. Rogers, 142 Ky. 560, 34 L.R.A.(N.S.) 463, 134 S.

W. 921, holding that municipality is not liable for maintaining city prison so that its windows overlook adjoining property destroying its privacy and permitting inmates to make loud noises and utter indecent language and thereby depreciating value of property; Winona v. Botzet, 23 L.R.A.(N.S.) 214, 94 C. C. A. 563, 169 Fed. 331, holding city liable for personal injury caused by horses taking fright at shrill whistle on city waterworks; Langley v. Augusta, 118 Ga. 597, 98 Am. St. Rep. 133, 45 S. E. 486, holding that city constructing sewer system without complying with formalities prescribed by statute authorizing it to construct sewers, cannot set up want of authority as defense to action for injury caused thereby; Vernon v. Wedgeworth, 148 Ala. 493, 42 So. 749, on liability of city for damages caused by nuisance maintained by it.

Distinguished in Braunstein v. Louisville, 146 Ky. 779, 42 L.R.A.(N.S.) 538, 143 S. W. 372, holding that city is not liable to one injured in street by fragment of rock thrown from quarry at workhouse by negligence of those operating quarry.

Liability of public officers.

Cited in note (93 Am. St. Rep. 848) on liability of public officers for communication of contagious or infectious disease.

Distinguished in Park Comrs. v. Prinz, 127 Ky. 471, 105 S. W. 948, holding board of park commissioners not liable for negligence of its park employees; Leavell v. Western Kentucky Asylum, 122 Ky. 217, 4 L.R.A.(N.S.) 271, 91 S. W. 671, 12 Ann. Cas. 827, holding asylum for insane not liable for injury caused by negligent act of lunatic permitted to assist in asylum laundry.

Joinder of parties.

Cited in footnote to Howe v. Northern P. R. Co. 60 L. R. A. 950, which authorizes joinder of master and negligent servant in action for injuries to other servant.

44 L. R. A. 477, HOGGARD v. MONROE, 51 La. Ann. 683, 25 So. 349.

Liability of municipality.

Cited in Dilluvio v. New York, 73 Misc. 126, 132 N. Y. Supp. 531, holding that act of city outside of authority conferred by statute, cannot be made basis of action for damages; Faucheux v. St. Martinville, 120 La. 765, 45 So. 600, holding municipality prima facie liable for destruction of private building by its officers.

Cited in note (2 L.R.A.(N.S.) 910) on municipal liability to persons injured in performance of *ultra vires* act.

Distinguished in Libby v. Portland, 105 Me. 378, 26 L.R.A.(N.S.) 145, 74 Atl. 805, 18 Ann. Cas. 547, holding that a city owning and operating a farm for profit is liable for negligence in connection therewith.

Ferryman as common carrier.

Cited in note (68 L.R.A. 155) on ferryman as a common carrier.

44 L. R. A. 479, TAYLOR v. CARROLL, 89 Md. 32, 42 Atl. 920.

Laches in prosecution of claim.

Cited in Hadaway v. Hynson, 89 Md. 314, 43 Atl. 806, holding delay of fifteen years in asserting claim on behalf of estate against trustee, followed by abandonment of claim until after trustee's death, fatal to recovery.

Cited in footnote to Robinson v. Bierce, 47 L. R. A. 275, which holds lien for taxes defeated by eight years' unexplained delay in prosecuting suits for same.

Rights of assignee of mortgage for foreclosure.

Distinguished in Wingert v. Brewer, 116 Md. 522, 82 Atl. 157, holding that

assignee of mortgage "for purpose of foreclosure and collection" has right to collect purchase money, or prior to sale and subsequent to advertisement he may receive amount due.

44 L. R. A. 482, BONAPARTE v. WISEMAN, 89 Md. 12, 42 Atl. 918.

Liability of landlord or owner for defects in buildings or premises.

Cited in Hearn v. Quillen, 94 Md. 44, 50 Atl. 402, holding defendant owners cannot escape liability for injury caused by fall of roof on ground that they employed experienced and competent carpenter to erect it; Davis v. Summerfield, 133 N. C. 330, 63 L. R. A. 496, footnote p. 493, 45 S. E. 654, holding lot owner liable for injury to adjoining owner through negligent excavation of such depth that injury might reasonably be anticipated, though work was done by independent contractor.

Cited in footnote to Pittsfield Cottonwear Mfg. Co. v. Pittsfield Shoe Co. 60 L. R. A. 116, which holds landlord liable to tenants of lower floor for injury from freezing of automatic fire extinguisher in portion retained by former, though building heated by independent contractor.

— For acts of independent contractors.

Cited in Laffery v. United States Gypsum Co. 83 Kan. 357, 45 L.R.A.(N.S.) 935, 111 Pac. 498, Ann. Cas. 1912A, 590, holding that owner is liable for injuries to third persons caused by work done by independent contractor, where contract requires performance of work intrinsically dangerous; Hanrahan v. Baltimore City, 114 Md. 532, 80 Atl. 312, holding that when city employs contractor to build sewer, under control of city officials, city is liable for negligence of contractor; Philadelphia, B. & W. R. Co. v. Mitchell, 107 Md. 606, 17 L.R.A.(N.S.) 977, 69 Atl. 422, holding railroad liable for injury to one passing along street over which its independent contractor was building a bridge, the injury being caused by an object negligently dropped from bridge; Bernheimer Bros. v. Bager, 108 Md. 562, 129 Am. St. Rep. 458, 70 Atl. 91, holding master liable for injury caused by failure to support properly a wall on adjoining property, though the excavating which caused the wall to fall was being done by an independent contractor; Thillman v. Baltimore, 111 Md. 135, 73 Atl. 722, holding city liable for negligence of independent contractor employed to pave street, where it retained control of the work; Cameron Mill & Elev. Co. v. Anderson, 34 Tex. Civ. App. 109, 78 S. W. 8, holding employer liable for injury where independent contractor employed to excavate in street left excavation unguarded; Leppert v. Flaggs, 101 Md. 74, 60 Atl. 450, on liability of one employing independent contractor to excavate near buildings.

Cited in footnotes to Boomer v. Wilbur, 53 L. R. A. 172, which denies owner's liability for injury by fall of bricks through negligence of independent contractor repairing chimney; Peerless Mfg. Co. v. Bagley, 53 L. R. A. 285, which holds landlord liable for independent contractor's negligence in putting in automatic fire extinguisher; Hoff v. Shockley, 64 L. R. A. 538, which holds property owner not liable for injuries to traveler by obstructions placed in street, without danger signals, by independent contractor for construction of building.

Cited in notes (65 L.R.A. 850) on liability for injuries caused by performance of work by independent contractor which is dangerous unless certain precautions are observed; (76 Am. St. Rep. 424) on liability for negligence and torts of independent contractors.

Control of work as question of fact.

Cited in Samuel v. Novak, 99 Md. 568, 58 Atl. 19, holding question of liability for damage to adjoining buildings from excavating done by independent

contractor is for jury; Decola v. Cowan, 102 Md. 555, 62 Atl. 1026, holding that under conflicting evidence question whether independent contractor had complete control of the work is for the jury.

Injury caused by excavation upon adjoining premises.

Cited in Walker v. Strosnider, 67 W. Va. 46, 67 S. E. 1087, 21 Ann. Cas. 1, holding that adjoining owner, excavating on his own land, must exercise reasonable care in doing so for safety of buildings on adjacent lands; Serio v. Murphy, 99 Md. 557, 105 Am. St. Rep. 316, 58 Atl. 435, holding that where owner of building is given notice of excavating to be done on adjoining lot it is his duty to protect his buildings, and he cannot recover for injury to them.

Cited in note (6 L.R.A.(N.S.) 243) on liability for injuries to buildings by negligent removal of lateral support of soil.

44 L. R. A. 485, McCREA v. ROBERTS, 89 Md. 238, 43 Atl. 39.

Mandamus to compel issuance of liquor license.

Followed in Fooks v. Purnell, 101 Md. 323, 61 Atl. 582, holding that appeal will not lie to courts to compel clerk of circuit court to issue liquor license.

Cited in McCrea v. Billingslea, 89 Md. 767, 43 Atl. 42, upholding dismissal of petition for mandamus to compel clerk of circuit court of county to issue liquor license.

Cited in note (125 Am. St. Rep. 515) on mandamus to compel issuance of license.

Mandamus to compel action by public officer.

Cited in Gross v. Baltimore, 111 Md. 547, 75 Atl. 346, holding that mandamus will not lie to compel city attorney to proceed in condemnation proceedings for opening street; Ex parte Watts, 108 Md. 700, 71 Atl. 316, holding that discretionary power of orphan's court as to amount of executor's fees is not reviewable on appeal.

Limitation of judicial powers to judicial functions.

Cited in Beasley v. Ridout, 94 Md. 659, 52 Atl. 61, holding provisions of act requiring visitors of county jail to be appointed by judges, unconstitutional; Malmo's Appeal, 72 Conn. 6, 43 Atl. 485, holding act allowing applicant to whom county commissioners have refused to issue liquor license, the right of appeal, constitutional; State *ex rel.* White v. Barker, 116 Iowa, 111, 57 L. R. A. 252, 93 Am. St. Rep. 222, 89 N. W. 204, holding that judges of constitutional court cannot be vested with power to choose managers of municipal water supply system; State ex rel. Young v. Brill, 100 Minn. 516, 111 N. W. 639, 10 Ann. Cas. 425, holding unconstitutional act conferring upon judges of district court power to appoint members of county board of control.

Distinguished in Re Counties Comprising Seventh Judicial Dist. 22 Okla. 448, 98 Pac. 557, holding that fixing term of office is legislative act which cannot be delegated to a court.

44 L. R. A. 489, MORRIS v. CAUDLE, 178 Ill. 9, 69 Am. St. Rep. 282, 52 N. E. 1036.

Unborn children as grantees in deeds.

Cited in Miller v. McAlister, 197 Ill. 77, 64 N. E. 254, holding that deed to grantee and her children, born and to be born, conveys no interest to children not born at execution of deed; Dick v. Ricker, 222 Ill. 416, 113 Am. St. Rep. 426, 78 N. E. 823, holding that grantee must be in esse at time deed is executed in order to take present title thereunder.

Cited in notes (84 Am. St. Rep. 236, 237) on conveyances to persons not in being; (119 Am. St. Rep. 952) on children en ventre sa mere.

Delivery of deeds.

Cited in Biggins v. Lambert, 115 Ill. App. 579, on deed as not being susceptible of delivery after death of grantor; Kittoe v. Willey, 121 Wis. 553, 99 N. W. 337, on delivery of deed to grantor's wife as being effective as delivery to grantees where so intended.

Cited in note (54 L. R. A. 872, 873) on delivery of deed to third person; or record, or delivery for record, by grantor.

44 L. R. A. 493, FIRE & WATER COMRS. v. WILKINSON, 119 Mich. 655, 78 N. W. 893.

Recovery of property wrongfully mingled with that of insolvent.

Cited in Plano Mfg. Co. v. Auld, 14 S. D. 520, 86 Am. St. Rep. 769, 86 N. W. 21, holding trust imposed on money in possession of insolvent bank for payment of money collected for stranger and mingled with its own funds; *Re* Mulligan, 116 Fed. 718, holding that where funds of owner are misapplied in purchase of stocks, no lien attaches in his favor on stocks recovered by trustee in bankruptcy and not shown to have been purchased with misapplied moneys; Peters v. Union Trust Co. 131 Mich. 324, 91 N. W. 273, holding securities purchased with funds of savings department of insolvent bank, impressed with trust in favor of savings depositors; Hewitt v. Hayes, 205 Mass. 362, 137 Am. St. Rep. 448, 91 N. E. 332, holding that where trustee mingled trust money with money of his own in bank, it will be presumed withdrawals made were made from trustee's own part and not from trust fund; National L. Ins. Co. v. Mather, 118 Ill. App. 498, holding that where bank receives trust funds, such funds constitute a preference in the assets over other creditors, where bank always retained on hand more than the amount of such fund; Lowe v. Jones, 192 Mass. 100, 6 L.R.A.(N.S.) 489, 116 Am. St. Rep. 225, 78 N. E. 402, 7 Ann. Cas. 551, holding that where trustee disposes of trust funds wrongfully, no trust can be established for proceeds in hands of administrator of his insolvent estate unless proceeds can be traced into some specific fund; Texas Moline Plow Co. v. Kingman Texas Implement Co. 32 Tex. Civ. App. 347, 80 S. W. 1042, holding no trust in specific funds created where proceeds of goods in question were mingled with other funds and used in the general business; Re Smith, T. & B. Co. 159 Fed. 271, holding that trust fund has no preference in insolvent's assets where no part thereof can be traced into such assets; Thoman v. Mills, 159 Mich. 414, 124 N. W. 33 (dissenting opinion), on right to follow trust property.

Cited in footnotes to Lincoln Sav. Bank & S. D. Co. v. Morrison, 57 L. R. A. 885, which holds *cestui que trust* entitled to preference, only to extent trustee's estate shown to have been increased by misappropriation of trust property; Woodhouse v. Crandall, 58 L. R. A. 385, which requires entire balance in insolvent bank to be turned over to beneficiary of trust fund exceeding such balance.

Cited in notes (1 L.R.A.(N.S.) 252) on claim of preference of special or trust deposit out of funds of insolvent bank, (86 Am. St. Rep. 804, 806) on right to recover money deposited with or collected by bank upon its insolvency.

Trust in deposit of public moneys in bank.

Cited in Crawford County v. Strawn, 15 L.R.A.(N.S.) 1107, 84 C. C. A. 553, 157 Fed. 54, on necessity of tracing trust fund into assets in order to sustain claim to preference; Lucas County v. Jamison, 170 Fed. 347, holding that in order to give priority in recovery from insolvent bank of public funds wrong-

fully deposited therein it must be shown not only that the funds were wrongfully deposited with knowledge of the bank but that they still exist as a part of the estate and to its enlargement.

Cited in footnote to Maloy v. Bernalillo County, 52 L. R. A. 126, which denies defaulting county treasurer's liability to county for interest paid to him by bank in which public money deposited, after he has paid county.

Cited in note (5 L.R.A.(N.S.) 889) on right to preference in respect to public funds deposited in bank subsequently becoming insolvent.

Distinguished in Retan v. Union Trust Co. 134 Mich. 10, 95 N. W. 1006, holding no trust created where register in chancery pursuant to statute deposited funds in bank, and such funds have no priority in case of bank's insolvency; Board of Education v. Union Trust Co. 136 Mich. 456, 99 N. W. 373, holding that deposit by treasurer of Board of Education of funds in bank of which he was cashier created no trust where it was not shown that he was a stockholder or profited thereby.

Deposit of public funds.

Followed in People v. Glazier, 159 Mich. 544, 124 N. W. 582, holding state treasurer criminally liable for depositing state funds in bank of which he is the principal stockholder.

44 L. R. A. 500, DETZUR v. B. STROH BREWING CO. 119 Mich. 282, 77 N. W. 948.

Liability for injury caused by materials falling into street.

Cited in Lauer v. Palms, 129 Mich. 684, 58 L. R. A. 73, 89 N. W. 694, holding landlord liable for injuries caused by falling wall, although not permitted by tenant to make necessary repairs.

Cited in footnote to Wolf v. Downey, 51 L. R. A. 242, which denies liability of contractor for either carpenter or mason work for injury from fall of brick from unknown cause.

Cited in note (123 Am. St. Rep. 568) on duty and liability of land owners to adjoining proprietors as to insecure walls and structures.

Proximate cause.

Cited in MacDonald v. Freeman Mfg. Co. 160 Mich. 385, 125 N. W. 352, holding slipping of blocks in mill, whereby employee was thrown against shaff and caught by projecting bolt, not as a matter of law, the proximate cause.

Cited in note (20 L.R.A.(N.S.) 96) on weather conditions as independent, intervening, efficient cause.

Grounds for objections to evidence.

Cited in Bacon v. Reich, 121 Mich. 486, 49 L. R. A. 313, 80 N. W. 278, holding that mere objection to testimony as incompetent and immaterial did not justify reversal; White v. Schaberg, 131 Mich. 320, 91 N. W. 168, holding appellate court limited, in consideration of objection to evidence, to ruling upon the objection as made; Harker v. Detroit United R. Co. 150 Mich. 703, 114 N. W. 657, holding that court will not reverse on appeal on ground that immaterial answer was permitted, where no specific ground of objection was stated and no instruction asked; Renders v. Grand Trunk R. Co. 144 Mich. 391, 108 N. W. 368, holding general objection of incompetency to mortality tables as evidence insufficient to justify reversal.

Right of judges to order remittitur in actions for damages.

Cited in Carton v. Day, 157 Mich. 45, 121 N. W. 295, holding party not

prejudiced where motion to open judgment was denied on condition that the other party remitted such part of verdict as to which he showed a defense.

Cited in footnotes to Central R. Co. v. Perkerson, 53 L.R.A. 210, which denies trial judge's power to order remittitur as condition of refusing new trial; Heimlich v. Tabor, 68 L.R.A. 669, which sustains practice of naming sum for which judgment may be rendered at option of one of the parties where verdict is excessive.

Cited in note (39 L.R.A.(N.S.) 1068, 1073) on power of trial court to cure excessive verdict by requiring or permitting reduction.

Amount of recovery for personal injury.

Cited in Larson v. Haglin, 103 Minn. 263, 114 N. W. 958, sustaining verdict of $10,500 damages for loss of arm.

Negligence as question for jury.

Cited in Haxer v. Griessel, 162 Mich. 312, 127 N. W. 309, holding that negligence of defendant was for jury in action for injury to third person caused by fall of ladder upon scaffold upon which injured person was working.

44 L. R. A. 504, MINNEAPOLIS SASH & DOOR CO. v. METROPOLITAN BANK, 76 Minn. 504, 77 Am. St. Rep. 609, 78 N. W. 980.

Collection of commercial paper by banks.

Cited in O'Leary Bros. v. Abeles, 68 Ark. 262, 82 Am. St. Rep. 291, 57 S. W. 791, holding check paid as between drawer and payee, where payee, through bank, sends check to drawee bank which marks check paid and sends collecting bank worthless exchange; Bank of Commerce v. Miller, 105 Ill. App. 234, holding bank not excused by general custom or special usage, for delay in collecting check; Pinkney v. Kanawha Valley Bank, 68 W. Va. 264, 32 L.R.A.(N.S.) 993, 69 S. E. 1012, Ann. Cas. 1912B, 115, holding that it is negligence for collecting bank to send checks direct to drawee bank; Farley Nat. Bank v. Pollock, 145 Ala. 327, 2 L.R.A.(N.S.) 197, 117 Am. St. Rep. 44, 39 So. 612, 8 Ann. Cas. 370; R. H. Herron Co. v. Mawby, 5 Cal. App. 43, 89 Pac. 872; Bank of Rocky Mount v. Floyd, 142 N. C. 194, 55 S. E. 95; Winchester Mill Co. v. Bank of Winchester, 120 Tenn. 235, 18 L.R.A.(N.S.) 446, 111 S. W. 248,—holding drawee bank not the proper agent for selection by a transmitting or collecting bank.

Cited in footnotes to Givan v. Bank of Alexandria, 47 L. R. A. 270, which holds sending check directly to drawee bank for collection, negligence; First Nat. Bank v. Citizens' Sav. Bank, 48 L. R. A. 583, which holds collecting bank impliedly instructed to send certificate of deposit directly to bank making it, which is only bank in place; Second Nat. Bank v. Merchants' Nat. Bank, 55 L. R. A. 273, which holds bank negligent in sending note for collection to bank whose cashier is treasurer of corporation maker, without hearing from similar note previously sent.

Cited in note (82 Am. St. Rep. 382) on liability of bank for negligence of notary in collection of commercial paper.

Distinguished in Plover Sav. Bank v. Moodie, 135 Iowa, 690, 110 N. W. 29, holding fact that holder of bank check sends same for collection direct to bank on which it is drawn is not such negligence as will discharge indorser where no prejudice is shown to have resulted.

Custom of banks as affecting presentment of check.

Cited in Noble v. Doughten, 72 Kan. 358, 3 L.R.A.(N.S.) 1179, 83 Pac. 1048, holding a local custom of banks to take up checks drawn upon them by their depositors with their own checks in other banks will not excuse holders from exercising the utmost diligence in collecting the substituted checks.

44 L. R. A. 508, CAMERON v. KENYON-CONNELL COMMERCIAL CO. 22 Mont. 312, 74 Am. St. Rep. 602, 56 Pac. 358.

Storage of explosives as nuisance.

Cited in notes (107 Am. St. Rep. 244; 16 L.R.A.(N.S.) 694) on storage of explosives as nuisance.

Connection with nuisance essential to responsibility.

Cited in note (32 L.R.A.(N.S.) 900) on connection with or participation in nuisance essential to responsibility.

Liability of vice principal.

Cited in Hagerty v. Montana Ore Purchasing Co. 38 Mont. 79, 25 L.R.A.(N.S.) 360, 98 Pac. 643, holding superintendent of mine liable for injury to one employed in shaft known by the superintendent to be dangerous.

Care required of servant.

Cited in Beardsley v. Murray Iron Works Co. 129 Iowa, 679, 106 N. W. 180, holding that master is not liable for injury to servant resulting from his failure to do properly the work which he is employed to do.

Agent's liability for torts.

Cited in notes (2 L.R.A.(N.S.) 380) on agent's liability to third person for torts; (6 L.R.A.(N.S.) 1005) on personal liability at common law of officers or stockholders to other party to ultra vires or unlawful corporate transaction; (39 L.R.A.(N.S.) 903) on liability of officer for personal injuries from torts in connection with business of corporation.

Liability for injury by servant in use of dangerous agency.

Cited in note (10 L.R.A.(N.S.) 369, 370, 380) on liability for injury by servant to third person in use of dangerous agency.

Liability of property owner for injury to fireman.

Cited in note (30 L.R.A.(N.S.) 62) on liability of property owner for injury to fireman from violation of duty enjoined by statute or ordinance.

Distinguished in Lunt v. Post Printing & Pub. Co. 48 Colo. 335, 30 L.R.A. (N.S.) 71, 110 Pac. 203, 21 Ann. Cas. 492, holding that owner of property owes no duty to firemen called to extinguish fire to warn them of presence of quantities of acid in room where fire seems to be, fumes from which may be dangerous to life.

Effect of motion for nonsuit.

Cited in McCabe v. Montana C. R. Co. 30 Mont. 334, 76 Pac. 701, holding that in motion for nonsuit, every fact will be considered as proven which the evidence tends to prove.

44 L. R. A. 512, EMBLER v. HARTFORD STEAM BOILER INSPECTION & INS. CO. 158 N. Y. 431, 53 N. E. 212.

Contracts for benefit of third persons.

Cited in Bain v. Atkins, 181 Mass. 244, 57 L. R. A. 792, footnote p. 791, 92 Am. St. Rep. 411, 63 N. E. 414, denying right of injured person to sue insurer against loss through liability for injuries, after settlement with insured; Wait v. Wilson, 86 App. Div. 487, 83 N. Y. Supp. 834, holding agreement of wife with husband to will as much of his property as was not used by her after his death, to her stepson, not enforceable by latter; Hurd v. Wing, 93 App. Div. 66, 86 N. Y. Supp. 907, Same Case on former appeal in 76 App. Div. 508, 78 N. Y. Supp. 574, holding agreement of grantee with grantor to pay for materials used in buildings on premises conveyed, enforceable by material man; Frerking v. Thomas, 64 Neb. 200, 89 N. W. 1005, holding maker of note and assignees not

entitled to benefit of promise made by payee with holder, in compromise of payee's liability as indorser, not to enforce notes against maker: Laudani v. Vulcan Engineering Co. 70 Miss. 394, 128 N. Y. Supp. 922, holding that where contractor under barge canal contract defaulted and state relet work at higher price, state owes no obligation to persons filing liens against original contractor to collect from contractor's sureties increased cost of work, and to reserve sum withheld from amount earned by contractor to be applied in payment of such liens; Clark v. Bonsal & Co. 157 N. C. 273, 72 S. E. 954, holding that when contract of indemnity is clearly against loss, no action will lie in favor of insured until some damage has been sustained either by payment of whole or some part of employee's claim; Rochester Dry Goods Co. v. Fahy, 111 App. Div. 753, 97 N. Y. Supp. 1013, holding that corporation cannot enforce promise made by seller of a majority of its stock to the buyer thereof; Klauck v. Federal Ins. Co. 60 Misc. 176, 111 N. Y. Supp. 1037, holding that owners of wrecked vessel can not sue for breach of contract between underwriters and wrecking company engaged to float the vessel; Rosseau v. Rouss, 180 N. Y. 122, 72 N. E. 916, holding that promise for benefit of third person must be supported by consideration from one having legal interest in its performance.

Cited in footnotes to Fenton v. Fidelity & C. Co. 48 L. R. A. 770, which holds indemnity against liability for injuries to employees assignable, though employer insolvent; Frye v. Bath Gas & Electric Co. 59 L. R. A. 444, which denies right of injured employee to enforce employer's liability insurance against insurer after employer's insolvency; Morgan v. Randolph-Clowes Co. 51 L. R. A. 653, which denies right of firm creditor to sue corporation assuming firm debts; Ferris v. American Brewing Co. 52 L. R. A. 305, which sustains right of action of one for whose benefit stipulation in lease was made, against sale on premises of other person's beer; Electric Appliance Co. v. United States Fidelity & G. Co. 53 L. R. A. 609, which denies right of action of one furnishing materials to contractor to sue on bond by latter to city, conditioned on turning over building free of claims for materials; Boston Ins. Co. v. Chicago, R. I. & P. R. Co. 59 L. R. A. 796, which denies right of action against railroad company carrying mail under contract with government, by sender of registered mail destroyed through negligence of its employees; Tweeddale v. Tweeddale, 61 L. R. A. 509, which sustains right of third person to enforce contract made for his benefit; Voorhees, M. & Co. v. Porter, 65 L.R.A. 736, which sustains right of creditors of vendor of goods to sue purchaser on agreement with vendor to pay such creditors out of the purchase money.

Cited in notes (7 L.R.A.(N.S.) 960) on injured employee's right to reach fund under employer's liability policy; (71 Am. St. Rep. 190) on right of third person to sue on contract made for his benefit.

Distinguished in Traver v. Snyder, 35 Misc. 266, 71 N. Y. Supp. 761, Affirming 34 Misc. 407, 69 N. Y. Supp. 750, holding grantees under receiver's sale, stipulating to pay expense of accounting and discharge of receiver, liable in action by receiver's attorney for compensation allowed by court; Wright v. Glen Teleph. Co. 48 Misc. 195, 95 N. Y. Supp. 101, holding that citizen may maintain suit to compel telephone company to furnish service according to contract with the city.

44 L. R. A. 515, MITCHELL v. CAROLINA C. R. CO. 124 N. C. 236, 32 S. E. 671.

Contracts to limit liability.

Cited in Gardner v. Southern R. Co. 127 N. C. 296, 37 S. E. 328, denying right of carrier to exempt itself by contract from liability for loss due to its

negligence; Gwyn-Harper Mfg. Co. v. Carolina C. R. Co. 128 N. C. 283, 83 Am. St. Rep. 675, 38 S. E. 894, holding stipulation in bill of lading requiring notice in writing of loss to carrier within thirty days after time for delivery, unreasonable; Bank of Tarboro v. Fidelity & D. Co. 128 N. C. 373, 83 Am. St. Rep. 682, 38 S. E. 908, holding that cashier's bond of fidelity and guaranty insurance company should be construed most strongly against company; Parker v. Atlantic Coast Line R. Co. 133 N. C. 341, 63 L. R. A. 830, 45 S. E. 658, holding liability of carrier for negligence not limited by indorsing words "subject to delay" on bill of lading; Harden v. Chesapeake & O. R. Co. 157 N. C. 250, 72 S. E. 1042, holding that stipulation in carrier's livestock bill of lading which fixes maximum valuation of stock shipped and recoverable thereunder without examination of stock, invalid; McConnell Bros. v. Southern R. Co. 144 N. C. 90, 56 S. E. 559; Stringfield v. Southern R. Co. 152 N. C. 128, 67 S. E. 333,—holding that carrier cannot by contract limit its liability for negligence; Winslow Bros. & Co. v. Atlantic Coast Line R. Co. 151 N. C. 254, 65 S. E. 965 (dissenting opinion), on same point; Jones-Lane Co. v. Atlantic Coast Line R. Co. 148 N. C. 585, 62 S. E. 701, holding valid agreement by shipper fixing reasonable valuation of stock shipped, made upon consideration of reduced rate.

Cited in note (88 Am. St. Rep. 92, 121, 123) on limitation of carrier's liability in bills of lading.

Burden of proof and circumstantial evidence.

Cited in Hinkle v. Southern R. Co. 126 N. C. 937, 78 Am. St. Rep. 685, 36 S. E. 348, holding burden upon carrier to prove facts exempting it from liability for injury to live stock under contract limiting liability; Gwyn-Harper Mfg. Co. v. Carolina C. R. Co. 128 N. C. 284, 83 Am. St. Rep. 675, 38 S. E. 894, holding burden upon carrier in whose hands damaged goods are found, to rebut presumption that damage was caused by it; Williams v. Southern R. Co. 130 N. C. 124, 40 S. E. 979, dissenting opinion by Douglas, J., who holds negligence of railway in maintenance of spark arrester provable by circumstantial evidence; Parker v. Atlantic Coast Line R. Co. 133 N. C. 339, 63 L. R. A. 829, 45 S. E. 658, holding burden of proving due diligence in carrying and delivering melons, upon carrier; Raleigh Hosiery Co. v. Raleigh & G. R. Co. 131 N. C. 240, 42 S. E. 602, holding burden upon carrier to rebut presumption of negligence where fire shown to have been caused by sparks from locomotive; Sumrell v. Atlantic Coast Line R. Co. 152 N. C. 269, 67 S. E. 585, holding that bill of lading raises presumption that goods were delivered to carrier in good order; Everett v. Norfolk & S. R. Co. 138 N. C. 70, 1 L.R.A.(N.S.) 988, 50 S. E. 557, holding that presumption of negligence arises against carrier which has received goods and fails to deliver them at destination; Kissinger v. Fitzgerald, 152 N. C. 253, 67 S. E. 588, holding that injury to goods raises presumption of negligence and burden is upon carrier to rebut it; Harper Furniture Co. v. Southern Exp. Co. 144 N. C. 645, 57 S. E. 458, 12 Ann. Cas. 924, holding that presumption of negligence from wrongful delay of goods, arises against any carrier in whose hands the goods are shown to have been after the delay; The Medea, 103 C. C. A. 273, 179 Fed. 786, holding that burden of proving absence of negligence is upon vessel, where cargo has been damaged; Meredith v. Seaboard Air Line R. Co. 137 N. C. 487, 50 S. E. 1, holding that when carrier receives goods in good condition burden is upon it to show delivery to connecting carrier in like condition; Walker v. Carpenter, 144 N. C. 681, 57 S. E. 461 (dissenting opinion), on burden of proof.

Cited in footnote to Mears v. New York, N. H. & H. R. Co. 56 L. R. A. 884,

which holds carrier has burden of proving that delivery of goods in wet condition was not due to its negligence.

Submission of issues.

Cited in Ray v. Long, 132 N. C. 893, 44 S. E. 652, holding issue submitted whether purchase money furnished equally by husband and wife, sufficient in ejectment by husband and wife for land sold under execution against husband.

44 L. R. A. 520, BALTIMORE & O. R. CO. v. FULTON, 59 Ohio St. 575, 53 N. E. 265.

Followed without comment in Thomas v. N. J. Gawne Co. 69 Ohio St. 562, 70 N. E. 1133.

Jurisdiction of state courts after removal of causes to Federal courts.

Cited in Hickman v. Missouri, K. & T. R. Co. 97 Fed. 120, holding that in removable cause, after certified copy of record of state court refusing removal is filed, all proceedings in state court are void; Holbrook v. J. J. Quinlan & Co. 84 Vt. 418, 80 Atl. 339, holding that when case is removed from state court to Federal court, whole case goes, leaving no part of its subject matter in state court, which thereafter can proceed no further, unless jurisdiction is restored.

Cited in footnotes to Illinois C. R. Co. v. Benz, 58 L.R.A. 691, which holds decision on reversal and remanding of action for personal injuries, removed to Federal court, not law of case if action dismissed and new one begun; McIver v. Florida, C. & P. R. Co. 65 L.R.A. 437, which sustains right of plaintiff who has been nonsuited or voluntarily dismissed his case after removal to Federal court, to recommence action in state court.

Cited in notes (54 L. ed. U. S. 733) on new action in state court after removal to Federal court and voluntary dismissal there; (7 L.R.A.(N.S.) 503) on right, after removal of action to Federal court and its dismissal without prejudice, to commence new action in state court.

Distinguished in Foley v. Cudahy Packing Co. 119 Iowa, 250, 93 N. W. 284; Adams Exp. Co. v. Schofield, 111 Ky. 837, 64 S. W. 903,—holding dismissal, without prejudice, of cause removed to state court not bar to maintenance of new suit in state court on same cause of action; Carr v. Howell, 154 Cal. 383, 97 Pac. 885, holding that dismissal of cause without trial of merits, in Federal court is no bar to suit in state court; Anderson v. United Realty Co. 79 Ohio St. 45, — L.R.A.(N.S.) —, 86 N. E. 644, holding that one who secures withdrawal of petition and bond for removal of cause to Federal court and dismisses as to that party, cannot thereafter be heard to assert that state court has lost jurisdiction.

Disapproved in McIver v. Florida C. & P. R. Co. 110 Ga. 228, 65 L.R.A. 440, 36 S. E. 775; Cleveland, C. C. & St. L. Ry. Co. v. Reese, 93 Ill. App. 663; Krueger v. Chicago & A. R. Co. 84 Mo. App. 362; Fleming v. Southern R. Co. 128 N. C. 81, 38 S. E. 253; Hooper v. Atlanta, K. & N. R. Co. 106 Tenn. 31, 53 L.R.A. 932, footnote p. 931, 60 S. W. 607; Gassman v. Jarvis, 100 Fed. 146; Texas Cotton Products Co. v. Starnes, 128 Fed. 184,—holding that dismissal, without determination on merits, of suit removed from state to Federal court, does not bar state court from entertaining new suit on same cause of action; Swift & Co. v. Hoblawetz, 10 Kan. App. 53, 61 Pac. 969, and Rodman v. Missouri P. R. Co. 65 Kan. 648, 59 L.R.A. 705, footnote p. 704, 70 Pac. 642, sustaining right to bring action in state court after dismissal without prejudice of action removed to Federal court; Stevenson v. Illinois C. Ry. 117 Ky. 858, 79 S. W. 767, 4 Ann. Cas. 890, holding that plaintiff procuring dismissal without prejudice, of action removed to Federal court may subsequently bring suit in state

court for same cause; Young v. Bell Teleph. & Teleg. Co. 75 S. C. 328, 7 L.R.A. (N.S.) 501, 55 S. E. 765, 9 Ann. Cas. 940, holding that where cause begun in state court has been removed to Federal court, and discontinued upon motion of plaintiff, he may bring another suit in state court for the same cause; Behen v. Metropolitan Street R. Co. 85 Kan. 495, 118 Pac. 73, Ann. Cas. 1913 A, 328, holding that removal of cause to Federal court does not preclude suit upon same cause in state court.

Overruled in Baltimore & O. R. Co. v. Larwill, 83 Ohio St. 112, 34 L.R.A. (N.S.) 1195, 93 N. E. 619, holding that where case has been removed to Federal court and dismissed without prejudice, action may be commenced in any court having jurisdiction.

44 L. R. A. 522, BLAGEN v. SMITH, 34 Or. 394, 56 Pac. 292.

Right of private individual to enjoin public nuisance or crime.

Cited in Templeton v. Williams, 59 Or. 163, 35 L.R.A.(N.S.) 470, 116 Pac. 1062, holding that use of building for stable in residence portion of city may be enjoined as nuisance if by noise and noxious odors adjoining residences are rendered uncomfortable and value of property diminished; Ingersoll v. Rousseau, 35 Wash. 99, 76 Pac. 513, 1 Ann. Cas. 35, holding that court of equity has power to enjoin the keeping of houses of ill fame in action brought by residents on neighboring property; Seifert v. Dillon, 83 Neb. 327, 19 L.R.A.(N.S.) 1020, 131 Am. St. Rep. 642, 119 N. W. 686, 17 Ann. Cas. 1126, holding adjoining owner entitled to injunction against use of property for house of ill fame, though it was so used before he purchased his property; Oliver v. Klamath Lake Nav. Co. 54 Or. 99, 102 Pac. 786, granting injunction, at instance of riparian owner, against obstruction in waters in front of his premises; Van Buskirk v. Bond, 52 Or. 237, 96 Pac. 1103, holding that private person cannot maintain action to enjoin obstruction of highway unless specially injured thereby.

Cited in footnotes to Weakley v. Page, 46 L. R. A. 552, which sustains right of person specially injured to have house of ill fame abated as nuisance; Griffith v. Holman, 54 L. R. A. 178, which denies private individual's right to abate public nuisance consisting of fence across navigable stream; Reyburn v. Sawyer, 65 L.R.A. 931, which sustains right of owner of island to injunction against maintenance of fishing nets in adjoining water so as to obstruct navigation.

Cited in notes (3 L.R.A.(N.S.) 623) on injunction against commission of crime when property right involved; (11 L.R.A.(N.S.) 1060) on right of neighbors to enjoin maintenance of bawdy house.

Distinguished in People *ex rel.* L'Abbe v. District Court, 26 Colo. 393, 46 L. R. A. 853, 58 Pac. 604, denying right of citizen to injunction to stop public gambling not alleged especially to injure complainant's property.

House of ill-fame as nuisance.

Cited in note (107 Am. St. Rep. 229) on house of ill-fame as nuisance.

44 L. R. A. 527, PORTLAND v. PORTLAND BITUMINOUS PAVING & IMPROV. CO. 33 Or. 307, 72 Am. St. Rep. 713, 52 Pac. 28.

Provisions in contracts for street paving relating to repairs.

Cited in Alameda Macadamizing Co. v. Pringle, 130 Cal. 229, 52 L. R. A. 265, footnote p. 264, 80 Am. St. Rep. 124, 62 Pac. 394, holding street improvement contract invalidated by guaranty for year; Kansas City v. Hanson, 8 Kan. App. 293, 55 Pac. 513, holding assessment invalidated by provision in contract for street improvement, requiring contractor to keep pavement in repair for five

years; Young v. Tacoma, 31 Wash. 160, 71 Pac. 742, holding it question for jury whether provision in contract for repairs for five years, was guaranty against defective work or not; Montgomery v. Barnett, 149 Ala. 123, 43 So. 92, holding that city has no power to make contract for the paving street which includes provision for keeping it in repair for a term of years; Williamsport v. Hughes, 10 Pa. Dist. R. 612, holding that cost of keeping in repair for a term of years, cannot be included in special assessment for paving street.

Cited in footnotes to Seaboard Nat. Bank v. Woesten, 48 L. R. A. 279, which holds agreement to maintain new pavement for series of years not contract for repairs necessitating letting to lowest bidder; Barber Asphalt Paving Co. v. French, 54 L. R. A. 492, which sustains requirement of five years' guaranty of street paving; Blochman v. Spreckels, 57 L. R. A. 213, which denies power to assess cost of street improvement on abutters where contractor required to sustain all loss from nature of work.

Distinguished in Allen v. Portland, 35 Or. 447, 58 Pac. 509, upholding validity of provision in paving contract requiring contractor to repair defects for stated period at his own expense; State *ex rel.* Wheeler v. District Court, 80 Minn. 308, 83 N. W. 183, upholding validity of guaranty by contractor of pavement for period of ten years; Shank v. Smith, 157 Ind. 409, 55 L. R. A. 568, footnote p. 564, 61 N. E. 932, sustaining provision in street paving contract for keeping in good condition for term of years; People *ex rel.* North v. Featherstonhaugh, 172 N. Y. 121, 60 L. R. A. 771, footnote p. 768, 64 N. E. 802, sustaining provision requiring street paving contractor to maintain work during period which it ought to wear; Akron v. Barber Asphalt Pav. Co. 96 C. C. A. 271, 171 Fed. 31, holding that paving contractor cannot set up invalidity of special assessment for future repairs, as defense to his liability on contract to pave and keep in repair for a term of years; Dillingham v. Spartanberg, 75 S. C. 556, 8 L.R.A.(N.S.) 416, 117 Am. St. Rep. 917, 56 S. E. 381, 9 Ann. Cas. 829, holding that city may require of contractor paving street bond for keeping it in repair for a specified time.

Estoppel of municipality.

Cited in Municipal Security Co. v. Baker County, 33 Or. 353, 54 Pac. 174, holding county receiving benefits not precluded from asserting invalidity of warrants for obligations in excess of constitutional limit.

44 L. R. A. 534, ROBERTSON v. OMAHA, 55 Neb. 718, 76 N. W. 442.

Contracts for repairs as guaranty of quality of street pavement.

Cited in Kansas City v. Hanson, 60 Kan. 837, 58 Pac. 474; State *ex rel.* Wheeler v. District Court, 80 Minn. 309, 83 N. W. 183; O'Keefe v. New York, 73 App. Div. 315, 76 N. Y. Supp. 796; Shank v. Smith, 157 Ind. 409, 55 L. R. A. 568, footnote p. 564, 61 N. E. 932; Williamsport v. Hughes, 21 Pa. Super. Ct. 454,—sustaining validity of provision in street paving contract for keeping in good condition for term of years; Diver v. Keokuk Sav. Bank, 126 Iowa, 699, 102 N. W. 542, 3 Ann. Cas. 669, holding paving contract valid though it included agreement to keep in repair for one year.

Cited in footnotes to Seaboard Nat. Bank v. Woesten, 48 L. R. A. 279, which holds agreement to maintain new pavement for series of years not contract for repairs, necessitating letting to lowest bidder; Alameda Macadamizing Co. v. Pringle, 52 L. R. A. 264, which holds street improvement contract invalidated by guaranty for year; Barber Asphalt Paving Co. v. French, 54 L. R. A. 492, which sustains requirement of five years' guaranty of street paving; People *ex rel.* North v. Featherstonhaugh, 60 L. R. A. 768, which sustains provision

requiring street paving contractor to maintain work during period which it ought to wear; Blochman v. Spreckels, 57 L. R. A. 213, which denies power to assess cost of street improvement on abutters, where contractor required to sustain all loss from nature of work.

Cited in note (44 L. R. A. 534) on power of city to bind contractor to repair pavement which he makes.

What constitutes repavement.

Cited in McCaffrey v. Omaha, 72 Neb. 586, 101 N. W. 251, holding that removing wearing surface and putting on a new one of the same, or other material constitutes "repaving."

Distinguished in Covington v. Bullock, 126 Ky. 241, 103 S. W. 276, holding the resurfacing paved street with asphalt without disturbing the macadam base constitutes "repair" only.

44 L. R. A. 540, STATE *ex rel.* WILSON v. TRENTON, 61 N. J. L. 599, 68 Am. St. Rep. 714, 40 Atl. 575.

Stipulations for repair in street paving contracts.

Cited in Borton v. Camden, 65 N. J. L. 516, 47 Atl. 436, holding delay in application for certiorari to review municipal ordinance and contract for paving until after performance, fatal to claim that contract was illegal because of guaranty to repair for ten years; O'Keefe v. New York, 73 App. Div. 315, 76 N. Y. Supp. 796, upholding validity of stipulation in contract requiring contractor to keep pavement in repair for fifteen years; Shank v. Smith, 157 Ind. 409, 55 L. R. A. 568, footnote p. 564, 61 N. E. 932, and Williamsport v. Hughes, 21 Pa. Super. Ct. 456, sustaining provision in street paving contract for keeping in good condition for term of years; People *ex rel.* North v. Featherstonhaugh, 172 N. Y. 121, 60 L. R. A. 771, footnote p. 768, 64 N. E. 802, sustaining provision requiring street paving contractor to maintain work during period which it ought to wear.

Cited in footnotes to Seaboard Nat. Bank v. Woesten, 48 L. R. A. 279, which holds agreement to maintain new pavement for series of years not contract for repairs, necessitating letting to lowest bidder; Alameda Macadamizing Co. v. Pringle, 52 L. R. A. 264, which holds street improvement contract invalidated by guaranty for year; Barber Asphalt Paving Co. v. French, 54 L. R. A. 492, which sustains requirement of five years' guaranty of street paving; Blochman v. Spreckels, 57 L. R. A. 213, which denies power to assess cost of street improvement on abutters where contractor required to sustain all loss from nature of work.

Distinguished in Montgomery v. Barnett, 149 Ala. 124, 43 So. 92, holding that special assessment cannot be levied to meet cost of paving under contract including keeping in repair for a term of years.

Disapproved in Williamsport v. Hughes, 10 Pa. Dist. R. 614, holding invalid special assessment for paving street where contract for paving included agreement to keep in repair for a term of years.

Attack on assessment by showing lack of corresponding benefit.

Cited in note (82 Am. St. Rep. 457) on right to attack public improvement assessment by showing lack of corresponding benefit.

Choice of bidders for public contract.

Cited in notes (38 L.R.A.(N.S.) 655, 658) on discretion in choosing between bidders for public contract; (38 L.R.A.(N.S.) 673) on elements to be considered in determining responsibility of bidder for public contract.

44 L. R. A. 542, WILSON v. ANDERSON, 186 Pa. 531, 40 Atl. 1096.

Deeds of trust.

Cited in Rynd v. Baker, 193 Pa. 491, 44 Atl. 551, holding title of beneficiaries under deed of trust by appointment exercised by grantor in pursuance of its terms not defeated by subsequent deed by grantor without formal revocation of deed of trust; Kraft v. Neuffer, 202 Pa. 563, 52 Atl. 100, holding voluntary deed of trust reserving life use of property to settler and wife during joint lives, containing no power of revocation, irrevocable; Potter v. Fidelity Ins. Trust & S. D. Co. 199 Pa. 365, 49 Atl. 85, holding voluntary active trust irrevocable, terms of deed expressly declaring it to be so; Fidelity Trust Co. v. New York Finance Co. 60 C. C. A. 192, 125 Fed. 278, denying right of creditor of settlor of trust, to reach the trust property, where debt arises after creation of trust; Nolf v. Beck, 12 North. Co. Rep. 175, holding that deed of trust executed for purpose of barring wife from any interest in land, is revocable and equity will decree reconveyance; Amrhein v. Cope, 9 North. Co. Rep. 144, holding that voluntary trust is not revocable solely because its benefits for cestui que trust are postponed until grantor's death; Fidelity Trust Co. v. New York Finance Co. 12 Pa. Dist. R. 686, on validity of voluntary deed of trust, reserving life interest in grantor; Richards v. Lawrence, 12 Pa. Dist. R. 677, on trusts where no power of revocation appears in trust deed.

Cited in footnotes to Neisler v. Pearsall, 52 L. R. A. 874, which holds settlement of property in trust stated to be irrevocable, not revocable without interposition of duly constituted tribunal; Murphy v. Delano, 55 L. R. A. 727, which holds income of spendthrift trust not within reach of creditors by void agreement of trustees to pay certain portion of income absolutely to beneficiary; Hutchinson v. Maxwell, 57 L. R. A. 384, which denies power to create equitable life estate free from debts of beneficiary.

Intention of grantor.

Cited in Zeok v. Mercantile Trust Co. 194 Pa. 391, 45 Atl. 215, refusing to set aside deed executed by wife to husband on latter's deathbed, in pursuance of family settlement perfectly understood and acquiesced in by each; Carney v. Carney, 196 Pa. 37, 46 Atl. 264, refusing to set aside deed from father to son, where evidence failed to show former's mental unsoundness, or that undue influence had been used, and it appeared that grantee had supported grantor for thirteen years.

What constitutes a deed.

Cited in Nixon v. Frick Coke Co. 27 Pa. Co. Ct. 151, holding instrument conveying land to grantee, reserving portion of house to grantor, and subject to payment of $10,000 on grantor's death, a deed; Learn v. Laufer, 19 Pa. Dist. R. 531, holding that conveyance of land for certain consideration and in addition to pay to certain persons stated amount two years after grantor's death did not constitute testamentary gifts to such persons.

Admissibility of declarations as evidence.

Cited in Park v. Park, 39 Pa. Super. Ct. 218, holding declarations made fifteen years after execution of parol agreement for sale of land, and making of will pursuant to such agreement inadmissible.

44 L. R. A. 546, KEATOR v. SCRANTON TRACTION CO. 191 Pa. 102, 44 W. N. C. 128, 71 Am. St. Rep. 758, 43 Atl. 86.

Presumption of negligence from happening of accident.

Cited in footnote to Springer v. Ford, 52 L. R. A. 930, which sustains presumption of negligence from injury to passenger by unexplained breaking of elevator appliance.

Cited in note (13 L.R.A.(N.S.) 616) on presumption of negligence from injury to passenger.

When person becomes a passenger or patron.

Cited in Wilson v. Detroit United R. Co. 167 Mich. 119, 132 N. W. 762, holding that relation of carrier and passenger continues while passenger is transferring from one car to another as part of continuous trip; Clark v. Durham Traction Co. 138 N. C. 80, 107 Am. St. Rep. 526, 50 S. E. 518, holding that person having a transfer and approaching car at usual place for entering is a passenger; Deichman v. Knecht, 18 Pa. Dist. R. 283, 11 North. Co. Rep. 237, on what constitutes a patron of a public bathing establishment.

Cited in footnotes to Illinois C. R. Co. v. Laloge, 62 L. R. A. 405, which holds intending passenger resorting to station unreasonable time before train's departure not entitled to protection as a passenger from assaults of strangers; Cassady v. Old Colony Street R. Co. 63 L. R. A. 285, which holds ordinary burning out of fuse in electric car not prima facie evidence of carrier's negligence.

Cited in notes (13 L.R.A.(N.S.) 283) on signaling car as making one a passenger; (104 Am. St. Rep. 587) on who are passengers on street railways.

Degree of care required of railroad company toward passenger.

Cited in Austrian v. Union Traction Co. 19 Pa. Super. Ct. 332, holding street car company liable for injury to person boarding car, by negligent starting thereof; Snyder v. Conestoga Traction Co. 25 Lanc. L. Rev. 149, holding that case is for jury where passenger was injured in alighting from car in night time at place where car was stopped because of accident to trolley wires.

Cited in note (118 Am. St. Rep. 464) on duties and liabilities of street railway companies toward passengers.

44 L. R. A. 548, WISE v. MORGAN, 101 Tenn. 273, 48 S. W. 971.

Negligence in sale or manufacture of dangerous articles.

Cited in footnotes to West v. Emanuel, 53 L. R. A. 329, which denies druggist's negligence in selling patent medicine without analyzing contents; Burgess v. Sims Drug Co. 54 L. R. A. 364, which holds druggist liable for injury by prescription negligently put up by registered pharmacist employed by him; Ives v. Welden, 54 L. R. A. 854, which holds merchant's failure to label gasoline renders him liable for injury to member of purchaser's family by explosion; Gibson v. Torbert, 56 L. R. A. 98, which denies liability of druggist for failure to instruct person of age of discretion as to safe method of handling phosphorus; Smith v. Middelton, 56 L. R. A. 484, which holds druggist liable for punitive damages for filling order for calomel tablets with morphine, without notice of fact; Peters v. Jackson, 57 L. R. A. 428, which holds one mistakenly selling poisonous drug for harmless medicine liable to third person taking it; Huset v. J. I. Case Threshing Mach. Co. 61 L. R. A. 303, which holds manufacturer supplying dangerous machine to another without notice of dangerous character, liable for injury to vendee's employee; Skinn v. Reutter, 63 L. R. A. 743, which holds one selling hogs known to have dangerous and infectious disease liable for injury to life or property caused thereby.

Liability for negligence without privity of contract.

Cited in footnote to Pittsfield Cottonwear Mfg. Co. v. Pittsfield Shoe Co. 60 L. R. A. 117, which holds one contracting with owner to heat portion of building retained, liable to tenants of lower floor for injury by freezing and bursting of water pipes designed for their protection from fire.

Cited in note (100 Am. St. Rep. 198) on right to recover for negligence in absence of privity.

Construction of statutes.

Cited in Maxey v. Powers, 117 Tenn. 403, 101 S. W. 181, holding that statute should be construed so as to make it sensible and effective.

Cited in notes (26 L.R.A.(N.S.) 1014) on what are medicines, drugs, or poisons within statutes regulating pharmacists; (30 L.R.A.(N.S.) 520) on construction of statute prohibiting or regulating sale of poisons.

Assignment of errors upon appeal.

Cited in Memphis Street R. Co. v. Johnson, 114 Tenn. 641, 88 S. W. 169, holding assignments of errors upon appeal limited to those assigned in lower court upon motion for new trial.

Liability for injury resulting from violation of statute.

Cited in Inland Steel Co. v. Yedinak, 172 Ind. 429, 87 N. E. 229, holding that in action for damages based on violation of statute, plaintiff must show that the violation alleged was the proximate cause of the injury.

44 L. R. A. 553, GALVESTON, H. & S. A. R. CO. v. ZANTZINGER, 92 Tex. 365, 71 Am. St. Rep. 859, 48 S. W. 563.

Liability for injury to trespassers.

Cited in Texas & P. R. Co. v. Black, 23 Tex. Civ. App. 124, 57 S. W. 330, holding that collusion between brakeman and person riding on freight car, by which latter pays brakeman for privilege, will not relieve carrier from liability for wilful act of brakeman knocking such person from train; Southern P. Co. v. Bender, 24 Tex. Civ. App. 135, 57 S. W. 574, sustaining judgment for trespasser struck on head with pistol by conductor and knocked off car; Moore v. Atchison, T. & S. F. R. Co. 26 Okla. 693, 110 Pac. 1059, holding that where passenger was ejected for nonpayment of fare and attempted to enter train while it was moving, act of brakeman in kicking him so that he lost his hold and fell was wilful assault for which company might be liable.

Cited in notes (10 L.R.A.(N.S.) 386) on liability for injury by servant to strangers in use of locomotive; (25 Eng. Rul. Cas. 142) on railroad's liability for tort committed by servant on trespasser.

Proximate cause.

Cited in note (45 L. R. A. 90) on rule of proximate cause in case of malicious torts.

Care required of injured person to lessen damages.

Cited in Arkansas River Packet Co. v. Hobbs, 105 Tenn. 45, 58 S. W. 278, upholding instruction that if plaintiff, acting on his own judgment, treated injured knee in such manner as physician of ordinary care and skill would have done, law would accept such action as full discharge of duty.

Certifying question to Supreme Court.

Cited in Pohle v. Robertson, 102 Tex. 275, 115 S. W. 1166, on procedure in certifying question from court of appeals to supreme court as to what matters must be so certified.

Effect of defendant's malice on contributory negligence.

Cited in note (10 L.R.A.(N.S.) 403) on effect of malice of defendant's servant on contributory negligence of person injured.

44 L. R. A. 557, SMITH v. NORTH AMERICAN TRANSP. & TRADING CO. 20 Wash. 580, 56 Pac. 372.

Followed without comment in Wheeler v. North American Transp. & Trading Co. 21 Wash. 704, 57 Pac. 1103.

When nonperformance of contract excused by impossibility.

Cited in Bullock v. White Star S. S. Co. 30 Wash. 454, 70 Pac. 1106, holding transportation company engaging to take passengers by water to specified port not excused from performance by fact harbor is icebound.

Cited in footnotes to Angus v. Scully, 49 L. R. A. 562, which sustains right to recover under contract to move building destroyed by fire before work completed; Ontario Deciduous Fruit Growers' Asso. v. Cutting Fruit Packing Co. 53 L. R. A. 681, which denies liability for failure to deliver specified quantity of fruit contracted for, from failure of crop due to unusual climatic conditions; Hughson v. Winthrop S. B. Co. 58 L. R. A. 432, which denies liability to passenger left behind by steamer, already full, leaving before advertised time; Krause v. Crothersville School Trustees, 65 L.R.A. 111, which holds covenant to repair building and construct annex thereto discharged by destruction by lightning of main building when work is practically completed.

44 L. R. A. 559, PHILADELPHIA MORTG. & T. CO. v. MILLER, 20 Wash. 607, 72 Am. St. Rep. 138, 56 Pac. 382.

What constitute fixtures.

Cited in Hall v. Law Guarantee & Trust Soc. 22 Wash. 307, 79 Am. St. Rep. 935, 60 Pac. 643, holding curtains, window screens, screen doors, gas and electric fixtures, water tank, sideboard, windmill, etc., not fixtures as between mortgagor and mortgagee; Neufelder v. Third Street & Suburban R. Co. 23 Wash. 476, 53 L. R. A. 603, 83 Am. St. Rep. 831, 63 Pac. 197, holding mill machinery attached by log screws to steady it, removable without injury to real estate, not part of real estate as between mortgagor and mortgagee; Alberson v. Elk Creek Min. Co. 39 Or. 559, 65 Pac. 978, holding personal property annexed to mine not intended to become part of real estate, personalty; Hayford v. Wentworth, 97 Me. 351, 54 Atl. 940, holding "wash-down syphon water closet," put in by tenant, removable; West v. Farmers' Mut. Ins. Co. 117 Iowa, 150, 90 N. W. 523, holding furnace and hot-water boiler in house, part of realty; Zimmerman v. Bosse, 60 Wash. 558, 111 Pac. 796, holding that machinery in sawmill and porch column plant consisting of stock goods that are portable and removable from building without injury to building, are not fixtures; American Radiator Co. v. Pendleton, 62 Wash. 57, 112 Pac. 1117, holding that boiler, radiator, and other appliances attached to hot water heating system are fixtures and subject to mechanic's lien; Filley v. Christopher, 39 Wash. 25, 109 Am. St. Rep. 853, 80 Pac. 834, on conflict of decisions as to what are fixtures.

Cited in footnotes to Murray v. Bender, 63 L.R.A. 783, which holds that chairs, stage, stage fixtures, and drop curtain annexed to theatre by owner of majority of stock of corporation having title to building, without agreement that they shall remain his personal property, pass as fixtures on execution sale of building; Giddings v. Freedley, 65 L.R.A. 327, which holds main belt transmitting power from an engine so annexed to building as to be real estate, to machinery in mill, real estate.

Cited in note (109 Am. St. Rep. 446) on fixtures as between mortgagee of realty and mortgagor.

44 L. R. A. 561, LAMBERT v. NICKLAS, 45 W. Va. 527, 72 Am. St. Rep. 828, 31 S. E. 951.

Innkeeper's lien.

Cited in footnote to McClain v. Williams, 49 L. R. A. 610, which denies innkeeper's lien on third person's property brought to inn by guest.

Waiver of lien.

Cited in Rosenbaum v. Hayes, 10 N. D. 327, 86 N. W. 973, holding factor's lien not waived by taking of additional security.

Cited in note (50 L. R. A. 720) on waiver of lien by attachment or execution.

44 L. R. A. 565, MARSHFIELD v. WISCONSIN TELEPH. CO. 102 Wis. 604, 78 N. W. 735.

Authorized use of streets and highways.

Cited in State *ex rel.* Wisconsin Teleph. Co. v. Sheboygan, 111 Wis. 32, 86 N. W. 657, upholding right of telephone company to erect poles in streets of city under statute authorizing construction along any public highway; State *ex rel.* Wisconsin Teleph. Co. v. Sheboygan, 114 Wis. 507, 90 N. W. 441, holding telephone company's right to use of streets not affected by subsequent adoption by city of statutes regulating selling of franchise; Allen v. Clausen, 114 Wis. 250, 90 N. W. 181, holding that franchises for use of streets or highways must come from state or municipality authorized by state to grant them; La Crosse v. LaCrosse Gas & Electric Co. 145 Wis. 413, 130 N. W. 530, holding that authority to city for holder of state franchise to exercise it within city, does not include power to exact as condition of such exercise payment of excise tax, in addition to other taxes; Jonesville v. Southern Michigan Teleph. Co. 155 Mich. 89, 130 Am. St. Rep. 562, 118 N. W. 736, 16 Ann. Cas. 439, holding that city may prohibit the erection of telephone line in main business street; Wisconsin Teleph. Co. v. Milwaukee, 126 Wis. 8, 1 L.R.A.(N.S.) 585, 110 Am. St. Rep. 886, 104 N. W. 1009, holding power of council as to granting rights to telephone companies limited to such as it may grant by virtue of its control of its streets; State ex rel. Smythe v. Milwaukee Independent Teleph. Co. 133 Wis. 595, 114 N. W. 108, holding invalid city ordinance which confers privileges, franchises and public functions upon telephone company in excess of power delegated to the city; State ex rel. Wisconsin Metropolis Teleph. Co. v. Milwaukee, 132 Wis. 617, 113 N. W. 40, on limit of power of city council in granting franchises to telephone companies; Wright v. Glen Teleph. Co. 112 App. Div. 747, 98 N. Y. Supp. 85, holding invalid agreement as to rates incorporated in telephone franchise; Eastern Wisconsin R. & Light Co. v. Hackett, 135 Wis. 473, 115 N. W. 376, holding resolution, prohibiting street railway from constructing switches on connecting tracks on city bridge or approaches, within power of council.

Cited in footnotes to Michigan Teleph. Co. v. Benton Harbor, 47 L. R. A. 104, which holds city's consent unnecessary to use of streets by telephone companies; Krueger v. Wisconsin Teleph. Co. 50 L. R. A. 298, which holds telephone poles and wires additional burden on street; Canton v. Canton Warehouse Co. 65 L.R.A. 561, which denies title of city to fee of streets entitling it to claim compensation from railroad company occupying portion of a street for a crossing.

Cited in note (53 L. R. A. 900) on prescriptive right to maintain public nuisance.

44 L. R. A. 579, BROWN v. CHICAGO & N. W. R. CO. 102 Wis. 137, 77 N. W 748, 78 N. W. 771.

Statutory actions for wrongful killing and for injuries resulting in death.

Cited in Hubbard v. Chicago & N. W. R. Co. 104 Wis. 164, 76 Am. St. Rep. 855, 80 N. W. 454, holding final settlement of estate of deceased not bar to action by personal representative to recover under statutes for his death caused by

alleged negligence of defendant; Southern Bell Teleph. & Teleg. Co. v. Cassin, 111 Ga. 582, 50 L. R. A. 697, 36 S. E. 881, denying right of action for death by personal representative of deceased, where latter had settled in full with defendant for injury causing his death; Dolson v. Lake Shore & M. S. R. Co. 128 Mich. 448, 87 N. W. 629, holding that where deceased survived injuries twelve hours, remedy for death was under survival statute, and not under act giving right of action for death; McMillan v. Spider Lake Saw Mill & Lumber Co. 115 Wis. 336, 60 L. R. A. 591, 95 Am. St. Rep. 947, 91 N. W. 979, holding statute giving action for death for benefit of next of kin of deceased not applicable where action was brought for benefit of alien mother of deceased; Schleiger v. Northern Terminal Co. 43 Or. 12, 72 Pac. 324, holding right of action given by statute to parents against one wrongfully causing death of minor child not exclusive of remedy given personal representatives of deceased minor; Jamieson v. Potts, 55 Or. 303, 25 L.R.A.(N.S.) 31, 105 Pac. 93 (dissenting opinion), on effect of absence of defendant from state upon operation of statute of limitation in personal injury actions; Stewart v. United Electric Light & P. Co. 104 Md. 342, 8 L.R.A.(N.S.) 392, 118 Am. St. Rep. 410, 65 Atl. 49; Mahoning Valley R. Co. v. VanAlstine, 77 Ohio St. 410, 14 L.R.A.(N.S.) 898, 83 N. E. 601,—holding that right of personal representative to continue action begun by one injured for benefit of estate and right of action for benefit of relatives are two separate rights and recovery in one is not a bar to the other; Robertson v. Chicago, St. P. M. & O. R. Co. 122 Wis. 68, 66 L.R.A. 921, 106 Am. St. Rep. 925, 99 N. W. 433, holding that right of action for death by wrongful act within the state arises as to nonresident relatives under the statute; Quinn v. Chicago, M. & St. P. R. Co. 141 Wis. 499, 124 N. W. 653, holding that right of action by survivors for negligence causing death, is governed by the law in force at the time of the injury; Re Williams, 130 Iowa, 567, 107 N. W. 608, on same point; Nemecek v. Filer & S. Co. 126 Wis. 72, 105 N. W. 225, on measure of damages recoverable by survivors; Lounsbury v. Davis, 124 Wis. 439, 102 N. W. 941, as pointing out distinction between cause of action in favor of widow and that in favor of estate; Jacobs v. Glucose Sugar Ref. Co. 140 Fed. 768, as illustrating conflict of decisions as to right of personal representative to recover for mental suffering of deceased.

Cited in footnotes to *Re* Meekin, 51 L. R. A. 235, which holds action for death by administrator, who is also father and sole beneficiary of deceased, survives father's death; Worcester & S. Street R. Co. v. Travelers' Ins. Co. 57 L. R. A. 629, which holds cases of instantaneous death not covered by policy insuring railroad company against loss from liability to persons sustaining "personal injuries."

Cited in notes (8 L.R.A.(N.S.) 385; 70 Am. St. Rep. 675, 676) on actions for death of human being.

Distinguished in Staeffler v. Menasha Woodenware Co. 111 Wis. 487, 87 N. W. 480, holding statute of limitations applicable to actions for personal injuries resulting in death where right of action survives under Wis. Stat. § 4253.

Questions in case that are not obiter dicta.

Cited in State v. National Acci. Asso. 103 Wis. 218, 79 N. W. 220, holding decision of court upon question of statute of limitations binding until overruled, although case was decided independent of such question; State *ex rel.* Atkinson v. McDonald, 108 Wis. 16, 81 Am. St. Rep. 878, 84 N. W. 171, holding naturalization judgment conclusive as to year's residence preceding judgment in state in which it was rendered; Trapp v. New Birdsall Co. 109 Wis. 555, 85 N. W.

478, holding every point in, or assumed to be in, a case considered and decided as basis for final conclusion, res judicata; Spratt v. Helena Power Transmission Co. 37 Mont. 77, 94 Pac. 631, holding judgment of court controlling as to all matters within the issues which opinion shows to have been deliberately considered; Johnson v. Seattle Electric Co. 39 Wash. 214, 81 Pac. 705, holding that matter necessarily assumed or decided in deciding a question directly passed upon is not obiter; Sprague v. Northern P. R. Co. 122 Wis. 512, 106 Am. St. Rep. 997, 100 N. W. 842, holding that opinion on question not expressly required for decision of a case, should be followed unless found erroneous; Derosia v. Ferland, 83 Vt. 381, 28 L.R.A.(N.S.) 581, 138 Am. St. Rep. 1092, 76 Atl. 153, holding that an expression of opinion upon a point argued by counsel and deliberately passed upon by the court is judicial dictum as distinguished from obiter dictum; Jamieson v. Potts, 55 Or. 303, 25 L.R.A.(N.S.) 31, 105 Pac. 93 (dissenting opinion), on rule of stari decisis.

Haste in decision of cause on first hearing.

Cited in Illinois Steel Co. v. Bilot, 109 Wis. 431, 83 Am. St. Rep. 905, 85 N. W. 402, as to statements in brief of counsel as to haste by court in consideration of questions on first hearing; Pietsch v. Milbreath, 123 Wis. 662, 68 L.R.A. 952, 107 Am. St. Rep. 1017, 102 N. W. 342, on attorneys right to ask for rehearing.

44 L. R. A. 593, LUNNEY v. HEALEY, 56 Neb. 313, 76 N. W. 558.

When real estate broker is entitled to commissions.

Cited in Leupold v. Weeks, 96 Md. 289, 53 Atl. 937, holding agent procuring purchase entitled to commissions, although contract was subsequently modified through efforts of another agent, and referring particularly to annotation in 44 L.R.A. 593; Reasoner v. Yates, 90 Neb. 759, 134 N. W. 651, holding that if vendor of lands enters into contract with competent purchaser produced by broker, inability to convey good title does not release vendor from payment of commissions; Hardy v. Sheedy, 58 Or. 198, 113 Pac. 1133, holding that broker had not earned commissions, where on last day of his authority to sell he notified owner that he had sold land, naming purchaser and price, and requesting owner to give purchaser time to examine title; Runck v. Dimmick, 51 Tex. Civ. App. 216, 111 S. W. 779, holding that where broker only procured option on part of buyer either to consummate purchase or forfeit earnest money, agent was not entitled to commissions, buyer having forfeited earnest money; Pinkerton v. Hudson, 87 Ark. 510, 113 S. W. 35, holding broker entitled to his commission where he finds purchaser financially able to purchase and with whom contract of sale is made though he fails to carry out his contract citing also annotation on this point; McCleary v. Willis, 35 Wash. 686, 77 Pac. 1073, on right to share in commission as "assisting" in making sale by one who found the purchaser and showed the property and sale was made to him.

Annotation cited in Moore v. Irwin, 89 Ark. 294, 20 L.R.A.(N.S.) 1175, 131 Am. St. Rep. 97, 115 S. W. 662; Fox v. Ryan, 240 Ill. 397, 88 N. E. 974,— holding broker who obtains purchaser whom vendor accepts and contract of sale is made, entitled to commission although the purchaser fails to carry out the contract; Southwestern Port Huron Co. v. Wilber, 75 Kan. 178, 88 Pac. 892, as containing full collation of authorities on right of broker to commission.

Cited in footnotes to Caston v. Quimby, 52 L. R. A. 785, which denies right

to commissions for obtaining unaccepted offer to loan money, requiring payment in gold; Cadigan v. Crabtree, 55 L. R. A. 77, which denies broker's right to commissions for procuring offer of lease subsequently accepted and contract executed through another broker; Livermore v. Crane, 57 L. R. A. 402, which holds purchaser refusing to complete purchase liable to broker for loss of commissions from seller; Cadigan v. Crabtree, 66 L.R.A. 982, which holds real estate broker not entitled to commission where after producing customer willing to negotiate for lease principal in good faith decides not to lease and discharges broker, although he subsequently decides to lease and makes contract with the person produced by the broker.

Cited in notes (43 L. R. A. 593) on real estate broker's commissions as affected by negligence, fraud, or default of principal, and defective title; (44 L. R. A. 321, 324, 340, 345) as to when real estate broker is considered as procuring cause of the sale or exchange effected; (45 L. R. A. 33) on fraud and secret dealings or interest of real estate brokers as affecting their commissions; (53 L.R.A. 243) on duty of broker to disclose identity of purchaser to principal; (29 L.R.A.(N.S.) 535) on effect of contract making broker's right to commissions dependent upon "sale" or other condition beyond that ordinarily implied.

Distinguished in Van Norman v. Fitchette, 100 Minn. 150, 110 N. W. 851, holding broker not entitled to commission where purchaser failed to comply with terms of sale where right to commission rested on compliance by vendee.

Lapse of time as terminating authority of real estate broker.

Cited in note (16 L.R.A.(N.S.) 431) on lapse of time as terminating authority of real estate broker.

44 L. R. A. 632, GRAHAM PAPER CO. v. PEMBROKE, 124 Cal. 117, 71 Am. St. Rep. 26, 56 Pac. 627.

Sale of debtor's interest in personal property before attachment.

Distinguished in Yank v. Bordeaux, 23 Mont. 211, 75 Am. St. Rep. 522, 58 Pac. 42, holding that failure to notify attaching creditors and officer making levy, of prior sale of debtor's interest in ore, will not invalidate sale as to them.

Assignment of chose in action.

Distinguished in Knoll v. Melone, 1 Cal. App. 641, 82 Pac. 982, holding lien created by assignment of chose in action as security for debt barred by limitation where such debt is barred.

Priority rights of different assignees.

Cited in Washington Twp. v. First Nat. Bank (Washington v. Wabash Bridge & Iron Works) 147 Mich. 575, 11 L.R.A.(N.S.) 474, 111 N. W. 349, holding that second assignee has preference where first assignee permitted the contract assigned to remain in hands of assignor and gave no notice of its rights; Coffman v. Liggett, 107 Va. 423, 59 S. E. 392, holding assignment of insurance policy invalid as against subsequent assignee thereof, where assignor did not part with his power and control over it under the first assignment.

Cited in notes (66 L.R.A. 776) on priority rights of different assignees of fund in hands of third person; (11 L.R.A.(N.S.) 472) on estoppel of assignee permitting assignor of contract to receive non-negotiable instruments issued in payment thereof, as against subsequent assignee.

44 L. R. A. 635, VAN VLECK v. DENTAL EXAMINERS (Cal.) 48 Pac. 223.

Review of action of state examining boards.

Cited in Raaf v. State Medical Examiners, 11 Idaho, 718, 84 Pac. 33, refusing

to review the decision of the state board of medical examiners denying the petitioner a license to practise medicine.

Powers vested in state examining boards.

Cited in note (22 L.R.A.(N.S.) 735) on determining character or standing of professional school for purposes of license statutes.

Distinguished in Ex parte Whitley, 144 Cal. 181, 77 Pac. 879, 1 Ann. Cas. 13, holding the legislature might properly vest in a board of dental examiners the determination of whether or not dental colleges were reputable.

44 L. R. A. 638, PITTSBURG, C. C. & ST. L. R. CO. v. MOORE, 152 Ind. 345, 53 N. E. 290.

Demurrer to pleading.

Cited in Lake Erie & W. R. Co. v. Hoff, 25 Ind. App. 243, 56 N. E. 925, and Smith v. Barber, 153 Ind. 327, 53 N. E. 1014, holding error in overruling demurrer to bad paragraph of pleading, harmless where facts found rest upon good paragraph; Midland Steel Co. v. Citizens Nat. Bank, 26 Ind. App. 84, 59 N. E. 211, and Cleveland, C. C. & St. L. R. Co. v. Parker, 154 Ind. 155, 56 N. E. 86, holding defective pleading not cured by finding in special verdict or finding of omitted fact; Lake Erie & W. R. Co. v. Mikesell, 23 Ind. App. 397, 55 N. E. 488, holding allegation that train was run at specified speed in violation of ordinance not good averment that such an ordinance was in force at time accident complained of happened; Chicago, I. & L. R. Co. v. Cobler, 172 Ind. 483, 87 N. E. 981, holding demurrer to complaint averring that the failure to ring bell as required by ordinance was the proximate cause of injury to complainant's intestate was properly overruled; Pittsburgh, C. C. & St. L. R. Co. v. Ross, 169 Ind. 10, 80 N. E. 845, holding a demurrer was properly overruled to an averment that complainant while in the line of his duty and in the exercise of due care while in the service of defendant was injured through the negligence of one in charge of the train; Radebaugh v. Scanlan, 41 Ind. App. 113, 82 N. E. 544, holding overruling of defective averments of complaint harmless where findings are based on sufficient paragraphs.

— Pleading aided by reference.

Cited in Lake Erie & W. R. Co. v. Moore, 42 Ind. App. 37, 84 N. E. 506; Fidelity & C. Co. v. Sanders, 32 Ind. App. 455, 70 N. E. 167,—holding on demurrer a complaint cannot be aided by reference to other parts of the record; Cleveland, C. C. & St. L. R. Co. v. Heineman, 46 Ind. App. 396, 90 N. E. 899 (dissenting opinion), on necessity that complaint allege all essential facts, unaided by recitals, conclusions or inferences.

Defective pleading cured by finding.

Cited in Goodwine v. Cadwallader, 158 Ind. 205, 61 N. E. 939, holding a defect in a pleading is not cured by a special finding which finds the omitted averment.

Acceptance of benefits of relief association in lieu of damages for personal injury.

Cited in Pittsburgh, C. C. & St. L. R. Co. v. Hosea, 152 Ind. 416, 53 N. E. 419, holding contract by which employee is given option to accept benefits of relief association in lieu of damages not a release of liability; Pittsburgh, C. C. & St. L. R. Co. v. Elwood, 25 Ind. App. 674, 58 N. E. 866, holding acceptance of benefits of voluntary relief association bar to action for damages for personal injury; Maine v. Chicago, B. & Q. R. Co. 109 Iowa, 269, 80 N. W. 315, holding acceptance of benefits of relief association by injured employee of railroad company under mistake in supposing injuries temporary, bar to recovery of

damages where money was not returned; Beck v. Pennsylvania R. Co. 63 N. J. L. 240, 76 Am. St. Rep. 211, 43 Atl. 908, upholding validity of contract by which employee agreed that acceptance of benefits of relief association should operate as release of claims for damages against railroad company; Oyster v. Burlington Relief Department, 65 Neb. 793, 59 L. R. A. 294, footnote p. 292, 91 N. W. 699, denying right to recover on certificate of railroad relief department, after recovering full statutory penalty for employee's death; Pittsburgh, C. C. & St. L. R. Co. v. Hosea, 152 Ind. 421, 53 N. E. 419, holding acceptance of benefits of relief association by widow in lieu of damages not bar to action for use of her child; Pittsburgh, C. C. & St. L. R. Co. v. Gipe, 160 Ind. 365, 65 N. E. 1034, holding acceptance of benefit of certificate in relief association by widow, prima facie bar to claim as administratrix for benefit of children; State *ex rel.* Sheets v. Pittsburg, C. C. & St. L. R. Co. 68 Ohio St. 42, 64 L. R. A. 413, 96 Am. St. Rep. 635, 67 N. E. 93, holding maintenance of voluntary relief association for employees by railroad corporation not against public policy; Hamilton v. St. Louis, K. & N. W. R. Co. 118 Fed. 95, holding contract by servant to accept voluntary relief in lieu of action for damages not affected by statute forbidding carrier to limit liability; Colaizzi v. Pennsylvania R. Co. 143 App. Div. 645, 128 N. Y. Supp. 312, holding that contract between servant of railroad and its relief department which stipulates that receipt of benefits from relief department shall release all claims for damages is valid; King v. Atlantic Coast Line R. Co. 157 N. C. 57, — L.R.A.(N.S.) —, 72 S. E. 801; Twaits v. Pennsylvania R. Co. 77 N. J. Eq. 109, 75 Atl 1010,— holding that contract between servant of railroad and its relief department that acceptance of benefits for injury shall operate as release of claim for damages, is valid; Atlantic Coast Line R Co. v. Dunning, 94 C. C. A. 128, 166 Fed. 859; Day v. Atlantic Coast Line R. Co. 102 C. C. A. 654, 179 Fed. 30; Baltimore & O. R. Co. v. Ray, 36 Ind. App. 437, 73 N. E. 942; Atlantic Coast Line R. Co. v. Beazley, 54 Fla. 342, 45 So. 761,— holding a contract under which an employee has an option of receiving relief from the relief and hospital department of the railroad or his remedy at law is not invalid; Gipe v. Pittsburg, C. C. & St. L. R. Co. 41 Ind. App. 160, 82 N. E. 471, holding the acceptance of a widow of relief from the relief fund of defendant company and under which she released her personal cause of action and action as administratrix estopped her from maintaining an action in the latter capacity; Barden v. Atlantic Coast Line R. Co. 152 N. C. 331, — L.R.A.(N.S.) —, 67 S. E. 971, on the validity of indemnity contracts between employers and employees which provide for the exemption of employer from liability for negligence.

Cited in footnote to Johnson v. Charleston & S. R. Co. 44 L. R. A. 645, which sustains contract making acceptance of benefits of relief fund operate to release company.

Cited in notes (57 L.R.A. 506) on insurance on life of minor; (11 L.R.A. (N.S.) 193) on contracts requiring servant to elect between benefits of relief fund and his action for damages.

Distinguished in Tarbell v. Rutland R. Co. 73 Vt. 351, 56 L. R. A. 658, 87 Am. St. Rep. 734, 51 Atl. 6, holding contract by which next of kin releases railroad company from statutory liability for injuries to one about to be employed, void.

Settlement with survivors.

Cited in Frank v. Newport Min. Co. 148 Mich. 640, 11 L.R.A.(N.S.) 138, 112 N. W. 504, holding where indemnity contract ran to all damaged by injury of indemnified person company may demand release from all persons interested as

a condition precedent to settlement with widow; Cleveland, C. C. & St. L. R. Co. v. Osgood, 36 Ind. App. 37, 73 N. E. 285, on no right existing in widow, children or next of kin to compromise an action for death by wrongful act.

Cited in notes (35 L.R.A.(N.S.) 208) on settlement of cause of action for death by beneficiaries without assent of executor or administrator; (70 Am. St. Rep. 685) on compromise or release of action for death of human being.

Railroad relief department.

Cited in Harrison v. Alabama Midland R. Co. 144 Ala. 255, 40 So. 394, 6 Ann. Cas. 804, holding a railroad company might properly aid in the establishment of a relief and hospital department.

Cited in note (10 L.R.A.(N.S.) 200) on validity of prvoision of railroad relief department for forfeiture of benefits in case of suit against company.

Violation of ordinance by railroad companies.

Cited in Pittsburgh, C. C. & St. L. R. Co. v. Martin, 157 Ind. 223, 61 N. E. 229, holding refusal of instruction that speed ordinance was enacted for benefit of public, and not for carrier's employees, proper; Baltimore & O. S. W. R. Co. v. Peterson, 156 Ind. 372, 59 N. E. 1044, holding failure of railroad company to comply with city ordinance providing for maintenance of watchman on rear of backing train, and ringing of bell, negligence *per se;* Martin v. Chicago, R. I. & P. R. Co. 118 Iowa, 150, 59 L. R. A. 700, 91 N. W. 1034, holding brakeman continuing work with knowledge of constant violation of speed ordinance by railroad assumes risk of such excess of speed; Freitag v. Chicago Junction R. Co. 46 Ind. App. 503, 92 N. E. 1039, holding that ordinance prescribing method of operating railroad trains applies to operation of trains on private grounds of company; Pittsburgh, C. C. & St. L. R. Co. v. Lightheiser, 163 Ind. 256, 71 N. E. 218, on ordinances regulating the movement of trains as being ordained for the protection of the public; Chicago, M. & St. P. R. Co. v. Donovan, 87 C. C. A. 600, 160 Fed. 830, on persons to whom duty required by ordinance to give warning at crossings of the approach of a train is due.

Cited in notes (5 L.R.A.(N.S.) 236) on violation of police ordinance as ground for private action; (40 L.R.A.(N.S.) 1106) on right of employee to rely on statute requiring train signals to be given at crossing.

Assumption of risks of employment.

Cited in American Rolling Mill Co. v. Hullinger, 161 Ind. 679, 67 N. E. 986, holding doctrine of assumed risk applicable to action under employer's liability act; Cleveland, C. C. & St. L. R. Co. v. Powers, 173 Ind. 115, 88 N. E. 1073, holding that railroad company's servants have right to rely upon assumption that ordinance regulating speed of trains will be obeyed.

Cited in note (6 L.R.A.(N.S.) 984) on assumption of risk of master's breach of statutory duty.

Competency of witnesses.

Cited in Lake Erie & W. R. Co. v. Charman, 161 Ind. 109, 67 N. E. 923, holding administrator's action under statute for wrongful death being for exclusive benefit of widow and next of kin, defendant is competent to testify.

Constitutionality of employer's liability act.

Cited in Terre Haute & I. R. Co. v. Rittenhouse, 28 Ind. App. 636, 62 N. E. 295, upholding constitutionality of employer's liability act.

Liability for engineer's negligence under employer's liability act.

Cited in Pittsburgh, C. C. & St. L. R. Co. v. Collins, 168 Ind. 481, 80 N. E. 415, holding under the employer's liability act a conductor might recover for injuries received through the negligence of the engineer.

Findings of fact.

Cited in Chicago, I. & L. R. Co. v. Williams, 168 Ind. 279, 79 N. E. 442, refusing on appeal to determine the merits of an averment which is negatived by a finding of the jury.

44 L. R. A. 645, JOHNSON v. CHARLESTON & S. R. CO. 55 S. C. 152, 32 S. E. 2, 33 S. E. 174.

Report of second appeal in 58 S. C. 489, 36 S. E. 851.

Contracts with railroad relief associations.

Cited in Petty v. Brunswick & W. R. Co. 109 Ga. 672, 35 S. E. 82, upholding contract by which employee, by accepting pecuniary and other benefits, released master from all liability for injury; Twaits v. Pennsylvania R. Co. 77 N. J. Eq. 109, 75 Atl. 1010, holding that contract between servant of railroad and its relief department that acceptance of benefits for injury shall operate as release of claim for damages, is valid; Atlantic Coast Line R. Co. v. Dunning, 94 C. C. A. 128, 166 Fed. 859; Atlantic Coast Line R. Co. v. Beazley, 54 Fla. 343, 45 So. 761,—holding a contract under which an employee has an option of relief from the relief and hospital department of the railroad or his remedy at law is not invalid; Cannaday v. Atlantic Coast Line R. Co. 143 N. C. 444, 8 L.R.A.(N.S.) 941, 118 Am. St. Rep. 821, 55 S. E. 836, enforcing a contract exempting a railroad company from liability for its negligence on the acceptance of relief from its relief department where under the laws of state where contract made and injuries received such contract was valid; Barden v. Atlantic Coast Line R. Co. 152 N. C. 332, — L.R.A.(N.S.) —, 67 S. E. 971, on the validity of indemnity contracts between employers and employees which provide for exemption of employer from liability for negligence.

Cited in footnote to Oyster v. Burlington Relief Department, 59 L. R. A. 292, which denies right to recover on certificate of railroad relief department, after recovering full statutory penalty for employee's death.

Cited in notes (10 L.R.A.(N.S.) 200) on validity of provision of railroad relief department for forfeiture of benefits in case of suit against company; (11 L.R.A.(N.S.) 189, 193) on contracts requiring servant to elect between benefits of relief fund and his action for damages.

Railroad relief and hospital departments.

Cited in Harrison v. Alabama Midland R. Co. 144 Ala. 255, 40 So. 394, 6 Ann. Cas. 804, holding a railroad company might properly aid in the establishment of a relief and hospital department.

Right of railroad company to exempt itself from liability for negligence.

Cited in Nickles v. Seaboard Air Line R. Co. 74 S. C. 132, 54 S. E. 255; Kirkland v. Charleston & W. C. R. Co. 79 S. C. 276, 15 L.R.A.(N.S.) 427, 128 Am. St. Rep. 848, 60 S. E. 668; Snipes v. Southern R. Co. 91 C. C. A. 593, 166 Fed. 10; Reed v. Southern R. Co. 75 S. C. 170, 55 S. E. 218,—on inability or want of power in a railroad company to make a contract exempting it from liability for negligence.

44 L. R. A. 655, BIGGS v. CONSOLIDATED BARB-WIRE CO. 60 Kan. 217, 56 Pac. 4.

Liability for injuries to child trespasser.

Cited in Consolidated Electric Light & P. Co. v. Healy, 65 Kan. 801, 70 Pac. 884, holding electric light company liable for killing of boy by wire in place known by defendant to be attractive to children; Kopplekom v. Colorado Cement

Pipe Co. 16 Colo. App. 277, 54 L. R. A. 285, footnote p. 284, 64 Pac. 1047, holding owner of uninclosed city lot liable for injury to young child by toppling over of cement pipe used by children as plaything; Edgington v. Burlington, C. R. & N. Co. 116 Iowa, 421, 57 L. R. A. 566, 90 N. W. 95, holding railroad company liable for injury to child seven years and eight months old, hurt by turntable on unfenced lot near public way; Osborn v. Atchison, T. & S. F. R. Co. 86 Kan. 442, 121 Pac. 364, holding that railroad was liable for injury to child while playing in abandoned round house which constituted "an attractive nuisance;" Franks v. Southern Cotton Oil Co. 78 S. C. 17, 12 L.R.A.(N.S.) 471, 58 S. E. 960, holding defendant company maintaining an unguarded reservoir on their premises to which children had access were liable for the drowning of a child therein.

Cited in footnotes to Ryan v. Towar, 55 L. R. A. 310, which denies land owner's duty to make premises safe for attempting to rescue trespassing child caught in water wheel in unused building; Gleason v. Smith, 55 L. R. A. 622, which denies liability for injury by collision with team, to twelve-year-old boy using street as playground; Uttermohlen v. Bogg's Run Min. & Mfg. Co. 55 L. R. A. 911, which denies liability of mine owner for injury to trespassing child by cable and pulleys hauling coal cars; Brinkley Car Works Mfg. Co. v. Cooper, 57 L. R. A. 724, which denies liability for injury to six-year-old boy from carelessly walking into pool of hot water; Paolino v. McKendall, 60 L. R. A. 133, which denies duty of occupier of land burning rubbish, to guard young children accustomed to play there, from fire.

Cited in note (19 L.R.A.(N.S.) 1133, 1165) on attractive nuisance.

Contributory negligence.

Report of second appeal in 62 Kan. 492, 63 Pac. 740, holding contributory negligence question for jury.

Cited in Cahill v. Stone, 153 Cal. 577, 19 L.R.A.(N.S.) 1100, 96 Pac. 84, holding it a question of fact for the jury to determine whether a child injured while playing around dangerous machinery should be held liable for contributory negligence.

Distinguished in Bess v. Atchison, T. & S. F. R. Co. 62 Kan. 305, 62 Pac. 996, denying right of recovery for killing of child with capacity to understand danger of situation, and who was run over by cars through his own negligence.

44 L. R. A. 659, SUMRALL v. COLUMBIA FINANCE & T. CO. 106 Ky. 260, 90 Am. St. Rep. 223, 50 S. W. 69.

Building and loan associations.

Cited in Forwood v. Eubank, 106 Ky. 293, 50 S. W. 255, denying right of holder of paid-up stock who has given withdrawal notice, to preference over holders of instalment stock on winding up of building association; Globe Bldg. & L. Co. v. Wood, 110 Ky. 11, 96 Am. St. Rep. 417, 60 S. W. 858, upholding right of insolvent building association to make general assignment; North Texas Bldg. & L. Asso. v. Hay, 23 Tex. Civ. App. 103, 56 S. W. 580, holding borrower in building association entitled to rescission of contract and adjustment of his account, upon sale of assets of association; Winegardner v. Equitable Loan Co. 120 Iowa, 493, 94 N. W. 1110, holding the issuance of guaranteed stock by a building and loan association is invalid as in excess of its powers; Hogsett v. Ætna Bldg. & L. Asso. 78 Kan. 80, 96 Pac. 52, on the invalidity of the issuance of preferred stock by a building and loan association.

Cited in note (21 L.R.A.(N.S.) 229) on right of preferred stock to preference as to capital.

44 L. R. A. 664, CITIZENS' BANK v. MILLETT, 103 Ky. 1, 82 Am. St. Rep. 546, 44 S. W. 366.

Parol to vary written instrument.

Cited in Farmers' Bank v. Wickiffe, 131 Ky. 793, 116 S. W. 249, holding parol evidence was inadmissible to vary the contract of suretyship on a negotiable note.

44 L. R. A. 673, PALMER v. MAINE C. R. CO. 92 Me. 399, 69 Am. St. Rep. 513, 42 Atl. 800.

Arrests.

Cited in Harness v. Steele, 159 Ind. 295, 64 N. E. 875, holding sheriff detaining innocent prisoner longer than necessary to procure warrant, liable for false arrest; State v. McLeod, 97 Me. 81, 53 Atl. 878, holding it unnecessary for people to show that prisoner was subsequently convicted, in prosecution for forcibly rescuing prisoner.

Cited in footnotes to McCullough v. Greenfield, 62 L. R. A. 906, which holds that possession by officer of a warrant will not justify arrest of accused by police department of other town under direction by telephone by officer holding warrant; Markley v. Snow, 64 L. R. A. 685, which denies liability of employer for act of employee in causing arrest, long after commission of the crime, of one suspected of having set fire to building of employer; Daniel v. Atlantic C. L. R. Co. 67 L.R.A. 455, which holds railroad company not liable for arrest by cashier with power to collect money, give receipts, sell tickets, care for money received and forward it to treasurer, of innocent person whom he suspects of having stolen money which has come into his possession; Texas Midland Railroad v. Dean, 70 L.R.A. 943, which holds railroad company liable for act of baggage master in assisting in wrongful arrest at instance of city authorities of passenger awaiting at station for train.

Cited in notes (7 L.R.A.(N.S.) 168) on liability of carrier for arrest of passenger by servant; (84 Am. St. Rep. 689) on right of policeman to make arrest.

Exemplary damages.

Cited in Robichand v. Maheux, 104 Me. 525, 72 Atl. 334, on right to an award of exemplary damages.

44 L. R. A. 677, PEOPLE *ex rel.* MAYNARD v. HOLLY, 119 Mich. 637, 75 Am. St. Rep. 435, 78 N. W. 665.

Power to offer reward for evidence.

Cited in Luchini v. Police Jury, 126 La. 980, 53 So. 68, 21 Ann. Cas. 59, holding that police jury has power to offer rewards for evidence of violations of its ordinances.

44 L. R. A. 679, PINGREE v. DIX, 120 Mich. 95, 78 N. W. 1025.

Rule of uniformity in taxation.

Cited in Teagan Transp. Co. v. Board of Assessors, 139 Mich. 8, 69 L.R.A. 440, 111 Am. St. Rep. 391, 102 N. W. 273, holding a statute which in effect conferred upon corporations engaged in maritime commerce and navigation the privilege of fixing the situs of their property for taxation was in violation of the constitutional requirement of uniformity.

Cited in note (60 L. R. A. 341, 364, 374) on constitutional equality in United States in relation to corporate taxation.

Distinguished in Union Trust Co. v. Wayne Probate Judge, 125 Mich. 490,

84 N. W. 1101, upholding constitutionality of inheritance tax law as a tax upon privilege of inheritance.

Explained in Chicago & N. W. R. Co. v. State, 128 Wis. 649, 108 N. W. 557, holding that a general state tax on railways in lieu of all other taxes is not an unconstitutional violation of uniformity of taxation.

Taxation of telegraph companies.

Cited in Detroit v. Western U. Teleg. Co. 130 Mich. 475, 90 N. W. 283, holding act providing for specific tax on telegraph companies not repealed by later unconstitutional acts.

Specific taxes.

Cited in Atty. Gen. ex rel. Beadle v. Arnott, 145 Mich. 419, 108 N. W. 646, on the propriety of specific taxes on the capital stock of corporations; Wyatt v. State Board, 74 N. H. 587, 70 Atl. 387 (dissenting opinion), denying that a tax upon savings bank deposits is a tax upon property.

Upholding of statute because of long continued enforcement.

Cited in Stumpf v. Storz, 156 Mich. 234, 23 L.R.A.(N.S.) 158, 132 Am. St. Rep. 521, 120 N. W. 618, on the long continued enforcement of a statute as not grounds for upholding it where the court is convinced that it is invalid.

44 L. R. A. 689, VOSS v. CONNECTICUT MUT. L. INS. CO. 119 Mich. 161, 77 N. W. 697.

Report of later appeal in 131 Mich. 597, 92 N. W. 102.

Interest of children in proceeds of policies on lives of parents.

Cited in Millard v. Brayton, 177 Mass. 543, 52 L. R. A. 123, footnote p. 117, 83 Am. St. Rep. 294, 59 N. E. 436, holding that policy payable to children in case of wife's death gives children living at wife's death before insured, vested interest; Jones v. Jones, 23 Pa. Co. Ct. 256, holding interest of beneficiary children under policy taken out by the mother on her own life, without reserving right to make new appointment of beneficiaries, vested; Elgar v. Equitable Life Assur. Soc. 113 Wis. 92, 88 N. W. 927, holding that where policy provided for payment of proceeds to insured's children if surviving, and, if not, to insured's executors, etc., surviving son took whole proceeds to exclusion of grandchild of deceased child; Michigan Mut. L. Ins. Co. v. Basler, 140 Mich. 236, 103 N. W. 596, holding where a policy was payable to wife if living and in case of her death to the children on the death of the wife and one of the children before the insured the policy was payable to the surviving child and the issue of the deceased child; Braddock v. Manhattan L. Ins. Co. 16 Pa. Dist. R. 129, holding under a policy taken out by wife on life of husband for her benefit, with the benefit to children in case of her death, on the death of the wife, the personal representative of a child who died during life of wife was not entitled to share in policy; Pool v. New England Mut. L. Ins. Co. 123 App. Div. 888, 108 N. Y. Supp. 431, holding under a policy taken out by a wife on her husband's life payable to her on her personal representatives, where she died before the husband, the husband's executor was not entitled to the proceeds.

Nature of beneficiary's interest in policy.

Cited in Laughlin v. Norcross, 97 Me. 34, 53 Atl. 834, holding that interest of beneficiary in policy passed by will, although policy not issued when will made.

Parties plaintiff in action on insurance policy.

Cited in Ruterbusch v. Supreme Court, I. O. F. 162 Mich. 215, 127 N. W. 288,

holding that it is not misjoinder, in action on life insurance policy payable in stated amounts to several beneficiaries, to join them as parties plaintiff.

44 L. R. A. 692, STATE *ex rel.* KNIGHT v. HELENA POWER & LIGHT CO. 22 Mont. 391, 56 Pac. 685.

Mandamus to compel operation of railroad.

Cited in footnote to State *ex rel.* Bridgeton v. Bridgeton & M. Traction Co. 45 L. R. A. 837, which holds street railway company's duty to operate road enforceable by mandamus.

City's right to compel operation of street railway.

Cited in Amesbury v. Citizens' Electric Street R. Co. 199 Mass. 397, 19 L.R.A.(N.S.) 869, 85 N. E. 419, holding where tracks were laid under a bare license revocable at will, and under no agreement or act requiring the continued use of the tracks the use thereof might be discontinued against the will of the municipality.

Cited in note (19 L.R.A.(N.S.) 866) on right of street railway to discontinue line.

Judicial control of operation of railroads.

Cited in Jacquelin v. Erie R. Co. 69 N. J. Eq. 446, 61 Atl. 18, on right of courts to compel the maintenance of a railroad station.

44 L. R. A. 694, UPCHURCH v. STATE, 36 Tex. Crim. Rep. 624, 38 S. W. 206.

Former jeopardy.

Cited in Woodward v. State, 42 Tex. Crim. Rep. 197, 58 S. W. 135, holding discharge of jury before verdict on account of serious illness of child of juror, and order of mistrial, not jeopardy; Bland v. State, 42 Tex. Crim. Rep. 288, 59 S. W. 1119, holding that upon plea of former jeopardy involving issue of fact as to proper exercise of court's discretion in discharging juror on account of sickness of juror, court should hear evidence in order that necessity for discharge may be properly determined; Vela v. State, 49 Tex. Crim. Rep. 590, 95 S. W. 529, holding plea of former jeopardy available where the jury was discharged in the absence of the prisoner and his counsel after a failure to agree.

Cited in footnotes to State v. Hager, 48 L. R. A. 254, which holds discharge on plea of former jeopardy not an acquittal; Dreyer v. People, 58 L. R. A. 869, which holds discharge of jury without consent of accused, because jurors unable to agree not jeopardy.

Instructions in criminal cases.

Cited in Chapman v. State, 42 Tex. Crim. Rep. 138, 57 S. W. 965, holding reading of lecture by court, ridiculing law of self-defense, to panel of jurors previous to drawing of jury in murder case, and in absence of defendant, reversible error.

Challenges to jury.

Cited in footnote to People v. Zeigler, 56 L. R. A. 882, which requires restoration to prisoner of peremptory challenges used on juror discharged for illness occurring while jury being impaneled.

44 L. R. A. 699, *Re* KNOWACK, 158 N. Y. 482, 53 N. E. 676.

General powers of supreme court.

Cited in *Re* Steinway, 159 N. Y. 258, 45 L. R. A. 472, 53 N. E. 1103, upholding power of supreme court to compel corporation to permit stockholder to inspect books; Re Tierney, 128 App. Div. 836, 112 N. Y. Supp. 1039, holding

the supreme court might properly entertain a petition by a parent for the custody of a child; Bresloff v. Jewish Protectory & Aid Asso. 60 Misc. 328, 113 N. Y. Supp. 254, on the supreme court as having power to restore to parents the custody of children.

Arrest, commitment, and custody of children.

Cited in Wood v. Wood, 61 App. Div. 99, 70 N. Y. Supp. 72, denying power of court, pending divorce proceedings, to award custody of defendant's child to his grandfather, defendant not having notice of application; People *ex rel.* McGrath v. Cooper, 75 App. Div. 621, 78 N. Y. Supp. 161, refusing to take orphan girl from home of persons who took her for adoption, where she was well cared for and desired to stay, on petition of maternal aunt, who worked out for a livelihood; People v. Angie, 74 App. Div. 541, 77 N. Y. Supp. 832, upholding right of police officer to arrest without a warrant, unaccompanied child under sixteen years of age, found in place where spirituous liquors are sold and drunk; People *ex rel.* Aikins v. State Industrial School, 33 Misc. 401, 67 N. Y. Supp. 674, dismissing certiorari proceeding to review commitment of boy to reformatory as a truant, on ground that it did not recite notice to parents, the proceeding not being taken by parent; Re Sharp, 15 Idaho, 128, 18 L.R.A.(N.S.) 894, 96 Pac. 563, holding an act providing for the commitment of delinquent children to an industrial school on the order of the probate court was not unconstitutional as being without due process of law, the statute not being penal; Mill v. Brown, 31 Utah, 480, 120 Am. St. Rep. 935, 88 Pac. 609, holding an act providing for the custody of delinquent children within the discretion of the trial court is not unconstitutional because no provision is made for trial by jury; People ex rel. Bolt v. Society P. C. C. 48 Misc. 176, 95 N. Y. Supp. 250, holding the commitment under statutory authority of a girl of under sixteen to the care of the society for the prevention of cruelty to children, as a witness in a prosecution for a criminal assault upon her, was not a deprivation of her constitutional right of liberty, without due process of law.

Distinguished in People *ex rel.* Stern v. New York Soc. for Prevention of Cruelty to Children, 27 Misc. 458, 58 N. Y. Supp. 118, denying power of court to review commitment of infant to house of industry upon returns to writs of habeas corpus and certiorari; *Re* Cohn, 28 Misc. 658, 59 N. Y. Supp. 1028, denying right of parents on application to supreme court to have imprisonment of child, committed to reformatory institution on complaint of father, terminated on proof that they deem boy sufficiently reformed; People *ex rel.* Sampson v. New York Catholic Protectory, 93 App. Div. 197, 87 N. Y. Supp. 557, holding that child should be remanded where untraversed return shows that he was committed to institution by magistrate.

44 L. R. A. 703, HERTER v. MULLEN, 159 N. Y. 28, 70 Am. St. Rep. 517, 53 N. E. 700.

Holding over by tenants beyond term of lease.

Report of second appeal in 52 App. Div. 326, 65 N. Y. Supp. 279, holding tenant holding over on account of sickness, liable for rent until he gives landlord actual, personal notice of quitting.

Cited in Probst v. Rochester Steam Laundry Co. 171 N. Y. 588, 64 N. E. 504, holding that assignee of lessee holding over and paying rent, accepted by lessor, elects to exercise option for extension of term provided for in lease; Preiser v. Wielandt, 48 App. Div. 572, 62 N. Y. Supp. 890, holding landlord liable for damages resulting in death of tenant's wife, too ill to be removed at expiration of lease, whose condition was aggravated by tearing down of house; Sullivan v.

Ringler, 59 App. Div. 185, 69 N. Y. Supp. 38, upholding right of landlord to treat holding over by subtenant as renewal of lessee's lease; Coleman v. Fitzgerald Bros. Brewing Co. 29 Misc. 350, 60 N. Y. Supp. 460, denying right of landlord, reletting to new tenant after old tenant had held over, to recover rent for period before he could relet; Macklin v. McNetton, 30 Misc. 750, 63 N. Y. Supp. 433, denying right to recover for use and occupation of premises from tenant holding over beyond term; Ketcham v. Ochs, 34 Misc. 472, 70 N. Y. Supp. 268, holding tenant not made liable by failure of mortgagee to remove certain personal property of subtenant until after expiration of term; Willis v. McKinnon, 37 Misc. 389, 75 N. Y. Supp. 770, denying right of tenant holding over, to defeat ejectment by acquiring outstanding title; Beeston v. Yale, 75 App. Div. 390, 78 N. Y. Supp. 158, holding tenants surrendering possession of premises, accepted by landlord, not liable for use and occupation because leaving boiler and two cutting machines, which he intended to abandon; German State Bank v. Herron, 111 Iowa, 27, 82 N. W. 430, holding possession of premises after termination of written lease, tenancy at will under statutes; Weber v. Rogers, 41 Misc. 665, 85 N. Y. Supp. 232, enjoining temporarily, prosecution of proceeding for summary removal of tenant on ground that removal would endanger his life; Stewart v. Briggs, 147 App. Div. 387, 132 N. Y. Supp. 89, holding that holding over because of death in family at time lease expires does not create new lease; Brooklyn Dock & Terminal Co. v. Bahrenburg, 135 App. Div. 802, 120 N. Y. Supp. 205, deciding that holding over of dock room after term of renewable lease constitutes a renewal; Kennedy v. New York, 196 N. Y. 23, 25 L.R.A.(N.S.) 852, 89 N. E. 360, holding that a holding over constitutes a renewal not by express contract but by implication of law; Gifford v. Bingham, 42 Ind. App. 41, 84 N. E. 1099, on right of landlord where tenant holds over after the expiration of his term to elect whether he shall consider him trespasser or tenant.

Cited in footnotes to Byxbee v. Blake, 57 L. R. A. 222, which holds tenant liable for another month's rent, by keeping keys and remaining in possession five days to clean up rubbish; Andrews v. Marshall Creamery Co. 60 L. R. A. 399, which holds mere holding over after term expires does not show election to renew for additional term under provisions of original lease.

Impossibility as excuse for nonperformance of act.

Cited in Walden v. Jamestown, 178 N. Y. 217, 70 N. E. 466, holding charter requirement of notice within two days of accident substantially complied with by service of notice within three days, where plaintiff unable to transact business within statutory period for notice; Columbus Trust Co. v. Moshier, 51 Misc. 272, 100 N. Y. Supp. 1066, holding a corporation after its dissolution and the forfeiture of its corporate rights was not liable on a guaranty to a stockholder of dividends for a specific number of years; Whipple v. Lyons Beet Sugar Ref. Co. 64 Misc. 364, 118 N. Y. Supp. 338, excusing the failure to complete the performance of a contract to raise a certain number of acres of sugar beets where by reason of drought a portion of the crop failed to grow.

Distinguished in Rhodes v. Hinds, 79 App. Div. 381, 79 N. Y. Supp. 437, holding proprietor of sawmill entitled to compensation for sawing and piling lumber, destroyed by fire before delivery to owner.

Evolution of the common law.

Cited in Doyle v. Andis, 127 Iowa, 58, 69 L.R.A. 962, 102 N. W. 177, 4 Ann. Cas. 18 (dissenting opinion), on the common law as not being an unchangeable code but a ceaseless evolution adaptable to meet the wants of society.

44 L. R. A. 711, SAMPSON v. BAGLEY, 21 R. I. 174, 42 Atl. 712.

Proceeds of insurance on premises held by life tenant.

Cited in footnote to Green v. Green, 46 L. R. A. 525, which requires money collected on total loss under policy taken out by life tenant, to be used in rebuilding or to go to remaindermen.

Cited in note (23 Eng. Rul. Cas. 88) on interest of remainderman in insurance.

Duty of life tenant to repair.

Cited in notes (137 Am. St. Rep. 662; 33 L.R.A.(N.S.) 672, 673) on duty of life tenant to repair.

Liability for waste.

Cited in Morris v. Cairncross, 14 Ont. L. Rep. 568; Chapman v. Cooney, 25 R. I. 661, 57 Atl. 928,—on the liability of a tenant for waste.

44 L. R. A. 716, STORRIE v. HOUSTON CITY STREET R. CO. 92 Tex. 129, 46 S. W. 796.

Liability of street railway for paving between tracks.

Cited in Shreveport v. Prescott, 51 La. Ann. 1924, 46 L. R. A. 212, 26 So. 664, holding railway company occupying street benefited by street improvement to extent of space occupied by it, and liable for its proportionate share of cost; Lincoln Street R. Co. v. Lincoln, 61 Neb. 134, 84 N. W. 802, upholding power of legislature to require street railway to pave part of street occupied by its tracks; Kettle v. Dallas, 35 Tex. Civ. App. 641, 80 S. W. 874, on the same point.

Cited in notes (46 L.R.A. 194, 202) on liability of street railway for paving assessment; (15 L.R.A.(N.S.) 488) on liability of railway occupying street, to assessment for improvements.

Distinguished in Rochester v. Rochester R. Co. 98 App. Div. 541, 91 N. Y. Supp. 87, holding where by a prior ordinance a street railway was required to keep in repair the space inside of the rails but exempted from expense of repairing, a subsequent act attempting to make it contribute to such expense was unconstitutional.

Power of legislature to alter or revoke corporate charters.

Cited in Kettle v. Dallas, 35 Tex. Civ. App. 641, 80 S. W. 874, holding that amendment to city charter authorizing creation of improvement districts and levying of tax against property owners to meet street improvement expenses is constitutional; Marshalltown Light, Power & R. Co. v. Marshalltown, 127 Iowa, 642, 103 N. W. 1005, holding a provision of a franchise exempting street car company from paving except in manner provided by franchise does not prevent the imposition of paving requirements; Kettle v. Dallas, 35 Tex. Civ. App. 641, 80 S. W. 874, holding taxpayer not deprived of property without due process by legislative amendment to city charter creating improvement districts for purposes of taxation of benefits.

Cited in note (50 L. R. A. 144) on privilege of using streets as a contract within constitutional provision against impairing obligation of contracts.

Power of legislature to make assessments superior to prior liens.

Cited in note (30 L.R.A.(N.S.) 763) on power of legislature to make special assessments superior to other prior liens.

44 L. R. A. 725, HOOPER v. HOOPER, 102 Wis. 598, 78 N. W. 753.

Disturbance of award of alimony for manifest injustice

Cited in Newton v. Newton, 145 Wis. 262, 130 N. W. 105, holding that deci-

sion of trial court in allowance of alimony will not be disturbed on appeal unless manifestly unjust; Minahan v. Minahan, 145 Wis. 520, 130 N. W. 476, holding that decision of court in making division of property where divorce is granted to wife will not be disturbed unless it is manifestly unjust.

44 L. R. A. 728, CASE v. HOFFMAN, 100 Wis. 314, 72 N. W. 390, 74 N. W. 220, 75 N. W. 945.

Disqualification of members of court.

Cited in *Re* Nevitt, 54 C. C. A. 624, 117 Fed. 450, holding judge not disqualified to hear and determine lawsuit, because in another action between other parties involving similar questions of law or fact he was counsel for one of litigants; Deming v. McClaughry, 51 C. C. A. 361, 113 Fed. 651, holding judgment against officer of voluntary army raised under acts of 1898 and 1899, by court-marshal composed of officers of regular army, void because of disqualification of members of court; State v. Hartley, 75 Conn. 110, 52 Atl. 615, holding that action of disqualified judge in presiding at trial renders judgment erroneous only; Topolewski v. Plankington Packing Co. 143 Wis. 76, 126 N. W. 554, holding that order in violation of section 2579, statutes (1898) providing that judge interested in action shall not have power to hear same, is void and subject to collateral attack; Carr v. Duhme, 167 Ind. 83, 78 N. E. 322, 10 Ann. Cas. 967, holding the disqualification of a member of a board of commissioners by interest may be waived by permitting the cause to proceed to judgment without objection; State ex rel. Dorgan v. Fisk, 15 N. D. 228, 107 N. W. 191, holding a drainage commission was not disqualified from acting on a proceeding for the laying of a drain because he owns land to be benefited by the laying of the drain; State ex rel. Cook v. Houser, 122 Wis. 578, 100 N. W. 964, holding the state central committee of a party is not disqualified by bias or interest of members from determining what set of contesting nominees were entitled to have their names placed on the ballot under the party designation; Rollins v. Connor, 74 N. H. 459, 124 Am. St. Rep. 983, 69 Atl. 777, 13 Ann. Cas. 334, on the disqualification of a member as affecting the action of a judicial tribunal; State ex rel. Rowell v. Dick, 125 Wis. 59, 103 N. W. 229, holding a judge who acted for plaintiffs in an action is disqualified to try a subsequent action by one of the plaintiffs, which involves part of the same cause of action; Conant's Appeal, 102 Me. 481, 120 Am. St. Rep. 512, 67 Atl. 564, holding the laying out of a town way is void where one of the selectmen laying out signs the petition for the way and signs the return upon the petition for the way.

Doctrine of res judicata.

Cited in State v. National Acci. Soc. 103 Wis. 218, 79 N. W. 220, holding decision as to applicability of statute of limitations to foreign corporations, involved in decision of case, binding upon court until overruled; Keystone Lumber Co. v. Kolman, 103 Wis. 303, 79 N. W. 224, holding that every question decided on appeal is binding, not only on trial court, but on supreme court on subsequent appeal; Priewe v. Wisconsin State Land & Improv. Co. 103 Wis. 549, 74 Am. St. Rep. 904, 79 N. W. 780, holding decision on former appeal binding as to all questions covered by it; Hart v. Moulton, 104 Wis. 353, 76 Am. St. Rep. 881, 80 N. W. 599, holding that judgment is as binding on privies as on parties, as to questions actually decided and upon which the judgment rests; Crouse v. Chicago & N. W. R. Co. 104 Wis. 480, 80 N. W. 752, holding decision of supreme court deciding that verdict submitted was sufficient must be followed on second appeal, whether right or wrong; Rupiper v. Calloway, 105 Wis.

8, 80 N. W. 916, holding that verdict for plaintiff in ejectment for only part of land is, in effect, a judgment against him as to balance asked for in pleadings; South Bend Chilled Plow Co. v. George C. Cribb Co. 105 Wis. 446, 81 N. W. 675, holding question not raised, but necessarily involved, in decision on first appeal *res judicata* on second appeal; Huesbschmann v. Cotzhausen, 107 Wis. 73, 82 N. W. 720, holding judgment as to legitimacy of plaintiff's grantor *res judicata* in subsequent suit in ejectment by plaintiffs, defendants having been parties in former proceeding; Becker v. Chester, 115 Wis. 128, 91 N. W. 87, holding every proposition upon which final conclusion rests, *res judicata;* Lonstorf v. Lonstorf, 118 Wis. 161, 95 N. W. 961, refusing to overrule former decision, regardless of whether court would decide in same way were case heard for first time; Jerdee v. Furbush, 115 Wis. 282, 95 Am. St. Rep. 904, 91 N. W. 661, holding that principles of law on which decision is based are necessarily part of decision; Bostwick v. Mutual L. Ins. Co. 122 Wis. 326, 99 N. W. 1042, holding on an appeal the decision of the court on a former appeal remanding the cause to the trial court to determine a certain question and render judgment in accordance with the opinion is binding; Pietsch v. Milbrath, 123 Wis. 653, 68 L.R.A. 949, 107 Am. St. Rep. 1017, 101 N. W. 388, holding the sufficiency of a complaint to support a cause of action is res judicata where the supreme court on former occasions declared the circumstances alleged therein constituted a good cause of action; Twentieth Century Co. v. Quilling, 136 Wis. 486, 117 N. W. 1007, holding the finding of the sufficiency of the allegations of an answer are binding upon a subsequent trial and appeal; Lindeman v. Rusk, 125 Wis. 237, 104 N. W. 119, on when a judgment is res judicata.

Cited in footnote to Illinois C. R. Co. v. Benz, 58 L. R. A. 691, which holds decision on reversal and remand of action for personal injuries removed to Federal court, not law of case if action dismissed and new one begun.

Rights in use of waters.

Cited in Huber v. Merkel, 117 Wis. 366, 62 L. R. A. 594, 98 Am. St. Rep. 933, 94 N. W. 354, upholding right of land owner to sink artesian wells and use water therefrom as he chooses, although diminishing flow from wells of his neighbors; Blohowak v. Grochoski, 119 Wis. 195, 96 N. W. 551, holding question whether natural water course exists, question for jury on conflicting evidence.

Cited in footnote to Kray v. Muggli, 45 L. R. A. 218, which denies prescriptive right of riparian owners to maintenance of dam after proprietor chooses to abandon it.

Cited in note (50 L. R. A. 838) on rights acquired in artificial condition of body of water.

Right of third party to sue on contract for his benefit.

Cited in footnotes to Ferris v. American Brewing Co. 52 L. R. A. 305, which sustains right of action of one for whose benefit stipulation in lease was made, against sale on premises of other person's beer; Electric Appliance Co. v. United States Fidelity & G. Co. 53 L. R. A. 609, which denies right of action of one furnishing materials to contractor on bond given by latter to city, conditioned on turning over building free of claims for materials; Boston Ins. Co. v. Chicago, R. I. & P. R. Co. 59 L. R. A. 796, which denies right of action against railroad company carrying mail under contract with government, by sender of registered mail destroyed through negligence of its employees; Tweeddale v. Tweeddale, 61 L. R. A. 509, which sustains right of third person to enforce contract made for his benefit.

What is a watercourse.

Cited in New Jersey, I. & I. R. Co. v. Tutt, 168 Ind. 211, 80 N. E. 420, holding

an artificial ditch used to carry off surface water was not a watercourse within the statutory meaning.

Cited in notes (67 Am. St. Rep. 670) on underground waters which are percolating; (2 Brit. Rul. Cas. 997) on character of water flowing underground in defined but unknown channel.

Possession of land as notice of title.

Cited in note (13 L.R.A.(N.S.) 96) on possession of land as notice of title.

Easements created by severance of tract.

Cited in notes (6 L.R.A.(N.S.) 411) on effect of division of tract with visible servitude in favor of one parcel upon another; (26 L.R.A.(N.S.) 357) on easements created by severance of tract with apparent benefit existing.

44 L. R. A. 734, BROWN v. ORANGEBURG COUNTY, 55 S. C. 45, 32 S. E. 764.

Liability of municipality for acts of mob.

Cited in footnotes to Chicago v. Manhattan Cement Co. 45 L. R. A. 848, which sustains statute compelling county to pay three fourths of value of property destroyed by mob; Wallace v. Norman, 48 L. R. A. 620, which denies city's liability for acts of officers participating in conspiracy or misdeeds of mob.

44 L. R. A. 737, CARUTHERS v. KANSAS CITY, FT. S. & M. R. CO. 59 Kan. 629, 54 Pac. 673.

Liability of lessor road for negligence of another company using road.

Cited in Hahs v. Cape Girardeau & C. R. Co. 147 Mo. App. 279, 126 S. W. 524, holding that if lessor railroad tracks were defective at time of lease as result of negligent construction, liability for injury resulting therefrom would attach to both lessor and lessee; Hamilton v. Louisiana & N. W. R. Co. 117 La. 248, 6 L.R.A.(N.S.) 791, 41 So. 560, holding that where a lease of the road is not authorized by statute the railroad company is liable for all injuries resulting from the negligent operation of the road by the lessee, as well as for the omission of some duty to the public, and also citing annotation on this point; Hollins v. New Orleans & N. W. R. Co. 119 La. 422, 44 So. 159, holding that under the state laws, both railroad companies are liable for injuries resulting from the negligent operation of the road by the lessee; Travis v. Kansas City S. & G. R. Co. 119 La. 490, 10 L.R.A.(N.S.) 1191, 121 Am. St. Rep. 526, 44 So. 274, holding that the lessor road is liable for the breach of duty by the lessee to the public but not for instance as to the duty toward the servant to furnish a safe place to work; Ackerman v. Cincinnati, S. & M. R. Co. 143 Mich. 62, 114 Am. St. Rep. 640, 106 N. W. 558, 8 Ann. Cas. 118, holding that under the state statute providing for the leasing of railroads, a lessor company is not liable for the breach of duty by its lessee under a ninety-nine year lease; Moorshead v. United R. Co. 203 Mo. 170, 100 S. W. 611, on certification adopting opinion of court of appeals 119 Mo. App. 580, 96 S. W. 261, holding that a city railroad company which had leased its road to another company under the provisions of the city ordinance, was not liable for injuries to a passenger because of the negligence of the lessee's servant.

Cited in footnotes to Sias v. Rochester R. Co. 56 L. R. A. 850, which denies liability of street railway company for death by collision with tree near track, of passenger of other company using track under traffic arrangement; Muntz v. Algiers & G. R. Co. 64 L. R. A. 222, which holds railroad company liable for negligent operation of cars on its road, whether operated by itself or lessee; Chicago & G. T. R. Co. v. Hart, 66 L.R.A. 75, which holds that statutory permission to railroad company to lease its property does not absolve it from

liability for injuries to lessee's employees because of defects in rolling stock, although due solely to lessee's negligence.

Cited in notes (22 L.R.A.(N.S.) 323) on liability of railroad for negligence of employee while running on road of another, subject to orders of the latter's train despatcher; (36 L.R.A.(N.S.) 887) on liability of railroad for injury to one riding on train run over its track by another through negligence of licensee.

Annotation in 44 L. R. A. 737, referred to particularly in Sinkhorn v. Lexington, H. & P. Turnp. Co. 112 Ky. 211, 65 S. W. 356, holding turnpike company surrendering entire control of road to county as lessee, not liable for failure of latter to repair.

Distinguished in McCabe v. Maysville & B. S. R. Co. 112 Ky. 876, 66 S. W. 1054, holding lessor liable for negligence of lessee railroad company in killing pedestrian; Louisville & N. R. Co. v. Breeden, 111 Ky. 746, 64 S. W. 667, holding railroad companies, parties to joint traffic agreement for use of tracks owned by one of the companies, both liable for negligence in operation of trains thereon, and referring particularly to annotation in 44 L. R. A. 737.

44 L. R. A. 757, ANTHONY v. NORTON, 60 Kan. 341, 62 Am. St. Rep. 360, 56 Pac. 529.

Actions for seduction.

Cited in Snider v. Newell, 132 N. C. 616, 44 S. E. 354, holding it unnecessary for father to show loss of services to maintain action for seduction of daughter.

Cited in note (76 Am. St. Rep. 661) on civil injury as foundation of action for seduction.

Application of common law to actions for damages.

Cited in Cooper v. Seaverns, 81 Kan. 282, 25 L.R.A.(N.S.) 524, 135 Am. St. Rep. 359, 105 Pac. 509, on the application of the common law in actions for damages.

44 L. R. A. 761, MARNER v. PENOYER, 33 C. C. A. 222, 91 Fed. 587.

Liability of corporation directors for negligence and misconduct.

Approved in Rankin v. Cooper, 149 Fed. 1013, holding that bank directors are bound to use reasonable care and diligence in the supervision of the affairs of the bank, such diligence being that which an ordinarily prudent and diligent man would exercise in view of all the circumstances.

Cited in Chick v. Fuller, 51 C. C. A. 649, 114 Fed. 23, holding, under facts in case, directors of manufacturing concern not liable for negligence, because they authorized payment of dividend while corporation was insolvent; Hanna v. People's Nat. Bank, 35 Misc. 521, 71 N. Y. Supp. 1076, holding directors of national bank liable to injured stockholders for losses due to negligence in permitting discount of notes; Campbell v. Watson, 62 N. J. Eq. 439, 50 Atl. 120, holding directors of bank liable for loss due to their negligent examination into condition of affairs of corporation; Holmes v. McDonald, 226 Ill. 176, 80 N. E. 714, holding that bank directors were liable for wilful and gross negligence in the management of the affairs of the bank; Mason v. Moore, 73 Ohio St. 295, 4 L.R.A.(N.S.) 606, 76 N. E. 932, 4 Ann. Cas. 240, holding that in an action against the directors of a bank, for damages resulting because of their publishing a false statement of the condition of the affairs of the bank, and inducing the plaintiff thereby to purchase stock, it must be shown that the publication was known to be false.

Cited in footnotes to Utley v. Hill, 49 L. R. A. 323, which denies liability of directors for deceit, for false statements in reports to secretary of state, believed to be true; Gerner v. Mosher, 46 L. R. A. 244, which holds bank directors attesting false report, liable to person purchasing stock in reliance on same.

Cited in notes (55 L.R.A. 757, 758, 767, 768, 771, 773) on liability of corporate directors to corporation; (4 L.R.A.(N.S.) 598, 599, 600) on liability of directors for default or negligence of cashier.

Distinguished in Robinson v. Mutual Reserve L. Ins. Co. 175 Fed. 630, holding that a receiver of a corporation can not maintain a suit in equity against the directors where he has a plain remedy at law.

44 L. R. A. 766, COREY v. WADSWORTH, 118 Ala. 488, 25 So. 503.

Rights of creditors in assets of corporation.

Cited in Wilson v. Stevens, 129 Ala. 637, 87 Am. St. Rep. 87, 29 So. 678; Brady v. James McDonnell Co. 122 Ala. 651, 26 So. 1029; Anderson v. Bullock County Bank, 122 Ala. 289, 25 So. 523, — upholding right of insolvent corporation to prefer its officers in payment of their bona fide debts; Henderson v. Hall, 134 Ala. 505, 63 L. R. A. 704, 32 So. 840, holding that assets of corporation do not constitute trust fund for creditors; Hawkins v. Donnerberg, 40 Or. 107, 66 Pac. 691, denying right of creditors of corporation to compel payment of subscriptions due on stock, after right of corporation to such payments had been barred by statute; Vaughn v. Alabama Nat. Bank, 143 Ala. 578, 42 So. 64, 5 Ann. Cas. 665, holding that the trust fund theory applies to corporations under the statutes the same as to individuals in the payment of debts, but extends no farther.

Disapproved in James Clark Co. v. Colton, 91 Md. 212, 49 L. R. A. 704, 46 Atl. 386, denying right of corporation officers to prefer their own claims to those of other creditors; Taylor v. Mitchell, 80 Minn. 497, 83 N. W. 418, declaring mortgage by insolvent corporation to secure claims of directors, fraudulent as to other creditors.

Objections to sale by trustee to himself.

Cited in Mobile Land Improv. Co. v. Gass, 142 Ala. 528, 39 So. 229, holding that a stranger can not ratify or object to the sale because it was made to the trustee himself, but only the principal or the parties interested.

44 L. R. A. 786, LAMKIN v. BALDWIN & L. MFG. CO. 72 Conn. 57, 43 Atl. 593.

Right of third party to sue on contract for his benefit.

Cited in Morgan v. Randolph & C. Co. 73 Conn. 398, 51 L. R. A. 654, footnote p. 653, 47 Atl. 658, denying right of creditor of copartnership to maintain action at law for his claim against corporation assuming copartnership debts; Barber v. International Co. 73 Conn. 594, 48 Atl. 758, upholding right of creditors to invoke aid of court of chancery to compel enforcement of contract between insolvent corporation and another corporation, by which latter agreed to pay debts of former, and which constituted its only asset; Root v. New Haven Trust Co. 82 Conn. 609, 74 Atl. 950, holding that the wife was the proper person to maintain an action upon the agreement made by her deceased husband making provision for the support of herself and her infant son, after the husband's death.

Cited in footnote to Capital Traction Co. v. Offutt, 53 L. R. A. 390, which denies liability of street railway company for debts of other company whose property and franchises bought.

Rights of a de facto organization.

Cited in New York, B. & E. R. Co. v. Motil, 81 Conn. 472, 71 Atl. 563, holding that the defect in the organization of a railroad corporation did not prevent it from becoming a corporation de facto, nor disqualify it from acquiring, holding, and conveying real estate.

Taxation of property in hands of receiver.

Cited in Pope v. Hartford, 82 Conn. 411, 74 Atl. 751, holding that money in the hands of ancillary receivers of a foreign corporation doing business within the state is taxable within the state.

44 L. R. A. 790, PULLMAN'S PALACE-CAR CO. v. HALL, 106 Ga. 765, 71 Am. St. Rep. 293, 32 S. E. 923.

Liability of sleeping car companies for loss of passenger's property.

Followed in Pullman Co. v. Schaffner, 126 Ga. 612, 9 L.R.A.(N.S.) 410, 55 S. E. 933, holding that a sleeping car company was liable for the loss of articles properly kept about the person, where the articles were stolen through the failure of the company to exercise reasonable care to prevent the theft.

Cited in Pullman Palace Car Co. v. Hatch, 30 Tex. Civ. App. 304, 70 S. W. 771, holding that passenger must show negligence on part of sleeping car company to render it liable for loss of baggage; Pullman Co. v. Green, 128 Ga. 144, 119 Am. St. Rep. 368, 57 S. E. 233, 10 Ann. Cas. 893, holding sleeping car company liable for the theft of articles properly kept about the person, through the failure of the company to exercise reasonable diligence to prevent the theft.

Cited in footnotes to Pullman's Palace Car Co. v. Adams, 45 L. R. A. 767, which holds sleeping car company liable for theft of passenger's property, where porter went to sleep while on watch; Pullman's Palace Car Co. v. Hunter, 47 L. R. A. 286, which sustains liability for theft of diamond rings from woman while asleep in sleeping car; Cooney v. Pullman Palace-Car Co. 53 L. R. A. 690, which holds sleeping car company liable for loss of passenger's valise, intrusted to employees of company.

Cited in note (9 L.R.A.(N.S.) 409) on duty of sleeping car company as to baggage or personal effects.

44 L. R. A. 795, BARTLETT v. COLUMBUS, 101 Ga. 300, 28 S. E. 599.

Liability of municipality for torts of its officers in exercise of governmental functions.

Cited in Gray v. Griffin, 111 Ga. 364, 51 L. R. A. 132, 36 S. E. 792, holding city not liable for physical injury and mental suffering of person illegally arrested, caused by condition in which prison was kept; Gray v. Griffin, 111 Ga. 368, 51 L. R. A. 134, 36 S. E. 792, holding city not liable for act of mayor in requiring person arrested to give larger bond than law authorized; Mellhenny v. Wilmington, 127 N. C. 152, 50 L. R. A. 472, footnote p. 470, 37 S. E. 187, denying city's liability for wrongful arrest of, and brutal assault on, innocent person by notoriously incompetent policeman; McFadin v. San Antonio, 22 Tex. Civ. App. 142, 54 S. W. 48, and Simpson v. Whatcom, 33 Wash. 402, 63 L. R. A. 819, 99 Am. St. Rep. 951, 74 Pac. 577, denying liability of city for arrest of person under void ordinance; Carter v. Worcester County, 94 Md. 626, 51 Atl. 830, holding county commissioners not liable for illegal arrest by county road supervisor, and referring particularly to annotation in 44 L.R.A. 795; Hershberg v. Barbourville, 142 Ky. 62, 34 L.R.A.(N.S.) 143, 133 S. W. 985, Ann. Cas. 1912 D, 189, holding that city is not liable in damages for arrest of person under invalid ordinance regularly passed in attempted exercise of its police power;

Bond v. Royston, 130 Ga. 648, 18 L.R.A.(N.S.) 411, 61 S. E. 491, holding that the city was not liable for the acts of its council and mayor in the attempted enforcement of an unconstitutional ordinance levying a tax upon a certain occupation; Clark v. Atlantic City, 180 Fed. 602, holding same as to enforcement of a city ordinance fixing a license for certain occupation.

Cited in footnotes to Tillman v. Beard, 46 L. R. A. 215, which denies liability of village president for procuring arrest for violation of void ordinance; Levin v. Burlington, 55 L. R. A. 396, which denies city's liability for officer's arrest and quarantine of one who has passed night in house containing smallpox patient; Mumford v. Starmont, 69 L.R.A. 350, which holds mayor and chief of police liable for arresting motorman to abate nuisance from operation of cars when trolley wire is in such poor condition as to be liable to fall.

Cited in notes (18 L.R.A.(N.S.) 410) on liability of municipality for attempt to enforce void ordinance regulating business or conduct within its limits; (32 L.R.A.(N.S.) 34) on municipal liability for legal proceedings.

44 L. R. A. 801, PEOPLE *ex rel.* DENEEN v. SIMON, 176 Ill. 165, 68 Am. St. Rep. 175, 52 N. E. 910.

Separation of executive, legislative, and judicial departments.

Cited in State *ex rel.* White v. Barker, 116 Iowa, 110, 57 L. R. A. 252, 93 Am. St. Rep. 222, 89 N. W. 204, denying right of legislature to vest in district court, power of choosing managers of municipal water supply system; Re Counties Comprising Seventh Judicial Dist. 22 Okla. 447, 98 Pac. 557, holding a statute unconstitutional as delegating legislative powers to the judiciary, where it provided that the governor should appoint additional judges of the district courts for such times and terms as the Supreme Court should recommend; State v. Illinois C. R. Co. 246 Ill. 231, 92 N. E. 814, holding that power of governor to audit and settle accounts of railroad under statute, is not judicial power.

Acts providing for registration of land titles.

Cited in State *ex rel.* Douglas v. Westfall, 85 Minn. 446, 57 L. R. A. 302, footnote p. 297, 89 Am. St. Rep. 571, 89 N. W. 175, sustaining act for Torrens system of registering land titles; Gage v. Consumer's Electric Light Co. 194 Ill. 34, 64 N. E. 653, holding question as to sufficiency of proof of payment of taxes in proceeding for registration of titles cannot be raised for first time in supreme court; Robinson v. Kerrigan, 151 Cal. 46, 121 Am. St. Rep. 90, 90 Pac. 129, 12 Ann. Cas. 829, sustaining constitutionality of Torrens' Land Registration Act; McMahon v. Rowley, 238 Ill. 36, 87 N. E. 66, holding the Registration of Land Titles Act constitutional in its general features.

Rule as to notice.

Cited in Tyler v. Registration Ct. Judges, 175 Mass. 80, 51 L. R. A. 437, footnote p. 433, 55 N. E. 812, holding land registration act not invalidated by failure to provide for notice of transfers; Title & Document Restoration Co. v. Kerrigan, 150 Cal. 316, 8 L.R.A.(N.S.) 690, 119 Am. St. Rep. 199, 88 Pac. 356, sustaining statute relative to the quieting of title by action, the summons to be served personally if the adverse party be known, or by publication if by reasonable diligence he cannot be found; Bear Lake County v. Budge, 9 Idaho, 712, 108 Am. St. Rep. 179, 75 Pac. 614, holding that a constructive service of a summons, is sufficient where there is some reason or necessity existing therefor, and where the Legislature has provided therefor.

Option to adopt statute.

Cited in Bryan v. Voss, 143 Ky. 426, 136 S. W. 884, holding that statute

providing for commission form of government for cities is not void because enacted to take effect on approval of voters.

Cited in footnote to Adams v. Beloit, 47 L. R. A. 441, which sustains option giving specially chartered cities power to adopt provisions of general law.

Construction of statutes.

Cited in People *ex rel.* Hillel Lodge No. 72, I. O. B. B. v. Rose, 207 Ill. 362, 69 N. E. 762, refusing to adopt construction which would place statute, making failure to report annually prima facie evidence of nonuser, in conflict with Constitution.

Application of proceeds from sale of minor's lands.

Cited in Dickson v. New York Biscuit Co. 211 Ill. 488, 71 N. E. 1058, holding that a purchaser from a trustee need not look to the application of the purchase money, where at the time of the sale the beneficiaries are infants.

Retrospective operation of statutes of limitation.

Cited in note (111 Am. St. Rep. 455) on retrospective operation of statutes of limitation.

Force of foreign quasi judgments in rem.

Cited in note (94 Am. St. Rep. 552) on force of foreign quasi judgments in rem.

44 L. R. A. 809, HOGAN v. STOPHLET, 179 Ill. 150, 53 N. E. 604.

Request amounting to demurrer to the evidence.

Cited in Grand Pacific Hotel Co. v. Pinkerton, 217 Ill. 74, 75 N. E. 427, holding that where the appellant submits to the trial court, to be marked "held" or "refused" a proposition that the finding should be for him it amounts to a demurrer to the evidence, giving the court power to review the evidence as to the right to recover.

Rewards for arrest and conviction of criminals.

Cited in Williams v. West Chicago Street R. Co. 191 Ill. 615, 85 Am. St. Rep. 278, 61 N. E. 456, Affirming 94 Ill. App. 389, denying right to reward for "arrest and conviction" of murderers, where plaintiff merely furnished information which led to arrest; Cornwell v. St. Louis Transit Co. 100 Mo. App. 262, 73 S. W. 305, holding that officer may be rewarded for extraordinary services beyond the limit of his ordinary duty; Clinton County v. Davis, 162 Ind. 66, 64 L. R. A. 784, 69 N. E. 680, holding that vote buyer cannot claim reward offered to one who furnishes information for conviction of vote seller; Davis v. Millsap, 159 Mo. App. 169, 140 S. W. 751, holding that sheriff, who has located and arrested in another state and returned to his county in this state fugitive from justice, may recover reward.

Cited in footnote to Smith v. Vernon County, 70 L.R.A. 59, which sustains right of police officer to reward offered by authorities of another state for apprehension of perpetrator of crime committed there where he acts as private detective in making arrest.

Cited in notes (7 L.R.A.(N.S.) 217) on what necessary to earn reward for arrest; (11 L.R.A.(N.S.) 1170) on right of officer to reward for arrest.

44 L. R. A. 814, SIZOR v. LOGANSPORT, 151 Ind. 626, 50 N. E. 377.

Meander line as boundary.

Cited in Leonard v. Wood, 33 Ind. App. 84, 70 N. E. 827, holding that where the conveyance was bounded by the meander line, it was a conveyance bounded by the river; Illyes v. White River Light & P. Co. 175 Ind. 123, 93 N. E. 670,

holding that description in eminent domain proceedings, fixing line as commencing at certain point, thence south to White river; thence up meanderings of said river to north line of section 61 includes land to thread of White river.

Cited in footnote to Security Land & Exploration Co. v. Burns, 63 L. R. A. 157, which holds that supposed meander line will be held boundary line if consistent with other calls and distances indicated on plat.

44 L. R. A. 815, BARMAN v. SPENCER (Ind.) 49 N. E. 9.

Liability of landlord for defective condition of premises.

Cited in Grant v. Tomlinson, 138 Mo. App. 228, 119 S. W. 1079, holding that landlord making repairs on leased premises with consent of tenant is liable for negligently creating dangerous condition on premises.

Cited in footnotes to Towne v. Thompson, 46 L. R. A. 748, which denies boarding-house lessee's liability to tenant's boarders for illness from unsanitary condition of premises; Smith v. State, 51 L. R. A. 772, which denies landlord's liability for injury to subtenant's child from defective balustrade on porch; Brady v. Klein, 62 L. R. A. 909, which denies right of action by licensee of tenant on landlord's covenant to repair, for injury due to defective condition of premises.

44 L. R. A. 821, WHEELER v. BOONE, 108 Iowa, 235, 78 N. W. 909.

Laws relating to bicycles.

Cited in Des Moines v. Keller, 116 Iowa, 650, 57 L. R. A. 244, 93 Am. St. Rep. 268, 88 N. W. 827, upholding validity of ordinance requiring bicyclists to carry lamps; Overhouser v. American Cereal Co. 118 Iowa, 420, 92 N. W. 74, holding ordinance admissible in action to recover for death of bicyclist caused by obstruction in street in violation of such ordinance.

Cited in note (47 L. R. A. 297) on bicycle law.

Duty of municipalities as to safety of bicyclists.

Cited in Morrison v. Syracuse, 45 App. Div. 422, 61 N. Y. Supp. 313, holding that city allowing bicyclist to ride on sidewalks upon payment of nominal fee owes him no greater care to keep walk safe than it owes pedestrians; Gagnier v. Fargo, 11 N. D. 78, 95 Am. St. Rep. 705, 88 N. W. 1030, holding that the city was not liable for injuries to a person riding a bicycle upon the sidewalk, if the sidewalk was in a reasonably safe condition for travel by pedestrians; Fox v. Clarke, 25 R. I. 518, 65 L.R.A. 236, 57 Atl. 305, 1 Ann. Cas. 548, holding same as to highways.

Cited in footnote to Lee v. Port Huron, 55 L. R. A. 308, which holds city liable for injury to bicyclists from defective sidewalk.

Cited in notes (20 L.R.A.(N.S.) 756) on liability of municipality for defects or obstructions in streets; (23 L.R.A.(N.S.) 544) on duty to make streets and highways safe for bicycles.

Amendments to pleadings after verdict.

Cited in Shawyer v. Chamberlain, 113 Iowa, 745, 86 Am. St. Rep. 411, 84 N. W. 661, upholding order of court striking from files amendment to answer filed after verdict, and raising new issue.

44 L. R. A. 823, REED v. LOUISVILLE & N. R. CO. 104 Ky. 603, 47 S. W. 591, 48 S. W. 416.

Rule as to stopping of train after injury to passenger.

Cited in Chesapeake & O. R. Co. v. Saulsberry, 112 Ky. 923, 56 L. R. A. 583, 66 S. W. 1051, holding railroad company ejecting drunken passenger at station

not bound to stop train to ascertain extent of injuries in case he is hurt trying to reboard train.

Cited in note (27 L.R.A.(N.S.) 770) on duty of carrier to passenger fallen from train.

Sufficiency of general allegations of negligence.

Cited in note (59 L. R. A. 243) on sufficiency of general allegations of negligence.

44 L. R. A. 825, DEPOSIT BANK v. DAVIESS COUNTY, 102 Ky. 174, 39 S. W. 1030, 44 S. W. 1131.

Affirmed in 173 U. S. 636, 662, 663, 43 L. ed. 840, 850, 19 Sup. Ct. Rep. 530, 875.

Followed without discussion in Covington v. First Nat. Bank, 198 U. S. 107, 49 L. ed. 967, 25 Sup. Ct. Rep. 562, Affirming 129 Fed. 793, which was a later stage of litigation begun in 103 Fed. 530.

Cited in Frankfort v. Deposit Bank, 108 Ky. 767, 57 S. W. 787, which by agreement was made to abide the decision in the cited case.

Repeal of charter provision granting exemption from taxation.

Cited in Newport v. Masonic Temple Asso. 103 Ky. 595, 45 S. W. 881, holding provision in charter exempting corporation from taxation repealed by subsequent Constitution requiring taxation of all property, unless exempted by Constitution; Northern Bank v. Stone, 88 Fed. 420, holding that the statute of Kentucky providing that all charters and amendments thereof, shall be subject to amendment or repeal by the legislature unless a contrary intent is expressed, applies to extensions of charters existing before the passage of the former statute; Perkins v. Coffin, 84 Conn. 297, 79 Atl. 1070, Ann. Cas. 1912C, 1188, on reserved powers in matter of taxation of property.

Taxation of deposits in banks.

Cited in Com. v. Wathen, 126 Ky. 574, 104 S. W. 364, holding that money in a bank is taxable as the depositor's though he at the time owes the bank for an overdraft but upon which the bank has not credited the deposit; Com. v. Bank of Commerce, 118 Ky. 557, 81 S. W. 679, holding that a bank could not be taxed for moneys deposited with it by its customers, but the depositors must pay the tax thereon.

Taxation of corporations.

Cited in First Nat. Bank v. Covington, 103 Fed. 530; Deposit Bank v. Frankfort, 191 U. S. 508, 48 L. ed. 279, 24 Sup. Ct. Rep. 154; Frankfort v. Deposit Bank, 111 Ky. 950, 98 Am. St. Rep. 444, 65 S. W. 10; Bank of Commerce v. Stone, 108 Ky. 433, 56 S. W. 683,—on history of decisions and legislation for taxation of banks.

Cited in notes (45 L. R. A. 747) on state taxation of national banks; (57 L. R. A. 72) on taxation of corporate franchises in United States.

Distinguished in Higgins v. Com. 126 Ky. 217, 103 S. W. 306, holding that notes, bonds, and other securities owned by a nonresident, but in the hands of a resident for the purpose of investing, are taxable.

Power to grant extensions to corporations by special act.

Cited in footnote to Bank of Commerce v. Wiltsie, 47 L. R. A. 489, which holds invalid, extension of old special charter of corporation.

Acts of public officials as affecting right to collect taxes.

Cited in Alexander v. Aud. 121 Ky. 114, 88 S. W. 1103, holding that the

failure of the sheriff to levy upon the personalty to collect taxes assessed against the land, does not make the sale of the land for taxes, void.

44 L. R. A. 837, STATE v. HAINES, 51 La. Ann. 731, 25 So. 372.

Perpetration of rape by husband upon the wife.

Cited in Frazier v. State, 48 Tex. Crim. Rep. 144, 122 Am. St. Rep. 738, 86 S. W. 754, 13 Ann. Cas. 497, holding that the husband cannot be guilty of actual rape upon his wife.

Bill of exceptions.

Cited in State v. Napoleon, 104 La. 166, 28 So. 972, and State *ex rel.* Markham v. Read, 52 La. Ann. 272, 26 So. 826, holding mere reservation of bill of exceptions in criminal cause insufficient; State *ex rel.* Periou v. Foster, 106 La. 195, 30 So. 749, upholding right of judge signing bill of exception, to assign his grounds for rulings objected to; State v. Simmons, 118 La. 23, 42 So. 582, holding that a note in the body of testimony, that the testimony had been objected to, and the objection sustained, was not a bill of exceptions, though a bill was reserved therein.

44 L. R. A. 840, VAN NORMAN v. GORDON, 172 Mass. 576, 70 Am. St. Rep. 304, 53 N. E. 267.

Confession of judgment.

Cited in Hutchinson v. Palmer, 147 Ala. 520, 40 So. 339, holding that a judgment entered by confession on a note containing a power of atttorney to make such confession, is binding and valid though not rendered on regular service of process; Cuykendall v. Doe, 129 Iowa, 464, 3 L.R.A.(N.S.) 455, 113 Am. St. Rep. 472, 105 N. W. 698, holding valid a judgment by confession rendered upon a note containing power of attorney authorizing such confession.

Presumption as to jurisdiction.

Cited in American Mut. L. Ins. Co. v. Mason, 159 Ind. 19, 64 N. E. 525, holding foreign court presumed to be one of general jurisdiction where transcript shows that it had a judge, clerk, and seal; Old Wayne Mut. Life Asso. v. McDonough, 164 Ind. 330, 73 N. E. 703, holding that the presumption is in favor of the validity of the judgment of a court of general jurisdiction rendered in another state, and the burden is upon the party alleging the contrary to prove same, unless the want of jurisdiction appears in the transcript; Christiansen v. Kriesel, 133 Wis. 511, 113 N. W. 980, holding that where it is shown that the foreign court being one of special jurisdiction, was a court having a judge, a seal, a clerk, and records and that the defendant appeared in the action, it is established prima facie that the court had jurisdiction.

Conclusiveness of foreign judgment.

Cited in American Mut. L. Ins. Co. v. Mason, 159 Ind. 17, 64 N. E. 525, holding judgment of foreign court barring jurisdiction of subject-matter and person, conclusive until reversed or vacated; Hazel v. Jacobs, 78 N. J. L. 463, 27 L.R.A.(N.S.) 1068, 75 Atl. 903, 20 Ann. Cas. 260, holding that judgment entered in another state upon warrant of attorney contained in note is entitled to full faith and credit here; Converse v. Ayer, 197 Mass. 453, 84 N. E. 98, holding that the judgment of another state by a court of that state having exclusive jurisdiction of the subject-matter and the corporation, by which a receiver is appointed, is conclusive and cannot be attacked collaterally in another state in an action to enforce stockholder's liability; Hazel v. Jacobs, 78 N. J. L. 463, 27 L.R.A.(N.S.) 1068, 75 Atl. 903, 20 Ann. Cas. 260, holding a foreign judg-

ment conclusive though entered without process upon a warrant of attorney contained in a note.

Cited in footnote to Crim v. Crim, 54 L. R. A. 502, which holds judgment, valid where rendered, against nonresident on judgment note with power of attorney, entitled to full faith elsewhere.

Cited in notes (3 L.R.A.(N.S.) 450) on effect in other states, of judgment confessed on warrant of attorney; (103 Am. St. Rep. 319, 322, 324) on judgments of courts of other states.

44 L. R. A. 841, LAMB KNIT-GOODS CO. v. LAMB GLOVE & MITTEN CO. 120 Mich. 159, 78 N. W. 1072.

Infringement of trade name.

Cited in Penberthy Injector Co. v. Lee, 120 Mich. 180, 78 N. W. 1074, upholding right of corporation purchasing trade name, to restrain infringement of same by vendor of same name; Bissell Chilled Plow Works v. T. M. Bissell Plow Co. 121 Fed. 367, denying right of corporation to use trade name "Bissell," owned by another corporation known as "The Bissell Plow Works;" Ludwig & Co. v. Claviola Co. 144 App. Div. 394, 129 N. Y. Supp. 310, holding that trade name "Ludwig" will be protected against infringement by injunction, where name was used as name of piano: Koebel v. Chicago Landlords' Protective Bureau, 210 Ill. 185, 102 Am. St. Rep. 154, 71 N. E. 362, holding that a corporation doing business under the name of the "Landlords' Protective Bureau" could enjoin another corporation from using the name "Landlords' Protective Department;" Sheffield-King Mill. Co. v. Sheffield Mill. & Elevator Co. 105 Minn. 323, 127 Am. St. Rep. 574, 117 N. W. 447, holding that the use of one's own name, unaccompanied by a caution or explanation so specific as to prevent any confusion as to the identity of the corporation or its product, may be enjoined; Bates Mfg. Co. v. Bates Numbering Mach. Co. 172 Fed. 898, holding that where the plaintiff had manufactured numbering machines for many years so that the name Bates had come to be attached to such machine, the use of the name, Bates Numbering Machines, would be enjoined where used by the defendant for the purposes of unfair competition.

Cited in note (85 Am. St. Rep. 103, 106) on what words or phrases may constitute a valid trademark.

44 L. R. A. 844, CONELY v. COLLINS, 119 Mich. 519, 78 N. W. 555.

Action on replevin bond in Dudley v. Conely, 125 Mich. 300, 84 N. W. 286.

Conveyances of debtor's property to secure creditors.

Distinguished in Belding-Hall Mfg. Co. v. Smith, 125 Mich. 57, 83 N. W. 1001, construing instrument purporting to chattel mortgage specified property, for purpose of securing certain debts, as chattel mortgage, and not as common-law assignment; Ontario Bank v. Hurst, 43 C. C. A. 201, 103 Fed. 239, holding deed of property in trust to pay specified debts and return surplus to grantor, conveyance in nature of mortgage.

44 L. R. A. 846, JOHN HANCOCK MUT. L. INS. CO. v. DICK, 117 Mich. 518, 76 N. W. 9.

Statements in proofs of loss as admissions against beneficiary.

Cited in Wasey v. Travelers' Ins. Co. 126 Mich. 126, 85 N. W. 459, holding statements in proofs of loss furnished another company, competent as admissions against beneficiary; Nelson v. Nederland L. Ins. Co. 110 Iowa, 607, 81 N. W. 807, holding affidavit of physician as to cause of death, offered as part of proof of loss,

competent evidence as an admission by beneficiary that contents were true, and referring particularly to annotation in 44 L. R. A. 846; Supreme Tent, K. of M. W. v. Stensland, 206 Ill. 131, 99 Am. St. Rep. 137, 68 N. E. 1098, upholding right of beneficiary signing proof of loss furnished by company, to contradict statement therein that death of insured was caused by suicide, and referring particularly to annotation in 44 L.R.A. 846; Osburn v. Court of Honor, 152 Mo. App. 662, 133 S. W. 87, holding that where notice is given that mistake was made in proofs of death, they have force of solemn admissions under oath against interest, but are not conclusive; Ferris v. Loyal Americans, 152 Mich. 319, 116 N. W. 445; Knapp v. Metropolitan L. Ins. Co. 143 Mich. 371, 114 Am. St. Rep. 651, 106 N. W. 1107,—holding that statements contained in the proofs of death are admissible as admissions of the beneficiary but they are not conclusive, Thaxton v. Metropolitan L. Ins. Co. 143 N. C. 42, 55 S. E. 419 (dissenting opinion), on the same point, and also referring to annotations on this point; Haapa v. Metropolitan L. Ins. Co. 150 Mich. 468, 16 L.R.A.(N.S.) 1170, 121 Am. St. Rep. 627, 114 N. W. 380, holding that proofs of death being in the nature of admissions, are competent evidence against the beneficiary; Denver L. Ins. Co. v. Price, 18 Colo. App. 33, 69 Pac. 313, holding that the beneficiary is not estopped to show that the deceased died from a cause different than that stated in the proofs of death, where the statement therein was made in reliance upon the attending physician's statement, if the insurer had notice of the intention to dispute the statement; Baldi v. Metropolitan L. Ins. Co. 24 Pa. Super. Ct. 288, holding that the beneficiary could contradict statements made in good faith in the proofs of death; Traiser v. Commercial Travelers' Eastern Acci. Asso. 202 Mass. 298, 88 N. E. 901, on the calling for additional proofs as a waiver of objections to the first proofs furnished.

Cited in note (45 L. ed. U. S. 743) on estoppel by proofs of loss to show that death was not caused by suicide.

44 L. R. A. 861, FARMERS' & M. INS. CO. v. JENSEN, 56 Neb. 284, 76 N. W. 577, 78 N. W. 1057.

Change of interest as affecting validity of insurance policy.

Cited in Home F. Ins. Co. v. Collins, 61 Neb. 201, 85 N. W. 54, holding policy forbidding change of interest violated by transfer of legal title, even if without consideration; Henton v. Farmers & M. Ins. Co. 1 Neb. (Unof.) 426, 95 N. W. 670, holding change of title not made within meaning of policy, by conveyance absolute in form, but intended as mere security for contingent liability; Exchange Bank v. Nebraska Underwriters Ins. Co. 84 Neb. 115, 133 Am. St. Rep. 614, 120 N. W. 1010, holding that a bill of sale will avoid a policy conditioned that it should be void in case of a change in title to the property insured.

Statute of uses in United States.

Cited in note (16 L.R.A.(N.S.) 1155) on statute of uses in United States.

L. R. A. CASES AS AUTHORITIES.

CASES IN 45 L. R. A.

45 L. R. A. 33, LEATHERS v. CANFIELD, 117 Mich. 277, 75 N. W. 612.

Agent representing conflicting interests.

Cited in Friar v. Smith, 120 Mich. 413, 46 L. R. A. 230, footnote p. 229, 79 N. W. 633, sustaining right to commissions from both parties where broker employed as middleman to bring parties together; Casady v. Carraher, 119 Iowa, 502, 93 N. W. 386, holding real estate broker acting as middle man in effecting exchange of properties, not entitled to commission from either party unless he discloses his double agency, and referring with approval to annotation in 45 L. R. A. 33; Grasinger v. Lucas, 24 S. D. 47, 123 N. W. 77, holding that broker who acts as mere middleman in bringing parties together, leaving them to make their own contracts may recover commissions from each party; Hogle v. Meyering, 161 Mich. 485, 126 N. W. 1063, holding that brokers cannot retain secret profit obtained by procuring an option on property sought in exchange by their principal who employed them to make the exchange; Hanna v. Haynes, 42 Wash. 291, 84 Pac. 861, holding contract of broker to secure purchase of land on condition that share in profits of its resale voidable where he also unknown to purchaser accepted commission from vendor, on ground of public policy.

Annotation cited in Harper v. Fidler, 105 Mo. App. 688, 78 S. W. 1034, holding that agent bringing parties together is not a middleman entitled to commission from both parties where one party relies entirely on his judgment to make the transaction; Skinner Mfg. Co. v. Douville, 57 Fla. 185, 49 So. 125, holding broker not entitled to commissions where in order to procure a sale he allowed his principal to think that he was not connected with procurement thereof and did not notify him of connection or intent to claim commission; Keach v. Bunn, 116 Ill. App. 402, holding that agent forfeits his right to commission for transaction of specific business where he is guilty of bad faith to his principal though no injury result to principal thereby.

Cited in footnotes to Kimball v. Ranney, 46 L. R. A. 403, which denies right of agent employed to sell mortgaged property for owner to purchase at sale; Strong v. Brennan, 47 L. R. A. 792, which denies right of attorney to recover for services to association employing him, when also engaged and paid by adverse party.

Cited in notes (43 L. R. A. 593) on real estate broker's commissions as affected by negligence, fraud, or default of principal and defective title; (44 L. R. A. 321)

as to when real estate broker is considered as procuring cause of sale or exchange effected; (53 L. R. A. 243) on duty of broker to disclose identity of purchaser to principal; (24 L.R.A.(N.S.) 659) on commissions of real-estate broker acting for both parties; (25 L.R.A.(N.S.) 739) on duty of broker to impart to principal knowledge of favorable terms offered or acceptable by customer; (34 L.R.A.(N.S.) 1047) on custom among real-estate agents to take rebates or commissions as affecting compensation; (31 L.R.A.(N.S.) 536) on right to commissions where broker with principal's consent becomes purchaser.

Distinguished in Carr v. Ubsdell, 97 Mo. App. 332, 71 S. W. 112, holding real estate broker negotiating lease entitled to commission from lessor, notwithstanding acceptance of gratuity from lessee; McLure v. Luke, 24 L.R.A.(N.S.) 663, 84 C. C. A. 1, 154 Fed. 650, holding that in the absence of evidence showing that agent had any discretion in matter of negotiating sale he may collect commission from both parties for merely bringing them together.

Right of trustee to retain bonus.

Cited in note (37 L.R.A.(N.S.) 924) on right of trustee to retain bonus or gratuity received from third party.

45 L. R. A. 53, CORNWELL v. WULFF, 148 Mo. 542, 50 S. W. 439.

Effect of power of disposal by life tenant.

Cited in Abbott v. Abbott, 189 Ill. 498, 82 Am. St. Rep. 470, 59 N. E. 958, raising, without deciding, question as to effect of power of disposal on life estate; Roth v. Rauschenbusch, 173 Mo. 590, 61 L. R. A. 457, footnote p. 455, 73 S. W. 664, holding devise to one absolutely, with power of alienation, remainder over, gives first taker fee simple absolute; Gibson v. Gibson, 239 Mo. 499, 144 S. W. 770, to the point that expressly created life estate with power of disposal does not amount to fee; Papin v. Piednoir, 205 Mo. 531, 104 S. W. 63, holding that where the cestui que trust has power to dispose of trust property by deed, mortgage or will and the power to direct the manner of its use by trustee she has the fee; Buxton v. Kroeger, 219 Mo. 260, 117 S. W. 1147 (dissenting opinion), on effect of power of disposal of remainder in fee by life tenant; Young v. Robinson, 122 Mo. App. 193, 99 S. W. 20, holding that beneficiary of trust with remainder over has same rights as though the estate was not devised in trust but in fee absolute where trustee holds free from all interference "to sole, separate and exclusive use" of beneficiary; Smullin v. Wharton, 73 Neb. 686, 103 N. W. 288, holding that beneficiary takes in fee under a will giving her the power of disposal with request that she leave the "bulk" of it to his "people."

Distinguished in Walton v. Drumtra, 152 Mo. 496, 54 S. W. 233 (approved in concurring opinion), holding deed to trustee to pay rents to wife and convey in fee as she may direct, with remainder over to husband in case of her death leaving property undisposed of, vests estate in husband subject to the power of disposal.

Operation of statute of uses.

Cited in Cantwell v. Crawley, 188 Mo. 55, 86 S. W. 251, holding that the statute of uses will execute a use where all that is required of trustee is to purchase land for use of another there being in connection therewith merely a naked use.

Rules of descent governing equitable estates.

Cited in Lich v. Lich, 158 Mo. App. 415, 138 S. W. 558, holding that equitable estates are governed by same rules of descent that govern duration of legal estates.

45 L. R. A. 66, ROBINSON v. STONE, 118 Ala. 273, 72 Am. St. Rep. 160, 24 So. 984.

Conveyance in contravention of trust.

Cited in Mobile Transp. Co. v. Mobile, 128 Ala. 349, 64 L. R. A. 342, 86 Am. St. Rep. 143, 30 So. 645, holding grant of tidal lands by state to municipality in furtherance of public interests, not breach of trust under which lands held for public; Fowler v. Alabama Iron & S. Co. 164 Ala. 419, 51 So. 393, holding that where agent, entrusted with purchase of land, secretly took deed in name of infant son, latter became trustee ex maleficio.

Cited in footnotes to Garesche v. Levering Invest. Co. 46 L. R. A. 232, which denies power of trustees under will to incorporate trust estate; Ball v. Safe Deposit & T. Co. 52 L. R. A. 403, which denies jurisdiction of equity to permit future sales by trustee of ground rents contrary to provisions of will creating contingent remainders; Carter v. Gibson, 52 L. R. A. 468, which holds right to pursue purchaser of trust property waived by taking judgment for price against trustee.

— Legal transfer of title.

Cited in Moore v. O'Dell, 27 Okla. 213, 111 Pac. 308, holding that conveyance by trustee although in violation of trust, vests legal title in such grantee, thereby substituting him as trustee, and remedy of cestui que trust is to redeem; Leech v. Karthaus, 141 Ala. 514, 37 So. 696, on effect of an irregular deed by a trustee for security to pass his legal title subject to rights of the parties; Cox v. University of Alabama, 161 Ala. 657, 49 So. 814, holding a conveyance of land by state held in trust for university in violation of such trust passes legal title nevertheless and is valid in law; Davidson v. Mantor, 45 Wash. 662, 89 Pac. 167, holding that deed from the grantee in fee of community property he being described as trustee, cannot be attacked by children of his grantor on the grounds that trust did not empower him to sell, and that such deed passed the legal title.

Distinguished in Huntington v. Spear, 131 Ala. 416, 30 So. 787, holding deed of trustee of dry naked trust conveys no interest.

Trustee as representative of cestui que trust.

Cited in Thompson v. Price, 37 Wash. 398, 79 Pac. 951, holding that a decree of foreclosure against trustee is binding on grantor as to his interest in the trust though he was not made a party to the proceedings.

Effect of laches on enforcement of trust.

Cited in Brackin v. Newman, 121 Ala. 313, 26 So. 3, holding statute of limitations begins to run from date of repudiation of trust by taking deed in own name to property purchased with wife's money; Washington v. Norwood, 128 Ala. 389, 30 So. 405, holding statute of limitations begins to operate when cause of action accrues; Martin v. Kelly, 132 Ala. 203, 31 So. 476, holding quiet enjoyment of trust property for twenty years bars action to enforce trust; Lide v. Park, 135 Ala. 138, 93 Am. St. Rep. 17, 33 So. 175, holding delay of twenty years in enforcing trust resulting from husband's taking deed to wife's property in own name, bars right to enforce trust; Oehmich v. Hedstrom, 251 Ill. 487, 96 N. E. 256, holding that cestui que trust must act promptly if he desires to have trustee's sale set aside; Com. v. Clark, 119 Ky. 102, 9 L.R.A.(N.S.) 758, 83 S. W. 100, holding statute ran in favor of life tenant as against remainderman from time he took a legal title which they might have avoided but did not.

Cited in footnote to Treadwell v. Treadwell, 51 L. R. A. 190, which holds relation of debtor and creditor created by trustee's use of trust property in own business with beneficiary's consent.

Cited in notes (5 L.R.A.(N.S.) 987, 990) on laches defeating relief after repudiation of express trust; (7 L.R.A.(N.S.) 371) on laches as bar to enforcement of trust as against one who knowingly purchased property in violation of terms of trust.

Suit by remainderman to quiet title pending life tenancy.

Cited in Depue v. Miller, 65 W. Va. 127, 23 L.R.A.(N.S.) 780, 64 S. E. 740, holding that heirs of wife could bring an action to quiet title during life of husband who has an estate by the courtesy.

45 L. R. A. 79, WILMINGTON v. EWING, 2 Penn. (Del.) 66, 43 Atl. 305.

Validity of statutes exempting cities from liability for defective streets.

Cited in Updyke v. Omaha, 87 Neb. 248, 30 L.R.A.(N.S.) 599, 127 N. W. 229 (dissenting opinion), on validity of statute exempting cities from liability for personal injuries caused by defective streets.

Municipal corporation as state governmental agency.

Cited in Downs v. Smyrna, 2 Penn. (Del.) 134, 45 Atl. 717, holding that courts will take judicial notice of legislative act incorporating a municipality and conferring powers thereon especially since a municipal corporation is a "body politic or corporate established by law to assist in civil government of the state," "an agency of state to carry out government in detail."

45 L. R. A. 87, ISHAM v. DOW, 70 Vt. 588, 67 Am. St. Rep. 691, 41 Atl. 585.

Trespasser's liability.

Cited in note (53 L. R. A. 635) on extent of trespasser's liability for consequential injuries resulting from trespass.

Proximate cause.

Cited in Parker v. Boston & M. R. Co. 84 Vt. 348, 79 Atl. 865, holding that proximate cause of injury to passenger by fall of suit case from rack as result of derailment of car, is the derailment; Ide v. Boston & M. R. Co. 83 Vt. 79, 74 Atl. 401, holding that where negligence in setting fire is established, unexpected changes in direction of wind whereby result of negligence is carried further than it would otherwise have gone does not affect liability for damage; McMillan v. Western U. Teleg. Co. 60 Fla. 142, 29 L.R.A.(N.S.) 896, 53 So. 329 (dissenting opinion), on failure to deliver message as proximate cause of loss to addressee.

Distinguished in Corbin v. Grand Trunk R. Co. 78 Vt. 462, 63 Atl. 138, where the "continuity" of the result from the wrongful act "was broken" by act of the person injured though not by his negligence.

45 L. R. A. 93, VAN HORN v. VAN HORN, 107 Iowa, 247, 77 N. W. 846.

Inheritance by illegitimate child.

Cited in Watson v. Richardson, 110 Iowa, 676, 80 N. W. 407, holding evidence insufficient to establish recognition in writing of illegitimate child entitling him to inherit; Alston v. Alston, 114 Iowa, 34, 86 N. W. 55, holding acts and conversations of alleged father of illegitimate child, tending to show recognition, admissible in partition suit against lawful children.

Cited in footnotes to *Re* Rohrer, 50 L. R. A. 350, which holds acknowledgment of illegitimate child by father's allegation in sworn pleading sufficient though not expressly made to admit child to heirship; Moore v. Moore, 58 L. R. A. 451, which sustains bastard's right to inherit from brother of deceased mother.

Status of legitimized bastard.

Cited in Brisbin v. Huntington, 128 Iowa, 175, 103 N. W. 144, 5 Ann. Cas. 931, holding that a bastard that has been recognized by father in writing as per statute is a bastard nevertheless and does not become "lawful issue."

Recognition of illegitimate child.

Cited in Morgan v. Strand, 133 Iowa, 302, 110 N. W. 596, holding that father's open acknowledgment of his paternity to a "girl back in Illinois" coupled with numerous statements concerning her mother and dealings and settlements concerning the child is a sufficient recognition though he never mentioned girl's name nor saw her.

Law governing descent of realty.

Cited in State v. McDonald, 59 Or. 526, 117 Pac. 281, holding that descent of real property is governed by lex rei sitæ.

45 L. R. A. 95, JOHNSTONE v. TALIAFERRO, 107 Ga. 6, 32 S. E. 931.

Illegitimate children as heirs and next of kin.

Cited in Robinson v. Georgia R. & Bkg. Co. 60 L. R. A. 556, holding mother of illegitimate child not within statute giving mother right of action for homicide of minor child.

Cited in footnotes to *Re* Rohrer, 50 L. R. A. 350, which holds acknowledgment of illegitimate child by father's allegation in sworn pleading sufficient though not expressly made to admit child to heirship; Alabama & V. R. Co. v. Williams, 51 L. R. A. 836, which denies mother's right to recover for death of illegitimate child; Moore v. Moore, 58 L. R. A. 451, which sustains bastard's right to inherit from brother of deceased mother.

Child or children.

Cited in Walker v. Roberson, 21 Okla. 899, 97 Pac. 609, holding that a statute giving Indian right to hold land equal to amount he was entitled to as member of tribe also lands belonging to his "children" does not apply to illegitimate child not recognized and made legal as per statute; Hayworth v. Williams, 102 Tex. 313, 132 Am. St. Rep. 879, 116 S. W. 43, holding the words "children and unmarried daughters" as used in statute setting aside exempt property for their use not to apply to unmarried illegitimate daughter.

Conveyances to persons not in being.

Cited in note (84 Am. St. Rep. 240) on conveyances to persons not in being.

45 L. R. A. 105, JONES v. CRAWFORD, 107 Ga. 318, 33 S. E. 51.

Maker's rights against person wrongfully negotiating paper.

Cited in Detwiler v. Bainbridge Grocery Co. 119 Ga. 983, 47 S. E. 553, holding that the wrongful transfer of negotiable paper to which maker has a complete defense gives rise to cause of action for damages in favor of maker against transferrer; Bourke v. Spaight, 80 Kan. 388, 102 Pac. 253, holding same where the paper was given without consideration.

Agreements destroying negotiability.

Cited in note (125 Am. St. Rep. 212) on agreements and conditions destroying negotiability.

45 L. R. A. 108, NORTH CHICAGO STREET R. CO. v. BAUR, 179 Ill. 126, 53 N. E. 568.

Negligence in sitting on platform.

Cited in Illinois Iron & Metal Co. v. Weber, 196 Ill. 533, 63 N. E. 1008, Re-

versing 89 Ill. App. 370, holding question for jury whether contributory negligence for twelve-year-old boy to ride on part of brick wagon projecting 14 inches beyond tail-board; Chicago City R. Co. v. McCaughna, 216 Ill. 208, 74 N. E. 819, Affirming 117 Ill. App. 540, holding negligence a question for jury where person injured was riding on platform along with others and the cars were full with persons hanging on straps; Peterson v. Chicago Consol. Traction Co. 231 Ill. 327, 83 N. E. 159, holding same where boy of fourteen got up from his seat about 300 feet from destination and got out on foot board ready to alight and was thrown to ground by a sudden jerk of car.

Cited in footnotes to Sweetland v. Lynn & B. R. Co. 51 L. R. A. 783, which sustains rule forbidding passenger's riding on front platform of electric car; Third Ave. R. Co. v. Barton, 52 L. R. A. 471, which denies right of passenger on running board of street car to recover for injuries by contact with pillar near track, while passing around conductor.

Cited in note (21 L.R.A.(N.S.) 716) on negligence of passenger in going upon platform or steps of car just before reaching station.

Negligence inferred from place passenger was riding.

Cited in Indianapolis Traction & Terminal Co. v. Beckman, 40 Ind. App. 102, 81 N. E. 82, holding mother not negligent in permitting small boy to sit on end of seat next to screen in summer car, he being thrown from seat, rolled under screen which did not reach to floor, and killed.

45 L. R. A. 110, GEER v. FRANK, 179 Ill. 570, 53 N. E. 965.

Champertous contracts.

Cited in London Guarantee & Acci. Co. v. Horn, 101 Ill. App. 363, holding policy forbidding insured from settling injured employee's claim without consent of insurer, void; Roller v. Murray, 107 Va. 531, 59 S. E. 421, holding contract by which attorney was to recover land and have one fifth thereof as fee and pay all expenses of litigation within state in which land was situated, to be champertous; Granat v. Krouse, 114 Ill. App. 489, holding same where attorney was to supply all funds for litigation, such amount to be taken from client's share of amount recovered and attorney to have stipulated amount of the recovery.

Cited in footnotes to Newman v. Freitas, 50 L. R. A. 548, which holds void, contract to pay attorney one third of all amounts recovered in divorce suit; Irwin v. Curie, 58 L. R. A. 830, which sustains right of person placing demands in attorney's hands to recover agreed compensation though statute forbids such agreements; Dorr v. Camden, 65 L.R.A. 348, which holds that contract for contingent fee must, in order to be sustained, be shown to have been entered into by the client after full knowledge of the facts and circumstances justifying such contract.

Cited in note (83 Am. St. Rep. 171, 177) on contracts between attorneys and clients.

45 L. R. A. 112, COFFEE v. LOUISVILLE & N. R. CO. 76 Miss. 569, 71 Am. St. Rep. 535, 25 So. 157.

Carriers; additional fare charged passenger without ticket.

Cited in footnotes to Johnson v. Georgia R. & Bkg. Co. 46 L. R. A. 502, which denies right of passenger without ticket to be carried on Sunday at reduced rate of which round trip tickets sold previous Sunday; Mills v. Missouri, K. & T. R. Co. 55 L. R. A. 497, which holds rule requiring tickets before entering train, authorizing additional fare on train, unenforceable unless ticket office kept

open as required; Monnier v. New York C. & H. River R. Co. 62 L. R. A. 357, which denies right of one boarding train without ticket because ticket office not open to refuse to pay extra fare.

Ticket as prerequisite of carriage of baggage.

Cited in Hart v. Atlanta Terminal Co. 128 Ga. 771, 58 S. E. 452, holding rule providing that no parcel be received in baggage room unless on presentation of railroad ticket, to be unreasonable.

Liability for loss of baggage left to be checked.

Cited in Cone v. Southern R. Co. 85 S. C. 527, 67 S. E. 779, 21 Ann. Cas. 158, holding that court will not say as matter of law that carrier is not liable for loss of baggage left by drayman in accustomed place to be checked.

45 L. R. A. 113, NEBRASKA TELEPH. CO. v. STATE, 55 Neb. 627, 76 N. W. 171.

Government; division of powers.

Cited in People's Gaslight & Coke Co. v. Hale, 94 Ill. App. 423, sustaining court's power to determine reasonableness of gas rates; State *ex rel.* White v. Barker, 116 Iowa, 111, 57 L. R. A. 252, 93 Am. St. Rep. 222, 89 N. W. 204, holding statute authorizing appointment by district court of trustees of waterworks system in cities of first class, invalid as requiring exercise of nonjudicial functions; Michigan Teleph. Co. v. St. Joseph, 121 Mich. 506, 47 L. R. A. 91, 80 Am. St. Rep. 520, 80 N. W. 383, holding decree establishing regulations as to extension of telephone line, void; State *ex rel.* Godard v. Johnson, 61 Kan. 818, 49 L. R. A. 667, 60 Pac. 1068, holding statute creating court of visitation empowered to regulate operation of railroads, void; Gulf Compress Co. v. Harris C. & Co. 158 Ala. 354, 24 L.R.A.(N.S.) 404, 48 So. 477, holding that chancery court has no power to fix a schedule of prices to be charged for receiving, handling and storing cotton by public warehouseman; Madison v. Madison Gas & Electric Co. 129 Wis. 267, 8 L.R.A.(N.S.) 536, 116 Am. St. Rep. 944, 108 N. W. 65. 9 Ann. Cas. 819, holding that the courts have no jurisdiction or power to establish rates for supplying gas to city inhabitants; Re Counties Comprising Seventh Judicial Dist. 22 Okla. 448, 98 Pac. 557, holding that a statute providing that supreme court shall fix time and term of office of an emergency judge is unconstitutional.

Cited in footnote to *Re* Janvrin, 47 L. R. A. 319, which sustains action empowering court to fix maximum water rates on petition of party aggrieved.

Cited in notes (8 L.R.A.(N.S.) 531) on power of judiciary to fix rates of public service corporations; (32 L.R.A.(N.S.) 641) on delegation of power to regulate carriers; (46 L. ed. U. S. 1144) on legislative power to regulate telephone rates.

Mandamus.

Cited in State v. Omaha Nat. Bank, 60 Neb. 241, 82 N. W. 850 (dissenting opinion), majority holding mandamus will lie to compel district court to vacate judgment; State *ex rel.* Wood v. Consumers Gas Trust Co. 157 Ind. 354, 55 L. R. A. 249, 61 N. E. 674, holding mandamus will lie against gas company refusing to furnish gas to applicant because of insufficiency of supply; State v. Holmes, 5 Neb. (Unof.) 66, 97 N. W. 243, denying writ of mandamus where relator had not asked judge or his court to vacate an order of injunction.

Cited in footnotes to People *ex rel.* Jackson v. Suburban R. Co. 49 L. R. A. 650, which holds electric railway company bound to perform duties imposed by ordinance under which road operated; State *ex rel.* Gwynn v. Citizens' Teleph.

Co. 55 L. R. A. 139, which authorizes mandamus to compel furnishing telephone and connections to customer.

Telephone company as common carrier.

Cited in Alt v. State, 88 Neb. 264, 35 L.R.A.(N.S.) 1215, 129 N. W. 432, holding that telephone company is common carrier of news and intelligence.

Right to telephone service at reasonable rate.

Cited in Western U. Teleg. Co. v. State, 165 Ind. 501, 3 L.R.A.(N.S.) 159, 76 N. E. 100, 6 Ann. Cas. 880, holding that telephone company must supply trade quotations to any patron so desiring at the regular rate where supplying of such quotations is a substantial part of telephone business.

Cited in footnote to Godwin v. Carolina Teleph. & Teleg. Co. 67 L.R.A. 251, which holds telephone company not required to furnish service to a bawdy house.

Cited in note (36 L.R.A.(N.S.) 561) on right of telephone company to discriminate as to rates.

Discrimination by public service corporations.

Cited in Leavitt v. Lassen Irrig. Co. 157 Cal. 90, 29 L.R.A.(N.S.) 216, 106 Pac. 404, holding that one who owns system for distribution of water appropriated for sale to public cannot confer upon any consumer preferential right.

45 L. R. A. 118, GILBERT v. ACKERMAN, 159 N. Y. 118, 53 N. E. 753.

Validity of statutes affecting limitation of actions.

Cited in Tyler v. Lansingburgh, 37 Misc. 605, 76 N. Y. Supp. 139, denying legislature's right to prevent recovery for personal injuries by abolishing village by incorporating it within city; Green v. Port Jervis, 31 Misc. 61, 64 N. Y. Supp. 547, and Barry v. Port Jervis, 64 App. Div. 283, 72 N. Y. Supp. 104, holding provision requiring notice of intention to sue for personal injuries to be filed within forty-eight hours after accident, unreasonable; Williams v. Port Chester, 72 App. Div. 524, 76 N. Y. Supp. 631, holding provision requiring one injured by defective walks to present claim to city within thirty days, unconstitutional as to one prevented by injuries from filing within required time; Osborne v. Lindstrom, 9 N. D. 8, 46 L. R. A. 719, footnote p. 715, 81 Am. St. Rep. 516, 81 N. W. 72, holding statute shortening period of limitation without leaving reasonable time to sue, void; Davidson v. Witthaus, 106 App. Div. 187, 94 N. Y. Supp. 428, holding that a statute shortening period in which action can be brought does not affect a vested right and is valid if a reasonable time is left in which to bring actions; Adams & F. Co. v. Kenoyer, 17 N. D. 306, 16 L.R.A.(N.S.) 683, 116 N. W. 98, holding that where statute bringing nonresidents under operation of statute of limitations did not fix a reasonable time in which to bring actions for foreclosure of real mortgages by nonresidents, it did not apply to cause of action thereon already existing; Lamb v. Powder River Live Stock Co. 67 L.R.A. 561, 65 C. C. A. 570, 132 Fed. 437, holding a statute to take effect three months after enactment unconstitutional where it provides that all actions on foreign judgments shall be brought within six years and applies to existing judgments which have gone over six years leaving only the three months from enactment to installation to institute actions on such judgments.

Cited in notes (1 L.R.A.(N.S.) 528) on constitutionality of statutes shortening period of limitations; (7 L.R.A.(N.S.) 716) on reasonableness of period allowed by saving clause in new statute of limitations.

— As dependent on time of taking effect.

Cited in Baldwin v. Aberdeen, 23 S. D. 640, 26 L.R.A.(N.S.) 120, 123 N. W. 80, holding that a statute changing limitation of actions against cities for per-

sonal injury does not apply to causes accruing after statute approved but before it went into effect.

Disapproved in Wooster v. Bateman, 126 Iowa, 555, 102 N. W. 521, holding that in determining validity of statute changing limitation of actions as to reasonableness the time between enactment and taking effect of the statute should be considered.

Operation of statutes of limitation.

Cited in Sehl v. Syracuse, 81 App. Div. 547, 81 N. Y. Supp. 482, holding section of city charter providing that omission to present claim within three months bars action for personal injuries, without retroactive force; Thoeni v. Dubuque, 115 Iowa, 484, 88 N. W. 967, holding statute limiting time within which suit may be brought for personal injuries, not retroactive; Beckham v. Hague, 38 Misc. 609, 78 N. Y. Supp. 79, holding statute of limitations runs against bank stockholders' liability from time comptroller declares assessment due on stock, not from time bank suspends payment; Cummings v. Rosenberg, 12 Ariz. 330, 100 Pac. 810, holding that statute of limitations which summarily cuts off bringing of actions will be construed to operate prospectively only, to save it from being held invalid.

Cited in footnote to Lamb v. Powder River Live Stock Co. 67 L.R.A. 558, which holds re-enactment of statute of limitations with shortened period as to judgments rendered outside of the state applicable to actions on judgments existing on time of its passage.

Cited in note (111 Am. St. Rep. 457) on retrospective operation of statutes of limitation.

Right to legal remedy.

Cited in MacMullen v. Middletown, 112 App. Div. 89, 98 N. Y. Supp. 145, holding invalid as taking away legal remedy for wrong done, a statute denying right of action for injury from ice on walks unless city had actual notice of presence of ice and a reasonable time thereafter for removal.

45 L. R. A. 121, HOLMES v. DETROIT, 120 Mich. 226, 77 Am. St. Rep. 587, 79 N. W. 200.

Validity of contracts for street improvement.

Cited in Reed v. Rockliff-Gibson Constr. Co. 25 Okla. 639, 138 Am. St. Rep. 937, 107 Pac. 168, holding that contract for use of patented material for street improvement is not invalid; Saunders v. Iowa City, 134 Iowa, 142, 9 L.R.A. (N.S.) 397, 111 N. W. 529, holding that a provision for competitive bidding for street paving is not violated by calling for bids on patented pavement; Baltimore v. Flack, 104 Md. 136, 64 Atl. 702, holding that a provision requiring letting of contract to lowest bidder does not require that of the kinds of pavement bid upon, the kind having the lowest bidder must be accepted by the city; Atty. Gen. ex rel. Allis-Chalmers Co. v. Public Lighting Commission, 155 Mich. 213, 118 N. W. 935, holding that Detroit city charter provision requiring that contracts be let to lowest bidder applies to contracts for the purchase of patented machinery; Dillingham v. Spartanburg, 75 S. C. 558, 8 L.R.A.(N.S.) 417, 117 Am. St. Rep. 917, 56 S. E. 381, 9 Ann. Cas. 829, holding that municipality should not be denied the right to accept bids on patented articles particularly where there is no statute requiring competitive bidding.

Cited in footnote to Diamond v. Mankato, 61 L. R. A. 448, which holds street improvement contract avoided by limiting asphaltum to two particular kinds and inserting other conditions tending to restrict bidding.

Cited in note (5 L.R.A.(N.S.) 682) on validity of contract for material patented or held in monopoly, where public letting to lowest bidder required.

Disapproved in Monaghan v. Indianapolis, 37 Ind. App. 289, 76 N. E. 424, holding that a provision for competitive bids precludes the specification of an exclusively controlled commodity although owner agrees to furnish it to contractors at a specified price.

Chancery jurisdiction.

Cited in note (36 L.R.A.(N.S.) 30) on taxpayer's right to enjoin unlawful municipal expenditures.

Distinguished in Detroit v. Wayne Circuit Judge, 128 Mich. 439, 87 N. W. 376, holding that taxpayer cannot enjoin city from making improvement contract, where his proportionate liability will be less than $100.

Judicial notice of corruption in letting of municipal contracts.

Cited in Hannan v. Board of Education, 25 Okla. 393, 30 L.R.A.(N.S.) 230, 107 Pac. 646, to the point that courts may take judicial notice of prevalence of corruption in letting of municipal contracts.

45 L. R. A. 126, PEOPLE *ex rel.* A. J. JOHNSON CO. v. ROBERTS, 159 N. Y. 70, 53 N. E. 685.

Property subject to taxation.

Followed in People *ex rel.* Levant Emery Co. v. Knight, 66 App. Div. 617, 73 N. Y. Supp. 1144, without discussion; People ex rel. Spencerian Pen Co. v. Kelsey, 105 App. Div. 134, 93 N. Y. Supp. 971, holding that trademark of foreign corporation may be assessed as part of capital employed in this state.

Cited in People *ex rel.* United States Aluminium Printing Plate Co. v. Knight, 174 N. Y. 483, 63 L. R. A. 90, 67 N. E. 65, Reversing 67 App. Div. 334, 73 N. Y. Supp. 745, sustaining assessment of franchise tax against corporation whose whole capital represented by patent rights; Baltimore v. Johnson, 96 Md. 740, 61 L. R. A. 571, 54 Atl. 646, holding seat in stock exchange not "property," within meaning of revenue laws of state; *Re* Jones, 28 Misc. 258, 59 N. Y. Supp. 983, holding good will of newspaper subject to collateral inheritance tax; People *ex rel.* New York & Q. Gas & Electric Co. v. Feitner, 58 App. Div. 558, 69 N. Y. Supp. 27, holding good will of corporation taxable with franchise forming part of capital stock; People *ex rel.* Cornell S. B. Co. v. Dederick, 161 N. Y. 206, 55 N. E. 927, holding indebtedness incurred by corporation for purchase of good will cannot be deducted from value of taxable property; People ex rel. Victor Koechl & Co. v. Morgan, 96 App. Div. 113, 88 N. Y. Supp. 1066, holding that good will of foreign corporation is an asset to be considered in fixing the amount of capital employed within this state in assessing for tax under law imposing license tax on franchises of corporations; People ex rel. International Elevating Co. v. Miller, 120 App. Div. 901, 105 N. Y. Supp. 1137 (dissenting opinion), on taxation of good will of foreign corporation as part of locally employed capital.

Cited in footnote to Hart v. Smith, 58 L. R. A. 949, which holds taxation of good will of business not authorized by statute for taxation of "all property."

Cited in notes (57 L. R. A. 58, 81, 85, 87, 99) on taxation of corporate franchises in the United States; (58 L. R. A. 548, 566, 567) on taxation of capital stock of corporations in the United States.

Sale of good will.

Cited in Slater v. Slater, 78 App. Div. 455, 80 N. Y. Supp. 363, holding good will of partnership salable asset of deceased partner's estate; Von Bremen v. MacMonnies, 200 N. Y. 47, 32 L.R.A.(N.S.) 295, 93 N. E. 186, 21 Ann. Cas.

423, Modifying 138 App. Div. 324, 122 N. Y. Supp. 1087, holding that member of firm who voluntarily conveys good will of business cannot upon establishing competing business, solicit trade from old customers of partnership.

Good will.

Cited in Re Silkman, 121 App. Div. 215, 105 N. Y. Supp. 872, holding good will to exist even where dealers in goods in which purity is an element in salability, have changed their place of business one door up the street and both original members of the firm are dead both of which facts are not known to patrons; Lindemann v. Rusk, 125 Wis. 233, 104 N. W. 119, holding that the operation of a new bank at the old stand under old name during the three year period allowed for closing up business of old bank is an appropriation of an asset of the old bank.

— As part of capital of corporation.

Cited in Re Stevens, 46 Misc. 649, 95 N. Y. Supp. 297, holding that on a sale of a corporation the proceeds coming from good will and franchise are to be considered as part of the capital or corpus of the corporate estate; Colby v. Equitable Trust Co. 55 Misc. 362, 106 N. Y. Supp. 801, holding that in a merger of corporations good will may be offered to make up a deficiency of capitalization on part of one of the corporations.

45 L. R. A. 132, NEW YORK SECURITY & T. CO. v. SARATOGA GAS & ELECTRIC LIGHT CO. 159 N. Y. 137, 53 N. E. 758.

Mortgagee's right to earnings and after-acquired property.

Followed in Re Marine Constr. & Dry Dock Co. 75 C. C. A. 451, 144 Fed. 652, Reversing 135 Fed. 928, holding that a mortgage on stock with a power in mortgagor to sell and replace stock is void as to general creditors as applying to property acquired after execution of mortgage.

Cited in Platt v. New York & S. B. R. Co. 170 N. Y. 455, 63 N. E. 532, Reversing 63 App. Div. 406, 71 N. Y. Supp. 913, holding order authorizing receiver to pay to trustees for bondholders earnings of railroad company acquired prior to appointment, erroneous; *Re* Waterloo Organ Co. 118 Fed. 905, denying mortgagee's right to after-acquired property as against power of referee in bankruptcy to order sale; Rumsey v. Peoples R. Co. 154 Mo. 249, 55 S. W. 615, holding receiver not entitled to earnings of railroad derived prior to appointment; Stratton v. Natural Carbonic Gas Co. 189 Fed. 928, holding that mortgage given by corporation covering real and personal property owned and to be acquired extends to personal property subsequently acquired and necessary to mortgagor's business, as against creditors; Central Trust Co. v. Morton Trust Co. 200 N. Y. 581, 93 N. E. 975, holding that where under terms of mortgage, mortgagor was entitled to rents and profits of property until default, such income would not pass under mortgage; Re Medina Quarry Co. 179 Fed. 935, holding that a mortgage given to secure money loaned to purchase quarry machinery and other necessary property will cover that property where acquired and stone is cut from the quarry as against general creditors; Barber Asphalt Paving Co. v. Forty-second Street M. & St. N. Ave. R. Co. 103 C. C. A. 614, 180 Fed. 654 (dissenting opinion), on mortgage as covering after-acquired property.

— As affected by actual possession.

Cited in Zartman v. First Nat. Bank, 189 N. Y. 271, 12 L.R.A.(N.S.) 1085, 82 N. E. 127, Affirming 109 App. Div. 410, 96 N. Y. Supp. 633, holding that a mortgage on stock with permission in mortgagor to sell for his own benefit creates no lien on property acquired as stock to take the place of the old and

possession does not help the mortgagee as against general creditors; Re Adamant Plaster Co. 137 Fed. 256, holding that a mortgage will not operate as a lien on after-acquired property as against general creditors where trustee in bankruptcy takes possession of the property after default mortgage and before mortgagee obtains possession.

Distinguished in Regina Music Box Co. v. F. C. Otto & Sons, 65 N. J. Eq. 595, 56 Atl. 715, where the trustee of the mortgage had taken possession of the property before creditors' execution had been returned satisfied.

45 L. R. A. 136, *Re* TAYLOR, 7 S. D. 382, 58 Am. St. Rep. 843, 64 N. W. 253.

Excessive sentence or relief.

Cited in State v. Taylor, 7 S. D. 550, 64 N. W. 548, holding sentence exceeding maximum term does not invalidate sentence *in toto;* Mach v. Blanchard, 15 S. D. 440, 58 L. R. A. 814, 91 Am. St. Rep. 698, 90 N. W. 1042, holding granting more relief than demanded in complaint does not invalidate default judgment; State ex rel. Bone v. Barr, 133 Iowa, 134, 110 N. W. 280, holding a judgment exceeding maximum time of imprisonment for failure to allow for "good time" earned, void as to the amount of excess.

Annotation cited in Shields v. People, 132 Ill. App. 139, holding that an imposition of fine and imprisonment on a verdict calling for imprisonment only is not reversible error but such mistake can be corrected in appellate court and the judgment of imprisonment be allowed to stand.

Review by habeas corpus.

Cited in Ex parte Haley, 1 Ala. App. 533, 56 So. 245, holding that person imprisoned is entitled to discharge on habeas corpus where he is detained under separable part of sentence which is void as being in excess of power of court to impose; State v. Pratt, 20 S. D. 444, 107 N. W. 538, 11 Ann. Cas. 1049, holding that habeas corpus can not be used to review errors or irregularities in criminal proceedings unless such irregularities go to the jurisdiction of the trial court.

Cited in note (87 Am. St. Rep. 195) on release of prisoner on habeas corpus after judgment and sentence.

Jurisdiction.

Cited in Ex parte Wade, 2 Okla. Crim. Rep. 106, 100 Pac. 35, defining jurisdiction.

45 L. R. A. 160, CASHION v. WESTERN U. TELEG. CO. 124 N. C. 459, 32 S. E. 746.

Liability for nondelivery of telegram.

Cited in Laudie v. Western U. Teleg. Co. 126 N. C. 436, 78 Am. St. Rep. 668, 35 S. E. 810, holding company liable to sender for negligent assurance as to delivery of message; Cogdell v. Western U. Teleg. Co. 135 N. C. 435, 47 S. E. 490, holding receipt of telegram, and failure to deliver within reasonable time, prima facie negligence; Hunter v. Western U. Teleg. Co. 130 N. C. 609, 41 S. E. 796, holding question whether company used due care in delivery of message for jury to determine; Woods v. Western U. Teleg. Co. 148 N. C. 7, 128 Am. St. Rep. 481, 61 S. E. 653, holding that company is liable for nondelivery of its message even though sendee arrives at home and saw brother's body before burial the company being guilty of a breach of a plain duty; Western U. Teleg. Co. v. Schriver, 4 L.R.A.(N.S.) 686, 72 C. C. A. 596, 141 Fed. 548, on persons to whom company is liable for breach of duty to deliver message.

Cited in footnote to Simmons v. Western U. Teleg. Co. 57 L. R. A. 607, which

sustains statute rendering telegraph companies liable for delay in delivering messages.

Distinguished in Kennon v. Western U. Teleg. Co. 126 N. C. 236, 35 S. E. 468, denying recovery for nondelivery of message "meet me to-morrow, 12 o'clock;" Cranford v. Western U. Teleg. Co. 138 N. C. 165, 50 S. E. 585, where there was no evidence to show that message was sent for benefit of plaintiff.

Damages for mental anguish.

Cited in Bennett v. Western U. Teleg. Co. 128 N. C. 104, 38 S. E. 294, holding mental anguish not presumed from failure of father-in-law to be at funeral of daughter-in-law, due to nondelivery of message; Hunter v. Hunter U. Teleg. Co. 135 N. C. 462, 47 S. E. 745, holding addressee of telegram prevented by nondelivery from attending funeral of second cousin, entitled to damages for resulting mental anguish, if amounting to high degree of mental suffering; Western U. Teleg. Co. v. Raines, 78 Ark. 551, 94 S. W. 700; Western U. Teleg. Co. v. Moxley, 80 Ark. 559, 98 S. W. 112,—on the allowance of damages for mental anguish caused by nondelivery of telegram which gives notice on its face of result of nondelivery; Foreman v. Western U. Teleg. Co. 141 Iowa, 36, 19 L.R.A.(N.S.) 376, 116 N. W. 724, holding that damages for mental anguish may be recovered for nondelivery of telegram announcing death though company had no notice of the relationship of deceased and addressee; Green v. Western U. Teleg. Co. 136 N. C. 497, 67 L.R.A. 987, 103 Am. St. Rep. 955, 49 S. E. 165, 1 Ann. Cas. 349, holding that message announcing arrival of sixteen year old girl on a midnight train is sufficient notice that mental anguish will result from nondelivery as to warrant allowance of damages on that score.

Cited in footnotes to Western U. Teleg. Co. v. Ferguson, 54 L. R. A. 846, which holds action not supported by proof of mental anguish from failure to deliver telegram promptly; Western U. Teleg. Co. v. Crocker, 59 L. R. A. 398, which sustains recovery for mental anguish for failure to deliver promptly telegram announcing serious illness of grandchild; Cowan v. Western U. Teleg. Co. 64 L. R. A. 546, which holds that mental anguish will sustain action for breach of contract to transmit telegram promptly; Barnes v. Western U. Teleg. Co. 65 L.R.A. 666, which sustains right to damages for mental anguish from failure to deliver telegram, though unaccompanied by physical suffering; Green v. Western U. Teleg. Co. 67 L.R.A. 985, which sustains liability of telegraph company for mental anguish of 16 year old girl in being compelled to drive two miles in strange city after midnight with a strange driver due to its failure to deliver telegram; Hancock v. Western U. Teleg. Co. 69 L.R.A. 403, which denies right to damages for mere disappointment and regret from failure of telegraph company promptly to deliver a death message; Western U. Teleg. Co. v. Reid, 70 L.R.A. 289, which denies father's right to recover for mental anguish in witnessing suffering of child because of telegraph company's failure promptly to deliver telegram summoning physician.

Cited in notes (8 L.R.A.(N.S.) 250) on right of person whose beneficial interest in telegram is not communicated, to recover for mental anguish; (14 L.R.A.(N.S.) 499) on mental anguish suffered by sender deprived of advice and consolation as element of damages for failure to deliver telegram announcing sickness or death.

Disapproved in Western U. Teleg. Co. v. Ayers, 131 Ala. 394, 90 Am. St. Rep. 92, 31 So. 78, denying recovery of damages for mental suffering to sender of nondelivered telegram announcing to brother-in-law mortal illness of child.

Cited as overruled in effect in Western U. Teleg. Co. v. Potts, 120 Tenn. 48, 19 L.R.A.(N.S.) 482, 127 Am. St. Rep. 991, 113 S. W. 789; Helms v. Western

U. Teleg. Co. 143 N. C. 391, 8 L.R.A.(N.S.) 252, 118 Am. St. Rep. 811, 55 S. E. 831, 10 Ann. Cas. 643,—holding that telegraph company is not liable to plaintiff for mental anguish from nondelivery of message where he was not mentioned in message or company had no notice that they owed any obligation.

— How measured.

Cited in Shepard v. Western U. Teleg. Co. 143 N. C. 246, 118 Am. St. Rep. 796, 55 S. E. 704, holding it error for judge to instruct in determining amount of damage for nondelivery of message as causing mental anguish, that jury has "right to take into consideration their own feelings."

Noncontractual liability of telegraph company.

Cited in Wells v. Western U. Teleg. Co. 144 Iowa, 617, 24 L.R.A.(N.S.) 1051, 138 Am. St. Rep. 317, 123 N. W. 371, holding that either a bank extending credit on a forged message delivered by telegraph company or a seller of goods accepting check on strength of such credit can sue telegraph company for resulting losses; Western U. Teleg. Co. v. Caldwell, 126 Ky. 48, 12 L.R.A.(N.S.) 752, 102 S. W. 840, holding that failure to deliver telegram is more than a breach of contract, it is an omission to do a public duty; Green v. Western U. Teleg. Co. 136 N. C. 492, 67 L.R.A. 987, 103 Am. St. Rep. 955, 49 S. E. 165, 1 Ann. Cas. 349, holding company owed legal duty to young girl where it took message calling an escort to meet her arrival on a night train in a strange town.

45 L. R. A. 163, PHILLIPS v. SOUTHERN R. CO. 124 N. C. 123, 32 S. E. 388.

Carriers; when one becomes a passenger.

Cited in Illinois C. R. Co. v. Laloge, 113 Ky. 901, 62 L. R. A. 406, footnote p. 405, 69 S. W. 795, holding intending passenger resorting to station unreasonable time before train's departure not entitled to protection from assaults of strangers as a passenger; Holcombe v. Southern R. Co. 66 S. C. 10, 44 S. E. 68, holding intending passenger missing train and waiting in depot several hours for next train, entitled to recover for injury from baggage being thrown against her while on platform; Messenger v. Valley City Street & Interurban R. Co. 21 N. D. 88, 32 L.R.A.(N.S.) 889, 128 N. W. 1023, holding that relation of carrier and passenger exists while passenger is entering car, and before he is seated therein although no ticket has been purchased; Smith v. Seaboard Air-Line R. Co. 10 Ga. App. 232, 73 S. E. 523, holding that person coming to railroad station with intention of taking next train is passenger, provided his coming is within reasonable time before departure of train; Fremont, E. & M. Valley R. Co. v. Hagblad, 72 Neb. 787, 4 L.R.A.(N.S.) 260, 101 N. W. 1033, 9 Ann. Cas. 1096, holding complaint defective to allege relation of passenger and carrier for failure to state or show that train for which ticket was bought was to leave within a reasonable time.

Cited in footnotes to Chicago & E. I. R. Co. v. Jennings, 54 L. R. A. 827, which holds one with ticket, crossing tracks on highway to board train on further track, not a passenger; Exton v. Central R. Co. 56 L. R. A. 509, which holds purchaser of ticket a passenger while using depot for purpose of journey; Illinois C. R. Co. v. Laloge, 62 L.R.A. 405, which holds intending passenger resorting to station an unreasonable time before departure of train not entitled to rights of passenger; Duchemin v. Boston Elev. R. Co. 66 L.R.A. 980, which holds that street car company does not owe to person approaching car to enter it as passenger same high degree of care with respect to defects in car that it owes to passengers actually on board.

Duty to keep depot open.

Cited in Coleman v. Southern R. Co. 138 N. C. 358, 50 S. E. 690, holding that

it is duty of railroad company to allow a person the use of its waiting room until arrival of next train where through negligence of agent such person missed the one immediately preceding; Riley v. Wrightsville & T. R. Co. 133 Ga. 417, 24 L.R.A.(N.S.) 381, 65 S. E. 890, 18 Ann. Cas. 208, holding a cause of action to arise from expulsion of persons awaiting connecting train on a through service ticket from the depot where they had been invited in to wait their train not being due for several hours.

Cited in footnotes to Louisville & N. R. Co. v. Com. 53 L. R. A. 149, which denies necessity of keeping ticket office open while not in use; Central R. Co. v. Motes, 62 L. R. A. 507, which sustains regulation against patrons sleeping or lying down on benches in waiting room while awaiting arrival or departure of trains.

Cited in notes (1 L.R.A.(N.S.) 852) on reasonable time to keep station open before and after trains; (29 L.R.A.(N.S.) 800) on liability of carrier for turning waiting passenger out of depot.

Carrier's duty to patrons.

Cited in Williams v. Carolina & W. R. Co. 144 N. C. 502, 12 L.R.A.(N.S.) 192, 57 S. E. 216, 12 Ann. Cas. 1000, holding that persons on arrival at flag station a reasonable length of time before train time and being willing and able to pay fare are entitled to be carried to next station; Finch v. Atlantic Coast Line R. Co. 151 N. C. 106, 65 S. E. 742, holding that railroad company owed a duty to a person placing freight as required on platform, to keep such platform in proper repair.

Distinguished in Monroe v. Atlantic Coast Line R. Co. 151 N. C. 377, 27 L.R.A.(N.S.) 195, 66 S. E. 315, where railroad companies' property on which injury occurred was used by public not connected in any way with business of company but merely as a cut off between streets.

45 L. R. A. 164, MEANS v. CAROLINA C. R. CO. 124 N. C. 574, 32 S. E. 960.

Carrier's duty to furnish conductor.

Later appeal in 126 N. C. 425, 35 S. E. 813, holding carrier negligent in failing to provide conductor for regular mixed train and requiring engineer or brakeman to perform his duties.

Declarations as part of res gestæ.

Cited in State v. Spivey, 151 N. C. 681, 65 S. E. 995, distinguishing declarations of actors in a tragedy and mere onlookers and holding that a declaration of deceased immediately after being shot that defendant shot him and that he saw him do so is admissible as part of res gestæ.

Cited in footnote to Sample v. Consolidated Light & R. Co. 57 L. R. A. 186, which holds admissible, declaration of motorman as to cause of accident while car still on body of injured child.

Distinguished in Hill v. Ætna L. Ins. Co. 150 N. C. 2, 63 S. E. 124, where the evidence sought to be admitted were declarations of deceased "after" he had been injured.

Duty as to safety of servant.

Cited in Shaw v. Highland Park Mfg. Co. 146 N. C. 239, 59 S. E. 676, holding master liable for injury to experienced workman caused by failure of superintendent to furnish suitable help and appliances requested by such workman.

Cited in note (17 L.R.A.(N.S.) 77) on duty of master to provide sufficient help.

45 L. R. A. 166, Re HOGAN, 8 N. D. 301, 73 Am. St. Rep. 759, 78 N. W. 1051.

What covered by policy.

Cited in footnote to Holmes v. Phenix Ins. Co. 47 L. R. A. 308, which holds damage by hail accompanied by wind storm not covered by policy against wind storms.

Effect of fraud in inception of note.

Cited in Mooney v. Williams, 9 N. D. 330, 83 N. W. 237, holding illegality in inception of note no bar to bona fide holder's recovery.

45 L. R. A. 169, SMITH v. UNION TRUNK LINE, 18 Wash. 251, 51 Pac. 400.

Negligence of street car company.

Cited in footnote to Roberts v. Spokane Street R. Co. 54 L. R. A. 184, which holds street car company not free from negligence *per se* in having cars meet at busy street crossing while running at rate of 2½ miles an hour.

Cited in note (4 L.R.A.(N.S.) 731) on injury to street car passenger who upon alighting passes around end of car and is struck by car on other track.

Contributory negligence.

Cited in Mischke v. Seattle, 26 Wash. 628, 67 Pac. 357, holding question for jury whether pedestrian with mind intent on business and carrying umbrella lowered in front, guilty of negligence by falling over open trap door in walk; Chisholm v. Seattle Electric Co. 27 Wash. 241, 67 Pac. 601, holding question for jury whether contributory negligence to cross street car track before car moving at rate of 20 miles an hour without sounding gong; Bass v. Norfolk R. & Light Co. 100 Va. 7, 40 S. E. 100, holding person crossing street railway track without looking to see if car is approaching not negligent as matter of law; Ames v. Waterloo & Cedar F. Rapid Transit Co. 120 Iowa, 658, 95 N. W. 161 (dissenting opinion), majority holding contributory negligence presumed where person struck by street railway car, which he might have avoided if he had looked and listened; Dow v. Des Moines City R. Co. 148 Iowa, 447, 126 N. W. 918, holding that contributory negligence of person struck by car was for jury where person injured stepped from behind one car and was struck by car going in opposite direction on another track; Hornstein v. United R. Co. 195 Mo. 456, 4 L.R.A. (N.S.) 738, 113 Am. St. Rep. 693, 92 S. W. 884, 6 Ann. Cas. 699; Indianapolis Street R. Co. v. Tenner, 32 Ind. App. 325, 67 N. E. 1044 (dissenting opinion),— on duty to look and listen before crossing street car tracks as distinguished from such duty in crossing tracks of steam road; Saylor v. Union Traction Co. 40 Ind. App. 387, 81 N. E. 94, holding that a person before crossing a street car track in populous part of city need not under all circumstances stop, look and listen; Perjue v. Citizens' Electric Light & Gas Co. 131 Iowa, 713, 109 N. W. 280, holding refusal to direct verdict for defendant not error where plaintiff eighty-nine years of age collided with a street car at a crowded crossing occupied by both street car tracks and switches and steam railroad.

45 L. R. A. 174, NORTH MILWAUKEE TOWN-SITE CO. NO. 2 v. BISHOP, 103 Wis. 492, 79 N. W. 785.

Assessments on stock.

Cited in La Crosse Brown Harvester Co. v. Goddard, 114 Wis. 614, 91 N. W. 225, holding allegation that directors made assessments pursuant to by-laws and authority in them vested, sufficient in action to recover assessment.

Cited in note (93 Am. St. Rep. 384, 385) on liability to corporations of subscribers to stock.

Power and right to pass by-laws for private corporation.

Cited in Renn v. United States Cement Co. 36 Ind. App. 153, 73 N. E. 269, holding valid a by-law changing the number of directors, passed at annual meeting of stockholders.

— Directors' power.

Cited in Van Atten v. Modern Brotherhood, 131 Iowa, 236, 108 N. W. 313, on right of board of directors of private corporation to pass by-laws.

45 L. R. A. 177, STATE *ex rel.* STROHL v. SUPERIOR COURT, 20 Wash. 545, 56 Pac. 35.

Relation of bankrupt laws to insolvency proceedings.

Explained in State *ex rel.* Heckman v. Superior Court, 28 Wash. 37, 92 Am. St. Rep. 826, 68 Pac. 170, holding that adjudication in bankruptcy does not deprive state courts of jurisdiction in pending suit affecting bankrupts, and referring particularly to annotation in 45 L. R. A. 177.

Cited in *Re* Storck Lumber Co. 114 Fed. 361, holding petition in bankruptcy supersedes insolvency bill in state court; Roberts Cotton Oil Co. v. F. E. Morse & Co. 97 Ark. 521, 135 S. W. 334, holding that state court had jurisdiction in 1909, upon application of stockholder alleging insolvency, to place corporation in hands of receiver for purpose of protecting creditors; Jensen-King-Byrd Co. v. Williams, 35 Wash. 165, 76 Pac. 934, holding that Federal bankruptcy act does not suspend jurisdiction of state courts in insolvency proceedings where there has been no proceedings instituted in bankruptcy in the same matter.

Annotation cited in Hickman v. Parlin-Prendorff Co. 88 Ark. 520, 115 S. W. 371, holding decree of chancery court in insolvency proceedings void and without jurisdiction where the relief sought is provided by bankruptcy act of Congress.

Cited in footnotes to Ketcham v. McNamara, 50 L. R. A. 641, which holds action by trustee in insolvency under state statute not maintainable since bankruptcy act took effect; Old Town Bank v. McCormick, 60 L. R. A. 577, which holds involuntary proceedings against persons chiefly engaged in tilling soil, not superseded by bankruptcy law.

Cited in note (26 L.R.A.(N.S.) 433) as to whether trustee in bankruptcy succeeding assignee for creditors acquires rights available to assignee, but not existing in assignor.

Preferences by insolvent corporation.

Cited in City Nat. Bank v. Goshen Woolen Mills Co. 35 Ind. App. 578, 69 N. E. 206, holding that directors of insolvent corporation cannot prefer themselves as creditors or creditors for whom they are responsible, where they have the running of the corporation and their own votes are necessary to make the preference.

45 L. R. A. 196, DAVIS v. WEBBER, 66 Ark. 190, 74 Am. St. Rep. 81, 49 S. W. 822.

Champertous contracts with attorneys.

Cited in De Graffenreid v. St. Louis S. W. R. Co. 66 Ark. 264, 50 S. W. 272, denying attorney's right to contest voluntary settlement of damage suit by virtue of contract assigning half of judgment recovered; Potter v. Ajax Min. Co. 22 Utah, 291, 61 Pac. 999, holding attorney may advance money to prosecute suit in absence of contract indemnifying client against liability for costs; Davis v. Chase, 159 Ind. 245, 95 Am. St. Rep. 294, 64 N. E. 88, holding void, agreement

of client not to compromise claim unless attorney present and directs settlement; Newport Rolling Mill Co. v. Hall, 147 Ky. 602, 144 S. W. 760, holding that where contract between attorney and client is valid, except as to clause prohibiting either from settling without other's consent, this clause may be stricken out and balance upheld; Roller v. Murray, 112 Va. 786, 38 L.R.A.(N.S.) 1206, 72 S. E. 65, holding that no recovery on quantum meruit can be had by attorney for services rendered under contract by which he undertakes to carry on litigation without cost to his client for share of recovery; Graham v. Dubuque Specialty Mach. Works, 138 Iowa, 460, 15 L.R.A.(N.S.) 732, 114 N. W. 619, holding valid the employment of an attorney on a contingent fee; Re Snyder, 190 N. Y. 74, 14 L.R.A.(N.S.) 1105, 123 Am. St. Rep. 533, 82 N. E. 742, 13 Ann. Cas. 441, holding contingent fee contract prohibiting settlement without consent of attorney void and quantum meruit for services rendered before a settlement without such consent will not lie; Jackson v. Stearns, 48 Or. 28, 5 L.R.A. (N.S.) 392, 84 Pac. 798, holding void a stipulation in contract between attorney and client prohibiting settlement or dismissal by client before prosecution to judgment where the attorney's lien would attach on proper notice; Ft. Worth & D. C. R. Co. v. Carlock, 33 Tex. Civ. App. 204, 75 S. W. 931, on validity of stipulation by attorney against settlement by client.

Cited in footnotes to Newman v. Freitas, 50 L. R. A. 548, which holds void, contract to pay attorney one third of all amounts recovered in divorce suit; Loofoourow v. Hicks, 55 L. R. A. 874, which holds lien for attorney's fees allowed by judgment of foreclosure enforceable against land bid in by mortgagee or assignee; Irwin v. Curie, 58 L. R. A. 830, which sustains right of person placing demands in attorney's hands to recover agreed compensation though statute forbids such agreements; Tompkins v. Nashville, C. & St. L. R. Co. 61 L. R. A. 340, which sustains plaintiff's right to dismiss suit, notwithstanding lien of attorney; Dorr v. Camden, 65 L.R.A. 348, which holds that contract for contingent fee must, in order to be sustained, be shown to have been entered into by the client after full knowledge of the facts and circumstances justifying such contract.

Cited in notes (2 L.R.A.(N.S.) 261) on right of attorney to recover upon quantum meruit for services under illegal or champertous contract; (14 L.R.A. (N.S.) 1101 on validity of provision, in contract for contingent fee, forbidding client to settle without attorney's consent; (83 Am. St. Rep. 163, 170, 175, 181) on contracts between attorneys and clients; (117 Am. St. Rep. 524) on validity of contracts in relation to prosecution of civil suits.

Good faith of attorney in dealing with client.

Cited in Weil v. Fineran, 78 Ark. 92, 93 S. W. 568, holding attorney not entitled to the proceeds of a contract with client unless in procuring it he use the utmost good faith and disclose all knowledge he has of the facts in connection.

Clients control of his own litigation.

Cited in Paulson v. Lyson, 12 N. D. 357, 97 N. W. 533, 1 Ann. Cas. 245, holding that client has general power to dismiss or settle any action without consent of his attorney notwithstanding agreement to the contrary.

Cited in note (93 Am. St. Rep. 173, 175) on extent to which litigant may control cause in which he has appeared by attorney.

Action for recovery for services.

Cited in Jackson v. Stearns, 58 Or. 66, 37 L.R.A.(N.S.) 645, 113 Pac. 30, Ann. Cas. 1913 A, 284, holding that value of services performed in consideration of parol agreement to convey land cannot be recovered in action for damages for breach of contract.

What is reasonable attorney fee.

Cited in Rachels v. Donipham Lumber Co. 98 Ark. 534, 136 S. W. 658, holding that "reasonable fee" for attorney is one that is reasonable, considering importance of litigation, benefit secured by it, amount and character of services, and his learning, skill and proficiency.

What is secured by attorney's lien.

Cited in note (24 Eng. Rul. Cas. 716) as to what is secured by attorney's lien.

45 L. R. A. 201, DELL v. MARVIN, 41 Fla. 221, 79 Am. St. Rep. 171, 26 So. 188.

Class legislation.

Cited in State *ex rel.* Lamar v. Jacksonville Terminal Co. 41 Fla. 372, 27 So. 221, sustaining statute regulating appellate proceedings on appeal from orders of railroad commission; Duckwall v. Jones, 156 Ind. 686, 58 N. E. 1056, sustaining statute authorizing allowance of attorney's fees in favor of plaintiff in foreclosure of mechanic's lien; Crooms v. Schad, 51 Fla. 175, 40 So. 497, holding race separation ordinance with respect to street cars not invalid for making exceptions from its rulings as to nurses in charge of children or invalids of opposite race; Morrison v. State, 116 Tenn. 551, 95 S. W. 494, on same point; Seaboard Air Line R. Co. v. Simon, 56 Fla. 555, 20 L.R.A.(N.S.) 131, 47 So. 1001, 16 Ann. Cas. 1234, holding a statute regulating compensation for losses caused to shippers on railroads invalid for not applying to other common carriers which as to compensation for losses have the same duties.

Cited in footnotes to Turner v. Boger, 49 L. R. A. 590. which holds provision for attorneys' fees in trust deed, void; Atkinson v. Woodmansee, 64 L. R. A. 325, which holds void, provision for recovery of attorney's fee by successful plaintiff in action to enforce laborer's or artisan's lien.

Cited in note (60 L. R. A. 323) on constitutional equality in the United States in relation to corporate taxation.

Errors presented on appeal.

Cited in Parker v. Dekle, 46 Fla. 454, 35 So. 4, holding that a court will consider a fundamental error in judgment itself of lower court where apparent in its face though it be not assigned.

— Sufficiency of objections.

Cited in Hoodless v. Jernigan, 46 Fla. 218, 35 So. 656, holding objection properly overruled where made generally to evidence partly good and partly bad offered in entirety.

Allowance of attorney's fees as costs.

Cited in Engebretsen v. Gay, 158 Cal. 34, 28 L.R.A.(N.S.) 1065, 109 Pac. 880, Ann. Cas. 1912A, 690, holding that legislature may allow attorney's fee against one whose delinquency makes necessary proceeding to enforce special assessment for public improvements against his property; Atlantic Coast Line R. Co. v. Coachman, 59 Fla. 137, 52 So. 377, 20 Ann. Cas. 1047, holding that statute providing for recovery of fifty per cent interest and attorney fees from common carriers for failure to pay for freight lost, within sixty days is constitutional; Cascaden v. Wimbish, 88 C. C. A. 277, 161 Fed. 245; Thompson v. Wise Boy Min. & Mill. Co. 9 Idaho, 370, 74 Pac. 958,—holding a statute allowing attorney's fees on successful judgment on miner's lien on ore, not unreasonable where applicable to all debtors similarly situated; Pittsburgh, C. C. & St. L. R. Co. v. Taber, 168 Ind. 422, 77 N. E. 747, 11 Ann. Cas. 808, holding constitutional the allowance of collection of attorney's fee from property owners sued on refusal to pay assessment for street improvement.

Cited in footnotes in Hartford Fire Ins. Co. v. Redding, 67 L.R.A. 518; L'Engle v. Scottish Union & N. Ins. Co. 67 L.R.A. 581,—which upholds provision for recovery of attorneys' fees in certain cases against fire and life insurance companies.

Cited in notes (17 L.R.A.(N.S.) 914) on validity of statutory provision for attorney's fee; (47 L. ed. U. S. 824) on unconstitutional inequality or discrimination in statutes allowing attorney's fees.

45 L. R. A. 204, ADAIR v. SOUTHERN MUT. INS. CO. 107 Ga. 297, 73 Am. St. Rep. 122, 33 S. E. 78.

Insurance; increase of risk by use of threshing machine.

Cited in Southern Mut. Ins. Co. v. Hudson, 113 Ga. 435, 38 S. E. 964, on second appeal, holding error, instruction that if owner "grossly" negligent in temporarily changing condition of insured property his right to recover upon policy would be defeated; 115 Ga. 639, 42 S. E. 60, on third appeal, holding opinion of witnesses as to increase of risk from change in condition of property properly excluded where hypothetical question called for review of evidence of other witnesses; Sumter Tobacco Warehouse Co. v. Phœnix Assur. Co. 76 S. C. 81, 10 L.R.A.(N.S.) 743, 121 Am. St. Rep. 941, 56 S. E. 654, 11 Ann. Cas. 780, holding that temporary increase of risk in knowledge of insured does not avoid a policy where increased risk terminates before loss and is not a cause thereof.

Increase of risk by tenant without knowledge of landlord.

Cited in Edwards v. Farmers Mut. Ins. Asso. 128 Ga. 356, 12 L.R.A.(N.S.) 488, 119 Am. St. Rep. 385, 57 S. E. 707, 10 Ann. Cas. 1036, holding that the storing of seed cotton in dwelling against express stipulation in policy avoids the insurance even where done by tenant in absence of knowledge of landlord.

Cited in note (12 L.R.A.(N.S.) 485) on effect upon insurance of tenant's breach of condition.

45 L. R. A. 209, CLOUD v. MALVIN, 108 Iowa, 52, 75 N. W. 645, 78 N. W. 791.

Conveyances to defeat creditors.

Cited in DeFrance v. Reeves, 148 Iowa, 351, 125 N. W. 655, holding that where title to land was placed in wife's name to defeat plaintiff's creditors, husband cannot require reconveyance.

Questions first raised on appeal.

Cited in Powell v. Nevada, C. & O. R. Co. 28 Nev. 343, 82 Pac. 96, holding that statute passed after affirmance in appeal cannot be urged as a ground for reversal.

45 L. R. A. 212, COOK v. BRAMEL, 106 Ky. 803, 51 S. W. 600.

Revival of mortgage lien as against grantee by partial payment by mortgagor.

Cited in Du Bois v. First Nat. Bank, 43 Colo. 406, 96 Pac. 169, holding that purchaser taking with record notice of mortgage is subject to a revival of lien thereof by a partial payment of secured debt by mortgagor, he having some interest remaining after expiration of period of limitations; Boucofski v. Jacobsen, 36 Utah, 181, 26 L.R.A.(N.S.) 907, 104 Pac. 117, on extension of lien by mortgagor as against junior claimants; Walker v. Luxon, 138 Ky. 17, 137 Am. St. Rep. 344, 127 S. W. 489, holding that action on note secured by mortgage does not stop limitation as against remote vendees.

Cited in note (28 L.R.A.(N.S.) 169) on effect of payment or acknowledgment by mortgagor to toll limitations as agent person holding through him.

45 L. R. A. 216, COOPER v. COM. 106 Ky. 909, 90 Am. St. Rep. 275, 51 S. W. 789, 59 S. W. 524.

What constitutes former jeopardy.

Cited in Re Collins, 151 Cal. 350, 129 Am. St. Rep. 122, 90 Pac. 827, on acquittal as bar to subsequent trial on same offense.

Cited in footnote to *Re* Ascher, 57 L. R. A. 806, which holds accused not put in jeopardy by discharge of jury after trial commenced, because jurors prejudiced in his favor.

Cited in notes (92 Am. St. Rep. 159) on identity of offenses on plea of former jeopardy; (103 Am. St. Rep. 21, 29) on res judicata in criminal proceedings.

Acquittal on false testimony as bar to prosecution for perjury.

Cited in Chitwood v. United States, 101 C. C. A. 342, 178 Fed. 443, holding that liability on a charge for which an acquittal has been had cannot be resurrected on a prosecution for perjury for falsely testifying in former case; Rex v. Quinn, 11 Ont. L. Rep. 250 (dissenting opinion), on same point.

Cited in note (39 L.R.A.(N.S.) 386, 389) on acquittal of crime as bar to prosecution for perjury on former trial.

Distinguished in State v. Bevill, 79 Kan. 525, 131 Am. St. Rep. 345, 100 Pac. 476, 17 Ann. Cas. 753, where the circumstances related in the false testimony were collateral to the charge; People v. Albers, 137 Mich. 681, 100 N. W. 908, where the falsity of the testimony was not, legally speaking, inconsistent with innocence on former charge.

Disapproved in State v. Vandemark, 77 Conn. 205, 58 Atl. 715, 1 Ann. Cas. 161, holding that a former trial in which an acquittal was had on testimony of defendant is no bar to an action for perjury based on falsity of such testimony; State v. Sargood, 80 Vt. 420, 130 Am. St. Rep. 995, 68 Atl. 49, 13 Ann. Cas. 367, holding conviction or acquittal on false testimony in criminal case not res judicata in prosecution for perjury based on such testimony.

45 L. R. A. 218, KRAY v. MUGGLI, 77 Minn. 231, 79 N. W. 964.

Prescriptive right as to condition of water.

Followed in Friedman v. Muggli, 77 Minn. 244, 79 N. W. 1126, without discussion.

Overruled on second appeal in 84 Minn. 91, 54 L. R. A. 477, 87 Am. St. Rep. 332, 86 N. W. 882, holding riparian owners who have improved property relying on continuance of diverted condition of stream entitled to have conditions undisturbed.

Cited in Marshall Ice Co. v. La Plant, 136 Iowa, 632, 12 L.R.A. (N.S) 1078, 111 N. W. 1016, holding that where the person holding a perpetual easement to maintain a dam, sold land bordering upon the artificial body of water formed thereby, and received an enhanced value because of it, the grantees may insist in the continuance of the dam.

Cited in note (50 L.R.A. 843) on rights acquired in artificial condition of body of water.

Distinguished in Albert Lea v. Nielsen, 80 Minn. 106, 81 Am. St. Rep. 242, 82 N. W. 1104, holding riparian owners not estopped to claim damages by permitting city to assume control of dam after abandonment, and erect waterworks upon bank; Lake Drummond Canal & Water Co. v. Burnham, 147 N. C. 50, 17 L.R.A.(N.S.) 948, 125 Am. St. Rep. 527, 60 S. E. 650, holding that where the owners and proprietors of a canal had maintained a cross-canal to aid navigation, and then closed it up, thereby flooding the defendant's land by

causing a lake to assume its natural size, they could not recover any damages therefor.

Responsibility for maintaining instrumentalities dangerous per se.

Cited in Gould v. Winona Gas Co. 100 Minn. 259, 10 L.R.A.(N.S.) 892, 111 N. W. 254, on the application of the doctrine of responsibility for damage to which the exercise of due care is no defense.

45 L. R. A. 223, MOBILE & O. R. CO. v. POSTAL TELEG. CABLE CO. 76 Miss. 731, 26 So. 370.

Use of railroad right of way by telegraph and telephone companies.

Cited in St. Louis & S. F. R. Co. v. Southwestern Teleph. & Teleg. Co. 58 C. C. A. 207, 121 Fed. 286, holding telephone company authorized to condemn right of way along railroad right of way, where there is necessity for taking, and use will not obstruct purposes of railroad company; Union P. R. Co. v. Colorado Postal Teleg. Cable Co. 30 Colo. 146, 97 Am. St. Rep. 106, 69 Pac. 564, holding title acquired by telegraph company by condemnation proceedings in right of way of railroad is merely easement; St. Louis & S. F. R. Co. v. Southwestern Teleph. & Teleg. Co. 58 C. C. A. 208, 121 Fed. 285, holding telephone company bound by stipulations and promises contained in petition for condemnation of easement in railroad company's right of way; American Teleph. & Teleg. Co. v. St. Louis, I. M. & S. R. Co. 202 Mo. 685, 101 S. W. 576, on the extent of use of railroad right of way by telegraph company.

Damages for use of railroad right of way.

Cited in Postal Teleg. Cable Co. v. Oregon Short Line R. Co. 114 Fed. 792, holding where no peculiar or special damage suffered by construction of telegraph on railroad right of way, railroad entitled to nominal damages only; Atlantic Coast Line R. Co. v. Postal Teleg. Cable Co. 120 La. 281, 48 S. E. 15, 1 Ann. Cas. 734, holding that owner of railroad right of way is damaged by use of the way for telegraph system only to the extent that such use curtails and impairs use of such way for railroad purposes; Illinois C. R. Co. v. State, 94 Miss. 767, 48 So. 561, on the measure of damages for the taking of railroad property.

Cited in note (26 L.R.A.(N.S.) 192, 193) on measure of damages for right of way for telegraph or telephone line along railroad.

Reservation of rights to owner in eminent domain.

Cited in Indianapolis & C. Traction Co. v. Wiles, 174 Ind. 242, 91 N. E. 161, holding that in exercising right of eminent domain party may leave in owner certain rights and privileges in land not inconsistent with use to be acquired.

45 L. R. A. 227, WAVERLY WATER FRONT IMPROV. & DEVELOPMENT CO. v. WHITE, 97 Va. 176, 33 S. E. 534.

Rights of riparian proprietors.

Cited in Chesapeake & O. R. Co. v. Walker, 100 Va. 84, 40 S. E. 633, holding corporation which is simple riparian owner entitled to accretions upon river shore, and referring particularly to annotation in 45 L.R.A. 227; Whealton v. Doughty, 112 Va. 654, 72 S. E. 112, holding that drain or gutter which goes bare at ordinary low water does not cut off or prevent extension of boundary line under statute but same is extended across such stream to ordinary low water mark.

Cited in note (64 L. R. A. 333) on municipal ownership of tide lands.

Distinguished in Taylor v. Com. 102 Va. 777, 102 Am. St. Rep. 865, 47 S. E.

875, where the question was as to the conflicting rights of the riparian proprietor and the commonwealth; Ferry Pass Inspectors' & Shippers' Asso. v. Whites River Inspector's & Shippers' Asso. 57 Fla. 404, 22 L.R.A.(N.S.) 349, 48 So. 643, holding shore could not be used for rafting and handling logs so as to destroy entirely access to the land or water.

45 L. R. A. 243, TATE v. COMMERCIAL BLDG. ASSO. 97 Va. 74, 75 Am. St. Rep. 770, 33 S. E. 382.

Life insurance; insurable interest.

Cited in First Nat. Bank v. Terry, 99 Va. 196, 37 S. E. 843, holding creditor has insurable interest in debtor's life; Strode v. Meyer Bros. Drug Co. 101 Mo. App. 634, 74 S. W. 379, holding creditor, whether claiming as beneficiary or as assignee, entitled only to amount necessary to make him whole, and as to remainder is trustee for estate of insured; Deal v. Hainley, 135 Mo. App. 514, 116 S. W. 1, holding that where the debtor insures his life for the benefit of a creditor, and the latter is the moving party in the transaction, the creditor can retain only such a part of the policy as will cover his debt.

Cited in footnotes to McQuillan v. Mutual Reserve Fund Life Asso. 56 L.R.A. 233, which sustains right to provide that assigned policy shall be void as to all above debt due assignee; Gordon v. Ware Nat. Bank, 67 L.R.A. 550, which holds that creditor has an insurable interest in life of debtor.

Cited in notes (54 L.R.A. 228) on insurable interest in life of parent or child or other relative by blood; (16 L.R.A.(N.S.) 1021) on insurance on life of officer for benefit of corporation; (128 Am. St. Rep. 321, 325) on life insurance in favor of persons having no insurable interest.

Wagering policy.

Cited in Bendet v. Ellis, 120 Tenn. 290, 18 L.R.A.(N.S.) 118, 127 Am. St. Rep. 1000, 111 S. W. 795, holding that where one applied for insurance upon his life, and immediately thereafter assigned the same to another pursuant to a previously made agreement, the policy was void as a wagering contract.

What sufficient assignment of policy.

Cited in footnotes to Opitz v. Karel, 62 L. R. A. 982, which sustains right of one taking policy on his own life to make valid gift of proceeds by mere delivery of policy; Steele v. Gatlin, 59 L. R. A. 129, which holds complete gift not made by verbal assignment of life policy accompanied with words indicating intention to give, and delivery of policy.

Assignability of insurance policy.

Cited in notes (3 L.R.A.(N.S.) 950) on validity of assignment of interest in life insurance to one paying premiums; (6 L.R.A.(N.S.) 129) on validity of assignment not made as cover for wager policy, as life insurance to one having no insurable interest; (87 Am. St. Rep. 509) on assignment of life insurance policies.

Disapproved in Rahders v. People's Bank, 113 Minn. 499, 130 N. W. 16, Ann. Cas. 1912A, 299, holding that insurance policy which has been issued and carried upon life of member of firm may be assigned by firm to corporation succeeding to business.

Void contract as creating an estoppel.

Cited in Lukens v. Nye, 156 Cal. 506, 36 L.R.A.(N.S.) 250, 105 Pac. 593, 20 Ann. Cas. 158, holding that a contract void as contrary to public policy cannot create an estoppel.

Cited in note (13 L.R.A.(N.S.) 1118) on right of one taking contract for property from third person to defraud creditors of another, who had legal title, but represented it to be in such third person, to invoke doctrine of estoppel.

Parties to insurance "in pari delicto."

Cited in Smathers v. Bankers' L. Ins. Co. 151 N. C. 104, 65 S. E. 746, 18 Ann. Cas. 756, holding that where the statute was enacted for the benefit of policy holders, an insured seeking to recover on a special agency contract which was forbidden by the statute, was in pari delicto and could not recover; Laun v. Pacific Mut. L. Ins. Co. 131 Wis. 566, 9 L.R.A.(N.S.) 1209, 111 N. W. 660, holding that where the statute prohibited a life insurance company from giving a rebate on the premiums as an inducement in securing new policies, a contract whereby a policy was issued giving to the insured a rebate on the premiums, did not place the parties in pari delicto so as to warrant a recovery of the premiums paid; McRae v. Warmack, 98 Ark. 60, 33 L.R.A.(N.S.) 954, 135 S. W. 807, holding that one who has paid premiums of insurance policy upon another's life, under agreement for assignment of policy, may in case assignment is void as against public policy, recover premiums paid.

45 L. R. A. 246, PORTSMOUTH GAS CO. v. SANFORD, 97 Va. 124, 75 Am. St. Rep. 778, 33 S. E. 516.

Persons subject to garnishment.

Cited in Duval County v. Charleston Lumber & Mfg. Co. 45 Fla. 269, 60 L.R.A. 553, 33 So. 531, 3 Ann. Cas. 174 (dissenting opinion), as to a county being subject to garnishment; Mitchell v. Miller, 95 Minn. 64, 103 N. W. 716, holding that a public corporation is not subject to garnishment when it owes an ordinary debt to a third person.

Cited in footnote to Tootle v. Coleman, 57 L. R. A. 120, which holds liability of debtor to garnishment not limited to situs of chose in action.

Cited in note (96 Am. St. Rep. 451) on subjecting officers' salaries to payment of their debts.

"Person" as including corporations.

Cited in Wetzel & T. R. Co. v. Tennis Bros. Co. 75 C. C. A. 266, 145 Fed. 462, 7 Ann. Cas. 426, holding that the use of the word, person, in statute providing for workmen's liens, includes corporations.

45 L. R. A. 249, LAURENS v. ELMORE, 55 S. C. 477, 33 S. E. 560.

Inter-state commerce.

Cited in notes (19 L.R.A.(N.S.) 316) on license or occupation tax on hawkers, peddlers, and persons engaged in soliciting orders by sample or otherwise, as violating the commerce clause; (46 L. ed. U. S. 789) on peddlers and drummers as related to interstate commerce; (54 L. ed. U. S. 965) on sale of picture frame as incidental to transaction protected by the commerce clause.

Disapproved in Dozier v. State, 154 Ala. 89, 129 Am. St. Rep. 51, 46 So. 9, holding that a non-resident corporation which is engaged in enlarging photographs solicited by agents traveling within the state, the orders being for the enlargement of the photograph which entitled the owner to an appropriate frame at factory prices, was engaged in intra-state commerce and subjects the agent to the payment of a license tax; State v. Looney, 214 Mo. 225, 29 L.R.A. (N.S.) 415, 97 S. W. 934, holding under the same contract as set forth in the leading case, that the agent of the picture company was a hawker or peddler

within the meaning of the statute requiring a license for the sale of picture frames, and was not engaged in interstate commerce.

Validity of ordinance imposing license tax.

Cited in footnotes to Adkins v. Richmond, 47 L. R. A. 583, which holds license tax on merchandise brokers void as to brokers selling goods by sample for principal in other state; *Re* Wilson, 48 L. R. A. 417, which holds void as applied to sale of original packages territorial statute requiring license for sale of coal oil; Brownback v. North Wales, 49 L. R. A. 446, which holds valid as to residents, ordinance requiring license for sale of goods on street or by soliciting orders from house to house; Williams v. Fears, 50 L. R. A. 685, which sustains license tax on emigrant agent.

45 L. R. A. 251, STATE, BOTT, PROSECUTOR, v. WURTS, 63 N. J. L. 289, 43 Atl. 744, 881.

Decision respecting adoption of amendment.

Approved in Kadderly v. Portland, 44 Or. 133, 74 Pac. 710, holding that whether a constitutional amendment had been legally adopted was a judicial question for the courts.

Cited in State *ex rel.* McClurg v. Powell, 77 Miss. 571, 48 L. R. A. 656, 27 So. 927, holding question whether proposed constitutional amendment has received requisite number of votes, for court, not legislature, to determine; Hammond v. Clark, 136 Ga. 320, 38 L.R.A.(N.S.) 82, 71 S. E. 479, holding that in absence of some exclusive method of determination provided by constitution, whether amendment has been properly proposed and adopted, is generally judicial question; McConaughy v. Secretary of State, 106 Minn. 401, 119 N. W. 408, holding that the courts of the state have jurisdiction to determine whether a constitutional amendment has been legally adopted; Rice v. Palmer, 78 Ark. 441, 96 S. W. 396, holding that the determination as to whether a constitutional amendment had been adopted was a judicial question so that an appeal would lie from the decision of the house of representatives.

What constitutes majority.

Cited in *Re* Denny, 156 Ind. 140, 51 L. R. A. 741, 59 N. E. 359 (dissenting opinion), majority holding majority of all votes cast at election for any purpose necessary to adoption of constitutional amendment; State *ex rel.* Lane v. Otis, 68 N. J. L. 67, 52 Atl. 305, holding that, in determining question of majority of votes cast at election, vote of township deemed illegal not to be considered; Eufaula v. Gibson, 22 Okla. 527, 98 Pac. 565, holding that a majority in a special election for the removal of a county seat, meant a majority of all the votes cast, whether the same were counted or rejected because of their illegality.

45 L. R. A. 257, BALK v. HARRIS, 122 N. C. 64, 30 S. E. 318, 124 N. C. 467, 70 Am. St. Rep. 606, 32 S. E. 799.

Reaffirmed on subsequent appeal in 132 N. C. 10, 43 S. E. 477, Denying rehearing of 130 N. C. 381, 41 S. E. 940.

Situs of personal property.

Cited in Hunt v. Turner, 54 Fla. 667, 45 So. 509, holding that if a person is domiciled within the state his personal property has its situs in that state.

Situs of debt for garnishment purposes.

Cited in Strause Bros. v. Ætna F. Ins. Co. 126 N. C. 229, 48 L. R. A. 454, footnote p. 452, 35 S. E. 471, holding debt of insurance company for loss in another state, without situs in third state where company has agent, for purposes of garnishment; Sexton v. Phœnix Ins. Co. 132 N. C. 2, 43 S. E. 479, hold-

ing unadjusted claim for loss under policy subject to attachment in hands of company at place of its home office in state other than residence of debtor.

Cited in footnotes to Tootle v. Coleman, 57 L. R. A. 120, which holds right to garnish debtor not limited to situs of chose in action; Pennsylvania R. Co. v. Rogers, 62 L. R. A. 178, which holds nonresident summoned as garnishee while temporarily within state not subject to further proceedings unless he has property within state; National Broadway Bank v. Sampson, 66 L.R.A. 606, which holds liability of nonresident to nonresident corporation not subject to attachment within state when debtor is temporarily within jurisdiction as situs of debt is at place of residence either of debtor or of creditor.

Cited in notes (67 L.R.A. 213) as to where debt garnishable; (3 L.R.A. (N.S.) 609) on place of payment as affecting jurisdiction to garnish debt; (44 L. ed. U. S. 212) on garnishment of debt dut to nonresident.

Effect of judgment against garnishee.

Cited in footnote to Baltimore & O. S. W. R. Co. v. Adams, 60 L. R. A. 396, which holds garnishee protected by foreign judgment against paying claim to principal debtor though judgment obtained by latter before former judgment entered.

Cited in note (47 L. R. A. 134) on effect of judgment against garnishee to merge or satisfy liability of principal debtor.

Extraterritorial effect of exemption laws.

Cited in Sexton v. Phœnix Ins. Co. 132 N. C. 3, 43 S. E. 479, holding exemption laws have no extraterritorial effect against executions; Re Owings, 140 Fed. 741, on the extraterritorial force of exemption laws.

Cited in note (1 L.R.A.(N.S.) 1195) on extraterritorial effect of exemption laws.

Distinguished in Goodwin v. Claytor, 137 N. C. 235, 67 L.R.A. 226, 107 Am. St. Rep. 479, 49 S. E. 173, holding that a corporation organized under the laws of New Jersey, but having its principal place of business in North Carolina, is domiciled within the state so that the exemption laws of Virginia were not applicable in an action in North Carolina.

45 L. R. A. 261, BETTS v. LEHIGH VALLEY R. CO. 191 Pa. 575, 43 Atl. 362.

Duty to look and listen before crossing tracks.

Cited in Girton v. Lehigh Valley R. Co. 199 Pa. 151, 48 Atl. 970, Affirming 17 Pa. Super. Ct. 149, sustaining recovery of one alighting from train on side of track opposite depot and injured while crossing tracks by train approaching without signal; Dieckmann v. Chicago & N. W. R. Co. 145 Iowa, 269, 31 L.R.A. (N.S.) 348, 139 Am. St. Rep. 420, 121 N. W. 676, holding that person who is obliged to cross track to take train in night and undertakes to do so after train is announced and is approaching is not guilty of negligence per se; Keifner v. Pittsburg, C. C. & St. L. R. Co. 223 Pa. 54, 72 Atl. 253, holding that where a passenger is obliged to cross an intervening track in going to his train, he is not bound to look before crossing the track; Struble v. Pennsylvania Co. 226 Pa. 121, 75 Atl. 17, holding that rule as a person about to cross a railroad track at a crossing, being required to stop, look and listen, does not apply strictly to a passenger crossing an intervening track in going to his train: Besecker v. Delaware, L. & W. R. Co. 220 Pa. 511, 123 Am. St. Rep. 714, 69 Atl. 1039, 14 Ann. Cas. 21, holding railway company liable for injuries to a passenger by being struck by a train while passing over an intervening track after alighting from train at the station, and he is under no obligation to look before crossing the track.

Cited in footnotes to Woehrle v. Minnesota Transfer R. Co. 52 L. R. A. 349, which holds traveler's failure to look and listen when watchman absent not negligence *per se;* Western & A. R. Co. v. Ferguson, 54 L. R. A. 803, which holds failure to look within 30 feet of track not prevent recovery; Lorenz v. Burlington, C. R. & N. R. Co. 56 L. R. A. 753, which holds negligence of one pursuing cow not looking and listening before crossing railroad track for jury; Keenan v. Union Traction Co. 58 L. R. A. 217, which holds failure to look for train within 35 feet of track, negligence; Colorado & Southern R. Co. v. Thomas, 70 L.R.A. 681, which holds failure to look and listen before crossing track not excused by existence of building adjoining highway which would obstruct view of tracks and by noise created therein which would prevent hearing approaching train.

Cited in note (27 L.R.A.(N.S.) 129) on duty of passenger to stop, look, and listen before crossing track adjacent to his train.

Distinguished in Gregg v. Northern P. R. Co. 49 Wash. 192, 94 Pac. 911, holding that where a person intending to board a train, stepped in front of the train as it was approaching, he was guilty of contributory negligence as a matter of law where he did not look before stepping upon the track.

45 L. R. A. 264, BARNES v. FIDELITY MUT. LIFE ASSO. 191 Pa. 618, 43 Atl. 341.

Existence of disease question of fact.

Cited in Connell v. Metropolitan L. Ins. Co. 16 Pa. Super. Ct. 529, holding existence of disease at time of issuance of policy, question of fact; Keiper v Equitable Life Assur. Soc. 159 Fed. 213, holding that whether the insured had ever suffered from a "serious illness" was for the jury.

Life insurance; warranty of good health.

Cited in Baldi v. Metropolitan Ins. Co. 18 Pa. Super. Ct. 610, holding temporary indisposition not tending to weaken constitution at time of application does not invalidate policy; Clemens v. Metropolitan Life Ins. Co. 20 Pa. Super. Ct. 572, holding that assured having bad cold and being in delicate condition unfitting for work, not breach of warranty of good health; Connell v. Metropolitan Life Ins. Co. 8 Del. Co. Rep. 186, holding under provision of policy that same should be void if assured has had disease of kidneys, existence of Bright's disease prior to and at time of issuance of policy complete defense, although application not attached to policy; French v. Fidelity & C. Co. 135 Wis. 274, 17 L.R.A.(N.S.) 1017, 115 N. W. 869, holding that sound health, or sound condition physically signifies an absence of bodily infirmities, but does not mean perfect health.

Cited in footnote to Black v. Travelers' Ins. Co. 61 L. R. A. 500, which holds injury not bodily infirmity as matter of law unless physical health of insured affected.

Cited in note (17 L.R.A.(N.S.) 1145) on effect of stipulation in application or policy of life insurance that it shall not become binding unless delivered to assured while in good health.

Distinguished in Gordon v. Prudential Ins. Co. 231 Pa. 407, 80 Atl. 882, affirming 20 Pa. Dist. R. 145, holding that company is not bound by policy where it was to be delivered only provided insured was in good health at time, if insured was ill with disease which caused his death at time of delivery.

Declarations of insured at time of taking of policy.

Cited in Ellis v. Metropolitan L. Ins. Co. 18 Pa. Dist. R. 502, 11 North Co. Rep. 402, holding that the declarations of the insured not a part of the res

gestæ at the time the contract was made, were not admissible in an action after the insured's death, by the beneficiaries.

45 L. R. A. 267, MORAN v. CORLISS STEAM-ENGINE CO. 21 R. I. 386, 43 Atl. 874.

Liability for injury by electric wires.

Cited in Herbut v. Lake Charles Ice, Light & Waterworks Co. 111 La. 526, 64 L. R. A. 104, 100 Am. St. Rep. 505, 35 So. 731, holding that burden is on electrical company to show itself free from negligence, where traveler injured by contact with detached wire lying upon sidewalk of town; Clonts v. Laclede Gaslight Co. 144 Mo. App. 591, 129 S. W. 238, holding that defendant was not liable for death of decedent while running defective elevator, where death was caused by electric shock resulting from act of servants of another company in bringing in contact with wire which furnished power to run elevator another wire carrying high voltage; Aga v. Harbach, 140 Iowa, 611, 117 N. W. 669, holding it the duty of the master to use every practicable precaution against dangers incident to the use of electricity.

Cited in footnotes to Boyd v. Portland General Electric Co. 52 L. R. A. 509, which holds want of sufficient assistance to replace promptly wires broken by severe storm not excuse as matter of law for delay; Mitchell v. Raleigh Electric Co. 55 L. R. A. 398, which sustains telephone company employee's right to presume that electric light wires properly insulated.

Cited in note (100 Am. St. Rep. 537), on duties and liabilities of electric corporations.

Liability for act of independent contractor.

Cited in Vickers v. Kanawha & W. V. R. Co. 64 W. Va. 478, 20 L.R.A.(N.S.) 797, 131 Am. St. Rep. 929, 63 S. E. 367, holding the railroad company liable for injuries resulting to one of its servants, from the acts of an independent contractor, where the injury resulted from the failure of the railroad company to furnish its servant with a safe place to work.

Cited in footnotes to Boomer v. Wilbur, 53 L. R. A. 172, which denies owner's liability for injury by fall of bricks through negligence of independent contractor repairing chimney; Peerless Mfg. Co. v. Bagley, 53 L. R. A. 285, which holds landlord liable for independent contractor's negligence in putting in automatic fire extinguisher; Pittsfield Cottonwear Mfg. Co. v. Pittsfield Shoe Co. 60 L. R. A. 116, which holds landlord liable to tenants of lower floor for injury from freezing of automatic fire extinguisher in portion retained by former, though building heated by independent contractor; Hoff v. Shockley, 64 L. R. A. 538, which holds property owner not liable for injuries to traveler by obstructions placed in street without danger signals by independent contractor for construction of building.

Cited in notes (54 L.R.A. 54, 62) on vice principalship as determined with reference to character of act which caused injury; (20 L.R.A.(N.S.) 793) on effect on master's liability of delegation of personal duty to independent contractor; (75 Am. St. Rep. 597) on who is a vice principal.

Evidence of previous occurrences to prove negligence.

Cited in Nelson v. Union R. Co. 26 R. I. 253, 58 Atl. 780, holding that the evidence of previous similar accidents from the same cause, was admissible, where the plaintiff was injured by being struck by a piece of an electric street light, which had been broken by the trolley of the defendant company slipping from the trolley wire while rounding a curve; Carr v. American Locomotive Co. 29 R. I. 285, 70 Atl. 196, holding that the condition of a valve before the

accident may be shown as bearing upon the question of negligence in not repairing the valve.

Cited in note (32 L.R.A.(N.S.) 1118) on admissibility of evidence of condition before and after accident of property whose defects alleged to have caused injury.

45 L. R. A. 269, STATE v. BECK, 21 R. I. 288, 43 Atl. 366.

Authority to practice medicine as authorizing practice of dentistry.

Disapproved in State v. Taylor, 106 Minn. 220, 19 L.R.A.(N.S.) 878, 118 N. W. 1012, 16 Ann. Cas. 487, holding that one licensed to practice medicine and surgery under a former act, cannot practice dentistry without obtaining a license to do so, as required by a later statute.

Regulation of right to practice medicine.

Cited in footnote to State v. Brown, 68 L.R.A. 889, which denies right to require license to own, run, or manage a dental office from one having no intention of engaging in actual practice of dentistry.

Statutory construction.

Cited in Gorman v. McHale, 24 R. I. 260, 52 Atl. 1083, holding that the husband is a proper party to an action to cancel a deed to a married woman notwithstanding the statute provides that in all actions by or against a married woman, she shall sue, or be sued alone.

45 L. R. A. 271, STATE *ex rel.* NOLAN v. MONTANA R. CO. 21 Mont. 221, 53 Pac. 623.

Consolidation of corporations.

Cited in State v. Central R. Co. 109 Ga. 729, 48 L. R. A. 356, footnote p. 351, 35 S. E. 37, sustaining consolidation of railroads incidentally lessening competition; Ramsey v. Hicks, 44 Ind. App. 511, 87 N. E. 1091, holding that consolidation of companies imports extinguishment of consolidating companies and creation of new ones.

Cited in footnote to Trust Co. v. State, 48 L. R. A. 520, which sustains consolidation of street railway companies resulting in giving increased facilities at less cost to public.

Cited in notes (52 L.R.A. 391) on right of corporations to consolidate; (89 Am. St. Rep. 609, 611, 612) on effect of consolidation of corporations.

Competing railroads.

Cited in Com. v. Louisville & N. R. Co. 144 Ky. 330, 138 S. W. 291, Ann. Cas. 1913A, 633, holding that road is competing line if it furnishes competition by reason of its connection with another line although it does not own connecting line.

45 L. R. A. 285, MERCHANTS' NAT. BANK v. GREAT FALLS OPERA HOUSE CO. 23 Mont. 33, 75 Am. St. Rep. 499, 57 Pac. 445.

Contribution from cosureties.

Cited in Northwestern Nat. Bank v. Great Falls Opera House Co. 23 Mont. 15, 57 Pac. 440, holding surety who has paid judgment may take assignment and enforce contribution from cosureties; Deleshaw v. Edelen, 31 Tex. Civ. App. 417, 72 S. W. 413, holding that payment of judgment against three joint makers of note by one of them who takes assignment thereof to himself, does not extinguish judgment so as to bar contribution.

Cited in note (68 L.R.A. 520, 556) on extinction of judgments against principals by sureties' payment.

Effect of code remedies of surety.

Cited in note (134 Am. St. Rep. 565) on effect of code remedies of surety on common-law remedies.

Right to testify as to intent.

Cited in note (23 L.R.A.(N.S.) 378) on right of one to testify as to his intent.

45 L. R. A. 289, HUTCHESON v. STORRIE, 92 Tex. 685, 71 Am. St. Rep. 884, 51 S. W. 848.

Validity of special tax in excess of benefits from local improvements.

Cited in note (82 Am. St. Rep. 457) on right to attack public improvement assessment by showing lack of corresponding benefit.

Distinguished in Wead v. Omaha, 73 Neb. 328, 102 N. W. 675, holding that where the assessment was levied properly but the board of equalization errs so as to make one piece of property bear more than its share of the tax, it will not defeat the whole tax; Beaumont v. Russell, 51 Tex. Civ. App. 356, 112 S. W. 950, holding that findings of council that benefits exceeded assessment for improvements, are prima facie evidence of facts so found, and in absence of other evidence, constitutionality of provision of charter under which it was made will not be considered.

Basis of assessment for local improvement.

Cited in State v. Robert P. Lewis Co. 82 Minn. 395, 53 L. R. A. 424, footnote p. 421, 85 N. W. 207, sustaining annual frontage tax on lots abutting on street in which water pipes laid; King v. Portland, 38 Or. 428, 55 L. R. A. 821, 63 Pac. 2, sustaining assessment requiring each owner to pay cost of improvement upon half of street in front of lot, where benefit exceeds cost; Adams v. Shelbyville, 154 Ind. 511, 49 L. R. A. 802, 77 Am. St. Rep. 484, 57 N. E. 114, sustaining statute providing for local assessments by frontage with provision for hearing grievances before final assessment; Heman v. Allen, 156 Mo. 549, 57 S. W. 559, Affirming recovery upon special tax bill for proportionate part of cost of constructing sewer; Harrisburg v. McPherran, 14 Pa. Super. Ct. 495, sustaining cost of street improvements assessed on basis of front-foot rule; Zehnder v. Barber Asphalt Paving Co. 106 Fed. 107; Charles v. Marion, 100 Fed. 543; Parker v. Detroit, 103 Fed. 359, — holding assessment against abutting owner without reference to benefits, void; Galveston v. Guaranty Trust Co. 46 C. C. A. 321, 107 Fed. 327, holding special assessment against street railroad company for improving portion of street within tracks, not municipal tax; French v. Barber Asphalt Paving Co. 181 U. S. 355, 45 L. ed. 894, 21 Sup. Ct. Rep. 625, affirming recovery of paving tax assessed according to frontage.

Cited in footnotes to Schroder v. Overman, 47 L. R. A. 156, which denies right to enjoin street assessment for failure of ordinance to affirmatively show that benefits were considered; King v. Portland, 55 L. R. A. 812, which upholds street improvement assessment, plan of which is not obviously shown to impose burdens in substantial excess of benefit; Webster v. Fargo, 56 L. R. A. 156, and Barber Asphalt Paving Co. v. French, 54 L. R. A. 492, which sustain statute charging entire cost of paving on abutters according to frontage; Smith v. Worcester, 59 L. R. A. 728, which holds conclusive, decision of legislature that landowners within assessment district are benefited by sewer; Sears v. Street Comrs. 62 L. R. A. 145, which authorizes consideration of benefit to abutting property from newly located passenger station in assessing cost of improving streets leading thereto; Cincinnati, L. & N. R. Co. v. Cincinnati, 49 L. R. A. 566, which denies right to assess entire cost of land taken for highway on remaining land of same

owner; Iowa Pipe & Tile Co. v. Callanan, 67 L.R.A. 408, which holds void, assessment for sewer on abutting property only eight feet deep at same front foot rate as full sized lots.

Cited in note (28 L.R.A.(N.S.) 1144, 1149) on assessments for improvements by front-foot rule.

Distinguished in Lentz v. Dallas, 96 Tex. 265, 72 S. W. 59, holding rule prohibiting assessment for street improvement in excess of benefit not applicable to construction of sidewalks at expense of abutting owner.

Relief against defective assessment.

Cited in footnotes to Norfolk v. Young, 47 L. R. A. 574, which holds insufficient, notice of assessment failing to show when, where, or before whom assessment may be contested; Kersten v. Milwaukee, 48 L. R. A. 851, which holds that injunction against wrongful paving assessment does not prevent new assessment; Rogers v. St. Paul, 47 L. R. A. 537, which denies right to recover back money paid on assessment for uncompleted street improvement.

Construction of constitution.

Cited in Ex parte Anderson, 46 Tex. Crim. Rep. 378, 81 S. W. 973, holding that the words of the state constitution are mandatory, where the words are express, commanding or prohibiting the doing of some act.

45 L. R. A. 295, RASMUSSEN v. CARBON COUNTY, 8 Wyo. 277, 56 Pac. 1098.

De jure officer's right to salary.

Approved in Samuels v. Harrington, 43 Wash. 605, 117 Am. St. Rep. 1075, 86 Pac. 1071, holding that a de jure officer was not entitled to his salary for the time that his office was held by a de facto officer, where such salary had been paid to the latter officer before the former had established his right to the office.

Cited in Chicago v. Luthardt, 191 Ill. 523, 61 N. E. 410, Affirming Chicago v. Luthardt, 91 Ill. App. 331, and holding municipal clerk holding position under civil service act entitled to salary for period he was unlawfully prevented from performing duties; Coughlin v. McElroy, 74 Conn. 402, 92 Am. St. Rep. 224, 50 Atl. 1025, holding city paying fees of office to *de facto* officer performing duties of office not liable therefor to *de jure* officer obtaining judgment of ouster; Stearns v. Sims, 24 Okla. 632, 24 L.R.A.(N.S.) 479, 104 Pac. 44, holding that the *de jure* officer who has been wrongfully prevented from performing the duties of his office, and afterward is installed in the office, cannot recover his salary for the time during which he was suspended, where it had been paid to a *de facto* officer; Bullis v. Chicago, 235 Ill. 480, 85 N. E. 614, holding that where the plaintiff had been wrongfully prevented from performing the duties of his office, he may recover the salary for the time during which he was so prevented, where it has not been paid to any one performing such duties; Tanner v. Edwards, 31 Utah, 86, 120 Am. St. Rep. 919, 86 Pac. 765, 10 Ann. Cas. 1091, holding that a de jure officer was entitled to the salary for that part of his term which he did not perform the duties of his office, and though compensation had been paid to a de facto officer in charge of the office during that time.

Cited in note (16 L.R.A.(N.S.) 796) on payment to de facto as defense to action for salary by de jure officer.

45 L. R. A. 303, RYAN v. LOUISVILLE & N. TERMINAL CO. 102 Tenn. 111, 50 S. W. 744.

What is a public use.

Cited in Great Falls Power Co. v. Webb, 123 Tenn. 591, 133 S. W. 1105,

holding that supplying electricity for light, heat, and power to public, is public use; Deerfield River Co. v. Wilmington Power & Paper Co. 83 Vt. 553, 77 Atl. 862, holding that end to be accomplished is ultimate test of whether contemplated exercise of power of eminent domain is for public use; Memphis State Line R. Co. v. Forest Hill Cemetery Co. 116 Tenn. 407, 94 S. W. 69, holding that lands used for a cemetery were devoted to a public use, so that a railroad company could not condemn a right of way across it; Alfred Phosphate Co. v. Duck River Phosphate Co. 120 Tenn. 270, 22 L.R.A.(N.S.) 704, 113 S. W. 410, holding that the condemnation of a right of way for a private railroad by a phosphate company was not for a public use, though the legislature designated it as such and authorized it.

Cited in notes (10 L.R.A.(N.S.) 910) on exercise of eminent domain by depot and belt or terminal railway companies; (21 L.R.A.(N.S.) 542) on eminent domain; combination of public and private uses; (88 Am. St. Rep. 935, 940) on existence of public use as question for courts; (102 Am. St. Rep. 814, 817, 818) on uses for which power of eminent domain cannot be exercised.

Eminent domain relating to terminal stations.

Cited in State *ex rel.* Lamar v. Jacksonville Terminal Co. 41 Fla. 412, 27 So. 225, sustaining act requiring terminal company to admit carrier to passenger terminal; Collier v. Union R. Co. 113 Tenn. 122, 83 S. W. 155, holding that a terminal railroad built to switch cars from one railroad to another, is a public necessity which may exercise right of eminent domain.

Cited in footnote to Kansas & T. Coal R. Co. v. Northwestern Coal & Min. Co. 51 L. R. A. 936, which holds railroad company entitled to exercise of eminent domain, though railroad short and built chiefly to transport coal of particular company.

Sufficiency of title to an act.

Cited in Stonega Coke & Coal Co. v. Southern Steel Co. 123 Tenn. 444, 31 L.R.A.(N.S.) 285, 131 S. W. 988, holding that provision that foreign corporation may become incorporated in state by complying with provisions of statute is covered by title "An act to declare the terms on certain foreign corporations may carry on their business;" Malone v. Williams, 118 Tenn. 438, 121 Am. St. Rep. 1002, 103 S. W. 798, holding an act entitled "An act to modify and change in certain respects the form of government of the city of Memphis, and to amend its charters, etc" was unconstitutional as not embracing all its subjects in its title, where the act related to state and county taxes, licenses and ferries; Memphis Street R. Co. v. Byrne, 119 Tenn. 306, 104 S. W. 460, holding title sufficient which was "An act to establish a Court of Chancery Appeals, to define its jurisdiction and powers, etc.," where the act related to the increase of the number of judges, change of name of court, and limited the jurisdiction of the Supreme Court.

Statutes embracing two subjects.

Cited in Peterson v. State, 104 Tenn. 131, 56 S. W. 834, holding provision for indictment of owner embraced within title of act to prevent stock from running at large; Condon v. Maloney, 108 Tenn. 99, 65 S. W. 871, sustaining statute dealing with public roads and county workhouse in single statute; Red River Furnace Co. v. Tennessee C. R. Co. 113 Tenn. 727, 87 S. W. 1016, holding that a statute validating railroad aid stock subscriptions, and authorizing the issuance of bonds to pay the same, and providing for the payment of the bonds, was not invalid as embracing more than one subject; Samuelson v. State, 116 Tenn. 479, 115 Am. St. Rep. 805, 95 S. W. 1012, sustaining an action to prohibit

the public traffic in non-transferrable signature tickets issued by common carriers, and to require carriers to redeem unused or partly used tickets, and to punish violations of the act; Knoxville v. Gass, 119 Tenn. 448, 14 L.R.A.(N.S.) 524, 104 S. W. 1084, holding that an act authorizing the issuance of certain coupon bonds, with which to fund the floating debt of the cities issuing them, to increase and improve the fire departments, and to pay for the widening of streets does not embrace more than one subject.

Power of the legislature over the exercise of the right of eminent domain.

Cited in Quarles v. Sparta, 2 Tenn. Ch. App. 727, holding that the legislature has the right to determine the necessity for and the expediency of the exercise of the right of eminent domain.

Judicial power over eminent domain.

Cited in note (22 L.R.A.(N.S.) 31, 37, 38, 40, 46, 52, 53, 67, 80, 123, 143) on judicial power over eminent domain.

45 L. R. A. 310, CARTER v. COM. 96 Va. 791, 32 S. E. 780.

Power of courts to punish for contempt.

Followed in Burdett v. Com. 103 Va. 842, 68 L.R.A. 257, 106 Am. St. Rep. 916, 48 S. E. 878, on the power of the courts to punish for contempt.

Cited in Com. v. Myers, 19 Pa. Dist. R. 1138, 59 Pittsb. L. J. 21, holding that court has inherent power to punish as contempt publication of article referring to pending cause calculated to obstruct justice.

Cited in note (117 Am. St. Rep. 952, 961, 962) on courts, tribunals and persons authorized to punish contempts.

Legislative abridgment of judicial power.

Followed in Trimble v. Com. 96 Va. 820, 32 S. E. 786, sustaining portion of statute allowing appeal in cases of contempt.

Cited in Bradley v. State, 111 Ga. 172, 50 L. R. A. 692, footnote p. 691, 78 Am. St. Rep. 157, 36 S. W. 630, denying legislature's power to restrict acts of contempt punishable by courts; Nichols v. Superior Ct. Judge, 130 Mich. 196, 89 N. W. 691, holding statute limiting and specifying acts punishable as contempts does not limit power of superior court in relation to such offenses; Smith v. Speed, 11 Okla. 108, 55 L. R. A. 406, footnote p. 402, 66 Pac. 511, denying authority of legislature to limit power of district court to punish for contempts, or to provide for jury trial in such proceedings before separate tribunal; Yoder v. Com. 107 Va. 828, 57 S. E. 581, sustaining statute providing in what cases courts may issue attachments for contempts and punish them summarily; McCurdy v. Smith, 107 Va. 759, 60 S. E. 78, holding that the powers of the legislature over the courts is limited to that which is given by the constitution; Chicago, B. & Q. R. Co. v. Gildersleeve, 219 Mo. 196, 118 S. W. 86, 16 Ann. Cas. 749 (dissenting opinion), on the limitation of the right of the courts to punish for contempt of court.

Cited in footnote to *Re* Day, 50 L. R. A. 519, which holds void, statute overriding rules of court as to admission to bar of persons who began study of law prior to specified date.

45 L. R. A. 316, *Re* COPE, 191 Pa. 1, 71 Am. St. Rep. 749, 4 Atl. 79.

Constitutional uniformity of taxes.

Cited in Com. v. Provident Life & T. Co. 19 Pa. Dist. R. 347, holding that taxation of corporations upon valuation of capital stock made upon basis

radically different from that applied to other corporations of same class of taxable subjects is unconstitutional; Com. v. Provident Life & Trust Co. 36 Pa. Co. Ct. 681, holding that in fixing the value of the property of one of a certain taxable class, a method cannot be employed that is different from that applied to others of the same class; Sinnemahoning Iron & Coal Co. v. Shaffer, 14 Pa. Dist. R. 371, holding that the exoneration from taxation of anything not exonerated by the constitution is void under the clause requiring uniformity; Christley v. Butler County, 37 Pa. Super. Ct. 37, holding that a statute exempting from taxation certain timber lands was unconstitutional under the clause requiring uinformity.

Validity of inheritance tax.

Followed in Hagy's Estate, 191 Pa. 27, 43 Atl. 1101, and Graff's Estate, 191 Pa. 28, 43 Atl. 1101, without discussion; *Re* Eshleman, 191 Pa. 72, 43 Atl. 201; Portuondo's Estate, 191 Pa. 56, 43 Atl. 1102, holding direct inheritance tax law unconstitutional.

Cited in Black v. State, 113 Wis. 223, 90 Am. St. Rep. 853, 89 N. W. 522, holding inheritance tax on estates over $10,000, exempting those for less, unconstitutional; Union Trust Co. v. Wayne Probate Judge, 125 Mich. 493, 84 N. W. 1101, sustaining act providing for tax on inheritances; Knowlton v. Moore, 178 U. S. 58, 44 L. ed. 976, 20 Sup. Ct. Rep. 747, 9 Pa. Dist. R. 309, sustaining war revenue tax imposing succession tax on legacies as distributive shares; Re Magnes, 32 Colo. 537, 77 Pac. 853, holding that statute providing for tax upon inheritances is constitutional; Nunnemacher v. State, 129 Wis. 233, 9 L.R.A. (N.S.) 140, 108 N. W. 627, 9 Ann. Cas. 711 (dissenting opinion), on the constitutionality of the inheritance tax.

Cited in footnotes to Drew v. Tifft, 47 L. R. A. 525, which requires uniformity and equal application in exemption from inheritance tax; Ferry v. Campbell, 50 L. R. A. 92, which holds succession tax void for want of notice of proceedings to fix amount of tax; Billings v. People, 59 L. R. A. 807, which sustains transfer tax on lineal descendants to whom life estate given with remainder to lineal descendants, but exempting lineal descendants taking fee.

Cited in notes (127 Am. St. Rep. 1044; 33 L.R.A.(N.S.) 596, 600) on constitutionality of succession taxes; (33 L.R.A.(N.S.) 610) on nature of inheritance tax.

Construction of inheritance tax statute.

Cited in Stellwagen v. Wayne Probate Judge, 130 Mich. 170, 89 N. W. 728 (dissenting opinion), majority holding amount of exemption provided in inheritance tax statute applicable only to whole estate, and not to several interests.

Disapproved in Diffenbaugh v. Rockey, 19 Lanc. L. Rev. 69, holding portion of purchase money of decedent's real estate represented by dower may be collected from heirs on death of widow.

45 L. R. A. 321, BENTON COUNTY SAV. BANK v. BODDICKER, 105 Iowa, 548, 67 Am. St. Rep. 310, 75 N. W. 632.

Non-compliance with conditions as defense to action on contract.

Cited in Sutton v. Weber, 127 Iowa, 366, 101 N. W. 775, holding that in an action for the price of goods sold under a written contract a good defense is shown where the buyers were partners and the contract was made with one partner, who was without authority to make purchases for the firm, and the contract was conditioned upon its acceptance by the absent partner on his return.

Burden of proof as to purchase in due course of business.

Cited in Keegan v. Rock, 128 Iowa, 43, 102 N. W. 805, holding that where it is shown that the title of any one who has negotiated a negotiable instrument is defective, the burden is upon the one holding the instrument to prove that he is a bona fide purchaser for value without notice in due course of business; McNight v. Parsons, 136 Iowa, 396, 22 L.R.A.(N.S.) 722, 125 Am. St. Rep. 265, 113 N. W. 858, 15 Ann. Cas. 265, holding that where a note was given for the purchase price of an animal, upon condition that it be returned if the animal was not as warranted, and the payee negotiated the note, the burden was upon the purchaser to prove that he was a purchaser in good faith in due course; O'Conner v. Kleiman, 143 Iowa, 440, 121 N. W. 1088, holding that if it were proved that the note was given for an illegal consideration, the burden shifted to the plaintiff to prove that he was a bona fide purchaser in due course.

Effect of ignorance of conditions.

Cited in Sawyer v. Campbell, 107 Iowa, 399, 78 N. W. 56, holding one taking note in ignorance of conditions, not affected; State Sav. Bank v. Montgomery, 126 Mich. 336, 85 N. W. 879, holding knowledge of cashier's fraud in obtaining notes, discounted at bank, not imputable to bank; Kidd v. Beckley, 64 W. Va. 86, 60 S. E. 1089, holding that payee of note irregularly indorsed takes same free from any special agreement between such indorser and maker if he has no knowledge of agreement.

Liability of sureties.

Cited in Novak v. Pitlick, 120 Iowa, 292, 98 Am. St. Rep. 360, 94 N. W. 916, holding bond without signature of principal cannot be enforced against surety in absence of proof of his consent to its delivery without such signature; Security Sav. Bank v. Smith, 144 Iowa, 209, 122 N. W. 825, holding that if sureties on note held by bank are led by agreement of cashier of bank to undertake collection for their benefit, they are entitled to defend against suit on note to extent of injury suffered by reliance upon his conduct; Putney v. Schmidt, 16 N. M. 409, 120 Pac. 720; Barnes v. Century Sav. Bank, 149 Iowa, 378, 128 N. W. 541,—holding that person who is about to become surety will be relieved from liability as such, if before signing he seeks knowledge from creditor who conceals knowledge which would affect surety's liability.

Cited in footnote to Fidelity Mut. L. Asso. v. Dewey, 54 L. R. A. 945, which holds sureties on bond of employee released by continuing him in employ without weekly reports required by contract.

Cited in notes (49 L.R.A. 315) on guaranty, by one signing obligation as surety, of genuineness of other signatures; (16 L.R.A.(N.S.) 345) as to whether surety is discharged by obligee's acceptance of new but defective obligation; (16 L.R.A.(N.S.) 775) as to when guaranty of commercial paper covers renewals; (90 Am. St. Rep. 194) as to when official bond binds sureties and what irregularities fail to relieve them from liability.

Prohibited acts as the basis of legal rights.

Cited in Toovey v. Ayrhart, 136 Iowa, 697, 114 N. W. 181, holding that a certificate of deposit given as a renewal after the bank was insolvent, which the depositor knew, was not invalid so as to prevent the depositor from recovering upon the certificate as against the receiver.

45 L. R. A. 348, STATE v. LANCASHIRE F. INS. CO. 66 Ark. 466, 51 S. W. 633.

Similarity between conspiracy in restraint of trade and a criminal conspiracy at common law.

Distinguished in Hammond Packing Co. v. State, 81 Ark. 537, 126 Am. St. Rep. 1047, 100 S. W. 407, Affirmed in 212 U. S. 331, 53 L. ed. 536, 29 Sup. Ct. Rep. 370, 15 Ann. Cas. 645, holding that a conspiracy in restraint of trade and a criminal conspiracy at common law are not identical.

Control of foreign corporations doing business in state.

Cited in Woodson v. State, 69 Ark. 528, 65 S. W. 465, holding foreign corporation doing business in state subject to law requiring coal to be weighed before screened; Federal Union Surety Co. v. Flemister, 95 Ark. 394, 130 S. W. 574, holding that legislature may dictate terms upon which foreign insurance companies may do business in state; Hammond Packing Co. v. Arkansas, 212 U. S. 331, 53 L. ed. 536, 29 Sup. Ct. Rep. 370, 15 Ann. Cas. 645 (affirming 81 Ark. 537, 126 Am. St. Rep. 1047, 100 S. W. 407) holding that the state statutes prohibited corporations from doing business within the state, where they were members of a combination to control prices, though the combination be created without the state and may not affect the prices within the state; Hartford F. Ins. Co. v. State, 76 Ark. 305, 89 S. W. 42, as construing statute upon this subject; State v. Columbian Nat. L. Ins. Co. 141 Wis. 569, 124 N. W. 502, on the control of foreign corporations which have withdrawn from the state.

Cited in note (48 L. R. A. 261) on legal restrictions on department stores.

Fixing rates.

Cited in State v. Ætna F. Ins. Co. 66 Ark. 485, 51 S. W. 638, holding complaint to recover penalty for violation of anti-trust law alleging membership in pool to fix premiums for insured, not demurrable; Rex v. Elliott, 9 Ont. L. Rep. 662, sustaining conviction of the president of an association of coal dealers under statute providing punishment for combining in restraint of trade, where the purpose of the association to prevent others not members from obtaining coal except from the members.

Cited in footnotes to Ætna Ins. Co. v. Com. 45 L. R. A. 355, which holds combination to maintain insurance rates not indictable; State *ex rel.* Crow v. Firemen's Fund Ins. Co. 45 L. R. A. 363, as to what constitutes unlawful combination of insurers to fix rates.

Cited in notes (64 L.R.A. 720) on illegal trusts under modern anti-trust laws; (55 L. ed. U. S. 232) on legality of combinations among underwriters.

Construction of statute.

Cited in State v. Arkadelphia Lumber Co. 70 Ark. 331, 67 S. W. 1011, denying ferryman's liability for failure to post ferriage rates when county clerk neglected to provide copy; Ex parte Helton, 117 Mo. App. 621, 93 S. W. 913, holding that in construing a statute ambiguous in meaning, it is proper for the courts to resort to the legislative journals, showing the original bill, and its amendments, for the purpose of ascertaining the legislative intent; Waterman v. Hawkins, 75 Ark. 126, 86 S. W. 844, holding that where a statute is capable of two constructions, one of which will make the statute void and the other, valid, the latter will be adopted; State v. International Harvester Co. 79 Ark. 521, 96 S. W. 119, holding that statutes imposing penalties and liabilities unknown at common law, are to be construed strictly in favor of those upon whom the burdens are imposed, and nothing is to be taken as intended unless clearly expressed.

Extraterritorial effect of statutes.

Cited in Leonard v. State, 95 Ark. 384, 129 S. W. 1089, holding that attempt to give extraterritorial effect to statute will not be ascribed to legislature unless language employed affords no escape from such construction; Wagner v. Minnie Harvester Co. 25 Okla. 567, 196 Pac. 969, to the point that contract and substantial defenses thereto provided by statute of state where made, would be governed by law of state where made; Belford v. State, 96 Ark. 278, 131 S. W. 953, holding that it will be presumed that court will exercise no jurisdiction beyond its territorial jurisdiction; Lindley v. State, 91 Ark. 291, 120 S. W. 987, holding that under the state statute prohibiting the sale of liquors within three miles of any school house where a school house was less than three miles from the state boundary, only that part of the three miles which was within the state, was covered by the statute.

45 L. R. A. 355, ÆTNA INS. CO. v. COM. 106 Ky. 864, 51 S. W. 624.

What constitutes unlawful combination of insurers.

Cited in Harris v. Com. — Va. —, 38 L.R.A.(N.S.) 463, 73 S. E. 561, holding that concerted action by fire insurance companies doing business in certain city in raising rates to meet license tax imposed upon business is not criminal conspiracy; McCarter v. Firemen's Ins. Co. 74 N. J. Eq. 401, 29 L.R.A.(N.S.) 1209, 135 Am. St. Rep. 708, 73 Atl. 414, 18 Ann. Cas. 1048 (dissenting opinion), on validity of agreement between insurance companies as to rates.

Cited in footnotes to State v. Lancashire F. Ins. Co. 45 L. R. A. 348, which holds combination between foreign insurance companies to fix rates of insurance in foreign countries not subject to penalty; State *ex rel.* Crow v. Firemen's Fund Ins. Co. 45 L. R. A. 363, as to what constitutes unlawful combination of insurers to fix rates.

Cited in notes (64 L.R.A. 274, 726, 736) on illegal trusts under modern anti-trust laws; (74 Am. St. Rep. 236) on same point; (55 L. ed. U. S. 231) on legality of combinations among underwriters.

Statutory construction.

Cited in Schultz v. State, 135 Wis. 650, 114 N. W. 505, holding that a threat to accuse one who is a county commissioner of accepting a bribe, is not a threat to do an injury to the person, property, business, or calling of another as prohibited by the statute.

Who may be served with process.

Cited in footnote to Mutual Reserve Fund Life Asso. v. Boyer, 50 L. R. A. 538, which denies right to serve process on state officer designated by foreign insurance company which has ceased to do business in state.

Cited in note (47 L. ed. U. S. 987) on service on state officer as service on foreign corporations.

Adoption of common law.

Cited in Nider v. Com. 140 Ky. 687, 131 S. W. 1024, holding that common law became part of law of this state by virtue of constitution.

45 L. R. A. 363, STATE *ex rel.* CROW v. FIREMEN'S FUND INS. CO. 152 Mo. 1, 52 S. W. 595.

Illegal combinations.

Cited in Ferd Heim Brewing Co. v. Belinder, 97 Mo. App. 69, 71 S. W. 691, holding combination of brewers not to sell to dealer indebted to member of combination, unlawful; Walsh v. Association of Master Plumbers, 97 Mo. App. 292, 71 S. W. 455, holding plumber entitled to injunction dissolving combination of

manufacturing plumbers and dealers under agreement not to sell supplies to persons not members; Froelich v. Musicians Mut. Ben. Asso. 93 Mo. App. 391, refusing to enjoin expulsion of member of voluntary association for violation of rule by riding on street car when employees on strike; State *ex rel.* Crow v. Armour Packing Co. 173 Mo. 382, 61 L. R. A. 472, 96 Am. St. Rep. 515, 73 S. W. 645, holding statements made by agents of meat packers admissible against them for purpose of establishing existence of unlawful combination to fix prices; State ex rel. Hadley v. Standard Oil Co. 218 Mo. 362, 116 S. W. 902, holding that there is nothing in the state or Federal constitution which prevents the enactment of a statute prohibiting the making of contracts in restraint of trade, whether reasonable or unreasonable; Knight & J. Co. v. Miller, 172 Ind. 45, 87 N. E. 823, 18 Ann. Cas. 1146, holding that states in the exercise of the police power may regulate or prohibit combinations in restraint of trade; State ex rel. Hadley v. Standard Oil Co. 194 Mo. 156, 91 S. W. 1062, holding that a trust or combination may be proved by the overt acts of the agents of respondent corporation sufficiently distinctive and significant and of a long continuance as would tread back and tend to establish the obnoxious pact or trust agreement; State ex rel. Hadley v. Standard Oil Co. 218 Mo. 403, 116 S. W. 902, on the same point; State ex rel. Hadley v. Standard Oil Co. 218 Mo. 461, 116 S. W. 902, on the control of foreign corporations combining in restraint of trade; McCarter v. Firemen's Ins. Co. 74 N. J. Eq. 398, 29 L.R.A.(N.S.) 1208, 135 Am. St. Rep. 708, 73 Atl. 414, 18 Ann. Cas. 1048 (dissenting opinion), on illegability of combination by fire insurance companies to fix prices and eliminate competition.

Cited in footnotes to State v. Lancashire F. Ins. Co. 45 L. R. A. 348, which holds combination between foreign insurance companies to fix rates of insurance in foreign countries not subject to penalty; Ætna Ins. Co. v. Com. 45 L. R. A. 355, which holds combination to maintain insurance rates not indictable.

Cited in notes (64 L. R. A. 724, 726) on illegal trusts under modern anti-trust laws; (48 L.R.A. 261) on legal restrictions on department stores; (74 Am. St. Rep. 260) on combinations constituting unlawful trusts; 55 L. ed. U. S. 232, 233) on legality of combinations among underwriters.

Penalty for unlawful combination.

Cited in State *ex rel.* Crow v. Armour Packing Co. 173 Mo. 393, 61 L. R. A. 474, 96 Am. St. Rep. 515, 73 S. W. 645, imposing fine and payment of costs only under statute punishing illegal combination of foreign corporation with forfeiture of right to do business in state.

Right to equal protection of laws.

Cited in State *ex rel.* Crow v. Continental Tobacco Co. 177 Mo. 31, 75 S. W. 737, holding statute prohibiting combinations to fix prices, etc., not unconstitutional because of exception as to rates of fire insurance companies in cities of 100,000 or more inhabitants; Com. v. Strauss, 191 Mass. 554, 11 L.R.A.(N.S.) 972, 78 N. E. 136, 6 Ann. Cas. 842, sustaining a statute which prohibited any manufacturer from making it a condition of the sale of goods that the purchaser should not deal in those of any other person, corporation or association, except when applied to exclusive agents of the manufacturer; State ex rel. Hadley v. Standard Oil Co. 218 Mo. 379, 116 S. W. 902, holding that legal regulations and restraints imposed upon the use of property and the authority to contract do not deprive the property owner of his property or contract rights without due process of law.

Cited in footnote to Com. v. Mobile & O. R. Co. 54 L. R. A. 916, which holds

contract obligations impaired by requiring domestication of foreign railroad company in state.

Title of acts.

Cited in *Ex parte* Loving, 178 Mo. 205, 77 S. W. 508, holding "neglected and delinquent children" not two classes of subjects within constitutional provision that no bill shall contain more than one subject, which shall be expressed in title.

Pleading; sufficiency of defense.

Cited in State *ex rel.* Crow v. Armour Packing Co. 173 Mo. 387, 61 L. R. A. 472, 96 Am. St. Rep. 515, 73 S. W. 645, holding reduction of prices, increase of state's business, and existence of combination among retailers, no defense to prosecution of meat packers for unlawful combination to fix prices.

Cited in note (48 L. R. A. 194, 206) on right to plead inconsistent defenses.

Liability of corporation for acts of agents.

Cited in State ex rel. Hadley v. Delmar Jockey Club, 200 Mo. 56, 92 S. W. 185, holding that a corporation is responsible to the state for the acts of its agents and servants in carrying on the business of the corporation; O'Donnel v. St. Louis Transit Co. 107 Mo. App. 40, 80 S. W. 315, holding that a common carrier was liable for the assault by its conductor upon a passenger; Fiedler v. Bambrick Bros. Constr. Co. 162 Mo. App. 542, 142 S. W. 1111, to the point that corporations can be proceeded against for penalties and fines, and their property taken as compensation for public wrong.

Joint parties to quo warranto proceedings.

Cited in State ex rel. Hadley v. Standard Oil Co. 218 Mo. 323, 116 S. W. 902, holding that one corporation can be joined with another when charged in quo warranto proceedings, with abuse or usurpation of corporate rights.

45 L. R. A. 380, KANSAS CITY, M. & B. R. CO. v. SOUTHERN R. NEWS CO. 151 Mo. 373, 74 Am. St. Rep. 545, 52 S. W. 205.

Contract of indemnity.

Cited in Wabash R. Co. v. Ordelheide, 172 Mo. 444, 72 S. W. 684, Affirming 88 Mo. App. 592, enforcing lessee's covenant to reimburse lessor for all loss by fire; Illinois C. R. Co. v. J. L. Fulton Co. 108 Ill. App. 238, upholding validity of contract between railroad company and contractor doing work on railroad, making latter responsible for damages for injuries to employees incurred during work; Lexington v. Ætna Indemnity Co. 155 N. C. 228, 71 S. E. 214, holding that it is not against public policy to indemnify city against loss sustained by negligent act of one who contracts to improve its streets; Breeden v. Frankford M. Acci. & Plate Glass Ins. Co. 220 Mo. 345, 119 S. W. 576, holding that a contract to insure an employer and indemnify him against injuries to an employee is not invalid as against public policy; Rountree v. Adams Exp. Co. 91 C. C. A. 186, 165 Fed. 156, on the validity of contracts of indemnity.

Conclusiveness of judgment.

Cited in Carmody v. Hanick, 85 Mo. App. 666, holding judgment as to payment in suit in which parties interested as partners, admissible in accounting action between partners; Springfield v. Plummer, 89 Mo. App. 532, holding judgment not conclusive between codefendants unless each had equal opportunity to defend; American Surety Co. v. Ballman, 104 Fed. 636, holding contractor's *mala fides* in paying judgment without sureties consent when case on appeal discharges indemnitor.

Cited in note (40 L.R.A.(N.S.) 729) on effect upon surety of judgment against principal.

Appeal; effect of findings of trial court.

Cited in Stotts City Bank v. Miller Lumber Co. 102 Mo. App. 82, 74 S. W. 472, and De Soto v. American Guaranty Fund Mut. F. Ins. Co. 102 Mo. App. 4, 74 S. W. 1, holding findings of trial court in action at law, when supported by evidence, conclusive on appeal.

45 L. R. A. 386, WONDERLY v. LAFAYETTE COUNTY, 150 Mo. 635, 73 Am. St. Rep. 474, 51 S. W. 745.

Impeachment of judgment.

Cited in Caffery v. Choctaw Coal & Min. Co. 95 Mo. App. 181, 68 S. W. 1049, holding judgment of Federal court, involved in action begun in justice's court, not subject to impeachment; Smoot v. Judd, 161 Mo. 687, 84 Am. St. Rep. 738, 61 S. W. 854, Reversing judgment by default obtained upon false return; Tapana v. Shaffray, 97 Mo. App. 345, 71 S. W. 119, holding heir entitled to vacation of judgment in suit to which administrator was induced to make no defense through false representations of plaintiff therein; Bracken v. Milner, 99 Mo. App. 194, 73 S. W. 225, holding evidence not admissible in collateral proceeding to show judgment in Federal court rendered in vacation, without knowledge or consent of defendant; Howard v. Scott, 225 Mo. 713, 125 S. W. 1158, as having approved without adopting a dictum of an earlier case that equity will not entertain a bill to set aside a judgment merely on the grounds that the cause of action upon which it is founded is tainted with fraud.

Cited in footnote to Travelers' Protective Asso. v. Gilbert, 55 L. R. A. 538, which denies right to resort to equity to vacate judgment for fraud when remedy at law adequate.

Distinguished in Hamilton v. McLean, 169 Mo. 71, 68 S. W. 930, denying right to annul partition decree on account of alleged invalidity of deed.

When judgment not bar to another suit.

Distinguished in Lake County v. Schradsky, 31 Colo. 182, 71 Pac. 1104, holding dismissal of suit on bonds in Federal court on ground that plaintiff is not real party in interest, not bar to suit by same plaintiff in state court.

Wrongdoer profiting by his own acts.

Distinguished in State ex rel. Ketcham v. Terre Haute & I. R. Co. 166 Ind. 583, 77 N. E. 1077, holding where the state was not entitled to collect the excess of the tolls over a certain amount as provided in the franchise, the railroad company was not profiting by its own wrongdoing in bribing the members of the state legislature to delay in demanding the payment of the excess, such delay not being the real grounds for refusing to enforce the collection.

Fraud sufficient to invalidate a judgment.

Cited in Mahoney v. State Ins. Co. 133 Iowa, 577, 9 L.R.A.(N.S.) 494. 110 N. W. 1041, holding that improper erasures upon instruments introduced in evidence when not objected to, do not constitute fraud sufficient to invalidate a judgment rendered in the action; Fitzpatrick v. Stevens, 114 Mo. App. 502, 89 S. W. 897, holding that where a holder of a note, which had been paid filed a verified claim against the estate of the maker, alleging that the note had not been paid, and the court allowed the claim, a suit in equity would afterward lie to set aside the judgment on the ground of fraud; Mangold v. Bacon, 237 Mo. 519, 141 S. W. 650; Lieber v. Lieber, 239 Mo. 39, 143 S. W. 458,—holding that to vitiate judgment for fraud, fraud must be shown by clear evidence and must have been exercised in procurement of judgment; Mangold v. Bacon, 229 Mo. 488, 130 S. W. 23 (dissenting opinion), on impeachment of judgment for fraud in procuring it.

Waiver of objection to admissibility of copies of foreign records.

Cited in note (5 L.R.A.(N.S.) 983) on waiver of objection to admissibility of copies of records of other states.

45 L. R. A. 392, ROSE v. BARCLAY, 191 Pa. 594, 43 Atl. 385.

Right to dividends on transfer of stock.

Cited in Day's Estate, 20 Montg. Co. L. Rep. 60, holding that where part of trust fund consists of shares of stock upon which scrip dividends are declared, such dividends are income as between life tenant and remainderman; Scott's Estate, 25 Montg. Co. L. Rep. 125, holding that life tenant is not entitled to pro rata distribution of assets converted in liquidation as if same were dividends; Missouri Baptist Sanitarium v. McCune, 112 Mo. App. 336, 87 S. W. 93, holding that a bequest of the proceeds of sale of stock does not carry with it the dividends declared after testator's death and before the sale of the stock; Dingertz v. Sterlingworth R. Supply Co. 15 Pa. Dist. R. 792, 10 North. Co. Rep. 217, holding that between the vendor and vendee of its stock, dividends of a corporation are the property of the owner of the shares at the time the dividends are declared, and a sale of the stock does not carry the dividends; Com. v. Schroeder, 18 Pa. Dist. R. 931, holding that a counter bond in replevin for a certificate of stock includes dividends accrued and accruing and they may be recovered in an action upon the bond.

Cited in footnote to Clark v. Campbell, 54 L. R. A. 508, which holds purchaser of stock by writing providing for delivery on payment by certain date, not entitled to dividends till payment.

Annotation in 45 L. R. A. 392, referred to particularly in Hauser v. Richardson, 90 Mo. App. 142, holding dividends go to owner of stock at time they are declared to be payable.

Silence as fraud.

Cited in Walsh v. Goulden, 130 Mich. 540, 90 N. W. 406, holding concealment from stockholders, by directors of corporation, of secret profit in sale of stock of corporation, not fraudulent.

Cited in footnotes to Chicora Fertilizer Co. v. Dunan, 50 L. R. A. 401, which holds failure to inform creditor of pending negotiations increasing value of collateral security sought to be released not fraudulent concealment; Opie v. Pacific Invest. Co. 56 L. R. A. 778, which denies duty of indorser to disclose to mortgagee knowledge as to value of mortgage which he attempts to buy for third person.

45 L. R. A. 399, DE WALT'S APPEAL, 190 Pa. 577, 42 Atl. 1025.

Validity of ordinance as to sale of liquors.

Cited in Gregg's License, 36 Pa. Super. Ct. 634, sustaining statute authorizing the granting of licenses for the sale of intoxicating liquors.

Cited in footnote to Bennett v. Pulaski, 47 L. R. A. 278, which sustains ordinance for closing saloons between 10 and 4 at night and on Sundays, but not requirement for removing curtains on front doors and windows.

45 L. R. A. 400, LOUD v. HAMILTON (Tenn. Ch.) 51 S. W. 140.

Contracts made under duress.

Cited in footnotes to Mack v. Prang, 45 L. R. A. 407, which holds threats of arresting man for embezzlement unless wife executes mortgage, duress; Galusha v. Sherman, 47 L. R. A. 417, which holds threats rendering one incapable of exercising free will in making contract, duress.

Distinguished in Gray v. Freeman, 37 Tex. Civ. App. 567, 84 S. W. 1105, holding that where the son of an old and ignorant negro secured a loan of money by representing that he was the owner of land, which in fact belonged to his father, and the latter was induced to give a mortgage upon the land to secure the loan, because of the threats of the creditor to prosecute the son, the mortgage was invalid because of duress.

Compounding criminal offenses.

Cited in footnotes to Jones v. Dannenberg Co. 52 L. R. A. 271, which holds void, in hands of bona fide purchaser, note given to stop criminal prosecution; United States Fidelity & G. Co. v. Charles, 57 L. R. A. 212, which holds void, note to reimburse surety on fidelity bond given on condition of not prosecuting principal; William Deering & Co. v. Cunningham, 54 L. R. A. 410, which holds void, contract to withdraw opposition to granting of pardon.

Cited in notes (16 L.R.A.(N.S.) 977) on validity of contract to pay existing indebtedness, or value of property or money feloniously obtained, upon consideration of stifling prosecution; (20 L.R.A.(N.S.) 485, 487, 489) on contracts procured by threats to prosecute relative.

Presumption as to law of another state.

Cited in footnote to Aslanian v. Dostumian, 47 L. R. A. 495, which denies presumption that law merchant as to protest of draft prevails in Asiatic Turkey.

Cited in note (67 L.R.A. 53) on presumption of similarity of foreign law.

Parol evidence as to consideration.

Cited in footnote to Johnson v. Elmen, 52 L. R. A. 162, which holds admissible, oral evidence of promise to assume payment of certain liens by grantee in deed with covenant against encumbrances.

45 L. R. A. 407, MACK v. PRANG, 104 Wis. 1, 76 Am. St. Rep. 848, 79 N. W. 770.

What constitutes duress.

Cited in Hodge v. Wallace, 129 Wis. 92, 116 Am. St. Rep. 938, 108 N. W. 212, holding that duress exists where one party, by the unlawful act of another party has been induced to make a contract or perform some other act under circumstances which deprive him of the exercise of free will; Fred Rueping Leather Co. v. Watke, 135 Wis. 618, 116 N. W. 174, holding that where a partner voluntarily executed notes for the value of hides purchased by his partner from a thief, there was no duress; Price v. Bank of Poynette, 144 Wis. 199, 128 N. W. 895, holding that threats of criminal prosecution, if made to third person with intent that they be communicated, and they are so communicated, is sufficient to constitute duress; Anderson v. Anderson, 122 Wis. 486, 100 N. W. 829, holding that ill treatment of husband by wife is not duress sufficient to sustain action to set aside deed of land to wife.

Cited in note (20 L.R.A.(N.S.) 487) on contracts procured by threats to prosecute relative.

Effect of duress on contract.

Followed in Keller v. Schmidt, 104 Wis. 602, 80 N. W. 935, holding duress no defense to suit on negotiable note by bona fide holder.

Cited in Rochester Mach. Tool Works v. Weiss, 108 Wis. 547, 84 N. W. 866, holding to constitute duress a defense, contracting party must have been so acted upon as to deprive him of quality of mind essential to making contract; Burton v. McMillan, 52 Fla. 480, 8 L.R.A.(N.S.) 995, 120 Am. St. Rep. 220, 42 So. 849, 11 Ann. Cas. 380, holding that a deed given by the wife to protect her husband from prosecution for embezzlement, was given under duress where threats were made to her, she being a very nervous person.

Cited in footnotes to Loud v. Hamilton, 45 L. R. A. 400, which holds duress no defense to one deliberately giving deed and notes to settle claim against son-in-law; Galusha v. Sherman, 47 L. R. A. 417, which holds threats rendering one incapable of exercising free will in making contract, duress.

Defenses to negotiable paper.

Cited in Arnd v. Sjoblom, 131 Wis. 645, 10 L.R.A.(N.S.) 845, 111 N. W. 666, 11 Ann. Cas. 1179, holding that a note given in payment for lightning rods without stating thereon for what purpose it was given as required by statute, was valid in the hands of an innocent purchaser for value.

45 L. R. A. 410, HOFFMAN v. McMULLEN, 28 C. C. A. 178, 48 U. S. App. 596, 83 Fed. 372.

Affirmed in 174 U. S. 639, 43 L. ed. 1117, 19 Sup. Ct. Rep. 839.

Enforcement of rights based upon illegal contracts.

Approved in Woodson v. Hopkins, 85 Miss. 184, 70 L. R. A. 648, 107 Am. St. Rep. 275, 37 So. 1000, holding where the loaner of money at extortionate rates of interest and by contracts void as against public policy, established the defendant as his agent, and the latter afterward claimed the business as his own, the former could not maintain an action against the latter based upon the illegal contracts.

Cited in footnote to Woodson v. Hopkins, 70 L.R.A. 645, which holds one conducting loan office and receiving rates of interest so extortionate as to shock moral sense and be against public policy not entitled to aid of equity to compel agent to pay over money received in business or to obtain possession of property pertaining to business.

Settlement of affairs of illegal partnership.

Cited in footnote to Central Trust & S. D. Co. v. Respass, 56 L. R. A. 479, which denies power of courts to settle affairs of bookmaking partnership.

Illegal purpose as affecting validity of contract.

Cited in Doyle v. Franks, 71 Kan. 642, 81 Pac. 211, holding where the tenant repaired a building in which he was selling intoxicating liquors contrary to law, that the lien filed by the tenant for repairs could be enforced, as the repairs were collateral to the business; Stewart v. Hutchinson, 120 Mo. App. 141, 96 S. W. 253, holding that where a bank loaned money in good faith and the money was used by the borrowers in speculations in futures contrary to law, the notes given for the money were not vitiated by the gambling transactions; Hardison v. Reel, 154 N. C. 277, 34 L.R.A.(N.S.) 1100, 70 S. E. 463, to the point that where agreement is made for purpose of preventing free and fair competition it is contrary to public policy and void; Virginia Bridge & Iron Co. v. Crafts, 2 Ga. App. 127, 58 S. E. 322, holding that rule rendering illegal contracts suppressing competition in letting of public contracts does not render illegal bona fide partnership agreements for bidding on such contracts.

Withdrawal from partnership.

Cited in Westwood v. Cole, 66 Misc. 63, 120 N. Y. Supp. 884, holding that where a partner lies by and by his conduct intimates to his co-partners that he has withdrawn, it amounts to a technical withdrawal and he is not entitled to share in the profits afterward made.

45 L. R. A. 420, BERKA v. WOODWARD, 125 Cal. 119, 73 Am. St. Rep. 31, 57 Pac. 777.

Rights conferred by illegal contract.

Cited in Moore v. Moore, 130 Cal. 113, 80 Am. St. Rep. 78, 62 Pac. 294, deny-

ing father's right to enforce trust under illegal contract; Sims v. Petaluma Gaslight Co. 131 Cal. 660, 63 Pac. 1011, holding *quantum meruit* recovery may be had under contract involving breach of fiduciary relation; Kagy v. West Des Moines Independent Dist. 117 Iowa, 698, 89 N. W. 972, holding neither public corporation making contract with one standing in fiduciary or official relation to it, nor taxpayer suing in its stead, can recover consideration paid thereunder, without returning benefits received; Independent School Dist. v. Collins, 15 Idaho, 542, 128 Am. St. Rep. 76, 98 Pac. 857, holding that no recovery could be had upon a contract absolutely prohibited by statute, such as a contract with a school district in which one of the trustees is interested; Lainhart v. Burr, 49 Fla. 330, 38 So. 711, holding where the county commissioners had purchased from firms in which some of the commissioners were interested, that if the warrants had been paid, the tax payers in an action could recover the amounts paid for unnecessary articles, but only the profit upon the necessary ones; Harrison County v. Ogden, 133 Iowa, 679, 108 N. W. 451, holding that a county commissioner could not collect claims for labor which he had purchased at a discount where the statute prohibited a county commissioner from purchasing any indebtedness of the county at less than face value; McManus v. Scheele, 116 La. 77, 40 So. 535, holding that certificates issued in payment of contract which was void because made with a member of the city council, were void and uncollectible, the councilman being interested through a subsequent contract relative to the first; Butler v. Agnew, 9 Cal. App. 332, 99 Pac. 395, holding that if the plaintiff cannot prove his case without showing that he has broken the law, the court will not assist him, whatever the justice of his claim.

Cited in footnotes to Sylvester v. Webb, 52 L. R. A. 518, which sustains contract to erect school building by member of building committee and selectman of town; Danville v. Robinson, 55 L. R. A. 162, which sustains right of member of city council to recover for injuries by defect in street.

Cited in notes (9 L.R.A.(N.S.) 1016) on municipal purchases from officer or member of board intrusted with duty of purchasing; (27 L.R.A.(N.S.) 1124) on liability of municipality on implied contract executed with officer; (117 Am. St. Rep. 502) on effect of knowledge of contemplated performance of contract in an illegal manner or of such a performance.

Validity of contracts in violation of statute.

Cited in Perry Water, Light & Ice Co. v. Perry, 29 Okla. 608, 39 L.R.A.(N.S.) 81, 120 Pac. 582, holding that contracts by city are not binding upon it under implied contract where if contract was express, it would be void under statute; Levinson v. Boas, 150 Cal. 193, 12 L.R.A.(N.S.) 587, 88 Pac. 825, 11 Ann. Cas. 661, holding that where a statute is made for the protection of the public, a contract in violation of its provisions is void; Bay v. Davidson, 133 Iowa, 693, 9 L.R.A.(N.S.) 1019, 119 Am. St. Rep. 650, 111 N. W. 25, holding that a contract of sale with a member of a town council is void under the statutes and at common law.

Cited in note (12 L.R.A.(N.S.) 578–81, 583, 584, 586, 588, 623) on validity of contract in business which it is misdemeanor to transact.

Distinguished in Bentley v. Hurlburt, 153 Cal. 801, 96 Pac. 890, holding that a statute making void sales of platted lands before the provisions of the statute have been complied with, where there was a substantial compliance with the statute, a sale of the land was not void.

45 L. R. A. 424, LEFFLER v. STATE, 153 Ind. 82, 74 Am. St. Rep. 300, 54 N. E. 439.

Obtaining money under false pretenses.

Cited in Com. v. Ferguson, 135 Ky. 38, 24 L.R.A.(N.S.) 1104, 121 S. W. 967, sustaining an indictment for obtaining money under false pretenses, which stated that the defendant was a minor and had obtained money by representing that he was of age, whether the party defrauded suffered any loss or not.

Cited in note (6 L.R.A.(N.S.) 370) on offense of obtaining money by false pretenses as affected by improbability of representations, or by failure to investigate.

45 L. R. A. 427, INDIANAPOLIS UNION R. CO. v. DOHN, 153 Ind. 10, 74 Am. St. Rep. 274, 53 N. E. 937.

Carrier's right to discriminate as to station privileges.

Cited in Godbout v. St. Paul Union Depot Co. 79 Minn. 196, 47 L. R. A. 535, footnote p. 532, 81 N. W. 835, authorizing discrimination by carrier between hackmen within, but not outside, of depot; Hedding v. Gallagher, 69 N. H. 662, 76 Am. St. Rep. 204, 45 Atl. 96, denying carrier's right to confer upon one privilege of entering premises to solicit carriage of baggage to exclusion of others; Interstate Stock Yards Co. v. Indianapolis Union R. Co. 99 Fed. 482, enjoining carrier's unlawful discrimination of switch connections; Palmer Transfer Co. v. Anderson, 131 Ky. 223, 19 L.R.A.(N.S.) 759, 133 Am. St. Rep. 237, 115 S. W. 182, holding a contract whereby a transfer company was given a practical monopoly of the station grounds of the railroad company, was void; Oregon Short Line R. Co. v. Davidson, 33 Utah, 375, 16 L.R.A.(N.S.) 782, 94 Pac. 10, 14 Ann. Cas. 489, holding that a carrier may grant the exclusive right to a cab company to occupy portions of the station grounds.

Cited in footnotes to Kates v. Atlanta Baggage & Cab Co. 46 L. R. A. 431, which sustains contract giving cab company exclusive privilege of soliciting patronage on trains and in depot; Norfolk & W. R. Co. v. Old Dominion Baggage Transfer Co. 50 L. R. A. 722, which sustains special privilege to baggage transfer company to another depot to solicit business; Boston & A. R. Co. v. Brown, 52 L. R. A. 418, which holds driver of public carriage entering railroad grounds to get passenger ordering carriage, a trespasser on soliciting other passengers; Pennsylvania Co. v. Chicago, 53 L. R. A. 223, which denies carrier's power to prevent others than lessee occupying hack stands in street; Hedding v. Gallagher, 64 L.R.A. 811, which sustains right of railroad company to give exclusive right to one teamster to enter on its grounds, if reasonable requirements of passengers are fully met; State ex rel. Sheets v. Union Depot Co. 68 L.R.A. 793, which sustains right of union depot company to grant transfer company exclusive right to use specified part of depot grounds for hacks and vehicles and soliciting patronage of passengers.

Cited in note (16 L.R.A.(N.S.) 781) on right to discriminate between solicitors of patronage at depots, wharves, etc.

Distinguished in State ex rel. Sheets v. Union Depot Co. 71 Ohio St. 391, 68 L.R.A. 797, 73 N. E. 633, 2 Ann. Cas. 186, holding that a union depot company may grant the exclusive right to a transfer company to occupy a portion of the station grounds and excluding all other companies from the grounds except in delivering passengers.

Disapproved in Donovan v. Pennsylvania Co. 61 L. R. A. 143, footnote p. 140, 57 C. C. A. 363, 120 Fed. 216, sustaining carrier's power to give exclusive right to solicit patrons within station to one hackman; Hedding v. Gallagher, 72 N. H.

390, 64 L. R. A. 819, footnote p. 811, 57 Atl. 225, sustaining right of railroad company to give to one teamster exclusive right to enter railroad property to solicit privilege of carrying baggage and passengers.

Contracts creating monopolies.

Cited in Chicago, I. & L. R. Co. v. Southern I. R. Co. 38 Ind. App. 238, 70 N. E. 843, holding a contract between carrier that one will not run any tracks to, or from, quarries connected with the other nor make any demands to use the other's side tracks nor interfere with the benefits acquired in the quarry was void as creating a monopoly.

Necessity of uniformity of rules.

Cited in Belmar v. Prior, 81 N. J. L. 258, 79 Atl. 1032, to the point that terms "rules and regulations" import partial restriction which does not wholly prohibit, and imply uniformity in operation, not discrimination.

45 L. R. A. 429, KANSAS CITY v. McDONALD, 60 Kan. 481, 57 Pac. 123.

Liability for obstructing highway.

Cited in Brabon v. Seattle, 29 Wash. 10, 69 Pac. 365, holding negligence of driver of hosecart, injured by overturning of vehicle through projection in highway, does not preclude recovery of damages unless sole cause of accident; Longnecker v. Wichita R. & Light Co. 80 Kan. 420, 102 Pac. 492, holding that the owner of a livery stable has no right to keep horses lodged in the street, nor to use the street for the storage of vehicles, but he may use the streets temporarily for such purposes.

Cited in footnote to Lund v. St. Paul, M. & M. R. Co. 61 L. R. A. 506, which denies contractor's liability for damage from obstruction of street because of delay in constructing due to strikes.

Cited in notes (3 L.R.A.(N.S.) 387) on duty of municipality to guard building material in street; (103 Am. St. Rep. 274, 275; 19 L.R.A.(N.S.) 507; 20 L.R.A.(N.S.) 665, 738, 748) on liability of municipality for defects or obstructions in streets; (21 L.R.A.(N.S.) 630) on contributory negligence as affecting municipal liability for defects and obstructions in streets.

Ordinances regulating use of highways.

Cited in footnotes to State v. Boardman, 46 L. R. A. 750, which holds void, ordinance setting apart one side of street for heavily loaded vehicles; State v. Rohart, 54 L. R. A. 947, which holds void, ordinance excluding heavily loaded vehicle with narrow tires from parkway; Com. v. Crowinshield, 68 L.R.A. 245, which sustains rule limiting to eight miles an hour the speed of vehicles in streets under control of park commissioners.

Exercise of legislative power by judiciary.

Cited in State *ex rel.* Godard v. Johnson, 61 Kan. 832, 49 L. R. A. 672, 60 Pac. 1068, holding act creating court of visitation to inquire into railroad matters, void.

Objection to remarks of counsel.

Cited in Miller v. Jenness, 84 Kan. 613, 34 L.R.A.(N.S.) 784, 114 Pac. 1052, holding that propriety of remarks of counsel to jury cannot be reviewed where no objection was made although exception was taken, and party did not ask to have remarks withdrawn from consideration of jury; Iola v. Birnbaum, 71 Kan. 601, 81 Pac. 198, 6 Ann. Cas. 267, holding that complaint of the language used by counsel in addressing the jury, cannot be entertained where no objection was made or order asked with regard to it at the time.

Mitigation of damages by receipt of money from other source.

Cited in note (67 L.R.A. 96) on mitigation of damages for personal injury by receipt of money from some other source because of injury.

45 L. R. A. 433, STATE v. BROADBELT, 89 Md. 565, 73 Am. St. Rep. 201, 43 Atl. 771.

Statutory regulation of business.

Cited in Luman v. Hitchens Bros. Co. 90 Md. 27, 46 L. R. A. 396, 44 Atl. 1051, holding statute prohibiting officer of railroad and mining corporations from acquiring interest in mercantile business, void; State v. Knowles, 90 Md. 657, 49 L. R. A. 698, 45 Atl. 877, sustaining statute requiring persons practising dentistry to obtain certificate of proficiency; Scholle v. State, 90 Md. 740, 50 L. R. A. 413, 46 Atl. 326, sustaining statute requiring examination and license to practise medicine; State v. Hawkins, 95 Md. 147, 93 Am. St. Rep. 328, 51 Atl. 850, sustaining act prohibiting use of trading stamps; State v. Hyman, 98 Md. 615, 64 L. R. A. 642, 57 Atl. 6, holding statute prohibiting use of tenement for manufacture of men's clothing, except by family, and regulating use in excepted case, within police power; Watson v. State, 105 Md. 655, 66 Atl. 635, holding a statute requiring a license of physicians commencing the practice of medicine after a certain date was not unconstitutional because it excepted physicians who were practising prior to a certain year; Mt. Vernon-Woodberry Cotton Duck Co. v. Frankfort Marine Acci. & Plate Glass Ins. Co. 111 Md. 570, 134 Am. St. Rep. 636, 75 Atl. 105, holding a statute prohibiting the employment of children under a certain age in factories in certain counties was not an unreasonable distinction.

Cited in footnotes to Frost v. Chicago, 49 L. R. A. 657, which holds void, ordinance prohibiting colored netting over package of fruit, etc.; State v. Layton, 62 L. R. A. 164, which sustains statutory prohibition against manufacture or sale of baking powder containing alum; Arbuckle v. Blackburn, 65 L.R.A. 864, which upholds statute prohibiting the coloring, coating, or polishing of article intended for food whereby damage or inferiority is concealed.

Cited in notes (34 L.R.A.(N.S.) 654) on constitutionality of discriminations in food laws; (78 Am. St. Rep. 237) on validity of laws enacted in exercise of police power.

— Of dairy business.

Cited in St. Louis v. Fischer, 167 Mo. 664, 64 L. R. A. 683, 99 Am. St. Rep. 614, 67 S. W. 872, sustaining ordinance prohibiting dairies within city limits without municipal authority; Sanders v. Com. 117 Ky. 9, 1 L.R.A.(N.S.) 935, 111 Am. St. Rep. 219, 77 S. W. 358, holding a statute prohibiting the sale of milk from cows fed on "still slop" was not unconstitutional as depriving of life, liberty or property; State v. McKinney, 29 Mont. 390, 74 Pac. 1095, 1 Ann. Cas. 579, holding an act requiring a license fee from dairymen using more than five cows in their business did not make an unreasonable classification.

Cited in footnotes to State v. Schlenker, 51 L. R. A. 347, which sustains power of legislature to prohibit addition of water to milk sold; State v. Crescent Creamery Co. 54 L. R. A. 466, which sustains statute against selling cream containing less than 20 per cent of fat; People v. Biesecker, 57 L. R. A. 178, which denies legislative power to prohibit sale of certain preservatives or of dairy products containing same; Norfolk v. Flynn, 62 L. R. A. 771, which sustains ordinance requiring inspection of milk sold within city limits and providing for licensing of venders; St. Louis v. Fischer, 64 L. R. A. 679, which sustains ordinance prohibiting maintenance of dairy within city limits.

Cited in notes (1 L.R.A.(N.S.) 932) on police regulations as to food for milch cows; (78 Am. St. Rep. 243) on acts as to dairy products which legislature may declare criminal.

Rights of officers under 14th Amendment.

Cited in Herbert v. Baltimore County, 97 Md. 642, 55 Atl. 376, holding statute changing compensation of justices of the peace in criminal cases from taxable fees to fixed sum, not violation of 14th Amendment to Federal Constitution.

Cited in note (79 Am. St. Rep. 186) on constitutionality of statutes allowing attorney's fee.

Delegation of police power.

Cited in Downs v. Swann, 111 Md. 61, 23 L.R.A.(N.S.) 742, 134 Am. St. Rep. 586, 73 Atl. 653, on the delegation by state of the police power.

45 L. R. A. 438, HELLER v. NATIONAL MARINE BANK, 89 Md. 602, 73 Am. St. Rep. 212, 43 Atl. 800.

Rights of preferred stockholders.

Cited in Scott v. Baltimore & O. R. Co. 93 Md. 497, 49 Atl. 327, holding that rights of preferred stockholders depend upon terms of contract or statute under which shares issued; Rogers v. Citizens' Nat. Bank, 93 Md. 618, 49 Atl. 843, holding creditors to whom preferred stockholders had assigned their stock as collateral not required to deduct value before sharing with general creditors; National Marine Bank v. Heller, 94 Md. 215, 50 Atl. 521, holding ratification of creditor's account making allowances estops general creditors from contesting payment of taxes; Coltrane v. Baltimore Bldg. & L. Asso. 110 Fed. 283, holding owners of full-paid stock entitled to no preference over holders of instalment stock in distribution of assets of insolvent loan association; Savannah Real Estate Loan & Bldg. Co. v. Silverberg, 108 Ga. 289, 33 S. E. 908, holding instrument evidence of indebtedness not certificate of preferred stock; Rider v. John G. Delker & Sons Co. 145 Ky. 636, 39 L.R.A.(N.S.) 1009, 140 S. W. 1011, holding that holder of preferred stock cannot enforce its redemption at par, if assets of corporation are insufficient to pay debts; Leviness v. Consolidated Gas Electric Light & P. Co. 114 Md. 572, 80 Atl. 304, holding that lien of preferred stock under statute is fixed and not floating charge on corporate property; Kidd v. Puritana Cereal Food Co. 145 Mo. App. 515, 122 S. W. 784, holding that power of corporation to bind itself to pay instalments on stock in priority to creditors must be found in clear legislative grant; Ellsworth v. Lyons, 104 C. C. A. 1, 181 Fed. 62, holding that corporation cannot as against creditors secure retirement of preferred stock under Laws of Michigan, 1897, section 7073; Baltimore, C. & A. R. Co. v. Godeffroy, 105 C. C. A. 63, 182 Fed. 539 (dissenting opinion), on statutory preferred stock as having priority over creditors; Re Fifty Gold Mines Corp. 190 Fed. 109, holding that preferred stock certificate holders were creditors of corporation, and mortgage given to secure such stock was not fraudulent; Hackett v. Northern P. R. Co. 140 Fed. 717, holding one asserting rights as a preferred stockholder must allege facts which show the nature of her rights under his contract; Deacon v. Kemp Manure Spreader Co. 15 Ont. L. Rep. 155, on the satisfaction of the lien of preferred stock holders.

Cited in note (21 L.R.A.(N.S.) 230) on right of preferred stock to preference as to capital.

Right to proceeds of policy.

Cited in Wm. Skinner & Sons' Ship-Building & Dry-Dock Co. Co. v. Houghton, 92 Md. 86, 84 Am. St. Rep. 485, 48 Atl. 85, holding that vendor holds proceeds

of policy as trustee for vendee after contract of sale of insured property; *Re* Wittenberg v. Veneer & Panel Co. 108 Fed. 597, holding that equitable lien arises in favor of mortgagee under policy transferred as collateral security; *Re* West Norfolk Lumber Co. 112 Fed. 764, holding that claims of lienors on insured property do not attach to proceeds of policy pledged as security.

Liberty of contracts.

Cited in Baltimore v. Garrett, 108 Md. 34, 68 Atl. 429, on public policy as requiring liberty of action in contracting.

45 L. R. A. 446, WEIHENMAYER v. BITNER, 88 Md. 325, 42 Atl. 245.

Stockholder's right to inspect corporate records.

Cited in Johnson v. Langdon, 135 Cal. 627, 87 Am. St. Rep. 156, 67 Pac. 1050, holding that mandamus will lie to enforce stockholder's right to inspect corporate records; Kimball v. Dern, 39 Utah, 191, 35 L.R.A.(N.S.) 136, 116 Pac. 28, Ann. Cas. 1913E, 166, holding that mandamus lies to compel inspection of books by stockholder, although inspection is for purpose of instituting suit against it; Brown v. Crystal Ice Co. 122 Tenn. 242, 122 S. W. 84, 19 Ann. Cas. 308, holding that mandamus is proper remedy to compel inspection of corporate books; Jackson v. Hopkins, 113 Md. 566, 78 Atl. 4, holding that petition of one who was working in opposition to church, to inspect books of church corporation should be denied; Wight v. Heublein, 111 Md. 657, 75 Atl. 507, holding stockholders' statutory right to inspect books is absolute and dependent only on ownership of stock when exercised for legitimate purposes; Sloan v. Clarkson, 105 Md. 171, 66 Atl. 18, holding equity has power to require accounting by factor to corporate principal on application by stockholder who has been denied right to inspect corporation's books.

Annotation cited in State ex rel. Humphrey v. Monida & Y. Stage Co. 110 Minn. 201, 124 N. W. 971, upholding right to inspect books for information as to financial standing and manner of conducting company's business, under statute allowing it at all times and for all proper purposes.

Cited in footnotes to State *ex rel.* Weinberg v. Pacific Brewing & Malting Co. 47 L. R. A. 208, which sustains stockholder's right to inspect corporate books for corporate interests; Cincinnati Volksblatt Co. v. Hoffmeister, 48 L. R. A. 732, which holds absolute, stockholders's right to inspect corporate books; McClintock v. Young Republicans, 68 L.R.A. 459, which sustains right of member of corporation organized in interests of political organization to inspect membership roll for purpose of instituting measures to promote objects of the organization.

Cited in notes (20 L.R.A.(N.S.) 185; 30 L.R.A.(N.S.) 291, 292; 107 Am. St. Rep. 676, 680, 681, 682, 687)—on right of stockholder to inspect corporate books and remedies for its enforcement.

45 L. R. A. 461, *Re* STEINWAY, 159 N. Y. 250, 53 N. E. 1103.

Inspection of books of corporation.

Cited in *Re* First Nat. Bank, 28 Misc. 664, 60 N. Y. Supp. 47, denying right of pledgee of corporate stock to examine books of corporation; Bruning v. Hoboken Printing & Pub. Co. 67 N. J. L. 120, 50 Atl. 906, holding inspection will be awarded only when sought in good faith and for specific purpose; People *ex rel.* Mackey v. American Union L. Ins. Co. 31 Misc. 617, 64 N. Y. Supp. 916, denying stockholder's right to examine corporate books to ascertain disposition of contributions to impairment of capital as foundation for suit; *Re* Rappleye, 43 App. Div. 85, 59 N. Y. Supp. 338, denying mandamus to compel inspection of books of

foreign corporation; *Re* Pierson, 44 App. Div. 219, 60 N. Y. Supp. 671, Affirming 28 Misc. 729, 59 N. Y. Supp. 1003, denying mandamus to compel exhibition of corporate books to discover whether corporation selling products at loss; Walsh v. Press Co. 48 App. Div. 336, 62 N. Y. Supp. 833, raising, without deciding, question as to stockholders' right to inspect books; People *ex rel.* McElwee v. Produce Exch. Trust Co. 53 App. Div. 94, 65 N. Y. Supp. 926, denying right to inspect books of corporation to obtain proof as to alleged improper loan; *Re* Kennedy, 75 App. Div. 190, 77 N. Y. Supp. 714, Reversing 37 Misc. 319, 75 N. Y. Supp. 457, denying stockholder's application to examine books of corporation when made with intent to injure business; Latimer v. Herzog Teleseme Co. 75 App. Div. 523, 78 N. Y. Supp. 314, holding that stockholder must show that corporation has refused desired information, and need of information to protect his interest; *Re* Coats, 73 App. Div. 180, 76 N. Y. Supp. 730, and *Re* Coats, 75 App. Div. 568, 78 N. Y. Supp. 429, holding that granting of stockholder's application to examine by-laws and books of corporation rests in sound discretion of court; *Re* Fitch, 160 N. Y. 95, 54 N. E. 701, holding that surrogate's court has jurisdiction over taxation of transfer of stock of domestic corporation held by nonresident decedent, where inspection of company's books may become necessary; State *ex rel.* Wellford v. Williams, 110 Tenn. 549, 64 L. R. A. 433, 75 S. W. 948, upholding right of taxpayer to inspection of books of municipal corporation, in proper case, notwithstanding law's provision for inspection by municipal committees and grand jury; Tuttle v. Iron Nat. Bank, 170 N. Y. 12, 62 N. E. 761, holding that court will permit examination of books of national bank by stockholders, when in process of liquidation; Fuller v. Alexander Hollander & Co. 61 N. J. Eq. 651, 88 Am. St. Rep. 456, 47 Atl. 646, holding mandamus proper remedy to compel exhibition of corporate books for inspection; People ex rel. Lehman v. Consolidated Fire Alarm Co. 142 App. Div. 754, 145 App. Div. 427, 127 N. Y. Supp. 348, holding that court may issue mandamus to compel inspection of corporate books by stockholders; Hollaman v. El Arco Mines Co. 137 App. Div. 864, 122 N. Y. Supp. 852, holding that statute requiring foreign corporation having office in this state to keep stockbook containing list of stockholders, etc. gives stockholder absolute right to inspect stockbook without stating purpose of inspection; Kimball v. Dern, 39 Utah, 191, 35 L.R.A.(N.S.) 140, 116 Pac. 28, Ann. Cas. 1913E, 166, hold that under statute stockholder has right to inspect books which may be enforced by mandamus, even though purpose is to commence action against corporation; Varney v. Baker, 194 Mass. 241, 80 N. E. 524, 10 Ann. Cas. 989, holding stockholder has right to examine corporate books when acting in good faith and to protect interests of himself and corporation; Woodworth v. Maltby Cedar Co. 154 Mich. 466, 117 N. W. 893, holding stockholder has right to examine national bank books and records for use in law suit begun by him; State ex rel. Humphrey v. Monida & Y. Stage Co. 110 Minn. 200, 124 N. W. 971, holding his right under statute covers examination for purpose of prosecuting bona fide claim against corporation; State ex rel. Johnson v. St. Louis Transit Co. 124 Mo. App. 118, 100 S. W. 1126, holding he may examine with aid of accountant and stenographer; State ex rel. English v. Lazarus, 127 Mo. App. 408, 105 S. W. 780, holding he has right to examine for legitimate purpose even though he is stockholder in competing company; People ex rel. Lorge v. Consolidated Nat. Bank, 105 App. Div. 410, 94 N. Y. Supp. 173, holding statute providing for inspection of national bank stockbook by shareholder and for making of extracts, is mandatory; People ex rel. Callanan v. Keeseville, A. C. & L. C. R. Co. 106 App. Div. 351, 94 N. Y. Supp. 555, holding statutory right to inspect stockbook is absolute irrespective of motive; People ex rel. Venner v.

New York L. Ins. Co. 111 App. Div. 186, 97 N. Y. Supp. 465, denying policy holder's right to inspect index list of policy holders in mutual life insurance company having no stock or stockbook; Re Taylor, 117 App. Div. 348, 101 N. Y. Supp. 1039, holding corporation not compelled to exhibit its books and papers to stockholder suing individual directors for fraud inducing him to purchase stock; Re Hastings, 120 App. Div. 759, 105 N. Y. Supp. 834 (dissenting opinion), on right of stockholder to examine corporate books and papers for proper purposes; People ex rel. Althause v. Giroux Consol. Mines Co. 122 App. Div. 620, 107 N. Y. Supp. 188, denying statutory right to make list of stockholders from stockbook to be used as mailing list for sale of other stocks; Henry v. Babcock & W. Co. 196 N. Y. 305, 134 Am. St. Rep. 835, 89 N. E. 942, holding statutory right to examine corporate books and make copies not dependent on disclosure of purposes; Re Kennedy, 37 Misc. 322, 75 N. Y. Supp. 457, holding executors and trustees of stockholder may examine corporate books and papers to enable them to testify as to value in transfer tax proceeding; Althause v. Giroux, 56 Misc. 510, 107 N. Y. Supp. 191, holding statutory right to inspect stockbook absolute and includes right to make detailed copies; Re Hatt, 57 Misc. 323, 108 N. Y. Supp. 468, holding stockholder must show proper purpose and refusal of officers before mandamus will issue to compel it; Guthrie v. Harkness, 199 U. S. 154, 50 L. ed. 132, 26 Sup. Ct. Rep. 4, 4 Ann. Cas. 433, holding state courts may issue mandamus to compel national bank to exhibit books and writings for proper purpose.

Cited in notes (20 L.R.A.(N.S.) 188; 107 Am. St. Rep. 675, 676, 678, 681, 687) on right of stockholder to inspect corporate books and remedies for its enforcement.

Distinguished in *Re* Colwell, 76 App. Div. 615, 78 N. Y. Supp. 607, denying right of stockholder to examination of minutes of stockholder's meetings and to inspection of books and papers where grounds upon which examination asked are specifically denied; Allee v. James, 68 Misc. 142, 123 N. Y. Supp. 581, holding that member of club is not entitled to access to membership roll, where such right is denied by officers; People ex rel. Leach v. Central Fish Co. 117 App. Div. 79, 101 N. Y. Supp. 1108, holding director has unqualified right to inspect books and papers; People ex rel. Hunter v. National Park Bank, 122 App. Div. 640, 107 N. Y. Supp. 369, holding stockholder seeking to enforce his statutory right to inspect books and records may be required to show for whose interest and purpose he acts; People ex rel. Rottenberg v. Utah, Gold & Copper Mines Co. 135 App. Div. 419, 119 N. Y. Supp. 852, holding remedy for refusal to transfer stock on books is by ordinary action and not by mandamus.

Court's exercise of nonjudicial powers.

Cited in *Re* Davies, 168 N. Y. 102, 56 L. R. A. 860, 61 N. E. 118, holding nonjudicial duties not imposed upon judge by statute providing that it shall be his duty to grant application for order for examination of witnesses as to monopoly.

Cited in note (51 L. R. A. 93) on superintending control and supervisory jurisdiction of superior over inferior or subordinate tribunal.

Practice on application for peremptory writ of mandamus.

Cited in Cooper v. Paris, 73 Misc. 246, 130 N. Y. Supp. 1043, holding that peremptory writ of mandamus still being demanded notwithstanding answering affidavits to petition, averments of affidavits positive in form are to be taken as true.

45 L. R. A. 475, COM. v. HILTON, 174 Mass. 29, 54 N. E. 362.

Right of fishery.

Cited in State v. Ashman, 123 Tenn. 662, 135 S. W. 325, holding that rights,

privileges, and immunities secured to citizens of several states do not include property rights of several states held in trust for their inhabitants.

Cited in footnote to Tyler v. State, 52 L. R. A. 100, which holds oysters taken from waters outside of state not within statutory prohibition of possession of.

Cited in note (60 L. R. A. 501, 503) on right to fish.

State regulation of fish and game.

Cited in People v. Setunsky, 161 Mich. 629, 126 N. W. 844, holding valid an act requiring a license to use a power boat for commercial fishing; State v. Leavitt, 105 Me. 78, 26 L.R.A.(N.S.) 800, 72 Atl. 875; Com. v. Boston Terminal Co. 185 Mass. 283, 70 N. E. 125; State v. Peabody, 103 Me. 330, 69 Atl. 273,—on the regulation and control of fisheries as being within the powers of the legislature.

Distinguished in Harper v. Galloway, 58 Fla. 265, 26 L.R.A.(N.S.) 798, 51 So. 226, holding unconstitutional a statute requiring other residents of a state to take out a license to hunt in a certain county, where residents of county were not required to take out the license.

General statutes as affecting local regulations.

Cited in Graham v. Roberts, 200 Mass. 158, 85 N. E. 1009, holding an amendment to a city charter providing for the referendum and initiative is not unconstitutional because the constitution forbids their adoption in general legislation.

45 L. R. A. 479, LA DOW v. E. BEMENT & SONS, 119 Mich. 685, 79 N. W. 1048.

45 L. R. A. 481, TELEFSEN v. FEE, 168 Mass. 188, 60 Am. St. Rep. 379, 46 N. E. 562.

Liability of officer for service of process.

Cited in Goldis v. Gately, 168 Mass. 303, 47 N. E. 96, holding that officer making arrest may assume that all steps have been taken to make writ valid; Belcher v. Sheehan, 171 Mass. 514, 68 Am. St. Rep. 445, 51 N. E. 19, holding invalidity of judgment and execution, defense to action for neglect to make arrest; Harris v. Snyder, 113 Wis. 458, 89 N. W. 660, holding order staying proceedings admissible in action against sheriff for failure to execute process; Paine v. Kelley, 197 Mass. 27, 83 N. E. 8; Rush v. Buckley, 100 Me. 327, 70 L.R.A. 466, 61 Atl. 774, 4 Ann. Cas. 318,—on the liability of an officer making an illegal arrest.

Cited in note (51 L. R. A. 199) on liability of officer for making arrest.

Jurisdiction and privileges of consuls.

Cited in McEvoy v. Wyman, 191 Mass. 278, 114 Am. St. Rep. 601, 77 N. E. 379, granting the petition of a consular representative to be appointed administrator of the estate of a subject of his country against objections of public administrator; The Ester, 190 Fed. 225, on jurisdiction of courts of admiralty of suit between foreign seamen and foreign vessel, in absence of treaty, over protest of consul.

Cited in notes (45 L. R. A. 588) on exemptions and privileges of consuls; (37 L.R.A.(N.S.) 549) on jurisdiction and power of consuls to administer on estates.

Supremacy of treaties over local laws.

Cited in Re Scutella, 69 Misc. 518, 127 N. Y. Supp. 874, holding that when treaty provisions conflict with laws or constitution of state former must prevail; Ex parte Anderson, 184 Fed. 117, holding that under treaty local courts were without authority to arrest or detain officers of foreign ship for acts not amount-

ing to disturbance of public peace, in maintaining discipline of seamen, upon ship or upon wharf; The Bound Brook, 146 Fed. 165, refusing to take jurisdiction of a suit for a seaman's wages between a German seaman and a German boat where treaty provides for settlement by consul; Minnesota Canal & Power Co. v. Pratt, 101 Minn. 232, 11 L.R.A.(N.S.) 119, 112 N. W. 395, on a treaty as being supreme over state constitutions and laws.

Cited in note (59 Am. St. Rep. 873) on effect of treaties on jurisdiction.

45 L. R. A. 500, QUIGLEY v. CLOUGH, 173 Mass. 429, 73 Am. St. Rep. 303, 53 N. E. 884.

Liability to trespasser.

Cited in Riley v. Harris, 177 Mass. 165, 58 N. E. 584, affirming recovery for injuries from bite of dog sustained while approaching house through back yard upon servant's invitation to call.

Cited in note (25 Eng. Rul. Cas. 113, 114) on liability for injury to trespasser by dangerous instrumentalities.

Liability for injury from obstruction placed to keep off trespassers.

Cited in Mead v. Strauss, 202 Mass. 401, 88 N. E. 889, holding defendant not liable for injuries from contact with a wire stretched along sidewalk to prevent trespassing on land.

45 L. R. A. 502, FULLER v. STATE, 122 Ala. 32, 82 Am. St. Rep. 17, 26 So. 146.

Parole of convict.

Cited in *Re* Convicts, 73 Vt. 425, 56 L. R. A. 661, 51 Atl. 10, holding statute empowering board to grant parole after expiration of minimum sentence, void, where Constitution vests pardoning power in governor; State ex rel. Davis v. Hunter, 124 Iowa, 573, 104 Am. St. Rep. 361, 100 N. W. 510, on right of governor to revoke a parole; Ex parte Houghton, 49 Or. 234, 9 L.R.A.(N.S.) 739, 89 Pac. 801, 13 Ann. Cas. 1101, on a prisoner as being bound by the conditions of his parole.

Cited in notes (1 L.R.A.(N.S.) 521) on constitutionality of statutory credits for good behavior; (16 L.R.A.(N.S.) 305) as to whether time prisoner is out on parol or conditional pardon should be deducted from term; (111 Am. St. Rep. 109, 113) on conditional pardons.

Right to detain prisoner.

Cited in Young v. State, 131 Ala. 55, 31 So. 373, holding that order for further investigation by grand jury preserves mittimus, where no indictment has been found.

Rights on arrest for violation of parole.

Cited in State v. Collins, 225 Mo. 639, 125 S. W. 465; State v. Horne, 52 Fla. 139, 7 L.R.A.(N.S.) 725, 42 So. 388,—holding a paroled prisoner on a violation of the terms of the parole may be summarily rearrested and committed; Re Ridley, 3 Okla. Crim. Rep. 361, 26 L.R.A.(N.S.) 115, 106 Pac. 549, holding to same effect; Re Prout, 12 Idaho, 500, 5 L.R.A.(N.S.) 1066, 86 Pac. 275, 10 Ann. Cas 199, holding a convict rearrested for a violation of the terms of his parole cannot be made to serve, beyond the time sentenced the time he was out on parole.

45 L. R. A. 504, STATE v. HOGRIEVER, 152 Ind. 652, 53 N. E. 921.

Municipal interference with pursuit of avocation.

Cited in Scougale v. Sweet, 124 Mich. 320, 82 N. W. 1061, holding it breach of peace to play base ball on Sunday; State v. Penny, 42 Mont. 125, 31 L.R.A. (N.S.) 1158, 111 Pac. 727, to the point that legislature has power to prohibit acts

that are destructive of morals of people and disturb peace and good order of society.

Cited in footnote to Watson v. Thomson, 59 L. R. A. 602, which denies city's power to prevent carrying on of lawful avocation on Christmas day.

Statutory construction.

Cited in United States Exp. Co. v. State, 164 Ind. 202, 73 N. E. 101, on statute as not to be construed so strictly as to defeat its obvious intent.

Constitutionality of Sunday labor laws.

Cited in Armstrong v. State, 170 Ind. 190, 15 L.R.A.(N.S.) 649, 84 N. E. 3, holding a statute prohibiting labor on Sunday a constitutional exercise of the police power.

Cited in note (78 Am. St. Rep. 264, 265) on validity of Sunday laws.

Inhibition against class legislation.

Cited in Johnson County v. Johnson, 173 Ind. 87, 89 N. E. 590, holding that classification in tax laws must be based upon natural reasons inhering in subject-matter; Chicago, I. & L. R. Co. v. Railroad Commission, 173 Ind. 482, 90 N. E. 1011, holding that statute exempting interurban railroads from certain taxes is valid, though made applicable to other railroads; Inland Steel Co. v. Yedinak, 172 Ind. 436, 87 N. E. 229, holding an act prohibiting the employment of children under fourteen years of age in factories is not invalid as class legislation; Carr v. State, 175 Ind. 264, 32 L.R.A.(N.S.) 1199, 93 N. E. 1071, holding that exempting professional baseball players from operation of Sunday laws, does not grant them unconstitutional privilege or immunity.

Sufficiency of allegation of statutory offence.

Cited in State v. New, 36 Ind. App. 523, 76 N. E. 181, holding an indictment sufficiently set out the statutory violation of acting as a rider in a horse race upon the public highway.

Violation of Sunday base ball law.

Cited in Heigert v. State, 37 Ind. App. 399, 75 N. E. 850, holding a statute prohibiting the playing of ball on Sunday where a fee is charged was violated where a fee charged for seats at the game.

Cited in note (21 L.R.A.(N.S.) 24) on Sunday baseball as offense.

45 L. R. A. 510, SMITH v. ROBERTSON, 106 Ky. 472, 50 S. W. 852.

Effect on contract of failure to procure license.

Cited in Wickes-Nease v. Watts, 30 Tex. Civ. App. 517, 70 S. W. 1001, holding a physician could not recover for professional services where he failed to record his certificate of qualification as required by statute; Fruin-Colnon Contracting Co. v. Chatterson, 146 Ky. 507, 40 L.R.A.(N.S.) 862, 143 S. W. 6, holding that foreign corporation cannot enforce paving assessment when it has not complied with statutory requirements for doing business in state.

Cited in footnotes to Denning v. Yount, 50 L. R. A. 103, which denies right of unlicensed brokers to recover commissions; Black v. Security Mut. Life Asso. 54 L. R. A. 939, which denies right to commissions of one securing applications for insurance before license which is granted before policies issued; Citizens' State Bank v. Nore, 60 L. R. A. 737, which authorizes recovery by bona fide purchaser of note for medical services by unlicensed practitioner.

Cited in notes (1 L.R.A.(N.S.) 1159) on validity of contract made in business carried on without required license; (12 L.R.A.(N.S.) 617) on validity of contracts in business which it is misdemeanor to transact.

Public policy as to contracts against statute.

Cited in Miller v. Union Mill Co. 45 Wash. 208, 88 Pac. 130, holding the repeal of a statutory duty imposed upon employers did not affect causes of action accruing prior to such repeal because of a violation thereof.

45 L. R. A. 513, LOUISVILLE TRUST CO. v. GAERTNER, 106 Ky. 481, 50 S. W. 971.

Enforcement of lien for rent.

Cited in Wender Blue Gem Coal Co. v. Louisville Property Co. 137 Ky. 352, 125 S. W. 732, holding that landlord suing to enforce lien for rent and to terminate lease, and obtaining injunction, need not take out distress warrant.

45 L. R. A. 518, NEWPORT v. COM. 106 Ky. 434, 50 S. W. 845, 51 S. W. 433.

Exemption of property from taxation.

Cited in footnote to Gate City Guards v. Atlanta, 54 L. R. A. 806, which denies exemption, as public property, to armory owned by volunteer military force.

Cited in notes (57 L. R. A. 74) on taxation of corporate franchises in United States; (60 L.R.A. 852) on taxation of municipal waterworks; (1 L.R.A.(N.S.) 766) on taxation of water company belonging to municipality; (132 Am. St. Rep. 327) on exemption from taxation or assessment of lands owned by governmental bodies, or in which they have an interest.

Distinguished in Com. v. Covington, 128 Ky. 41, 14 L.R.A.(N.S.) 1216, 1007 S. W. 231, holding city waterworks system exempt from taxation.

Res judicata.

Cited in Frankfort v. Deposit Bank, 111 Ky. 952, 98 Am. St. Rep. 444, 65 S. W. 10, holding judgment of Federal court, that city barred by judgment of state court from recovering tax, not *res judicata*, where judgment of state court subsequently reversed; Covington v. First Nat. Bank, 198 U. S. 107, 49 L. ed. 967, 25 Sup. Ct. Rep. 562, Affirming 129 Fed. 799; Georgia R. & Bkg. Co. v. Wright, 124 Ga. 603, 53 S. E. 251,—holding a suit to collect taxes for one year no bar to an action to collect taxes on the same property for another year; Dodd v. Pittsburg, C. C. & St. L. R. Co., 127 Ky. 784, 16 L.R.A.(N.S.) 909, 108 S. W. 787, holding a decision in an action to compel the satisfaction of a judgment in an action on a contract is no bar to the enforcement of a judgment for a tort.

Disapproved in Defries v. McMeans, 121 Iowa, 544, 97 N. W. 65, holding judgment that land contracts are not assessable for particular year is *res judicata* of right as to subsequent years.

Effect of erroneously describing defendant as corporation.

Cited in Standard Hay & Grain Co. v. Ratliff Bros. 144 Ky. 165, 137 S. W. 1035, holding that judgment may be rendered against defendant as partnership, though sued as corporation, where by answer partnership is disclosed, and judgment is sought as such partnership against plaintiff.

Cited in note (40 L.R.A.(N.S.) 570) on effect of erroneously describing defendant in process as corporation instead of individual or partnership, or vice versa.

45 L. R. A. 524, LIVERPOOL & L. & G. INS. CO. v. BOARD OF ASSESSORS, 51 La. Ann. 1028, 72 Am. St. Rep. 483, 25 So. 970.

Taxation of moneys and credits.

Cited in New Orleans v. Stempel, 175 U. S. 315, 44 L. ed. 178, 20 Sup. Ct. Rep. 110, holding bank bills and municipal bonds subject to taxation where found, irrespective of owner's domicil; State v. Franklin County Sav. Bank & T. Co. 74

Vt. 262, 52 Atl. 1069, holding commercial deposits within taxable funds of savings bank.

Situs of personalty for purpose of taxation.

Cited in National F. Ins. Co. v. Board of Assessors, 121 La. 115, 126 Am. St. Rep. 313, 46 So. 117; General Electric Co. v. Board of Assessors, 121 La. 134, 46 So. 122; Hunt v. Turner, 54 Fla. 667, 45 So. 509,—on the situs of personalty for the purpose of taxation.

Cited in note (2 L.R.A.(N.S.) 638) on situs of debt for taxation, apart from creditor's domicil.

45 L. R. A. 527, BALTIMORE CONSOL. R. CO. v. PIERCE, 89 Md. 495, 43 Atl. 940.

Liability for servant's wrongful act.

Cited in Brenner v. Ford, 116 La. 555, 40 So. 894, holding defendant not liable for the negligence of servant not employed to drive horse who during defendant's absence and in disobedience to defendant's orders drove the horse; Rosenkovitz v. United R. & Electric Co. 108 Md. 313, 70 Atl. 108; Baltimore & O. R. Co. v. Strube, 111 Md. 128, 73 Atl. 697; Deck v. Baltimore & O. R. Co. 100 Md. 182, 108 Am. St. Rep. 399, 59 Atl. 650,—on liability of master for wrongful act of servant.

Cited in footnotes to Galveston, H. & S. A. R. Co. v. Zantzinger, 47 L. R. A. 282, which sustains liability for engineer's ejection of trespasser from footboard of engine; Dorsey v. Kansas City, P. & G. R. Co. 52 L. R. A. 92, which holds carrier liable for death of trespasser falling under wheels in escaping from rocks thrown by brakeman; Enright v. Pittsburgh Junction R. Co. 53 L. R. A. 330, which denies right to eject or frighten ten-year-old boy from rapidly moving train; Lamb v. Littman, 53 L. R. A. 852, which holds employer liable for assault by cruel overseer on minor employee; Lynch v. Florida C. & P. R. Co. 54 L. R. A. 810, which denies company's liability for assault by station agent as result of personal quarrel; Guille v. Campbell, 55 L. R. A. 111, which denies master's liability for injury to bystander by slipping of hook from servant's hand while pretending to throw at boys playing on cotton bales; Alseever v. Minneapolis & St. L. R. Co. 56 L. R. A. 748, which sustains liability for injuries by engineer operating blow-off cock to frighten children; Palmisano v. New Orleans City R. Co. 58 L. R. A. 405, which denies master's liability for injury to boy running blindly against moving car after release by employee, who has caught and lectured him; Southern R. Co. v. James, 63 L. R. A. 257, which holds master liable for injury by night watchman shooting trespasser while running away after being arrested by him; McNamara v. St. Louis Transit Co. 66 L.R.A. 486, which holds exemplary damages against street car company justified by conductor's intentional and unjustified kicking of boy attempting to board car; Evers v. Krouse, 66 L.R.A. 593, which holds servant alone responsible for act by him while engaged in master's work but entirely disconnected therefrom; Dixon v. Northern P. R. Co. 68 L.R.A. 895, which sustains master's liability for injuries caused by brakeman wantonly and wilfully kicking trespasser from moving car; Bowen v. Illinois Central R. Co. 70 L.R.A. 915, which holds railroad company not liable for wanton act of station agent in killing a person who had come to station to inquire about demurrage on car of coal and whom agent shot as he was about to sign receipt for a package.

Cited in notes (10 L.R.A.(N.S.) 401) on liability for injury by servant to third person in use of dangerous agency; (25 Eng. Rul. Cas. 143) on master's liability for tort committed by servant.

Care required of drivers of vehicles on highway.

Cited in footnotes to Citizens' R. Co. v. Ford, 46 L. R. A. 457, which holds ordinance requiring person "riding or driving" to check up or halt at crossing not applicable to electric car; Crisman v. Shreveport Belt R. Co. 62 L. R. A. 747, which holds it duty of motorman to prepare for emergencies on seeing person riding on horseback close to track in crowded street; Wilson v. Chippewa Valley Electric R. Co. 66 L.R.A. 912, which holds motorman who makes no attempt to control speed of car on seeing runaway team approaching crossing under circumstances suggesting collision guilty of wanton and reckless disregard of human life amounting to intentional wrong.

Acting within scope of duty as question for jury.

Cited in Philadelphia, B. & W. R. Co. v. Stumpo, 112 Md. 580, 77 Atl. 266; Baltimore, C. & A. R. Co. v. Twilley, 166 Md. 450, 67 Atl. 265,—holding it a question for jury on the evidence whether a servant was acting within the scope of duty.

Construction of requests or prayers.

Cited in Norris v. Connecticut F. Ins. Co. 115 Md. 181, 80 Atl. 960, Ann. Cas. 1912D, 79, holding that where it appears from whole proof plaintiff was not entitled to recover, prayer of defendant asking that case be taken from jury, saying that "it appears by plaintiff's own evidence," is not sufficient for reversal; Thillman v. Baltimore, 111 Md. 133, 73 Atl. 722, holding the correctness of prayers not referring to the pleadings is determinable upon a consideration of the evidence; Pennsylvania R. Co. v. Cecil, 111 Ind. 298, 73 Atl. 820, holding a prayer offered by defendant properly rejected where it asks for an instruction that the plaintiff has offered no evidence entitling him to recover.

45 L. R. A. 531, CREAMER v. McILVAIN, 89 Md. 343, 73 Am. St. Rep. 186, 43 Atl. 935.

Presumption as to negligence.

Cited in Rowe v. Such, 134 Cal. 575, 66 Pac. 862, holding that burden of proof is upon one bringing action for death to show negligence of driver of runaway team; Luecke v. Graham, 123 Mo. App. 214, 100 S. W. 505, holding negligence would not be inferred from the mere running away of a horse.

Cited in notes (23 L.R.A.(N.S.) 171) as to whether negligence inferrable from mere fact that horse runs away; (113 Am. St. Rep. 1019) on presumption of negligence from happening of accident causing personal injuries.

Vicious character of horse as affecting liability for injuries.

Cited in note (22 L.R.A.(N.S.) 1232) on vicious character of horse as affecting liability for injuries by frightening it.

45 L. R. A. 535, DOXTATOR v. CHICAGO & W. M. R. CO. 120 Mich. 596, 79 N. W. 922.

Actionable interest in corpse.

Cited in Louisville & N. R. Co. v. Wilson, 123 Ga. 66, 51 S. E. 24, 3 Ann. Cas. 128, holding a wife might have a right of action for the mutilation of the body of her deceased husband.

45 L. R. A. 538, DELAWARE & H. CANAL CO. v. MAHLENBROCK, 63 N. J. L. 281, 43 Atl. 978.

Actions by or against foreign corporations.

Cited in Goldmark v. Magnolia Metal Co. 65 N. J. L. 349, 47 Atl. 720, holding attachment maintainable against foreign corporation having no office but owning

property in state, when cause of action arose elsewhere; Frawley v. Pennsylvania Casualty Co. 124 Fed. 264, holding collection of renewal premium by foreign insurance company through cashier of bank, not transaction of business within state such as would subject corporation to jurisdiction of local courts by service of process upon cashier as agent; R. M. Owen & Co. v. Storms, 78 N. J. L. 157, 72 Atl. 441, to the point that defense that defendant corporation was not authorized to transact business in state must be pleaded; Slaytor-Jennings Co. v. Specialty Paper Box Co. 69 N. J. L. 215, 54 Atl. 247, on the maintenance of actions by foreign corporations.

Doing business in state within meaning of statute.

Cited in W. H. Lutes Co. v. Wysong, 100 Minn. 114, 110 N. W. 367, holding the sale and delivery of a machine to a firm within the state was not doing business within the state within the meaning of a statute: John Deere Plow Co. v. Wyland, 69 Kan. 257, 76 Pac. 863, 2 Ann. Cas. 304, on what may constitute doing business in state within the meaning of a statute imposing certain requirements upon foreign corporations; Falaenau v. Reliance Steel Foundry Co. 74 N. J. Eq. 329, 69 Atl. 1098, holding an order accepted at the office of a foreign corporation in another state constitutes a contract of the latter state on which such corporation may maintain an action in this state; Kirven v. Virginia-Carolina Chemical Co. 76 C. C. A. 172, 145 Fed. 294, 7 Ann. Cas. 219; Von Seyfried v. Vollers, 75 N. J. L. 406, 67 Atl. 930; State use of Hart-Parr Co. v. Robb-Lawrence Co. 15 N. D. 60, 106 N. W. 406; Alleghany County v. Allen, 69 N. J. L. 276, 55 Atl. 724,—on when foreign corporation is doing business in state within the meaning of a statute.

Cited in note (2 L.R.A.(N.S.) 128) on sale of single cargo by foreign corporation as doing business in state.

45 L. R. A. 541, JORDAHL v. BERRY, 72 Minn. 119, 71 Am. St. Rep. 469, 75 N. W. 10.

Physician's recovery as bar to action for malpractice.

Cited in Sale v. Eichberg, 105 Tenn. 344, 52 L. R. A. 897, footnote p. 894, 59 S. W. 1020, holding action for malpractice not barred by confession of judgment in favor of physician for services, and referring with approval to annotation in 45 L. R. A. 541.

Malpractice as defence to recovery for services.

Cited in Vanderberg v. Slagh, 150 Mich. 230, 114 N. W. 72, holding that malpractice may be shown for the purpose of defeating claim for services rendered by physician or surgeon.

45 L. R. A. 547, BANK OF MONONGAHELA VALLEY v. WESTON, 159 N. Y. 201, 54 N. E. 40.

Followed without discussion in Bank of Monongahela Valley v. Weston, 62 App. Div. 623, 71 N. Y. Supp. 1132.

When nonsuit error.

Cited in Fiddler v. New York C. & H. R. R. Co. 64 App. Div. 96, 71 N. Y. Supp. 721, holding it improper to grant nonsuit when evidence presents question of fact as to company's negligence, in action for personal injuries; Fay v. Brooklyn Heights R. Co. 69 App. Div. 564, 75 N. Y. Supp. 113, and Sundheimer v. New York, 176 N. Y. 497, 68 N. E. 867, holding plaintiff entitled to most favorable inference deducible from evidence on appeal from nonsuit; Whitaker v. Staten Island Midland R. Co. 72 App. Div. 470, 76 N. Y. Supp. 548, holding question as to passenger's negligence and passenger's freedom from contributory negligence,

for jury; Becker v. New York, 170 N. Y. 230, 63 N. E. 298, holding it error to dismiss complaint for extra work wrongfully disallowed and made necessary by mistakes of city surveyor; Place v. New York C. & H. R. R. Co. 167 N. Y. 347, 60 N. E. 632, and McDonald v. Metropolitan Street R. Co. 167 N. Y. 68, 60 N. E. 282, holding that court cannot direct verdict in jury trials when issue of fact presented.

Accommodation indorsement of negotiable paper by partner.

Later appeal in 172 N. Y. 261, 64 N. E. 946, holding partner permitting copartner to use firm name in indorsement of notes for accommodation of others estopped from questioning validity of indorsement as against bona fide holder without notice.

Cited in Second Nat. Bank v. Weston, 161 N. Y. 524, 76 Am. St. Rep. 283, 55 N. E. 1080, holding that failure of other partners to stop copartner's repeated use of firm name for accommodation of third parties creates presumption of his implied authority; Hunter v. Allen, 127 App. Div. 575, 111 N. Y. Supp. 820, on the liability of a member of a firm on accommodation paper given outside the business of the firm.

Bona fides as to ownership of note.

Cited in McCammon v. Shantz, 49 App. Div. 464, 63 N. Y. Supp. 611, holding question of holder's bona fides in receiving note, for jury; Citizens' Nat. Bank v. Weston, 162 N. Y. 117, 56 N. E. 494, holding proof of fraudulent inception of promissory note shifts burden as to bona fides to transferee.

Notice of dissolution of partnership.

Cited in Citizens' Nat. Bank v. Weston, 162 N. Y. 120, 56 N. E. 494, 172 N. Y. 253, holding erroneous, charge that holder of note had notice of dissolution of partnership, where notice had been sent to two commercial agencies, two newspapers had published local item, and notice had been sent by successors in business letters; Johnson v. Levy, 109 La. 1048, 34 So. 68, holding person who suffers his name to be used as partner after dissolution, responsible to third persons giving credit to firm; Overlock v. Hazzard, 12 Ariz. 145, 100 Pac. 447, holding that where firm is dissolved and corporation of same name succeeds it reasonable notice must be given to persons having subsequent dealings with corporation.

Cited in note (4 L.R.A.(N.S.) 800) on necessity of actual notice of retirement to relieve retiring member from liability on firm obligation thereafter renewed.

Accommodation indorsers.

Cited in Chemical Nat. Bank v. Kellogg, 183 N. Y. 96, 2 L.R.A.(N.S.) 302, 111 Am. St. Rep. 717, 75 N. E. 1103, 5 Ann. Cas. 158, holding a married woman indorsing for her husband's business a note payable and dated in this state is estopped to deny that her contract was that of another state where no notice given that she was a nonresident.

— Notice.

Cited in Re Troy & C. Shirt Co. 136 Fed. 428, on the presentment of a note for discount by the makers as being notice that the indorsement thereon is an accommodation indorsement.

Cited in note (2 L.R.A.(N.S.) 525) on taking note from maker or payee as constructive notice of accommodation character of and lack of authority for indorsement.

45 L. R. A. 551, STODDARD v. LUM, 159 N. Y. 265, 70 Am. St. Rep. 541, 53 N. E. 1108.

Enforcement of stockholder's liability.

Cited in Lang v. Lutz, 39 Misc. 4, 78 N. Y. Supp. 200, holding that creditors may enforce payment of subscriptions by stockholders of insolvent corporation; Beals v. Buffalo Expanded Metal Constr. Co. 49 App. Div. 592, 63 N. Y. Supp. 635, holding subscriber not released from liability upon unpaid subscription by assignment of his agreement to make advances, repayment to be made upon completion of contracts; Rathbone v. Ayer, 84 App. Div. 189, 82 N. Y. Supp. 235, holding stock subscriptions are debts belonging to the corporation, and therefore assets which pass to its trustee in bankruptcy; Southworth v. Morgan, 71 Misc. 220, 128 N. Y. Supp. 598, holding that stockholder's liability for unpaid stock, so far as creditors are concerned, does not accrue until the making of order in proceedings to wind up corporation calling for payment; Southworth v. Morgan, 143 App. Div. 653, 128 N. Y. Supp. 196, holding that receiver of corporation may recover amount of value of stock from one who received it gratuitously or for less than par; Cheney v. Scharmann, 145 App. Div. 465, 129 N. Y. Supp. 993, holding that superintendent of banks could only enforce liability of stockholders of bank by suit in equity against all liable as stockholders; Warth v. Moore Blind Stitcher & Overseamer Co. 146 App. Div. 33, 130 N. Y. Supp. 748, holding that contract liability on unpaid subscription for capital stock could be enforced by corporation same as liability arising on any other indebtedness to it; Shipman v. Treadwell, 73 Misc. 591, 131 N. Y. Supp. 67, holding that liability of stockholders to pay proportionate share of debts, is not fixed until demand for payment after determination that enforcement of their liability is necessary to pay corporate debts; Blumenthal & Co. v. Denver Shoe Co. 18 Pa. Dist. R. 162, 25 Lanc. L. Rev. 242, on whether a creditor of a bankrupt corporation must first exhaust remedies against corporation.

Cited in footnote to Miller v. Smith, 66 L.R.A. 473, which holds that courts of state of stockholder's residence will not take jurisdiction of suit by corporate creditor on behalf of all to enforce his statutory liability to contribute toward payment of corporate debts in advance of judicial determination of his proportionate liability where laws of state of incorporation contemplate pro rata contribution to be enforced in equitable proceeding against all stockholders.

Cited in note (33 L.R.A.(N.S.) 896, 897) on right to enforce stockholders' liability outside of state of incorporation.

Actions upon statutory liability in foreign jurisdiction; by foreign receiver.

Cited in Howarth v. Angle, 162 N. Y. 187, 47 L. R. A. 729, footnote p. 725, 56 N. E. 489, sustaining foreign receiver's right of action against stockholder of foreign corporation; Sigua Iron Co. v. Brown, 171 N. Y. 502, 64 N. E. 194, sustaining foreign receiver's right to sue resident for unpaid calls upon assessable capital stock; *Re* Remington Automobile & Motor Co. 119 Fed. 444, holding contractual liability of stockholder, in insolvent corporation of New Jersey, for unpaid portion of stock subscription, enforceable in New York by trustee in bankruptcy; Worthington v. Griesser, 77 App. Div. 208, 79 N. Y. Supp. 52, holding statutory liability, under laws of another state, of persons unlawfully assuming to exercise corporate powers, not penal in character, and enforceable in this state; Hutchinson v. Stadler, 85 App. Div. 437, 83 N. Y. Supp. 509 (concurring opinion), majority holding resident stockholder of foreign corporation doing business within state, entitled to maintain action to compel director, participating in declaring unlawful dividend, to restore amount thereof to corporation; People v.

Martin, 175 N. Y. 322, 96 Am. St. Rep. 628, 67 N. E. 589, holding false oath to amount of capital of foreign corporation paid in, made under statute of another state, is paying within statutes of this state; Stone v. Penn Yan, K. P. & B. R. Co. 197 N. Y. 288, 134 Am. St. Rep. 879, 90 N. E. 843, affirming the right of a foreign receiver to maintain an action to recover unpaid premiums on an insurance policy.

Cited in footnotes to Crippen, L. & Co. v. Laighton, 46 L. R. A. 467, which denies enforceability of stockholder's liability in another state; Fidelity Ins. Trust & S. D. Co. v. Mechanics' Sav. Bank, 56 L. R. A. 228, which holds stockholder's liability enforceable in Federal court, or any court where personal service obtainable; Blair v. Newbegin, 58 L. R. A. 644, which sustains right to enforce stockholder's liability in another state without making corporation a party.

Distinguished in Bank of China v. Morse, 168 N. Y. 481, 56 L. R. A. 148, footnote p. 139, 85 Am. St. Rep. 676, 61 N. E. 774, holding assessment under English statute in proceedings to wind up corporation for benefit of reorganization scheme not enforceable against resident.

Law of owner's domicil as affecting property elsewhere.

Cited in Maas v. German Sav. Bank, 73 App. Div. 527, 77 N. Y. Supp. 256, sustaining payment of decedent's savings bank account to foreign administrator after letters issued here; Hilliker v. Hale, 54 C. C. A. 258, 117 Fed. 226, denying right of receiver appointed in Minnesota, for insolvent corporation of that state, to sue for enforcement of stockholder's liability in New York state.

Corporate assets.

Cited in Leighton v. Leighton Lea Asso. 62 Misc. 79, 114 N. Y. Supp. 918, holding sums due from stockholders on lands apportioned and accepted by them, are reachable in equity by creditors of the corporation as assets thereof; Knickerbocker Trust Co. v. Iselin, 185 N. Y. 59, 113 Am. St. Rep. 863, 77 N. E. 877; Ford v. Chase, 118 App. Div. 607, 103 N. Y. Supp. 30, on unpaid stock as an asset of the corporation.

Suability of corporation.

Cited in Williams v. Port Chester, 97 App. Div. 96, 89 N. Y. Supp. 671, denying right of legislature to exempt a municipal corporation from liability for negligence in the maintenance of highways under its control.

45 L. R. A. 556, BUSH v. ORANGE COUNTY, 159 N. Y. 212, 70 Am. St. Rep. 538, 53 N. E. 1121.

For what purposes public funds may be used.

Cited in *Re* New York Juvenile Asylum, 31 Misc. 448, 65 N. Y. Supp. 617, holding New York juvenile asylum entitled to pay for children voluntarily entrusted to it; *Re* Greene, 55 App. Div. 482, 67 N. Y. Supp. 291, holding statute imposing tax upon county to reimburse bank for money advances to county treasurer in excess of deposit and used to pay county obligations, void; Rockefeller v. Taylor, 69 App. Div. 183, 74 N. Y. Supp. 812, holding assessors personally liable for expenses of defending proceedings to review grossly excessive assessment; Mahon v. Board of Education, 171 N. Y. 269, 89 Am. St. Rep. 810, 63 N. E. 1107, declaring unconstitutional, statute conferring pensions upon teachers who retired before establishment of pension system; Newburgh Sav. Bank v. Woodbury, 173 N. Y. 57, 65 N. E. 858, Affirming 64 App. Div. 306, 72 N. Y. Supp. 222, denying drafted men's liability to bank for money loaned to town and paid to them under void statute; People *ex rel.* Stephens v. Phillips, 88 App. Div. 563, 85 N. Y. Supp. 200, holding invalid, statute giving damages for change of grade of street to per-

son becoming owner of abutting property after change made, where damages could not be claimed but for such statute; Stemmler v. New York, 179 N. Y. 484, 72 N. E. 581, holding that city which has paid de facto officer is not liable to pay person subsequently adjudged to be lawful incumbent but who has rendered no service.

Cited in footnotes to Pritchard v. Magoun, 46 L. R. A. 381, which authorizes taxes to aid in building for highway and railway purposes toll bridge owned by private corporation; Dodge v. Mission Twp. 54 L. R. A. 242, which holds promotion of construction and operation of sugar mills a private purpose not authorizing taxation.

Distinguished in Parsons v. Van Wyck, 56 App. Div. 339, 67 N. Y. Supp. 1054, holding city authorized to issue bonds to pay for soldiers and sailors' monument erected in public park; Re Borup, 102 App. Div. 265, 92 N. Y. Supp. 624: denying that an act appropriating money to abutting owners for damages caused by a change in the grade of a road was unconstitutional as in the nature of a gift; People ex rel. Blair v. Grout, 44 Misc. 528, 90 N. Y. Supp. 122, holding valid an act allowing veterans of the civil war illegally removed from office to recover the salary paid to his successor before reinstatement.

— To pay for defense of public officers.

Cited in *Re* Fallon, 28 Misc. 750, 59 N. Y. Supp. 849, declaring unconstitutional, statute requiring city to pay expenses of officials tried and acquitted; *Re* Straus, 44 App. Div. 430, 61 N. Y. Supp. 37, and *Re* Jensen, 44 App. Div. 512, 60 N. Y. Supp. 933, Affirming 28 Misc. 381, 59 N. Y. Supp. 653, holding repayment of expenses incurred by public officer in successful defense against removal on charge of accepting bribe, not public purpose; Chapman v. New York, 168 N. Y. 86, 56 L. R. A. 849, 85 Am. St. Rep. 665, 61 N. E. 108, denying city's power to issue bonds to pay necessary expenses previously incurred by city officer in defending charge of misconduct.

Conclusiveness of interlocutory judgment.

Cited in Bauer v. Hawes, 115 App. Div. 497, 101 N. Y. Supp. 455, holding that an interlocutory judgment which was to culminate in an adjustment in one action of all rights of all defendants did not conclude one of them who failed to appeal.

45 L. R. A. 559, ROBILLARD v. SOCIÉTÉ ST. JEAN BAPTISTE DE CENTREVILLE, 21 R. I. 348, 79 Am. St. Rep. 806, 43 Atl. 635.

45 L. R. A. 560, PHILLIPS v. PROVIDENCE STEAM ENGINE CO. 21 R. I. 302, 43 Atl. 598.

Power to sell corporate assets against will of minority.

Cited in notes (103 Am. St. Rep. 553; 35 L.R.A.(N.S.) 400) on power to sell property essential to existence of corporation as a going concern against will of minority.

45 L. R. A. 563, WORTH v. NORTON, 56 S. C. 56, 76 Am. St. Rep. 524, 33 S. E. 792.

Privilege from service of process.

Second appeal in 56 S. C. 479, 35 S. E. 135, holding that question as to jurisdiction of supreme court to allow party to answer should have been made before remittitur sent down.

Cited in footnote to Berlett v. Weary, 60 L. R. A. 609, which authorizes service of summons on member of legislature during legislative session.

Cited in note (52 L. ed. U. S. 278, 279) on privilege of members of Congress from suit.

45 L. R. A. 567, STATE v. HOLLEYMAN, 55 S. C. 207, 31 S. E. 362, 33 S. E. 366.

Unlawful possession of liquors.

Cited in footnote to Henderson v. Heyward, 47 L. R. A. 366, which holds ordinance against receiving within city liquor lawfully purchased elsewhere, unauthorized.

Cited in note (24 L.R.A.(N.S.) 175) on power to prohibit or restrict one's using liquor or having it in possession for use.

Distinguished in Easley v. Pegg, 63 S. C. 102, 41 S. E. 18, holding possession of contraband liquors for any purpose, unlawful.

What constitutes interstate commerce.

Cited in Texas & P. R. Co. v. Davis, 93 Tex. 380, 54 S. W. 383, holding foreign corporation transporting cattle from another state by driving them to station within state, and shipping them to ranch in state, engaged in interstate commerce; Smith v. Lafar, 67 S. C. 493, 46 S. E. 332, holding that liquor purchased in another state and shipped to purchaser in this state is not contraband while in transit, being protected as article of interstate commerce.

Distinguished in Jaro v. Holstein, 73 S. C. 114, 52 S. E. 870, holding liquor brought into state by a private party to be delivered to another, who it is known intends to use it for illicit purposes may be seized in the possession of the party carrying it.

Termination of interstate shipment of liquors.

Cited in State v. Messervy, 86 S. C. 509, 68 S. E. 766, holding that interstate shipment of alcohol in unbroken package is delivered, so as to be subject to state laws, when put in possession of consignee by carrier at station.

Cited in note (11 L.R.A.(N.S.) 552) on what sufficient to terminate interstate transportation of intoxicating liquors.

45 L. R. A. 579, WILCOX v. LUCO, 118 Cal. 639, 50 Pac. 758.

Reversing 45 Pac. 676.

Jurisdiction over foreign consuls.

Cited in Redmond v. Smith, 22 Tex. Civ. App. 325, 54 S. W. 636, and Scott v. Hobe, 108 Wis. 242, 84 N. W. 181, holding that state courts have jurisdiction of actions against trading consuls of foreign nations, in absence of treaty provisions to contrary.

Jurisdiction of state courts of actions under federal statutes.

Cited in Bradbury v. Chicago, R. I. & P. R. Co. 149 Iowa, 57, 40 L.R.A. (N.S.) 689, 128 N. W. 1; St. Louis, I. M. & S. R. Co. v. Hesterly, 98 Ark. 252, 135 S. W. 874,—holding that state courts are authorized to enforce rights declared or created by Federal Employer's Liability Act of April, 1908.

45 L. R. A. 589, SLACK v. SUDDOTH, 102 Tenn. 375, 73 Am. St. Rep. 881, 52 S. W. 180.

Sale of good will.

Cited in Millspaugh Laundry v. First Nat. Bank, 120 Iowa, 4, 94 N. W. 262, holding use, by purchaser at foreclosure sale, of name and place of business of mortgagor, not conversion of good will.

Cited in footnote to Hutchinson v. Nay, 68 L.R.A. 186, which sustains surviving partner's right to enter into competing business and solicit trade from

customers of old firm, notwithstanding sale of good will as part of firm assets at instance of personal representative of deceased.

Cited in note (5 L.R.A.(N.S.) 1070) on good will as impliedly passing with transfer of business.

Distinguished in Jackson v. Byrnes, 103 Tenn. 700, 54 S. W. 984, sustaining contract of vendor of livery stable not to engage in same business so long as vendee remains.

45 L. R. A. 591, COOPER v. OVERTON, 102 Tenn. 211, 73 Am. St. Rep. 864, 52 S. W. 183.

Liability for dangerous condition of premises.

Cited in Griffin v. Chicago & W. I. R. Co. 101 Ill. App. 287, denying company's liability to boy tripping over switch and injured by train while trespassing; Indianapolis Water Co. v. Harold, 170 Ind. 177, 83 N. E. 993, holding defendant company maintaining a foot log across a canal for the convenience of its workmen in repairing the canal and used by the public for crossing the canal were not liable to a father whose minor son was drowned while playing about it; Briscoe v. Henderson Lighting & P. Co. 148 N. C. 403, 19 L.R.A.(N.S.) 1124, 62 S. C. 600, holding defendant company not liable for injuries received by a child trespassing on premises and falling into a pool of hot water negligently covered, there being no showing that the boy was in the habit of frequenting the premises; Foster-Herbert Cut Stone Co. v. Pugh, 115 Tenn. 700, 4 L.R.A.(N.S.) 809, 112 Am. St. Rep. 881, 91 S. W. 199, holding defendant not liable for the death of a child killed while climbing on defendant's wagon at the invitation of the driver; Kansas City v. Siese, 71 Kan. 286, 80 Pac. 626, (dissenting opinion) denying liability of city for the drowning of a minor son of plaintiff in a pond formed by the grading of a street across a ravine.

Cited in footnotes to Arnold v. St. Louis, 48 L. R. A. 291, which denies liability of city or private owner for drowning of children while skating on pond without invitation; Kramer v. Southern R. Co. 52 L. R. A. 359, which denies railroad company's liability for death of child by fall of pile of cross-ties in unused portion of street; Rachmel v. Clark, 62 L. R. A. 959, which holds manufacturer storing stone slabs on sidewalk in front of building liable for injuries to person lawfully using the sidewalk; Heimann v. Kinnare, 52 L. R. A. 652, which holds thirteen-year-old boy negligent *per se* in jumping over strip of water on to rotten ice on pond and sliding to point where water over his head; Kopplekom v. Colorado Cement Pipe Co. 54 L. R. A. 284, which holds owner of uninclosed city lot liable for injury to young child by toppling over of large cement pipe used by children as plaything; Savannah, F. & W. R. Co. v. Beavers, 54 L. R. A. 314, which denies duty of one making excavation on own land to guard trespassing children from injury; Temby v. Ishpeming, 69 L.R.A. 618, which denies liability of city for injuries to traveler by fall of billboard insecurely fastened by abutting owner.

Cited in notes (19 L.R.A.(N.S.) 1145) on attractive nuisance; (25 Eng. Rul. Cas. 114) on liability for injury to trespasser by dangerous instrumentalities.

45 L. R. A. 600, KANSAS CITY, M. & B. R. CO. v. DELANEY, 102 Tenn. 289, 52 S. W. 151.

Publication of libel by letter.

Cited in Shinglemeyer v. Wright, 124 Mich. 241, 50 L. R. A. 133, 82 N. W. 887,

holding communications with police officers charging woman with stealing wheel, constitute publication.

Cited in footnote to Gambrill v. Schooley, 52 L. R. A. 87, which holds dictation of libelous letter to confidential stenographer, a publication.

Cited in note (21 L.R.A.(N.S.) 33) on letter to attorney or agent of plaintiff as publication of libel.

Libelousness of black list or boycott.

Cited in Watters v. Retail Clerks Union No. 479, 120 Ga. 427, 47 S. E. 911, holding no action would lie for the issuing of a circular putting plaintiff on the "unfair" list and stating the reasons for so doing.

Cited in note (4 L.R.A.(N.S.) 1099) on liability growing out of giving or refusing information affecting character of reputation of servant.

45 L. R. A. 603, SHORT v. BULLION, B. & C. MIN. CO. 20 Utah, 20, 57 Pac. 720.

Statutory limitations upon right of contract.

Cited in Com. v. Beatty, 15 Pa. Super. Ct. 18, sustaining act regulating hours of employment of women; Kilpatrick v. Grand Trunk R. Co. 74 Vt. 301, 93 Am. St. Rep. 887, 52 Atl. 531, upholding validity of statute imposing liability upon railroads for injury to employee from use of freight car with ladder on side; Ex parte Boyce, 27 Nev. 333, 65 L.R.A. 55, 75 Pac. 1, 1 Ann. Cas. 66, upholding the validity of an act providing an eight hour day for workmen in certain employments designated: Re Chartz, 29 Nev. 112, 5 L.R.A.(N.S.) 917, 124 Am. St. Rep. 915, 85 Pac. 352, on the constitutionality of statutory limitations of hour of labor.

Cited in footnotes to *Re* Dalton, 47 L. R. A. 380, which sustains eight-hour law applicable only to employees of state municipality or subdivision of state; Fiske v. People, 52 L. R. A. 291, which holds void, restriction of hours of labor on city contracts to eight hours per day; Wenham v. State, 58 L. R. A. 825, which sustains statute limiting hours of work of women in certain employments; State v. Buchanan, 59 L. R. A. 342, which sustains prohibition against employment of women more than ten hours a day in certain establishments; Cleveland v. Clements Bros. Constr. Co. 59 L. R. A. 775, which holds void, act limiting to eight hours a day work of laborers on public contract; *Re* Ten-Hour Law, 61 L. R. A. 612, which sustains limitation to ten hours a day work of street railway employee.

Cited in notes (65 L.R.A. 45, 48) on legislative limitation of hours of labor; (78 Am. St. Rep. 245) on acts of employer and employe which legislature may declare criminal; (48 L. ed. U. S. 149) on validity of legislation regulating hours of labor.

Distinguished in *Re* Morgan, 26 Colo. 432, 47 L. R. A. 60, footnote p. 52, 77 Am. St. Rep. 269, 58 Pac. 1071, holding eight-hour law, as applied to smelters, void.

Rights of parties in pari delicto.

Cited in Haddock v. Salt Lake City, 23 Utah, 528, 65 Pac. 491, sustaining right to prove illegal contract as defense to suit for services in serving process; Karren v. Karren, 25 Utah, 95, 60 L. R. A. 303, 95 Am. St. Rep. 815, 69 Pac. 465, holding that consent decree of divorce, obtained by suppression of evidence, will not be set aside upon petition of either party; Brock v. Jones County, 145 Iowa, 406, 124 N. W. 209, holding that physician who was member of county medical society which had contract with county to furnish medical attendance to poor, and had received benefits thereunder, is estopped from claiming such contract is void, in action to recover for services from town trustees;

Johnson v. Berry, 20 S. D. 134, 1 L.R.A.(N.S.) 1161, 104 N. W. 1114, holding a thresher not filing the bond required by statute to entitle one to operate a threshing machine cannot recover compensation for services performed although the other party not aware of threshers' failure to file the bond.

Right to avoid effect of statute by contract.

Cited in Atchison, T. & S. F. R. Co. v. Fronk, 74 Kan. 526, 87 Pac. 698, 11 Ann. Cas. 174, holding a contract entered into by an employee of a railroad exempting the company from liability for negligence was void where a liability was created by statute.

Cited in notes (12 L.R.A.(N.S.) 609; 117 Am. St. Rep. 508) on invalidity of contract in violation of labor laws.

Purpose of statutory limitation on hours of labor.

Cited in State v. Livingston Concrete Bldg. & Mfg. Co. 34 Mont. 577, 87 Pac. 980, 9 Ann. Cas. 204, on the purpose of a statute providing the number of hours that shall constitute a days labor in certain employments.

45 L. R. A. 609, McELDOWNEY v. WYATT, 44 W. Va. 711, 30 S. E. 239.

Validity of special statutes.

Cited in Archer v. Baltimore Bldg. & L. Asso. 45 W. Va. 42, 30 S. E. 241, sustaining statute exempting building associations from operation of usury laws.

Cited in footnote to Milwaukee County v. Isenring, 53 L. R. A. 635, which holds act regulating sheriff's fees for particular county, local.

Vested rights in statute.

Cited in footnotes to Osborne v. Lindstrom, 46 L. R. A. 715, which holds invalid, statute shortening period of limitation without leaving reasonable time to sue; Cassard v. Tracy, 49 L. R. A. 272, which holds pending appeals within provision in new Constitution giving supreme court power to determine questions of fact as well as of law; Orman v. Van Arsdell, 67 L.R.A. 438, which sustains right of legislature to take away fully matured right under existing law to defeat debt by plea of limitations; Lohrstorfer v. Lohrstorfer, 70 L.R.A. 621, which holds vested right conferred by dismissal of appeal for failure to comply with mandatory statute as to payment of register's fee for return.

Cited in notes (27 L.R.A.(N.S.) 1188) on vested right of municipal corporation in defense of limitations; (95 Am. St. Rep. 659) on bar of statute of limitations as vested right; (111 Am. St. Rep. 456) on retrospective operation of statutes of limitation.

Title of acts.

Cited in McNeeley v. South Penn Oil Co. 52 W. Va. 641, 62 L. R. A. 576, 44 S. E. 508, holding title, "An Act Concerning the Limitation of Actions in Certain Cases," insufficient under Constitution requiring "object" to be stated.

45 L. R. A. 616, LAWTON v. CHILTON, 103 Wis. 244, 79 N. W. 321.

Railroad company's liability for loss of mail.

Cited in Boston Ins. Co. v. Chicago, R. I. & P. R. Co. 118 Iowa, 434, 59 L. R. A. 801, 92 N. W. 88, and Boston Ins. Co. v. Chicago, R. I. & P. R. Co. 118 Iowa, 434, 59 L. R. A. 801, 92 N. W. 88, holding that sender of registered mail package has no right of action against a railroad company transporting same as agent of government.

Damages for breach of subcontractor's contract for carrying mail.

Cited in Woodlief v. Logan, 51 La. Ann. 1953, 26 So. 627, holding mail contractor resuming contract with government after default of subcontractor, enti-

tled to recover of subcontractor only cost of temporary service of mails during default, amount deducted by government for loss or depredation upon mails, and profit stipulated in subcontract.

Vested rights in statute of limitations.

Cited in Cole v. Van Ostrand, 131 Wis. 467, 110 N. W. 884, holding the extension of the period of limitations before the statute has completely run does not impair the obligations of a contract or deprive one of property without due process of law.

Cited in footnote to Osborne v. Lindstrom, 46 L. R. A. 715, which holds invalid, statute shortening period of limitation without leaving reasonable time to sue.

Validity of local legislation.

Cited in Milwaukee County v. Isenring, 109 Wis. 18, 53 L. R. A. 640, 85 N. W. 131, holding act regulating sheriff's fees for particular county, local; Berges v. Milwaukee County, 116 Wis. 198, 93 N. W. 44, holding statute providing stated salary for register of deeds in counties having stated population or upwards, is general in its application.

Liability of servant for negligence.

Cited in note (25 L.R.A.(N.S.) 343, 346) on liability of agent or servant to third persons for own negligence or nonfeasance.

Application of statutes of limitations to foreign cause of action.

Cited in Arp v. Allis-Chalmers Co. 130 Wis. 455, 8 L.R.A.(N.S.) 1000, 118 Am. St. Rep. 1036, 110 N. W. 386, holding a statute of limitations applied to a cause of action arising in another state and brought by a resident of that state against a resident of this state in the courts of the state.

Statute requiring notice of claim as statute of limitations.

Cited in note (8 L.R.A.(N.S.) 997) on statute requiring notice of claim before action as statute of limitations.

45 L. R. A. 621, TAYLOR v. MUTUAL RESERVE FUND LIFE ASSO. 97 Va. 60, 33 S. E. 385.

Service of process.

Cited in footnotes to Abbeville Electric Light & P. Co. v. Western Electrical Supply Co. 55 L. R. A. 146, which authorizes service on traveling salesman of foreign corporation sent to investigate controversy out of which cause of action arose; Buie v. Chicago, R. I. & P. R. Co. 55 L. R. A. 861, which authorizes service of railroad company by serving in another state officers of company organized to construct extension of system.

Interference with management of foreign corporation.

Cited in Howard v. Mutual Reserve Fund Life Asso. 125 N. C. 54, 45 L. R. A. 856, 34 S. E. 199, denying injunction forbidding foreign insurance company to levy assessments upon resident member after new plan; State ex rel. Minnesota Mut. L. Ins. Co. v. Denton, 229 Mo. 198, 138 Am. St. Rep. 417, 129 S. W. 709, holding that courts of this state cannot make full examination into affairs of foreign insurance company for purpose of enforcing accounting to policy holder; Bradbury v. Wankegan W. Min. & Smelting Co. 113 Ill. App. 609, refusing to enjoin a foreign corporation and appoint a receiver because of difficulties concerning the internal affairs of the corporation; Sprague v. Universal Voting Mach. Co. 134 Ill. App. 382, denying bill for an injunction against officers of a foreign corporation to prevent them from acts which will tend to wreck the corporation; Babcock v. Farwell, 245 Ill. 33, 91 N. E. 683, on the jurisdic-

tion of courts in controversies concerning the internal affairs of foreign corporations.

Cited in note (70 L.R.A. 539) on judicial discretion to decline jurisdiction of litigation over internal affairs of foreign corporation.

Moot questions.

Cited in Huntington v. Taylor, 156 Fed. 706, refusing to adjudicate after the termination of an action on the rights of persons not parties thereto at the instance of an officer charged with the execution of the judgment.

45 L. R. A. 628, KIMBALL v. GRANTSVILLE CITY, 19 Utah, 368, 57 Pac. 1.

Scope of legislative power.

Approved in State v. Fair, 35 Wash. 133, 102 Am. St. Rep. 897, 76 Pac. 731, on the extent of the plenary power of the legislature to enact laws and upholding a general saving clause enacted at an extraordinary session called for other purposes.

Cited in State *ex rel.* Nichols v. Cherry, 22 Utah, 3, 60 Pac. 1103, sustaining legislature's right to prescribe mode of demanding jury trial; State *ex rel.* Breeden v. Lewis, 26 Utah, 123, 72 Pac. 388, holding statute increasing number of judges in district valid exercise of legislative power.

Cited in note (44 L. ed. U. S. 393) on legislative power as to annexation of rural lands to municipalities.

Collection of municipal taxes.

Followed in Wooley v. Grantsville City, 19 Utah, 409, 57 Pac. 10, and Boothe v. Grantsville City, 19 Utah, 411, 57 Pac. 10, without discussion.

Cited in footnote to Atchison, T. & S. F. R. Co. v. Clark, 47 L. R. A. 77, which holds void, fire tax to which railroad property subject without being entitled to any of benefits.

Cited in note (27 L.R.A.(N.S.) 696) on municipal taxation of rural lands.

Rule of stare decisis.

Cited in Gibbs v. Gibbs, 26 Utah, 396, 73 Pac. 641, holding rule of *stare decisis* not binding where principles involved are wholly remedial; State *ex rel.* Guilbert v. Lewis, 69 Ohio St. 208, 69 N. E. 132, refusing to be bound by former decision holding statutes relating to administration of office of auditor of particular county constitutional.

Cited in note (73 Am. St. Rep. 104) on limitations on doctrine of stare decisis.

45 L. R. A. 638, STATE v. MANNION, 19 Utah, 505, 75 Am. St. Rep. 753, 57 Pac. 542.

Right of accused to be confronted by witnesses.

Cited in State v. King, 24 Utah, 486, 91 Am. St. Rep. 808, 68 Pac. 418, holding reading of testimony given at preliminary examination by witness then cross-examined by accused, authorized, where witness left state after service of subpœna; Wray v. State, 154 Ala. 42, 15 L.R.A.(N.S.) 496, 129 Am. St. Rep. 18, 45 So. 697, 16 Ann. Cas. 362, holding an accused was deprived of his constitutional right of being confronted by witnesses against him where the state was allowed to ask a witness a question who because of his dangerous physical condition the accused could not be required to cross-examine; State v. Heffernan, 24 S. D. 3, 25 L.R.A.(N.S.) 878, 140 Am. St. Rep. 764, 123 N. W. 87, holding testimony on a former trial may be read where witness is absent from state; Ralph v. State, 124 Ga. 83, 2 L.R.A.(N.S.) 512, 52 S. E. 298, holding constitutional right to be confronted by witnesses did not entitle deaf prisoner to

have verbatim typewritten transcript of evidence made and given to him as trial progressed.

Cited in note (129 Am. St. Rep. 25, 26, 28), on constitutional right of accused to be confronted by witnesses.

Distinguished in State v. Vanella, 40 Mont. 333, 106 Pac. 364, holding an accused waived his constitutional right to be confronted by witnesses where a deposition was used on the trial without objection.

Waiver of constitutional rights.

Cited in State v. Way, 76 Kan. 933, 14 L.R.A.(N.S.) 607, 93 Pac. 159, holding the reception of the verdict in the voluntary absence of the accused was legal.

45 L. R. A. 642, SIEVERS v. BROWN, 34 Or. 454, 56 Pac. 171.

Rights of vendor and vendee.

Cited in Collins v. Creason, 55 Or. 529, 106 Pac. 445, holding that contract for sale of realty vests equitable title to premises in purchaser, who is thereafter treated as owner of land; Miles v. Hemenway, 59 Or. 326, 111 Pac. 696, holding that decree foreclosing land contract upon default, should not direct sale of premises; Dunn v. Mills, 70 Kan. 661, 79 Pac. 146, 3 Ann. Cas. 363, holding a vendee in possession under a contract of sale cannot resist payment of the purchase price on the ground of lack of title in vendor where vendor tenders deeds in due form and vendee makes no objection or offer to rescind the contract; Flanagan Estate v. Great Central Land Co. 45 Or. 344, 77 Pac. 465, on when a vendor may have a strict foreclosure of a contract for the sale and purchase of land; Wells, F. & Co. v. Page, 48 Or. 80, 3 L.R.A.(N.S.) 106, 82 Pac. 856, on what necessary to enable a vendor to maintain a suit against a vendee for breach of a contract to purchase; Higinbotham v. Frock, 48 Or. 132, 120 Am. St. Rep. 796, 83 Pac. 536, on a bond for a deed as transferring on the vendee an equitable title.

Cited in note (3 L.R.A.(N.S.) 103) on necessity of perfecting title before time for performance to hold vendee.

45 L. R. A. 645, FLYNN v. BAISLEY, 35 Or. 268, 76 Am. St. Rep. 495, 57 Pac. 908.

Fraud; conveyances to relatives.

Cited in Wright v. Craig, 40 Or. 196, 66 Pac. 807, holding conveyance of valuable property to relative for inadequate consideration by insolvent, places burden upon parties to show bona fides; Garnier v. Wheeler, 40 Or. 201, 66 Pac. 812, and Mendenhall v. Elwert, 36 Or. 384, 59 Pac. 805, holding insolvent's conveyance to son presumptively fraudulent; Brown v. Case, 41 Or. 233, 69 Pac. 43, holding sister has burden of showing deed from insolvent brother taken for valuable and adequate consideration, and without notice of debtor's intention to defraud creditors; Robson v. Hamilton, 41 Or. 244, 69 Pac. 651, holding burden on mother to show deed from insolvent daughter taken for valuable consideration and without notice of latter's fraudulent intent to delay creditors.

Distinguished in Advance Thresher Co. v. Esteb, 41 Or. 478, 69 Pac. 447, holding defendant in ejectment not required to prove he is purchaser for valuable consideration, and without notice, but may rely upon proof of nature and duration of estate.

Emancipation of minors.

Cited in Lewis v. Missouri, K. & T. R. Co. 82 Kan. 352, 108 Pac. 95, holding the emancipation of a minor may be inferred from the actions of the parties;

Livesley v. Heise, 48 Or. 154, 85 Pac. 509, holding the earnings of a minor are not liable to claims of father's creditors where no question raised as to his minority; Bristoe v. Chicago & N. W. R. Co. 128 Iowa, 482, 104 N. W. 487, on how the emancipation of a minor child may be shown.

Cited in note (113 Am. St. Rep. 114, 121) on emancipation of infants.

Voluntary conveyances.

Cited in Seed v. Jennings, 47 Or. 468, 83 Pac. 847, on voluntary conveyances as being constructively void as to existing creditors.

Cited in note (119 Am. St. Rep. 557) on presumption that voluntary conveyance is in fraud of creditors.

45 L. R. A. 647, ENTERPRISE DITCH CO. v. MOFFIT, 58 Neb. 642, 76 Am. St. Rep. 122, 79 N. W. 560.

Assessment on unpaid stock.

Cited in Bent v. Underdown, 156 Ind. 519, 60 N. E. 307, holding unpaid portion of stock not asset for benefit of corporation creditors, where articles provide that only certain part shall be paid.

Assessment of paid up stock.

Cited in Swanger v. Porter, 87 Neb. 767, 128 N. W. 516, to the point that full paid stock of corporation is nonassessable, in hands of owner; Garey v. St. Joe Min. Co. 32 Utah, 517, 12 L.R.A.(N.S.) 563, 91 Pac. 369, holding legislature with reserved power to alter and amend cannot make full paid stock subject to assessment by majority action; Wall v. Basin Min. Co. 16 Idaho, 320, 22 L.R.A.(N.S.) 1017, 101 Pac. 733, holding an assessment on paid-up stock enforcible against stock alone is not obnoxious to a constitution limiting stockholder's liability in personam to par value of stock.

Cited in note (22 L.R.A.(N.S.) 1014) on assessments on paid-up stock.

Distinguished in Mirage Irrig. Co. v. Sturgeon, 77 Neb. 177, 108 N. W. 977, affirming the validity of an assessment on paid-up stock where the certificates contained a recital that the stock was taken subject to assessment over its par value for maintenance of property.

45 L. R. A. 654, GADSDEN v. THRUSH, 58 Neb. 340, 78 N. W. 632.

Reaffirmed without discussion on second appeal in 63 Neb. 882, 89 N. W. 403.

Effect of usury.

Cited in note (56 L. R. A. 677, 699) on forfeiture or other effect of taking or reserving illegal interest by national bank.

45 L. R. A. 658, BRADFORD GLYCERINE CO. v. ST. MARY'S WOOLEN MFG. CO. 60 Ohio St. 560, 71 Am. St. Rep. 740, 54 N. E. 528.

Negligent use of explosives.

Cited in Fitz Simons & C. Co. v. Braun, 199 Ill. 395, 59 L. R. A. 424, 65 N. E. 249, Affirming 94 Ill. App. 540, holding contractor liable for damage done to neighboring buildings by vibration due to explosion of dynamite used in excavating; Bishop v. Brown, 14 Colo. App. 548, 61 Pac. 50, holding no presumption of negligence arises from mere explosion of boiler; Kleebauer v. Western Fuse & Explosives Co. 60 L. R. A. 379, reversed on rehearing, the court holding that storage of gunpowder on premises of fuse manufacturer within 250 yards of dwellings not negligence *per se*.

Cited in note (113 Am. St. Rep. 1015) on presumption of negligence from explosions.

Distinguished in Cleveland Terminal & Valley R. Co. v. Marsh, 63 Ohio St.

249, 52 L.R.A. 147, 58 N. E. 821, denying company's liability to boy employed by station agent and injured by explosion of signal torpedo; Langabaugh v. Anderson, 68 Ohio St. 143, 62 L.R.A. 952, 67 N. E. 286, holding in action for negligent burning of building from explosion of crude oil, it is error to leave to jury to determine whether crude oil stored in tanks is constant menace to property.

— High and low explosives.

Cited in Smith v. Mine & S. Supply Co. 32 Utah, 26, 88 Pac. 683, holding it proper on question of care in storage to prove the comparative explosiveness of the thing kept with other explosives.

Storage of explosives as nuisance.

Cited in Flynn v. Butler, 189 Mass. 386, 75 N. E. 730, holding the maintenance of a building for the storage of explosives was a nuisance where floor was soaked with nitroglycerine and neighborhood was populous; Henderson v. Sullivan, 16 L.R.A.(N.S.) 691, 86 C. C. A. 236, 159 Fed. 49, 14 Ann. Cas. 590, holding the storage of explosives on a small island in the Detroit river, needed in government work there, was not enjoinable absolutely but only if needlessly large amounts were kept; O'Hara v. Nelson, 71 N. J. Eq. 169, 63 Atl. 836, sustaining the enjoining the introduction of gasoline into tanks of automobiles in a frame building used as a garage in a thickly settled portion of a city, and the storage of automobiles there with gasoline in their tanks.

Cited in notes (123 Am. St. Rep. 579) on duty and liability of land owners as to storage of explosives; (16 L.R.A.(N.S.) 692) on storage of explosives as nuisance.

Liability for maintenance of dangerous instrumentality.

Cited in Barnes v. Zettlemoyer, 25 Tex. Civ. App. 470, 62 S. W. 111; McGhee v. Norfolk & S. R. Co. 147 N. C. 164, 24 L.R.A.(N.S.) 119, 60 S. E. 912 (dissenting opinion),—on right to recover for injuries received from the maintenance of a public nuisance without reference to the question of negligence; Gould v. Winona Gas Co. 100 Minn. 266, 10 L.R.A.(N.S.) 889, 111 N. W. 254, on liability for injury from the maintenance of a dangerous instrumentality without reference to the question of negligence; Laugabough v. Anderson, 22 Ohio C. C. 181, 12 Ohio C. D. 343, holding one storing large quantities of highly inflammable and dangerous crude oil on his premises, under duty to keep same upon his own premises irrespective of negligence; Northern Ohio Ry. v. Akron Canal & Hydraulic Co. 7 C. C. N. S. 80, 28 Ohio C. C. 60, on the liability of one collecting upon his premises dangerous substance for injury resulting from escape thereof; Marsh v. Lake Shore Electric R. Co. 7 Ohio C. C. N. S. 411, 28 Ohio C. C. 14, holding electricity not such highly dangerous agency that its keeper was insurer of safety of others coming in contact with it, but was charged with care commensurate with its deadly qualities.

Liability for injuries due to blasting operations.

Cited in Hoffman v. Walsh, 117 Mo. App. 283, 93 S. W. 853, holding defendant liable for injuries received by plaintiff duirng blasting operations without regard to whether defendant was negligent or not; Longtin v. Persell, 30 Mont. 311, 65 L.R.A. 655, 104 Am. St. Rep. 723, 76 Pac. 699, 2 Ann. Cas. 198; Blackford v. Heman Constr. Co. 132 Mo. App. 162, 112 S. W. 287,—holding defendant operating a quarry in a large town was liable for injuries resulting from blasting operations without reference to the question of negligence.

Cited in note (123 Am. St. Rep. 581) on duty and liability of land owners to adjoining proprietors as to blasting merely causing concussion.

Distinguished in Thurmond v. Ash Grove White Lime Asso. 125 Mo. App. 77, 102 S. W. 617, holding negligence must be shown to render defendant liable for injuries due to blasting operations where such blasting was not continuous and done in a sparsely settled community; Armstrong v. Cincinnati, 12 Ohio C. C. N. S. 78, holding that use of explosives for blasting is not negligence per se.

Liability arising from ordinary authorized use of property.

Cited in Dayton v. City R. Co. 12 Ohio S. & C. P. Dec. 290, holding street railway operating under single trolley system pursuant to municipal grant of franchise, with due care was not liable for injuries resulting from unavoidable escape of electricity.

45 L. R. A. 662, ST. BERNARD v. KEMPER, 60 Ohio St. 244, 54 N. E. 267.

Taxes as leviable upon corpus of real property.

Cited in Williamson v. Lewis, 13 Ohio S. & C. P. Dec. 372, holding unpaid balance of delinquent taxes assessed against leasehold were chargeable against the fee where sale of leasehold returned insufficient sum.

Lessee in possession as owner for taxation or assessment purposes.

Cited in Clemmer v. Cincinnati, 7 Ohio C. C. N. S. 32, 28 Ohio C. C. 90, holding acts of lessee for years with privilege of purchase binding as to special assessment upon all parties at interest where lessee was treated and regarded as owner by lessor; Herman v. Columbus, 15 Ohio S. & C. P. Dec. 514, holding signature of perpetual lessee to petition for street improvement binding on lessor though leasehold was liable to forfeiture for default of payment of ground rent.

— Mortgagor in possession as owner.

Cited in Cincinnati Bldg. & Deposit Co. v. Cincinnati, 10 Ohio C. C. N. S 32, 30 Ohio C. C. 502, holding mortgagor in possession had right to sign petition for street improvement and thereby estop himself and mortgagee from objecting to assessment.

45 L. R. A. 664, SMITH v. BROOKLYN, 160 N. Y. 357, 54 N. E. 787.

Appropriation of waters.

Cited in Hempstead v. New York, 52 App. Div. 186, 65 N. Y. Supp. 14, holding statute requiring municipal corporations to deepen channels after diverting water, not applicable to streams diverted before passage of act; Strobel v. Kerr Salt Co. 164 N. Y. 321, 51 L. R. A. 694, 79 Am. St. Rep. 643, 58 N. E. 142, enjoining diversion of water from stream to operate salt works by saturating salt beds and allowing condensed portion to return to stream rendering it unfit for domestic purposes; People v. Hulbert, 131 Mich. 165, 64 L. R. A. 271, 100 Am. St. Rep. 588, 91 N. W. 211, upholding right of riparian proprietor to bathe in lake to prejudice of municipality using lake for supplying water to inhabitants.

Cited in footnotes to New Whatcom v. Fairhaven Land Co. 54 L. R. A. 190, which denies city's right to appropriate waters of navigable lake for water supply to injury of riparian owner; Canton v. Shock, 58 L. R. A. 637, which holds city liable to lower proprietor, for furnishing water to outside persons, or for transportation, or unreasonable amount to manufacturers.

Percolating waters.

Cited in Westphal v. New York, 75 App. Div. 253, 78 N. Y. Supp. 56, holding decreased rental value with water withdrawn, measure of damages for city's taking water by means of wells; Forbell v. New York, 164 N. Y. 524, 51 L. R. A. 697, footnote p. 695, 79 Am. St. Rep. 666, 58 N. E. 644, Affirming 47 App. Div.

372, 61 N. Y. Supp. 1005, authorizing injunction against city's draining subsurface water by pumping works: Reisert v. New York, 174 N. Y. 200, 66 N. E. 731, Reversing 69 App. Div. 303, 74 N. Y. Supp. 673, holding landowner entitled to damages for drying up of streams and wells by city pump station; Stillwater Water Co. v. Farmer, 89 Minn. 66, 60 L. R. A. 879, footnote p. 875, 99 Am. St. Rep. 541, 93 N. W. 907, and Barclay v. Abraham, 121 Iowa, 629, 64 L. R. A. 259, 100 Am. St. Rep. 365, 96 N. W. 1080, sustaining right to injunction against landowner's draining, collecting, and diverting percolating waters solely to waste them; Katz v. Walkinshaw, 141 Cal. 148, 64 L. R. A. 246, 99 Am. St. Rep. 35, 74 Pac. 766, enjoining diversion of percolating waters in artesian belt for sale to owners of land outside such belt; Herriman Irrig. Co. v. Keel, 25 Utah, 122, 69 Pac. 719 (concurring opinion), majority upholding right of mining company to collect percolating waters on own land, and turn same into natural channel, for use further down stream, but limiting right of appropriation as against persons using waters for irrigation; Erickson v. Crookston Waterworks, Power & Light Co. 100 Minn. 487, 8 L.R.A.(N.S.) 1253, 111 N. W. 391, 10 Ann. Cas. 843, holding defendant water company had no right to deprive the owners of wells on adjoining land of the flow of waters by using pumps to secure a greater flow of water from the artesian basin; Meeker v. East Orange, 77 N. J. L. 633, 25 L.R.A.(N.S.) 471, 134 Am. St. Rep. 798, 74 Atl. 379, holding the sinking of wells to supply a municipality with water which resulted injuring plaintiff's well and crops by the withdrawal of water from his land rendered the municipality liable for the injury; Reisert v. New York, 101 App. Div. 94, 91 N. Y. Supp. 780, restraining defendant municipality from appropriating subterranean waters by artificial means to such an extent as lower the level of subterranean waters under plaintiff's land; Hathorn v. Natural Carbonic Gas Co. 128 App. Div. 38, 112 N. Y. Supp. 374, Modifying 60 Misc. 344, 113 N. Y. Supp. 458, holding constitutional an act which restrains the taking of mineral waters from land by artificial means to the injury of adjoining owners in mineral waters from the same source; Hathorn v. Dr. Strong's Saratoga Springs, Sanitarium, 55 Misc. 448, 106 N. Y. Supp. 553, restraining defendant appropriating percolating waters by the use of artificial means to the detriment of adjoining land owners; Pence v. Carney, 58 W. Va. 304, 6 L.R.A.(N.S.) 271, 112 Am. St. Rep. 963, 52 S. E. 702, on rights of land owner to appropriate percolating waters.

Cited in footnotes to Vineland Irrig. District v. Azusa Irrig. Co. 46 L. R. A. 820, which holds subsurface flow of river through gravelly bed subject to legal appropriation subordinate to rights of prior appropriator of surface flow; Brosnan v. Harris, 54 L. R. A. 628, which sustains right under statute to appropriate water of spring without natural outlet; Huber v. Merkel, 62 L. R. A. 589, which holds that landowner's right to sink wells and gather percolating water cannot be taken away by legislation unless by exercise of eminent domain or police power; Gagnon v. French Lick Springs Hotel Co. 68 L.R.A. 176, which sustains right to interlocutory injunction against malicious pumping by owners of surface of mineral water from large subterranean reservoir coming to surface in valuable springs on neighboring property.

Cited in note (99 Am. St. Rep. 74) on landowner's right in percolating waters.

Distinguished in Houston & T. C. R. Co. v. East, 98 Tex. 150, 66 L.R.A. 740, 107 Am. St. Rep. 620, 81 S. W. 279, 4 Ann. Cas. 827, holding the collection of percolating waters by defendant company for the use of its engines in such quantities as to injure plaintiff's use was damnum absque injuria.

45 L. R. A. 666, MOOT v. BUSINESS MEN'S INVEST. ASSO. 157 N. Y. 201, 52 N. E. 1.

Notice affecting title of purchaser of real estate.

Cited in Wilson v. Van Epps, 38 Misc. 493, 77 N. Y. Supp. 980, holding mortgagee under mortgage executed by trustee bound to know limitations of trust; Gorman v. Gorman, 40 App. Div. 226, 57 N. Y. Supp. 1069, holding purchaser of premises at partition sale not required to take title resting in part upon adverse possession; Potter v. Sachs, 45 App. Div. 457, 61 N. Y. Supp. 426, holding purchaser of realty chargeable with constructive notice which law imputes to records; Taylor v. Klein, 47 App. Div. 349, 62 N. Y. Supp. 4, holding title to property purchased without authority from court by committee in name of lunatic's wife, not marketable; Gardner v. Dembinsky, 52 App. Div. 477, 65 N. Y. Supp. 183, holding vendee of land from donee of power in trust without authority to purchase, cannot convey marketable title; Wells v. Johnston, 55 App. Div. 488, 67 N. Y. Supp. 112, holding title of purchaser at tax sale subject to tax deed to state; Sisco v. Martin, 61 App. Div. 504, 70 N. Y. Supp. 597, holding absence of proof of service on next of kin of citation for proof of will, insufficient ground to reject title, when proof discoverable by use of reasonable diligence; Cahill v. Seitz, 93 App. Div. 112, 86 N. Y. Supp. 1009, holding purchaser of real estate presumed to investigate title, using care and diligence of expert; Feist v. Block, 115 App. Div. 213, 100 N. Y. Supp. 843, holding a vendee contracting to assume mortgages is chargeable with the terms thereof as recorded though not contained in the contract; Schnitzer v. Bernstein, 119 App. Div. 49, 103 N. Y. Supp. 860; Belloff v. Dime Sav. Bank, 118 App. Div. 22, 103 N. Y. Supp. 273,—on purchaser of real estate as chargeable with notice of facts appearing of record.

"Good and satisfactory" title.

Cited in Dean v. Williams, 56 Wash. 621, 106 Pac. 130, holding title free from valid objections is "good"; Whited v. Calhoun, 122 La. 112, 47 So. 415, holding contract to convey and furnish a good and satisfactory title is complied with if it is one purchaser should be satisfied with; Salisbury v. Ryon, 105 App. Div. 448, 94 N. Y. Supp. 352, holding executors could not have the specific performance of a contract to purchase land decreed where a doubt exists as to whether the will gives the executors a power of sale; Empire Realty Corp. v. Sayre, 107 App. Div. 418, 95 N. Y. Supp. 371, holding encroachment of building on street did not render title unmarketable where possibility was very remote that city would ever object and no one else could.

Cited in footnote to Ladd v. Weiskopf, 69 L.R.A. 785, which holds title not rendered unmarketable so as to entitle vendee to rescind and recover back purchase money by deed as to construction of a decree of distribution which is conclusive on all parties interested.

Cited in note (18 L.R.A.(N.S.) 743) on what constitutes "satisfactory title" within requirement of agreement relating to land.

Right of purchaser to rely on abstract.

Cited in Equitable Bldg. & L. Asso. v. Bank of Commerce & T. Co. 118 Tenn. 685, 12 L.R.A.(N.S.) 454, 102 S. W. 901, 12 Ann. Cas. 407, holding purchaser may rely upon abstract without making an original investigation if it purports to state substance of conveyances and indicates no error.

45 L. R. A. 671, ATLANTIC CITY R. CO. v. GOODIN, 62 N. J. L. 394, 72 Am. St. Rep. 652, 42 N. W. 333.

Negligence of persons crossing tracks.

Cited in Girton v. Lehigh Valley R. Co. 17 Pa. Super. Ct. 149, holding failure

to look and listen before crossing tracks in passing from train to depot, not negligence; St. Louis, I. M. & S. R. Co. v. Tomlinson, 69 Ark. 497, 64 S. W. 347, holding it negligence to cross tracks without stopping to look and listen when head enveloped in cloak; Redhing v. Central R. Co. 68 N. J. L. 643, 54 Atl. 431, holding whether passenger negligent in crossing track at station to take train, without looking for approach of cars, question for jury; Dieckmann v. Chicago & N. W. R. Co. 145 Iowa, 269, 31 L.R.A.(N.S.) 348, 139 Am. St. Rep. 420, 121 N. W. 676, holding that person required to cross track in night to board approaching train is not guilty of negligence per se, if he does so after train is in sight and announced; Garrett v. Atlantic City & S. R. Co. 79 N. J. L. 130, 74 Atl. 273, holding that railroad owes no duty of care to traveler that, after alighting from train, undertakes to cross tracks at place on right of way not provided for that purpose by company; Besecker v. Delaware, L. & W. R. Co. 220 Pa. 511, 123 Am. St. Rep. 714, 69 Atl. 1039, 14 Ann. Cas. 21, holding a passenger alighting from a train has a right to assume that he will be in no danger from trains on tracks between him and the station.

Cited in footnote to Chesapeake & O. R. Co. v. King, 49 L. R. A. 102, which sustains alighting passenger's right to presume against dangerous operation of trains.

Cited in note (13 L.R.A.(N.S.) 621) on running train or car between standing train and station.

Distinguished in Gregg v. Northern P. R. Co. 49 Wash. 192, 94 Pac. 911, holding a person struck by a train as he was approaching the station to take such train was guilty of contributory negligence in failing to stop and look and listen before attempting to cross the tracks.

Cohabitation as proof of marriage.

Cited in footnotes to University of Michigan v. McGuckin, 57 L. R. A. 917, which holds lawful marriage shown between persons whose cohabitation originally meretricious, by continued cohabitation after disability removed and birth of children baptized as legitimate; Hilton v. Roylance, 58 L. R. A. 723, which sustains sealing for time and eternity under Mormon marriage ceremony.

Validity of marriage contracted per verba de praesenti.

Cited in Travers v. Reinhardt, 205 U. S. 438, 51 L. ed. 872, 27 Sup. Ct. Rep. 563, Affirming 25 App. D. C. 581, upholding the validity of a marriage entered into by contract per verba de praesenti.

Cited in note (124 Am. St. Rep. 109. 122) on common law marriages.

Negligence as a question for the jury.

Cited in Atlantic C. R. Co. v. Kiefer, 75 N. J. L. 55, 66 Atl. 930, holding it properly a question for the jury as to whether a person struck by a train after alighting from another was guilty of negligence.

45 L. R. A. 675, WATSON SEMINARY v. COUNTY COURT, 149 Mo. 57, 50 S. W. 880.

Cited in Morrow v. Pike County, 189 Mo. 615, 88 S. W. 99, historically, as to the statute providing an endowment for Watson Seminary out of fines collected.

Legislature's power to amend acts of incorporation.

Cited in Gregg v. Granby Min. & Smelting Co. 164 Mo. 628, 65 S. W. 312, sustaining stockholder's right to cumulate his vote for directors, under constitutional provision adopted subsequent to creation of corporation by special charter, giving each shareholder one vote on each share of stock; Snouffer v. Cedar Rap-

ids & M. C. R. Co. 118 Iowa, 305, 92 N. W. 79, holding street railway company may be required to remove tracks from side to middle of street, and to grade and pave space occupied, notwithstanding rights granted under original ordinance.

Public nature of institutions incorporated by state.

Cited in State ex rel. Wyoming Agri. College v. Irvine, 14 Wyo. 381, 84 Pac. 90, holding an agricultural college established by the state, the trustees of which are appointed by the governor, was a public institution.

45 L. R. A. 681, BRADT v. NEW NONPAREIL CO. 108 Iowa, 449, 79 N. W. 122.

Communications to subject of libel.

Cited in Yousling v. Dare, 122 Iowa, 541, 98 N. W. 371, holding that action for libel does not lie for defamatory words contained in a letter addressed to the plaintiff.

Damages for mental anguish.

Cited in Beaulieu v. Great Northern R. Co. 103 Minn. 50, 19 L.R.A.(N.S.) 568, 114 N. W. 353, 14 Ann. Cas. 462, holding damages are not recoverable by a parent for mental anguish occasioned by the delay of defendant in the transportation of the dead body of her child.

45 L. R. A. 682, *Re* THOMPSON, 174 Ill. 229, 51 N. E. 1046.

Proof of will.

Cited in Gould v. Chicago Theological Seminary, 189 Ill. 285, 59 N. E. 536; *Re* Kohley, 200 Ill. 192, 65 N. E. 699; Illinois Masonic Orphans' Home v. Gracy, 190 Ill. 97, 60 N. E. 194 — holding evidence to establish will on appeal need not be limited to testimony of subscribing witnesses; Webster v. Yorty, 194 Ill. 413, 62 N. E. 907, holding identity of detached portion of will need not be established by subscribing witness; Mendenhall's Will, 43 Or. 557, 73 Pac. 1033, holding recitals in attestation clause cannot prevail as against convincing testimony that will was neither signed nor signature acknowledged in presence of witnesses; Re Barry, 219 Ill. 392, 76 N. E. 577, holding on an appeal from an order of probate court refusing to probate the will, proof of execution was not limited to the testimony of subscribing witnesses; Re Sizer, 129 App. Div. 10, 113 N. Y. Supp. 210, holding the attestation clause with proof of the signatures of testator and subscribing witness are prima facie proof of due execution of a will; Hill v. Kehr, 228 Ill. 206, 119 Am. St. Rep. 425, 81 N. E. 848; Mead v. Presbyterian Church, 229 Ill. 529, 14 L.R.A.(N.S.) 258, 82 N. E. 371, 11 Ann. Cas. 426; Greene v. Hitchcock, 222 Ill. 222, 78 N. E. 614,—on the testimony admissible on an appeal from an order denying the probate of a will; Noble v. Fickes, 230 Ill. 600, 13 L.R.A.(N.S.) 1207, 82 N. E. 950, 12 Ann. Cas. 282, on proof necessary to entitle a will prima facie to probate.

Impeachment of subscribing witness.

Cited in Johnson v. Johnson, 187 Ill. 95, 58 N. E. 237, holding impeachment of subscribing witness in contest proceeding does not relate back to execution of will.

Cited in note (82 Am. St. Rep. 58) on impeachment of subscribing witness.

Effect of dismissal of proceedings to probate will.

Cited in Senn v. Gruendling, 218 Ill. 460, 75 N. E. 1020; Hitchcock v. Green, 235 Ill. 300, 85 N. E. 238, affirming 139 Ill. App. 411,—on the effect of the dismissal of proceedings in circuit court to probate a will.

45 L. R. A. 687, FOUTCH v. STATE, 95 Tenn. 711, 34 S. W. 423.

Use of deadly weapon in self-defense.

Cited in State v. Foutch, 96 Tenn. 247, 34 S. W. 1, holding owner has right to use deadly weapon to protect house and family against indecent acts.

Right of aggressor to set up plea of self defense.

Approved in State v. Short, 120 La. 191, 45 So. 98, holding one who has receded or recanted his aggressive intent may defend himself and also citing annotation on this point.

Cited in State v. Lee, 85 S. C. 106, 137 Am. St. Rep. 869, 67 S. E. 141, holding that fault in bringing on difficulty so as to deprive defendant of plea of self defense may include acts occurring before actual encounter but so closely connected with it as to be fairly regarded as operating to bring it on; Cooper v. State, 123 Tenn. 95, 138 S. W. 826, holding that it is not erroneous in failing to define what would amount to "provocation of difficulty" so as to deprive accused of right of self defense; Bassett v. State, 44 Fla. 27, 33 So. 262, holding an accused commencing an assault with a deadly weapon on the deceased would not set up the plea of self defense; State v. Gray, 46 Or. 29, 79 Pac. 53, holding the plea of self defence is not available to one who goes out of his way to meet the deceased and provokes an assault on himself by the use of insulting and threatening language; Gambrell v. Com. 130 Ky. 522, 113 S. W. 476, on right of an accused beginning the trouble to set up self defence and also citing annotation on same point; State v. Taylor, 57 W. Va. 240, 50 S. E. 247, holding charge bad which did not exclude innocent or accidental commencement of combat.

Annotation approved in State v. Short, 121 La. 1032, 46 So. 1003, on right of an accused to set up plea of self defence when the aggressor and applying same to instructions given.

Cited in notes (15 L.R.A.(N.S.) 1013) as to whether one assisting relative in peril is bound by latter's act in bringing on difficulty; (74 Am. St. Rep. 733; 109 Am. St. Rep. 807),—on right of self-defense by original aggressor.

45 L. R. A. 712, RICHARDS v. EAST TENNESSEE, V. & G. R. CO. 106 Ga. 614, 33 S. E. 193.

Jurisdiction over infants' property.

Cited in Reed v. Alabama & G. Iron Co. 107 Fed. 592, holding equity may decree sale of property vested in life tenants and their children when funds needed for support and all parties before court and provision made for protection of unborn remaindermen; Rankin v. Schofield, 81 Ark. 452, 98 S. W. 674, holding that courts of equity have power to mortgage or sell lands of infants for their benefit; Palmer Brick Co. v. Woodward, 135 Ga. 451, 69 S. E. 827, holding that minors claiming remainder interest under deed are bound by order made where their guardian ad litem was duly served with copy of petition for right to lease lands; Phinizy v. Wallace, 136 Ga. 530, 71 S. E. 896, on effect of judicial decree in relation to property in which unborn persons have interest.

Cited in footnote to Pitts v. Rhode Island Hospital Trust Co. 48 L. R. A. 783, which authorizes allowance necessary for infant's maintenance out of trust fund provided for his education.

Cited in note (120 Am. St. Rep. 657) on inherent equity jurisdiction to decree sale of land of minors.

Disapproved in Hoskins v. Ames, 78 Miss. 993, 29 So. 828, holding chancery court without jurisdiction under Constitution of 1832 to sell infant's estate in remainder at suit of life tenant.

Outstanding title as defense.

Cited in Greenfield v. McIntyre, 112 Ga. 697, 38 S. E. 44, holding purchaser under tax sale cannot set up outstanding title in another, without connecting himself therewith, to defeat action by heirs to recover property.

Jurisdiction of chancery in chambers.

Cited in Mitchell v. Turner, 117 Ga. 962, 44 S. E. 17, holding void an order of of the superior court in chambers authorizing the sale of the real estate of a minor; Luguire v. Lee, 121 Ga. 632, 49 S. E. 834, holding chancery had no power in chambers to authorize the sale of the real estate of a remainderman for the purpose of reinvestment; Peary v. Dure, 131 Ga. 111, 62 S. E. 47, on the equitable estate of a minor as subject to an order of sale in chambers; Morehead v. Allen, 131 Ga. 812, 63 S. E. 507, on right to order in chambers the sale of the legal estate of a minor.

Distinguished in Webb v. Hicks, 117 Ga. 338, 43 S. E. 738, holding a judge in chambers could not authorize the sale of a minor's real estate.

Orders in chambers.

Cited in Morehead v. Allen, 127 Ga. 515, 56 S. E. 745, on rule for determination of whether an order was issued by the court in chambers or in open court.

45 L. R. A. 735, CALDWELL v. STORY, 107 Ky. 10, 52 S. W. 850.

Defamatory words used in course of duty.

Cited in Tanner v. Stevenson, 138 Ky. 589, 30 L.R.A.(N.S.) 205, 128 S. W. 878, holding that school superintendent, who from malicious motives attacks character of applicant for state license to teach, by making false charges of immoral character against him is guilty of libel.

Cited in footnotes to Niven v. Bolan l, 52 L. R. A. 786, which denies liability of physician for signing in good faith certificate necessary to commit to hospital for dipsomaniacs; Finley v. Steele, 52 L. R. A. 852, which holds members of school board not guilty of libel in sending request to school commissioner to revoke teacher's certificate; Buisson v. Huard, 56 L. R. A. 296, which holds privileged, answers to inquiries by interested persons as to defamatory remarks by others; Mauk v. Brundage, 62 L. R. A. 477, which denies privilege to statements made in preamble to order of board of health regulating conduct of physicians, as to carelessness of physician in treating obstetrical cases.

Privileged communications.

Cited in Kersting v. White, 107 Mo. App. 280, 80 S. W. 730, holding a communication by the defendant to a fellow member of a society for the promotion of moral conduct concerning another member whose conduct was under investigation to the effect that he was leading a sinful life with plaintiff, was privileged.

Cited in note (104 Am. St. Rep. 148) on what libelous statements are privileged.

45 L. R. A. 737, McHENRY v. DOWNER, 116 Cal. 20, 47 Pac. 779.

Taxation of bank stock and bonds.

Cited in Germania Trust Co. v. San Francisco, 128 Cal. 595, 61 Pac. 178, holding railroad bonds, secured by mortgage, not assessable to holder for taxation; Dodge v. Nevada Nat. Bank, 48 C. C. A. 627, 109 Fed. 727, holding statute providing for assessment of shares of national bank stock not retroactive; First Nat. Bank v. Estherville, 150 Iowa, 100, 129 N. W. 475, holding that tax on stock of national banks is invalid, because no tax is levied upon state banks.

Cited in footnote to Commercial Nat. Bank v. Chambers, 56 L. R. A. 346, which holds all unexempt property of national bank within jurisdiction subject to taxing power of state.

Cited in notes (3 L.R.A.(N.S.) 585) on state taxation of capital or national banks; (69 Am. St. Rep. 40, 49, 50) on state taxation of national banks.

Annotation particularly referred to in German American Sav. Bank v. Burlington, 118 Iowa, 86, 91 N. W. 829, which holds bank not entitled to deduct from assessment of shares of stock amount of United States bonds held as part of capital.

Taxation of corporate stocks.

Cited in Crocker v. Scott, 149 Cal. 588, 87 Pac. 102, on the settled constitutionality of an exemption of shares of stock of state corporations from taxation.

Cited in note (30 L.R.A.(N.S.) 705) on constitutionality of statute allowing deduction of only assessed value of realty in assessing capital stock of corporation.

Equality of taxation.

Cited in Kersey v. Terre Haute, 161 Ind. 474, 68 N. E. 1027, upholding validity of vehicle tax ordinance which excludes from its operation electric street cars and automobiles.

Self-executing constitutional provisions.

Cited in State v. Bradford, 12 S. D. 211, 80 N. W. 143, holding that amendment providing for state control of manufacture and sale of liquors does not operate to repeal existing license laws; Crocker v. Scott, 149 Cal. 584, 87 Pac. 102, holding a constitutional provision for the taxation of all property not specially exempted was not self-executing.

Cited in note (56 L. R. A. 115) on self-executing constitutional provisions.

45 L. R. A. 747, PEOPLE v. NATIONAL BANK OF D. O. MILLS & CO. 123 Cal. 53, 69 Am. St. Rep. 32, 55 Pac. 685.

Taxation of national banks.

Cited in San Francisco v. Crocker-Woolworth Nat. Bank, 92 Fed. 273, and First Nat. Bank v. San Francisco, 129 Cal. 97, 61 Pac. 778, holding state assessment of personal property of national bank invalid.

Cited in footnote to Commercial Nat. Bank v. Chambers, 56 L. R. A. 346, which holds all unexempt property of national bank within jurisdiction subject to taxing power of state.

Cited in note (3 L.R.A.(N.S.) 584) on state taxation of capital or national banks.

Assessment of omitted property.

Reaffirmed in Rosasco v. Tuolumne County, 143 Cal. 435, 77 Pac. 148; Kern Valley Water Co. v. Kern County, 137 Cal. 513, 70 Pac. 476; San Francisco v. La Societe Francaise D'Epargnes Et De Prevoyance Mutuelle, 131 Cal. 614, 63 Pac. 1016; Savings & L. Soc. v. San Francisco, 131 Cal. 359, 63 Pac. 665—upholding authority of assessor to add omitted property to verified assessment list, without calling for corrected statement or requiring appearance of taxpayer for examination.

Assessment of property in trust.

Cited in Title Guaranty & T. Co. v. Los Angeles County, 3 Cal. App. 620, 86 Pac. 844, holding money held in escrow by a trust company was properly assessable to such corporation as trustee.

Shares of stock as representing taxable corporate assets.

Cited in Chesebrough v. San Francisco, 153 Cal. 563, 96 Pac. 288, on shares of stock as representing the assets of a corporation for purpose of taxation.

45 L. R. A. 760, STATE v. THOMAS CRUSE SAV. BANK, 21 Mont. 50, 52 Pac. 733.

45 L. R. A. 767, PULLMAN'S PALACE CAR CO. v. ADAMS, 120 Ala. 581, 74 Am. St. Rep. 53, 24 So. 921.

Liability of sleeping car company for loss of property.

Cited in Cooney v. Pullman Palace Car Co. 121 Ala. 369, 53 L. R. A. 691, footnote p. 690, 25 So. 712, holding sleeping car company liable for negligent loss of satchel containing mileage tickets, and articles needed for journey; Williams v. Webb, 27 Misc. 510, 58 N. Y. Supp. 300, denying sleeping car company's liability for loss of money carried separately in fob-pocket, which passenger expected to deposit in bank; Bacon v. Pullman Co. 16 L.R.A.(N.S.) 580, 89 C. C. A. 1, 159 Fed. 3, 14 Ann. Cas. 516, holding defendant company was not liable for the loss of jewelry carried by the plaintiff, as "baggage" it not being carried without any intention or purpose of using it during the journey.

Cited in footnote to Pullman's Palace Car Co. v. Hunter, 47 L. R. A. 286, which sustains liability for theft of diamond rings from woman while asleep in sleeping car.

Cited in note (9 L.R.A.(N.S.) 409) on duty of sleeping car company as to baggage or personal effects.

Instructions.

Cited in Edmonson v. Anniston City Land Co. 128 Ala. 595, 29 So. 596, holding misleading instruction of court cured by explanatory charge.

Imputing negligence of passenger to fellow-passenger.

Cited in note (110 Am. St. Rep. 291) on imputing negligence of passenger to fellow passenger.

Burden of proof of contributory negligence.

Cited in note (33 L.R.A.(N.S.) 1183) on burden of proof as to contributory negligence.

45 L. R. A. 772, STATE *ex rel.* BRICKMAN v. WILSON, 123 Ala. 259, 26 So. 482.

Power of clerk to change legislative journal.

Cited in Montgomery Beer Bottling Works v. Gaston, 126 Ala. 439, 51 L. R. A. 399, 85 Am. St. Rep. 42, 28 So. 497, holding clerk's written statement on margin of legislative journal after journal filed with secretary, unlawful interpolation.

Remedy at law which will defeat right to mandamus.

Cited in State ex rel. Johnson v. Collins, 41 Mont. 529, 110 Pac. 526, holding that to defeat issuance of writ of mandamus on ground that relator has remedy at law, remedy must be one which itself enforces performance of particular duty enjoined.

Duties, performance of which may be compelled by mandamus.

Cited in note (125 Am. St. Rep. 493, 494) on duties, performance of which may be compelled by mandamus.

Right of relator in mandamus to attack validity of statute.

Cited in note (16 L.R.A.(N.S.) 267) on right of relator in mandamus to attack constitutionality of statute relied upon.

45 L. R. A. 780, *Re* NEWMAN, 124 Cal. 688, 57 Pac. 586.

Husband and wife; effect of second marriage under belief of death.

Distinguished in *Re* Harrington, 140 Cal. 248, 98 Am. St. Rep. 51, 73 Pac. 1000, holding woman marrying again after absence of husband for ten years, and reported dead, not entitled to homestead from first husband's estate, before second marriage has been annulled; *Re* Harrington, 140 Cal. 295, 74 Pac. 136 (dissenting opinion), majority holding wife not entitled to family allowance from estate of husband, where she has remarried after ten years' absence and reputed death of husband, and second husband is living, and marriage not annulled.

Appeal; findings of trial court.

Cited in Harding v. Harding, 140 Cal. 691, 74 Pac. 284, holding determination of trial court upon question of bona fides of residence of plaintiff in action for divorce conclusive on appeal.

Marriage void under foreign laws.

Cited in Harrington v. Kelly, 147 Cal. 130, 109 Am. St. Rep. 118, 81 Pac. 546, on impeachment of marriage by proof of the laws of a foreign state making it wholly void.

Disqualifications of executors or administrators.

Cited in Re Munroe, 161 Cal. 12, 118 Pac. 242, holding that mere immorality is not sufficient to justify courts refusal to appoint as executor one who is nominated in will.

Cited in note (113 Am. St. Rep. 564) on right of nonresident to act as executor or administrator.

45 L. R. A. 783, PEOPLE v. LEWIS, 124 Cal. 551, 57 Pac. 470.

Cited in Carbo v. State, 4 Ga. App. 585, 62 S. E. 140, as cited by trial court overruling motion for a new trial on the grounds that verdict was contrary to law and evidence.

Right to an "instruction" for an acquittal.

Cited in State v. Wright, 20 N. D. 218, 126 N. W. 1023, Ann. Cas. 1912C, 795, holding that it is not error for court to refuse at close of state's case, to advise acquittal as jury is not bound by such advice; People v. Ward, 145 Cal. 739, 79 Pac. 448, holding where it is the duty of the court to advise an acquittal because of the insufficiency of the evidence, the fact that counsel moves that court "instruct" for an acquittal does not justify a denial of the motion where statute provides that court "advise."

Unproved statements by counsel as error.

Cited in People v. Davis, 1 Cal. App. 12, 81 Pac. 716, holding it was not reversible error for prosecuting counsel to charge that defendant was living off of the earning of the prosecuting witness a prostitute where defendant testified he received money from her; Ossenkop v. State, 86 Neb. 546, 126 N. W. 72, holding the narration of facts by counsel in addressing the jury which are not subsequently proved is not error where not prejudicial.

Reopening of case.

Cited in People v. McPherson, 6 Cal. App. 270, 91 Pac. 1098, holding the opening of the case for the prosecution after its close was in the discretion of the trial court.

Review of findings of fact.

Cited in State v. Rathbone, 8 Idaho, 172, 67 Pac. 186, refusing to review the action of the trial court where a substantial conflict in the evidence exists.

Homicide from injuries by different persons acting independently.

Cited in notes (67 L.R.A. 426, 427, 428, 429) on homicide resulting from injuries by different persons acting independently; (22 L.R.A.(N.S.) 845) on criminal responsibility for wound resulting in death, as affected by negligence of deceased.

45 L. R. A. 788, *Re* STANFORD, 126 Cal. 112, 58 Pac. 462.

Validity of inheritance tax statutes.

Cited in Black v. State, 113 Wis. 223, 90 Am. St. Rep. 853, 89 N. W. 522, holding statute imposing collateral inheritance tax on estates over $10,000, and exempting estates of less value, unconstitutional; Damon v. McDougald, 10 Cal. App. 544, 102 Pac. 684, upholding the validity of an inheritance tax; Income Tax Cases, 148 Wis. 510, 134 N. W. 673, Ann. Cas. 1913A, 1147, on validity of provisions of statute which denies to nonresidents exemptions from taxes that are allowed to residents.

Cited in notes (33 L.R.A.(N.S.) 602; 127 Am. St. Rep. 1038, 1045, 1050; 23 Eng. Rul. Cas. 107) on validity of inheritance taxes.

Distinguished in *Re* Mahoney, 133 Cal. 183, 85 Am. St. Rep. 155, 65 Pac. 389, refusing to uphold constitutionality of statute exempting resident nephews and nieces from collateral inheritance tax, by rejecting clause making exemption applicable to residents only.

Repeal of inheritance tax.

Approved in Re Martin, 153 Cal. 226, 94 Pac. 1053, holding tax on inheritance cannot after the death of the deceased be surrendered by subsequent legislative act.

Cited in Re Lander, 6 Cal. App. 745, 93 Pac. 202; Trippet v. State, 149 Cal. 526, 8 L.R.A.(N.S.) 1213, 86 Pac. 1084,—holding a tax upon collateral bequests and inheritances cannot after the death of the decedent be repealed or surrendered by a subsequent legislative act; Campbell v. California, 200 U. S. 93, 50 L. ed. 387, 26 Sup. Ct. Rep. 182, on an inheritance tax after the death of deceased as not subject to surrender by subsequent enactment.

Cited in note (127 Am. St. Rep. 1057) on repeal of inheritance tax laws.

Inheritance tax, time for ascertainment.

Cited in Re Woodward, 153 Cal. 39, 94 Pac. 242, holding the amount of an inheritance tax to be paid is determinable by the law in force at the time of the death of the deceased.

Nature of inheritance tax.

Cited in Re Touhy, 35 Mont. 436, 90 Pac. 170, on the nature of an inheritance or succession tax as one on privilege and not on property; National Safe Deposit Co. v. Stead, 250 Ill. 598, 95 N. E. 973, Ann. Cas. 1912B, 430, holding that state has vested financial right in estate of every decedent which is subject to payment of inheritance tax.

Cited in notes (9 L.R.A.(N.S.) 122) on nature of right to take by will or inheritance; (33 L.R.A.(N.S.) 609) on nature of inheritance tax.

Appeal from enforcement of void inheritance tax.

Cited in Cross v. Superior Ct. 2 Cal. App. 344, 83 Pac. 815, denying that a writ of prohibition would lie to prevent the enforcement of the collection of a collateral inheritance tax, there being a remedy by appeal.

Power of legislature to release state claims.

Cited in McNeal v. Ritterbusch, 29 Okla. 227, 116 Pac. 778, to the point that, under constitution, legislatures have no power to release liability of any cor-

poration or individual to state; Re Kennedy, 157 Cal. 526, 29 L.R.A.(N.S.) 433, 108 Pac. 280, to the point that right of state to impose inheritance tax vests upon death of testator or intestate and cannot be surrendered or limited by subsequent act of legislature.

45 L. R. A. 793, HITE v. HITE, 124 Cal. 389, 71 Am. St. Rep. 82, 57 Pac. 227.

Allowance to wife pending suit for divorce or for annulment of marriage.

Cited in Baker v. Baker, 136 Cal. 305, 68 Pac. 971, holding *ex parte* order for payment of alimony made prior to service of summons, void; Harron v. Harron, 128 Cal. 304, 60 Pac. 932, upholding allowance, after decree of divorce, of counsel fees to aid plaintiff in defending motion for new trial; Dunphy v. Dunphy, 161 Cal. 88, 118 Pac. 445, holding that alimony and counsel fees may be allowed in action to annul marriage; Ricard v. Ricard, 143 Iowa, 185, 26 L.R.A.(N.S.) 502, 136 Am. St. Rep. 763, 121 N. W. 525, 20 Ann. Cas. 1346, holding in proceedings by husband to annul an illegal marriage the court might allow the wife temporary alimony; State ex rel. Lloyd v. Superior Ct. 55 Wash. 350, 25 L.R.A. (N.S.) 391, 104 Pac. 771; holding an order for alimony pendente lite cannot be made, pending an action for separate maintenance where the fact of marriage is denied; Stewart v. Stewart, 156 Cal. 655, 105 Pac. 955, holding that awarding of alimony rests in the discretion of the trial court.

Cited in note (25 L.R.A.(N.S.) 388) on alimony pendente lite or counsel fees when marriage is denied.

Distinguished in Eickhoff v. Eickhoff, 29 Colo. 301, 93 Am. St. Rep. 64, 68 Pac. 237, holding alimony should be awarded when prima facie case of marriage settled; Allen v. Superior Court, 133 Cal. 505, 65 Pac. 977, holding that payment of suit money, but not that of alimony, may be imposed as condition to proceeding with trial of husband's action to annul marriage, where it is conceded plaintiff is unable to pay.

Proof of marriage.

Cited in Harron v. Harron, 128 Cal. 310, 60 Pac. 932, holding agreement to marry, followed by illicit relations, but without assumption of right, duties, or obligations of marriage, insufficient to support action for divorce; Re Gird, 157 Cal. 541, 137 Am. St. Rep. 131, 108 Pac. 499, holding that no different rule of decision in this court can be applied in determining sufficiency of evidence to sustain findings in case involving marriage relation, than in any other case; Fountain v. Fountain, 80 Ark. 484, 97 S. W. 656, 10 Ann. Cas. 557, holding on a preliminary application for alimony testimony by plaintiff of the solemnization of the marriage with proof of cohabitation and recognition by defendant of plaintiff as his wife was sufficient to warrant a presumption of marriage.

Trial of merits on application for alimony.

Cited in Kowalsky v. Kowalsky, 145 Cal. 395, 78 Pac. 877, on the merits of the case as not being the subject of consideration on an application for temporary alimony.

Appealability of order for temporary alimony.

Cited in Van Horn v. Van Horn, 48 Wash. 390, 125 Am. St. Rep. 940, 93 Pac. 670, on an order for alimony as being a final order.

Distinguished in Ex parte Houtsen, 154 Cal. 544, 98 Pac. 391, holding in habeas corpus proceeding instituted to procure a discharge because of a refusal to pay alimony it cannot be raised that in the proceedings for alimony, the relation of husband and wife was not shown.

45 L. R. A. 800, BRIDGES v. McALLISTER, 106 Ky. 791, 90 Am. St. Rep. 267, 51 S. W. 603.

Liability for acts under judgment subsequently vacated or reversed.

Cited in Anderson v. Schmidt, 96 Ill. App. 127, holding trespass will not lie for damages sustained from the seizure and sale of personal property under a subsisting judgment subsequently vacated; Hess v. Deppen, 125 Ky. 429, 101 S. W. 362, 15 Ann. Cas. 670, holding on the reversal of a judgment for the enforcement of bonds and mortgages, after the sale of the property, appellees are only responsible for the amount received therefrom with interest; Dover & M. Nat. Bank v. Northern Coal & Coke Co. 133 Ky. 779, 119 S. W. 151, on rights of interested parties how affected by a reversal of a judgment.

Cited in note (96 Am. St. Rep. 134) on limitation upon effect of reversal of judgments.

Distinguished in Cavanaugh v. Wilson, 108 Ky. 764, 57 S. W. 620, holding defendant in execution, whose property is purchased by plaintiff's attorney under an erroneous judgment subsequently reversed, is entitled to have restitution of the property or its value in money.

45 L. R. A. 804, HARDY v. GUNN, 122 Ala. 666, 25 So. 621.

45 L. R. A. 806, ALEXANDER v. ALEXANDER, 13 App. D. C. 334.

Alimony.

Cited in Walter v. Walter, 15 App. D. C. 340, denying wife's right to enforce payment of arrears of alimony after final decree for husband; Audubon v. Shufeldt, 181 U. S. 578, 45 L. ed. 1010, 21 Sup. Ct. Rep. 735, holding alimony not barred by discharge in bankruptcy; Lesh v. Lesh, 21 App. D. C. 484, holding that order for payment of alimony *pendente lite* is final order from which appeal lies without special leave; Demonet v. Burkart, 23 App. D. C. 319, holding where a decree of divorce is a vinculo, the court may thereafter require the payments of arrears in alimony which was decreed payable to the wife.

Cited in footnotes to Wetmore v. Wetmore, 48 L. R. A. 666, which holds right to alimony from income of testamentary trust for support of former husband terminated by remarriage of divorced woman; Livingston v. Livingston, 61 L. R. A. 800, which holds unchangeable provision for alimony in divorce decree cannot be impaired by subsequent statute empowering courts to modify same.

45 L. R. A. 814, STACKPOLE v. HANCOCK, 40 Fla. 362, 24 So. 914.

Silence as fraud.

Cited in Hirschman v. Hodges, O'H. & R. Co. 59 Fla. 528, 51 So. 550, holding that if after representation of fact, party to whom it was made institutes inquiry for himself, and actually learns real facts, he cannot claim to have relied upon misrepresentations.

Cited in footnotes to Chicora Fertilizer Co. v. Dunan, 50 L. R. A. 401, which holds failure to inform creditor of pending negotiations increasing value of collateral security sought to be released not fraudulent concealment; Simon v. Goodyear Metallic Rubber Shoe Co. 52 L. R. A. 745, which holds false representations made to procure contract without knowledge as to their truth, ground for disaffirmance; Opie v. Pacific Invest. Co. 56 L. R. A. 778, which denies duty of indorser to disclose to mortgagee knowledge as to value of mortgage which he attempts to buy for third person.

Cited in note (30 L.R.A.(N.S.) 749, 750, 752) on effect of purchaser's concealment of misrepresentation of fact affecting value or realty.

Assessment as affected by return.

Cited in Flanagan v. Dunne, 45 C. C. A. 85, 105 Fed. 832, holding purchaser at tax sale, void because return made by mortgagee, and not owner, acquires no title as against foreclosure purchase.

Effect of replications to answers in chancery.

Cited in Pinney v. Pinney, 46 Fla. 572, 35 So. 95, on the effect of filing a replication to an answer to put in issue matters of the bill not admitted as well as new matter in the answer.

Fraud of agent as affecting principal.

Cited in Moore v. Sawyer, 167 Fed. 842, on a grantee as being liable for misrepresentations made by his agent in procuring a deed of the land.

Construction of decree in equity.

Cited in Theisen v. Whiddon, 60 Fla. 375, 53 So. 642, holding that decree in equity should be construed with reference to proceedings had, and if it can be so interpreted as to comport with proper proceedings in equity, it may be sustained if supported by evidence.

45 L. R. A. 822, LAMSON v. BEARD, 36 C. C. A. 56, 94 Fed. 30.

Payment of individual debt of bank officer with bank's funds.

Cited in Hier v. Miller, 68 Kan. 262, 63 L. R. A. 956, 75 Pac. 77, holding cashier of bank without implied authority to bind bank by entry as deposit of amount of his indebtedness in customer's pass book; Gale v. Chase Nat. Bank, 43 C. C. A. 498, 104 Fed. 216, holding clear and satisfactory proof required to justify finding of cashier's implied authority to draw cashier's draft in payment of individual debt, from acquiescence of directors; Campbell v. Manufacturers Nat. Bank, 67 N. J. L. 308, 91 Am. St. Rep. 438, 51 Atl. 497, denying bank's liability for cashier's use of funds for individual debt because of failure to detect transaction when defect not discoverable by ordinary inspection; Home Sav. Bank v. Otterbach, 135 Iowa, 160, 124 Am. St. Rep. 267, 112 N. W. 769, holding the burden is on one dealing with a bank cashier who uses bank funds for his own benefit to show facts estopping the bank from denying his authority; Newburyport v. Spear, 204 Mass. 151, 90 N. E. 422, holding it no defense in an action for money received on a check drawn on bank account of city by treasurer without authority on payment of a personal debt that defendant paid the money to others retaining only the amount of a commission; Mendel v. Boyd, 3 Neb. (Unof.) 479, 91 N. W. 860, holding to same effect; Kitchens v. Teasdale Commission Co. 105 Mo. App. 469, 79 S. W. 1177, holding the carelessness of bank directors is no defense to defendant a commission company receiving funds misappropriated by a cashier by means of drafts on bank's correspondents which defendant company collected; Hawkeye Gold Dredging Co. v. State Bank, 157 Fed. 263, on right of a corporation to recover from a bank funds wrongfully transferred to it by corporation's treasurer; Langlois v. Gragnon, 123 La. 457, 22 L.R.A.(N.S.) 416, 49 So. 18, holding bank not liable where cashier notified his own creditor that a sum had been placed to his credit to pay debt.

Cited in footnote to Hier v. Miller, 63 L.R.A. 952, which sustains right of bank to recover amount paid out on checks drawn upon the faith of an unauthorized entry by the cashier of the amount of his individual debts as a credit on the pass book of his creditor.

Cited in notes (52 L.R.A. 796) on liability of bank or other depositary, or of drawee, for taking deposit of agent, fiduciary, or other representative to pay

his own debt; (31 L.R.A.(N.S.) 171) on right of taker of commercial paper of corporation for officer's individual debt.

Distinguished in First Nat. Bank v. Byrnes, 61 an. 466, 59 Pac. 1056,, denying agent's liability for teller's misappropriation of bank's funds by drafts wrongfully issued and sent to company in distant city.

Bank directors' liability.

Cited in footnote to Utley v. Hill, 49 L. R. A. 323, which denies liability of directors for deceit for false statements in reports to secretary of state believed to be true.

Review of judgment on appeal.

Cited in Keene Mach. Co. v. Barratt, 40 C. C. A. 575, 100 Fed. 593, holding that where a special finding upon one issue is unassailable, and sufficient to support judgment, error of law or fact in respect to another issue without prejudice.

Over issues and frauds by corporate officers.

Cited in Mendel v. Boy, 71 Neb. 661, 99 N. W. 493, on a cashier as not being authorized to issue drafts of the bank for himself; Lucile Dreyfus Min. Co. v. Willard, 46 Wash. 357, 89 Pac. 935, holding a corporation entitled to the cancellation of spurious stock wrongfully issued by its secretary; Hinsey v. Supreme Lodge K. of P. 138 Ill. App. 274, holding where funds of plaintiff organization were drawn by the president and secretary, fraudulently, and appropriated to the purchase of land for their benefit and that of another, such latter person was chargeable with knowledge of the fraud and acquired no title in equity as against plaintiff.

Imputation of knowledge of officers to bank.

Cited in notes (2 L.R.A.(N.S.) 993) on imputing to corporation knowledge of managing officer engaged in illegal act; (29 L.R.A.(N.S.) 559) on imputation of knowledge of personally interested officers to bank.

Circumstances putting purchaser of negotiable paper on inquiry.

Cited in note (29 L.R.A.(N.S.) 354) on circumstances sufficient to put purchaser of negotiable paper on inquiry.

45 L. R. A. 832, *Re* BOYLE, 6 Idaho, 609, 96 Am. St. Rep. 286, 57 Pac. 706.

Coroner acting as sheriff.

Cited in State v. Corcoran, 7 Idaho, 226, 61 Pac. 1034, holding that where martial law exists to limited extent only, and sheriff is in custody, coroner may properly be directed to perform duties of sheriff.

Right to contravert on habeas corpus recitals in governor's proclamation.

Cited in Moyer v. Peabody, 148 Fed. 875; Re Moyer, 35 Colo. 165, 12 L.R.A. (N.S.) 984, 117 Am. St. Rep. 189, 85 Pac. 190,—holding in habeas corpus proceedings the recitals in the proclamation of the governor that a state of insurrection existed in a certain county could not be controverted.

Martial law other than in time of war.

Cited in notes (65 L.R.A. 199, 207; 98 Am. St. Rep. 773) on martial law other than in time of war; (12 L.R.A.(N.S.) 980) on power of governor, in suppressing insurrection, to authorize arrest and detention without surrender to civil authorities.

— Suspension of writ of habeas corpus.

Cited in note (98 Am. St. Rep. 776) on suspension of writ of habeas corpus under martial law.

45 L. R. A. 837, STATE *ex rel.* BRIDGETON v. BRIDGETON & M. TRACTION CO. 62 N. J. L. 592, 43 Atl. 715.

Municipal right of action against public service corporation for ultra vires acts.

Cited in Muncie Natural Gas Co. v. Muncie, 160 Ind. 109, 60 L. R. A. 829, 66 N. E. 436, upholding right of municipality to maintain action to enjoin gas company from violating its contract as to maximum rate to be charged for gas.

Mandamus.

Cited in State ex rel. Milwaukee v. Milwaukee Electric R. & Light Co. 144 Wis. 391, 140 Am. St. Rep. 1025, 129 N. W. 623, holding that mandamus will lie to enforce performance of continuous legal duty; Railroad Comrs. v. Delaware, L. & W. R. Co. 79 N. J. L. 222, 76 Atl. 236, holding that mandamus is proper remedy for enforcing orders made by board of railroad commissioners; State ex rel. Ellis v. Atlantic Coast Line R. Co. 48 Fla. 128, 37 So. 652, holding mandamus would lie to compel the observance of a regulation of the railroad commissioners imposing specific duties upon railroad companies; Jacquelin v. Erie R. Co. 69 N. J. Eq. 443, 61 Atl. 18, holding mandamus an adequate remedy to compel a railroad to maintain a station at a particular point; State ex rel. Rutherford v. Hudson River Traction Co. 73 N. J. L. 240, 63 Atl. 84, holding mandamus the proper remedy to compel defendant company to pave a street under an ordinance which gave its predecessor the use of the streets; Re Wheeler, 62 Misc. 50, 115 N. Y. Supp. 605, on mandamus as being the proper remedy to compel the performance of a duty.

Distinguished in Amesbury v. Citizens Electric Street R. Co. 199 Mass. 400, 19 L.R.A.(N.S.) 870, 85 N. E. 419, dismissing a petition to compel street railway company to resume the use of its tracks where no enactment requires a use of the tracks as a condition of the grant of location.

Duty resting upon common carrier.

Cited in State ex rel. Ellis v. Atlantic Coast Line R. Co. 53 Fla. 677, 13 L.R.A. (N.S.) 329, 44 So. 213, 12 Ann. Cas. 359, on duty resting upon railroads assuming to act as common carriers towards the public.

— Abandonment of.

Cited in Asbury Park & S. G. R. Co. v. Neptune Twp. 73 N. J. Eq. 333, 67 Atl. 790, denying right of street railroad company to abandon the performance of its duties as a common carrier.

Cited in note (19 L.R.A.(N.S.) 866) on right of street railway to discontinue line.

Liability of successor to railway franchise.

Cited in Eatontown Twp. v. Monmouth County Electric Co. 78 N. J. L. 495, 74 Atl. 513, holding that agreement between original grantee of street railway franchise and city to make certain payments to city is binding upon successor to franchise.

45 L. R. A. 842, STREITWOLF v. STREITWOLF, 58 N. J. Eq. 570, 43 Atl. 904.

45 L. R. A. 846, HOLM v. JAMIESON, 173 Ill. 295, 50 N. E. 702.

Liability of a guarantor.

Cited in George E. Lloyd & Co. v. Matthews, 223 Ill. 483, 7 L.R.A.(N.S.) 380, 114 Am. St. Rep. 346, 79 N. E. 172, distinguishing between the liability of a guarantor and an endorser; Swenson v. Stoltz, 36 Wash. 322, 78 Pac. 999, 2 Ann. Cas. 504, on the liability of a guarantor as distinguished from a liability "on the instrument."

Cited in note (105 Am. St. Rep. 508) an contract of guaranty.

45 L. R. A. 848, CHICAGO v. MANHATTAN CEMENT CO. 178 Ill. 372, 69 Am. St. Rep. 321, 53 N. E. 68.

City's liability for torts.

Cited in Chicago v. Norton Mill. Co. 97 Ill. App. 658, holding municipal corporation's liability for torts not affected by constitutional inhibition as to indebtedness; Marshall v. Buffalo, 50 App. Div. 155, 64 N. Y. Supp. 411, holding city liable for destruction of unoccupied buildings by mob.

Cited in footnote to Champaign County v. Church, 48 L. R. A. 738, which sustains statute making county liable to penalty for death by mob violence.

Inquiry into legislature's motive.

Cited in State *ex rel.* Dreibelbiss v. Berghoff, 158 Ind. 358, 63 N. E. 717, holding motive of legislature in enacting that office of municipal judge in certain cities should come into existence two days after city election, not subject to judicial inquiry.

Legislative power to create debts against municipality.

Cited in Morgan v. Schusselle, 228 Ill. 112, 81 N. E. 814, on want of power in legislature to create a debt against a municipality against its will.

Plenary power of legislature.

Cited in Harder's Fire Proof Storage & Van Co. v. Chicago, 235 Ill. 70, 85 N. E. 245, 14 Ann. Cas. 536, holding valid a legislative act authorizing municipalities to levy a license fee on all vehicles used on the streets.

Legislative creation of municipal liability.

Cited in Iola v. Birnbaum, 71 Kan. 603, 81 Pac. 198, 6 Ann. Cas. 267, holding similar law not lacking in due process; Sturges v. Chicago, 237 Ill. 49, 86 N. E. 683 holding an act imposing a liability on municipalities for damage done by mobs not invalid because the liability is imposed regardless of negligence; Pittsburg, C. C. & St. L. R. Co. v. Chicago, 242 Ill. 188, 134 Am. St. Rep. 316, 89 N. E. 1022, on statute imposing a liability on municipality for damage done by mobs as resting on the duty of the municipality to preserve peace and order and protect property; Dawson Soap Co. v. Chicago, 234 Ill. 316, 84 N. E. 920, 14 Ann. Cas. 1131, on the constitutionality of a particular enactment as to liability for mob damage.

Constitutional questions.

Cited in People v. McBride, 234 Ill. 165, 123 Am. St. Rep. 82, 84 N. E. 865, 14 Ann. Cas. 994, on it being the duty of the courts to uphold the constitutionality of legislative acts if it can reasonably be done.

45 L. R. A. 853, HOWARD v. MUTUAL RESERVE FUND LIFE ASSO. 125 N. C. 49, 34 S. E. 199.

Jurisdiction determined by amount involved.

Cited in Sloan v. Carolina C. R. Co. 126 N. C. 491, 36 S. E. 21, holding jurisdiction conferred by sum demanded in good faith, although demurrer reduces cause below $200.

Judicial non-interference with internal affairs of foreign corporations.

Cited in State ex rel. Minnesota Mut. L. Ins. Co. v. Denton, 229 Mo. 198, 138 Am. St. Rep. 417, 129 S. W. 709, holding that courts of this state cannot make full examination into affairs of foreign insurance company for purpose of enforcing accounting on stockholders application; Sprague v. Universal Voting Mach. Co. 134 Ill. App. 382, holding a bill which called for interference with the internal affairs of a foreign corporation was properly dismissed; Babcock v. Farwell, 245

Ill. 33, 91 N. E. 683, on courts as not interfering in controversies affecting the internal affairs of a foreign corporation.

Amendment of pleadings on appeal.

Cited in Bonner v. Stotesbury, 139 N. C. 8, 51 S. E. 781, refusing to allow the amendment of a complaint where it would thereby present a different case than was tried below, and brought up for review.

Voluntary payments to insurer.

Cited in Barrows v. Mutual Reserve L. Ins. Co. 81 C. C. A. 71, 151 Fed. 466, holding payment of assessments not made under duress where paid for years with a knowledge of the facts and distributed in accordance with contract.

45 L. R. A. 858, COM. v. VAUGHN, 101 Ky. 603, 42 S. W. 117.

Punishment of distinct offenses committed by single act.

Cited in Chapman v. State, 61 Neb. 891, 86 N. W. 907, holding statute making illicit intercourse under promise of marriage a crime no bar to prosecution for rape in having such intercourse with young girl; Hughes v. Com. 131 Ky. 509, 31 L.R.A.(N.S.) 701, 115 S. W. 744, holding illegal registration and false swearing while so doing constituted such separate offenses that a conviction for one no bar to an indictment for the other; Com. v. Jones, 33 Pa. Co. Ct. 128, 15 Pa. Dist. Rep. 938, holding a person without a license who sells liquor on Sunday may be convicted of Sunday selling and selling without license.

Cited in footnote to People v. McDaniels, 59 L. R. A. 578, which holds prosecution for assault to commit murder barred by conviction of battery for same acts.

Cited in notes (31 L.R.A.(N.S.) 714) on right to convict for several offenses growing out of same facts; (92 Am. St. Rep. 106, 108, 155) on identity of offenses on plea of former jeopardy.

45 L. R. A. 863, SACRAMENTO BANK v. PACIFIC BANK, 124 Cal. 147, 71 Am. St. Rep. 36, 56 Pac. 787.

Right of action against insolvent bank.

Cited in Argues v. Union Sav. Bank, 133 Cal. 144, 65 Pac. 307, holding ordinary action for collection of debt cannot be maintained against insolvent bank in process of liquidation, unless claim has been disallowed.

Liability of stockholders in insolvent corporation.

Cited in Turner v. Fidelity Loan Concern, 2 Cal. App. 134, 83 Pac. 62, on the liability of stockholder to creditors of an insolvent corporation by two statutory modes of assessment or direct suit by creditor.

Preference of creditors.

Cited in City Nat. Bank v. Goshen Woolen Mills Co. 35 Ind. App. 576, 69 N. E. 206, on the preference of officers and directors of an insolvent corporation as creditors.

Right of subrogation.

Cited in Brown v. Sheldon State Bank, 139 Iowa, 95, 117 N. W. 289, holding subrogation never allowable in favor of one who discharged what was virtually his own debt.

Cited in note (99 Am. St. Rep. 505) on right of subrogation.

L. R. A. CASES AS AUTHORITIES.

CASES IN 46 L. R. A.

46 L. R. A. 33, CLEVELAND, C. C. & ST. L. R. CO. v. BERRY, 152 Ind. 607, 53 N. E. 415.

Sufficiency of pleadings.

Cited in Tipton Light, Heat & Power Co. v. Newcomer, 156 Ind. 352, 58 N. E. 842, holding overruling of motion to make more specific complaint alleging that gas company negligently permitted its high pressure line to become "defective, insufficient, and out of repair," without setting out particular defects, error; Scheiber v. United Teleph. Co. 153 Ind. 612, 55 N. E. 742, holding sufficiency of complaint tested by specific facts alleged, without aid from characterization of acts as negligent; Apperson v. Lagro, 44 Ind. App. 190, 87 N. E. 97, holding sufficient, obligation that defendant negligently operated automobile and ran over plaintiff; Indiana Union Traction Co. v. McKinney, 39 Ind. App. 90, 78 N. E. 203, holding demurrer for want of facts properly overruled under allegation of negligence in committing the act complained of; Lake Erie & W. R. Co. v. Moore, 42 Ind. App. 33, 81 N. E. 85; Lake Erie & W. R. Co. v. Bray, 42 Ind. App. 52, 84 N. E. 1004; Pittsburgh, C. C. & St. L. R. Co. v. Collins, 163 Ind. 572, 71 N. E. 661,—holding general allegation that trainmen negligently managed train and caused accident suffices; Cleveland, C. C. & St. L. R. Co. v. Peirce, 34 Ind. App. 193, 72 N. E. 604, holding allegation of defendant's negligence insufficient when followed by allegation of fact specifying that negligence was of defendant's servant and containing no allegation of agency.

Cited in note (59 L. R. A. 229) on sufficiency of general allegations of negligence.

Distinguished in Coburn v. New Teleph. Co. 156 Ind. 99, 52 L. R. A. 675, 59 N. E. 324, holding that allegation that telephone company unlawfully dug up highway insufficiently negatives municipal authority.

Findings contrary to natural laws.

Cited in Sheppard v. Wichita Ice & Cold Storage Co. 82 Kan. 513, 28 L.R.A. (N.S.) 650, 108 Pac. 819, holding finding that a room was dark not necessarily opposed to laws of light where size of area to be lighted by given windows did not appear and other factors made it doubtful how much light there was and how well diffused.

Distinguished in Fletcher v. Kelly, 37 Ind. App. 261, 76 N. E. 813, holding

plaintiff's testimony that a hall was dark sufficient to overcome rule that jury cannot make a finding clearly contrary to natural laws where jury went to view place of injury.

Presumption of negligence in case of falling objects.

Cited in footnote to Wolf v. Downey, 51 L. R. A. 242, holding that presumption of negligence arises from dropping of brick from building being constructed.

Liability for injury by things falling from train.

Cited in footnote to Pennsylvania R. Co. v. Martin, 55 L. R. A. 361, which denies duty of railroad company to use care to avoid injury to one using track for own affairs.

Right of injured servant to recover from other than master.

Cited in Continental Fruit Exp. v. Leas, 50 Tex. Civ. App. 592, 110 S. W. 129, holding that one who furnishes defective cars to railroad company cannot evade responsibility for injuries resulting to servant of railroad by contract with railroad that latter alone would be liable.

Annotation cited in Loehring v. Westlake Constr. Co. 118 Mo. App. 173, 94 S. W. 747, holding one contractor liable to servants of another where he made a dangerous scaffolding knowing that other's servants would be likely to use it: Consolidated Gas Electric Light & P. Co. v. Chambers, 112 Md. 338, 26 L.R.A. (N.S.) 518, 75 Atl. 241, holding where another than the master is liable for the injury the degree of care is same as in case of master; Lookout Mountain Iron Co. v. Lea, 144 Ala. 175, 39 So. 1017, holding mine owner may be liable to assistant of miner for negligence in operating mine car.

Cited in footnotes to Kansas v. Orr, 50 L. R. A. 783, which holds city liable for injury to switchman by defective planking at street crossing; Baker v. Louisville & N. Terminal Co. 53 L. R. A. 474, which denies railroad company's liability for fall of ice company's employee from top of car which he was storing with ice; Missouri, K. & T. R. Co. v. Merrill, 59 L. R. A. 711, which denies liability of company delivering defective car to connecting line, for injury to employee of latter, after inspection of car; Murray v. Dwight, 48 L. R. A. 673, which holds servant of truckman unloading goods at warehouse not fellow servant of warehouseman's servants; Erie R. Co. v. Salisbury, 55 L. R. A. 578, which holds company liable to one injured at crossing by negligent operation of push car by one to whom it was loaned by foreman of gang of men in company's employ.

Cited in notes (47 L. R. A. 176) on *volenti non fit injuria* as defense to actions by injured servants; (57 L. R. A. 824) on statutory liability of employers for defects in condition of their plant; (3 L.R.A.(N.S.) 1101) on assumption by tenant's employee of risk of unsafe portions of building in landlord's possession; (17 L.R.A.(N.S.) 921) on duty of owner of premises to protect licensee against hidden dangers; (22 L.R.A.(N.S.) 324) on liability of railroad for negligence of employee while running on road of another, subject to orders of the latter's train despatcher; (36 L.R.A.(N.S.) 270) as to whether statutory duty of employer to guard place or machinery is owing to employees of contractor.

Res ipsa loquitur.

Cited in Chicago & E. I. R. Co. v. Reilly, 212 Ill. 509, 103 Am. St. Rep. 243, 72 N. E. 454, holding rule of res ipsa loquitur not applicable where plaintiff stood on street crossing on dark night and was struck by lumber protruding from side of passing lumber train where no evidence of careless piling was introduced.

46 L. R. A. 58, THE JOSEPH B. THOMAS, 30 C. C. A. 333, 56 U. S. App. 619, 86 Fed. 658.

Res ipsa loquitur.

Cited in Armour v. Golkowska, 95 Ill. App. 495, holding negligence presumed where barrel falls from platform upon employee working below; Northam v. Boston & M. Consol. Copper & S. Min. Co. 111 C. C. A. 450, 190 Fed. 724, holding that prima facie presumption of negligence is raised when it is shown floor of stope of defendant's mine was insufficient to sustain rocks which fell and injured plaintiff and which had fallen previously; Taylor v. United Fruit Co. 126 La. 575, 52 So. 770, holding that defendant was liable to plaintiff who was injured by fall of heavy piece of hatchway which fell upon him while at work in hold of vessel; Whitten v. Nevada Power, Light & Water Co. 132 Fed. 786, holding instantaneous death by taking hold of electric light bulb does not raise presumption of negligence; Frederick Leyland & Co. v. Holmes, 82 C. C. A. 511, 153 Fed. 559, on injuries which do not ordinarily occur when reasonable care is used as raising presumption of negligence.

Distinguished in Pederson v. John D. Spreckles & Bros. Co. 31 C. C. A. 315, 59 U. S. App. 439, 87 Fed. 945, holding presumption of negligence on part of towing vessel not raised by breaking of breast chock on tow; Cleveland, C. C. & St. L. R. Co. v. Berry, 152 Ind. 619, 46 L. R. A. 57, 53 N. E. 415, holding doctrine of *res ipsa loquitur* inapplicable where injury caused by iron pin thrown off from locomotive tender.

Libel in rem for personal injuries.

Cited in The Anaces, 34 C. C. A. 563, 93 Fed. 244, sustaining right of stevedore injured by negligence of ship officers to libel ship.

Degree of care due licensee.

Cited in Steele v. Grahl-Peterson Co. 135 Iowa, 424, 109 N. W. 882, holding contractor owes employes of subcontractor same degree of care as latter where he permits them to use his building in the course of their work.

Distinguished in Pauckner v. Wakem, 231 Ill. 280, 14 L.R.A.(N.S.) 1121, 83 N. E. 202, holding warehouseman liable to person admitted into warehouse on business for injury caused by failure to exercise reasonable care in lighting premises and also citing annotation on this point.

Proximate cause.

Cited in McGill v. Michigan S. S. Co. 75 C. C. A. 518, 144 Fed. 793, holding steamship company liable for gas explosion from filling oil tank on which men were working with candles; Pioneer S. S. Co. v. McCann, 96 C. C. A. 49, 170 Fed. 876, holding ship company liable for injury to stoker who in descending into hull in order to avoid a swinging grabber stepped into an open door which appeared to be like other doors of the vessel but which opened upon an unguarded shelf and was dark.

46 L. R. A. 122, UNITED STATES v. ADDYSTON PIPE & STEEL CO. 54 U. S. App. 723, 29 C. C. A. 141, 85 Fed. 271.

Affirmed in 175 U. S. 211, 44 L. ed. 136, 20 Sup. Ct. Rep. 96.

Violations of Federal anti-trust act.

Cited in Chesapeake & O. Fuel Co. v. United States, 53 C. C. A. 265, 115 Fed. 619, Affirming 105 Fed. 103, holding contract of fuel company to handle exclusively, at minimum price fixed by association of coal and coke producers, output for western market, illegal; Whitwell v. Continental Tobacco Co. 64 L. R. A. 694, 60 C. C. A. 290, 125 Fed. 458, holding restriction by tobacco manufacturer of its own trade to those only who refrain from dealing in competitor's goods, not

violative of anti-trust act; State v. Smiley, 65 Kan. 258, 69 Pac. 199, holding agreement by all dealers on certain market, limiting amount of grain they may buy on market, violation of anti-trust act; East Tennessee, V. & G. R. Co. v. Interstate Commerce Commission, 39 C. C. A. 423, 99 Fed. 61, holding agreement of competing carriers, restricting competition, illegal; Lowry v. Tile, Mantel & Grate Asso. 98 Fed. 826, sustaining complaint under anti-trust act alleging combination to raise prices, and control output, with intent to monopolize interstate commerce in tiles, mantels, and grates; Lowry v. Tile, Mantel & Grate Asso. 106 Fed. 45, holding association of dealers in state, restricting buying and selling of goods, and discriminating against manufacturers and dealers not members, illegal; Brett v. Ebel, 29 App. Div. 260, 51 N. Y. Supp. 573, holding contract of vendor of good will not to re-engage in business in limited area not invalid; Bancroft v. Union Embossing Co. 72 N. H. 409, 64 L. R. A. 302, 57 Atl. 97, upholding contract not to compete in manufacture of machinery from patterns sold to other party; Robinson v. Suburban Brick Co. 62 C. C. A. 487, 127 Fed. 807, holding enforceable, contract by vendors of plant not to engage in competing business within specified area for stated period; Booth v. Davis, 127 Fed. 878, sustaining validity of contract whereby stockholders of vendor corporation agreed not to engage in similar business in vicinity for stated period; United States v. Standard Oil Co. 173 Fed. 184, holding ownership by one corporation of majority of stock in twenty other corporations engaged in same business illegal; Standard Oil Co. v. United States, 221 U. S. 95, 55 L. ed. 659, 34 L.R.A.(N.S.) 869, 31 Sup. Ct. Rep. 502, 59 Pittsb. L. J. 305, Ann. Cas. 1912 D, 734 (dissenting opinion), on contracts in restraint of trade as prohibited regardless of whether they are reasonable or not.

Cited in footnotes to Gibbs v. McNeeley, 60 L. R. A. 152, which holds anti-trust act violated by combination of manufacturers of product of state, market for four fifths of which in other states, to limit production and raise price; W. W. Montague & Co. v. Lowry, 63 L. R. A. 58, which holds unlawful, combination constituted by association to unite all "acceptable dealers" in business in certain city and within 200 miles therefrom.

Distinguished in Anderson v. United States, 171 U. S. 617, 43 L. ed. 306, 19 Sup. Ct. Rep. 50, holding by-law of traders' live stock exchange against recognizing nonmembers, valid.

Agreements to restrict competition and control prices.

Approved in McCarter v. Firemen's Ins. Co. 70 N. J. Eq. 293, 61 Atl. 705, holding in absence of statute public has no grounds for affirmative relief as against a combination in restraint of trade; Wayne-Monroe Teleph. Co. v. Ontario Teleph. Co. 60 Misc. 440, 112 N. Y. Supp. 424, holding contract of two telephone companies that only partially restrained trade and such restraint being purely ancillary to the main purpose of the contract is not void; Davis v. A. Booth & Co. 65 C. C. A. 269, 131 Fed. 38, holding agreement of stockholders not to re-engage in same business for ten years made ancillary to sale of the corporation is not void as a restraint of trade.

Cited in Cravens v. Carter-Crume Co. 34 C. C. A. 485, 92 Fed. 485, holding guaranty of certain sum as dividends on stock in central company in consideration of manufacturer's closing factory, not enforceable; Brown v. Jacobs' Pharmacy Co. 115 Ga. 435, 57 L. R. A. 551, 90 Am. St. Rep. 126, 41 S. E. 553, holding combination of dealers to compel others in same business to sell at fixed prices, illegal; State *ex rel.* Crow v. Firemen's Fund Ins. Co. 152 Mo. 42, 45 L. R. A. 375, 52 S. W. 595, holding that combination of insurance agents to maintain fixed rates violates state anti-trust law; Aetna Ins. Co. v. Com. 106

Ky. 888, 45 L. R. A. 361, 51 S. W. 624, holding combination to maintain insurance rates not indictable offense at common law; Wittenberg v. Mollyneaux, 60 Neb. 585, 83 N. W. 842, sustaining covenant by one grantee on exchange of hotels not to use property for hotel purposes for certain period; Walsh v. Association of Master Plumbers, 97 Mo. App. 294, 71 S. W. 455, holding unlawful, agreement between plumbers' association, dealers and manufacturers, for purpose of fixing prices and in restraint of trade; National Enameling & Stamping Co. v. Haberman, 120 Fed. 419, holding enforceable, restrictive covenant, ancillary to main contract, unlimited in time and covering entire United States, when no broader than necessary to give covenantee rights paid for; S. Jarvis Adams Co. v. Knapp, 58 C. C. A. 7, 121 Fed. 40, holding valid, agreement by departing employee, for sufficient consideration, to refrain from establishing competing business or reveal secrets for stated period; Cumberland Teleph. & Teleg. Co. v. State, 100 Miss. 120, 39 L.R.A.(N.S.) 284, 54 So. 670, holding valid, combination between local and long-distance telephone companies; Harris v. Com. 113 Va. 752, 38 L.R.A.(N.S.) 462, 73 S. E. 561, holding that combination of fire insurance companies to maintain monopoly in city is not criminal conspiracy; Dr. Miles Medical Co. v. John D. Park & Sons Co. 220 U. S. 408, 55 L. ed. 519, 31 Sup. Ct. Rep. 376, holding that agreements between dealers, having for their sole purpose distruction of competition and fixing of prices, are void; Home Teleph. Co. v. North Manchester Teleph. Co. 47 Ind. App. 419, 92 N. E. 558, holding that telephone companies cannot contract in disregard of convenience of public, or to deprive public of best and least expensive service; Merchants' Ice & Cold Storage Co. v. Rohrman, 138 Ky. 542, 30 L.R.A.(N.S.) 978, 137 Am. St. Rep. 390, 128 S. W. 599, holding that where contracts looking to consolidation of ice manufacturing plants in certain place, was, intended for purpose of controlling market, fact that no effort was made to raise price at that place did not effect validity of contracts; W. H. Hill Co. v. Gray, 163 Mich. 22, 30 L.R.A.(N.S.) 333, 127 N. W. 803, holding that fact that article of commerce not patented, is sold under trade name affords no exemption from common law or statutory rules against restraint of trade; Stewart v. Stearns & C. Lumber Co. 56 Fla. 588, 24 L.R.A.(N.S.) 656, 48 So. 19, holding contract of lease of storehouse by sawmill company whereby mill owners agree to give storekeeper a monopoly on sale of necessaries to its employes is against public policy; State v. Duluth Bd. of Health, 107 Minn. 525, 23 L.R.A.(N.S.) 1270, 121 N. W. 395, holding board of trade the rule of which makes a schedule of reasonable rates with provision for expulsion for charging other rates not a restraint of trade; State ex rel. Hadley v. Standard Oil Co. 218 Mo. 325, 116 S. W. 902, holding it an illegal restraint of trade for two corporations to divide a state into two parts and agree not to invade each other's territory and to sell to others than themselves only at retail prices; Ferd Heim Brewing Co v. Belinder, 97 Mo. App. 69, 71 S. W. 691, holding void an agreement of wholesale brewers not to sell to anyone who was in debt for previously purchased beer, although it did not affect prices and was intended for worthy purpose; Garden City Sand Co. v. Southern Fire Brick & Clay Co. 124 Ill. App. 607, holding it no unlawful restraint to agree to manufacture one certain kind of product exclusively for one company; Walsh v. Association of Master Plumbers, 97 Mo. App. 294, 71 S. W. 455, on combinations to create monopolies and raise prices; McCarter v. Firemen's Ins. Co. 74 N. J. Eq. 412, 29 L.R.A.(N.S.) 1214, 135 Am. St. Rep. 708, 73 Atl. 414, 18 Ann. Cas. 1048, on absence of positive wrong or crime in contract in restraint of trade such as to support action; Slaughter v. Thacker Coal & Coke Co. 55 W. Va. 651, 65 L.R.A. 347, 104 Am. St. Rep. 1013,

47 S. E. 247, 2 Ann. Cas. 335, holding agreement of three mining companies to give certain sales agent exclusive sale of their entire output is a restraint of trade; Pocahontas Coke Co. v. Powhatan Coal & Coke Co. 60 W. Va. 519, 10 L.R.A.(N.S.) 280, 116 Am. St. Rep. 901, 56 S. E. 264, 9 Ann. Cas. 667, holding contract between two coke companies regulating sales and shipments of entire output is void; Knapp v. S. Jarvis Adams Co. 70 C. C. A. 536, 135 Fed. 1014, holding agreement made ancillary to contract of employment whereby person employed covenanted not to engage in same business for ten years if he left company's employ valid; Camors-McConnell Co. v. McConnell, 140 Fed. 414, sustaining validity of agreement, made ancillary to sale of business, not to enter into same business for an agreed time as not a void restraint of trade; John D. Park & Sons Co. v. Hartman, 12 L.R.A.(N.S.) 147, 82 C. C. A. 158, 153 Fed. 40, Reversing 145 Fed. 375, holding a system of contracts whereby sole manufacturer of a patent medicine regulated sale and price of his commodity both as to wholesalers and retailers an unlawful restraint of trade; Walker v. Lawrence, 101 C. C. A. 417, 177 Fed. 367, holding agreement not to engage in liquor business for six years made ancillary to sale of business and good will is no defense in action on notes given to secure payment therefor.

Cited in footnotes to State *ex rel.* Crow v. Armour Packing Co. 61 L. R. A. 464, which holds unlawful, combination to fix prices, shown by acts of competing dealers; Com. v. Grinstead, 56 L. R. A. 709, which holds agreement not to resell goods at less than specified price not within statute for suppression of conspiracies; Hawarden v. Youghiogheny & L. Coal Co. 55 L. R. A. 828, which sustains retail coal dealer's right of action against wholesalers and favored retailers combining to drive other retailers out of business.

Cited in notes (6 L.R.A.(N.S.) 848) on validity of stipulation not to engage in particular business not ancillary to lawful contract; (74 Am. St. Rep. 236, 241, 246, 248, 269, 270, 272) on combinations constituting unlawful trusts.

Constitutionality of legislation against combinations to control prices.

Approved in State v. Smiley, 65 Kan. 258, 67 L.R.A. 911, 69 Pac. 199, holding valid anti trust laws.

Cited in State *ex rel.* Monnett v. Buckeye Pipe Line Co. 61 Ohio St. 548, 56 N. E. 464, upholding constitutionality of state act forbidding combinations of corporations to restrict competition, with view to increased prices; State *ex rel.* Durner v. Huegin, 110 Wis. 253, 62 L. R. A. 742, 85 N. W. 1046, sustaining constitutionality of statute making combination to control prices with malicious intent to injure rival, punishable criminally.

Who are manufacturers.

Cited in State v. American Sugar Ref. Co. 108 La. 642, 32 So. 965, holding sugar refiner a manufacturer within constitutional exemption from license taxation.

46 L. R. A. 142, MERCHANTS' AD-SIGN CO. v. STERLING, 124 Cal. 429, 71 Am. St. Rep. 94, 57 Pac. 468.

Contracts in restraint of trade.

Cited in Grand Union Tea Co. v. Lewitsky, 153 Mich. 252, 116 N. W. 1090, holding statute making void any contract not to enter any business or professional employment whether reasonable or not valid if not applicable to contracts of vendees of business or profession and the good will thereof.

Cited in notes (64 L.R.A. 720) on illegal trusts under modern anti-trust laws; (9 L.R.A.(N.S.) 448) on contracts in partial restraint of trade, and modern anti-trust acts; (24 L.R.A.(N.S.) 933) on validity of agreement in restraint of

trade, ancillary to sale of business or profession, as affected by territorial scope.

— Sales of stock with restriction on seller.

Cited in Kradwell v. Thiesen, 131 Wis. 101, 111 N. W. 233, holding in absence of statute prohibiting restraint of trade except where good will thereof is sold a stockholder may bind himself not to engage in same business in selling stock of a corporation; Buckhout v. Witwer, 157 Mich. 409, 23 L.R.A.(N.S.) 509, 122 N. W. 184, holding sale by stockholder of corporation stock with agreement that he will not engage in same business for a certain period of time a lawful restraint; Dodge Stationery Co. v. Dodge, 145 Cal. 387, 78 Pac. 879, on sale of stock in corporation by stockholder with agreement that he shall not engage in same business being unlawful restraint of trade.

Cited in note (23 L.R.A.(N.S.) 506) on contract by selling shareholder not to compete with corporation.

46 L. R. A. 144, BARTRAM v. SHARON, 71 Conn. 686, 71 Am. St. Rep. 225, 43 Atl. 143.

Municipal liability for negligence.

Cited in Colwell v. Waterbury, 74 Conn. 572, 57 L. R. A. 220, 51 Atl. 530, denying city's liability to employee injured by defective stone crusher; Lavigne v. New Haven, 75 Conn. 696, 55 Atl. 569, denying liability of municipality for defect in highway in absence of statute; Makepeace v. Waterbury, 74 Conn. 363, 50 Atl. 876, holding city bound to repair all highways within its limits, whether laid out by authorities, or highways by dedication; Salzman v. New Haven, 81 Conn. 393, 22 L.R.A.(N.S.) 336, 71 Atl. 500, holding city not liable for damage to cellar by water of heavy rain flowing through insufficiently packed earth of an excavation in highway; Paulsen v. Wilton, 78 Conn. 62, 61 Atl. 61, holding city liable for failure to keep actually existing highway in repair although title thereto is shown to be in another; Rudnyai v. Harwinton, 79 Conn. 94, 63 Atl. 948, 6 Ann. Cas. 988, holding town liable for injury to abutting property from failure to properly drain surface water from highway.

Cited in note (13 L.R.A.(N.S.) 1263) on liability of townships for defects in highway.

Distinguished in Waterford v. Elson, 78 C. C. A. 675, 149 Fed. 95, holding city's liability for injuries caused by defective highway not penal; Elson v Waterford, 140 Fed. 800, holding city liable for injuries to person dragged off a wagon by overhanging branches of trees while riding on highway.

— Duty to guard streets.

Cited in Seidel v. Woodbury, 81 Conn. 67, 70 Atl. 58, holding town not bound to maintain a railing along a road fifty-six feet wide the footpath of which was sixteen feet wide because the ground fell off two feet perpendicularly and sloped gradually for twenty feet.

— Untraveled part of highway.

Cited in O'Neil v. New Haven, 80 Conn. 156, 67 Atl. 487, holding person using public scale set in untraveled part of highway not a traveler thereon.

Contributory negligence as bar to recovery.

Cited in Brockett v. Fair Haven & W. R. Co. 73 Conn. 434, 47 Atl. 763, holding that complaint alleging injury caused by defendant's negligence need not aver freedom from contributory negligence.

— Imputed negligence.

Cited in Wilmot v. McRadden, 78 Conn. 283, 61 Atl. 1069, holding culpable

negligence of parents concurring with negligence of defendants no bar to recovery by child too young to be guilty of negligence in action for injuries.

Cited in note (8 L.R.A.(N.S.) 613, 657) on imputed negligence of driver to passenger.

Distinguished in Loso v. Lancaster County, 77 Neb. 475, 8 L.R.A.(N.S.) 633, 109 N. W. 752, holding person in private vehicle who has no authority over driver may recover for failure to properly maintain bridge although driver was guilty of contributory negligence.

Effect of concurring negligence of third person.

Cited in Hinckley v. Danbury, 81 Conn. 243, 70 Atl. 590, holding city liable for injury to conductor by reason of barrier in highway although motorman knew of it and failed to warn conductor.

Cited in footnotes to Griffin v. Jackson Light & P. Co. 55 L. R. A. 318, which denies electric light company's liability for injury to stranger attempting to use defectively insulated, movable light which storekeeper has continued to use; Louisville & E. Mail Co. v. Barnes, 64 L. R. A. 574, which holds that negligence of steamer company does not prevent recovery for death of passenger by drowning while attempting to disembark, from other steamboat company whose negligence was also responsible for his death; Missouri P. R. Co. v. Columbia, 58 L. R. A. 399, which holds placing of heavy doors on platform, which are blown on track by severe gale, not proximate cause of derailment of engine.

Explained and distinguished in Upton v. Windham, 75 Conn. 291, 96 Am. St. Rep. 197, 53 Atl. 660, holding town, failing to fence highway, liable for injury resulting from frightened horse plunging down unprotected bank.

Municipal duty and right as to highways.

Cited in Dawson v. Orange, 78 Conn. 117, 61 Atl. 101, on purely public nature of municipality's title in and authority over highways and denying any proprietary right therein.

Statutory remedy for defect in highway.

Distinguished in Knapp & C. Mfg. Co. v. New York, N. H. & H. R. Co. 76 Conn. 316, 100 Am. St. Rep. 994, 56 Atl. 512, holding railroad taking temporary use of street without making compensation liable for injuries caused thereby although not given written notice of injury within sixty days.

Penal statutes.

Cited in Central Vermont R. Co. v. Robbins, 107 C. C. A. 33, 184 Fed. 442, holding that statute giving right of action against railroad to recover damages for destruction of property, although derogatory of common law is not penal, but remedial, and to be construed accordingly; Coburn v. Connecticut Co. 84 Conn. 657, 81 Atl. 241, holding that statute requiring street railway to keep highway between tracks in repair imposes upon railroad public duty and not private one.

46 L. R. A. 150, STEIN v. NATIONAL LIFE ASSO. 105 Ga. 821, 32 S. E. 615.

Rights of insurance agent after termination of agency.

Followed in American Ins. Co. v. France, 111 Ill. App. 391, sustaining right of insurance agent, after termination of agency, to influence policy holders of former employer, to transfer their business to him.

46 L. R. A. 153, LANE v. SPOKANE FALLS & N. R. CO. 21 Wash. 119, 75 Am. St. Rep. 821, 57 Pac. 367.

Compulsory physical examination.

Cited in Austin & N. W. R. Co. v. Cluck, 97 Tex. 176, 64 L.R.A. 496, foot-

note p. 494, 104 Am. St. Rep. 863, 77 S. W. 403, 1 Ann. Cas. 261, denying, in absence of legislative authority, right of court, in action for personal injury, to compel plaintiff to undergo physical examination; Best v. Columbia Street R. Light & P. Co. 85 S. C. 429, 67 S. E. 1 (dissenting opinion), on power of courts to order physical examination of plaintiff in personal injury actions; Murphy v. Southern P. Co. 31 Nev. 142, 101 Pac. 322, 21 Ann. Cas. 502, holding that in action for personal injuries, rulings of trial court in granting or refusing physical examination of plaintiff will not be disturbed in absence of abuse of discretion; May v. Northern P. R. Co. 32 Mont. 527, 70 L.R.A. 113, 81 Pac. 328, 4 Ann. Cas. 605, holding court cannot order physical examination of injured person in absence of legislation; Johnston v. Southern P. Co. 150 Cal. 543, 89 Pac. 348, 11 Ann. Cas. 841, holding court has power to order physical examination of injured person in civil action; Western Glass Mfg. Co. v. Schoeninger, 42 Colo. 363, 15 L.R.A.(N.S.) 668, 126 Am. St. Rep. 165, 94 Pac. 342, holding defendant entitled to medical examination where injured person was examined immediately after injury and he was declared to have St. Vitus dance which a year later same physician declared to be paralysis due to injury; Brown v. Chicago, M. & St. P. R. Co. 12 N. D. 69, 102 Am. St. Rep. 564, 95 N. W. 153, holding in action for injuries to her person court may order plaintiff to disclose her person for inspection by physicians of defendant; Gray v. State, 55 Tex. Crim. Rep. 111, 22 L.R.A.(N.S.) 525, 114 S. W. 635, on right of defendant in action for personal injuries to demand physical examination of plaintiff; Mutual L. Ins. Co. v. Griesa, 156 Fed. 402, holding court has power to compel exhumation and physical examination of corpse to ascertain cause of death.

Cited in footnotes to Stack v. New York, N. H. & H. R. Co. 52 L. R. A. 328, which denies power of court to compel plaintiff to submit to physical examination; Wittenberg v. Onsgard, 47 L. R. A. 141, which denied application to compel plaintiff to submit his neck to be photographed by X-Ray; Bagwell v. Atlanta Consol. Street R. Co. 47 L. R. A. 486, which holds that action for injury to minor daughter should not be dismissed for her refusal, after attaining majority, to submit to physical examination; State v. Height, 59 L. R. A. 438, which holds unlawful, disclosure by physicians of knowledge as to venereal disease, obtained by examination, against his will, of one accussed of rape; Atchison, T. & S. F. R. Co. v. Palmore, 64 L. R. A. 90, which holds that request for expert examination of eyes, in action for their alleged permanent injury, should be granted, although involving use of drugs; Austin & N. W. R. Co. v. Cluck, 64 L.R.A. 494, which denies power of court in absence of statute to require the plaintiff in an action for personal injuries to submit to an examination of his person; May v. Northern P. R. Co. 70 L.R.A. 111, which denies judicial power at common law to compel plaintiff to submit to physical examination.

Cited in notes (2 L.R.A.(N.S.) 387) on waiver of right to object to physical examination or exhibition of person; (23 L.R.A.(N.S.) 464, 467) on power to compel physical examination.

Distinguished in Myrberg v. Baltimore & S. Min. & Reduction Co. 25 Wash. 376, 65 Pac. 539, holding court's refusal to allow physical examination, asked for during trial, no abuse of discretion.

Contributory negligence of person standing in car.

Cited in Yazoo & M. Valley R. Co. v. Humphrey, 83 Miss. 733, 36 So. 154, holding instruction that passenger on mixed train could not, under statute, be guilty of contributory negligence was error where she was warned that it was

dangerous not to keep her seat and to leave it was unnecessary; Allen v. Northern P. R. Co. 35 Wash. 240, 66 L.R.A. 812, 77 Pac. 204 (dissenting opinion), on question of contributory negligence on or about trains being one for jury; Thomas v. San Pedro, L. A. & S. L. R. Co. 95 C. C. A. 371, 170 Fed. 135, holding it for jury whether leaving seat and going to front platform when passenger's station had been called but car had not actually stopped was contributory negligence.

Inference raised by refusal to offer attending physician as witness.

Cited in Arnolds v. Maryville, 110 Mo. App. 262, 85 S. W. 107, holding it not error to instruct jury to draw no inference disadvantageous to plaintiff for failure to have attending physician testify; William Laurie Co. v. McCullough, 174 Ind. 484, 90 N. E. 1014, Ann. Cas. 1913 A, 49, holding that counsel for defendant in their argument to jury in personal injury case have no right to comment adversely on fact that plaintiff failed to have her physician testify; Pennsylvania R. Co. v. Durkee, 78 C. C. A. 107, 147 Fed. 101, 8 Ann. Cas. 790, holding jury may draw no inference derogatory to plaintiff in action for injuries to person for failure to have attending physician testify.

Submission of case to jury.

Distinguished in Scarpelli v. Washington Water Power Co. 63 Wash. 23, 114 Pac. 870, holding that where plaintiff's prima facie case, sufficient on motion for nonsuit, is so fully explained as to leave no substantial conflict, case should be taken from jury.

46 L. R. A. 160, THOMAS v. COCHRAN, 89 Md. 390, 43 Atl. 792.

Who entitled to insurance, where beneficiary dies before insured.

Cited in Expressman's Mut. Ben. Asso. v. Hurlock, 91 Md. 591, 80 Am. St. Rep. 470, 46 Atl. 957, holding administrator of beneficiary dying before member of benefit society, entitled to insurance; Preston v. Connecticut Mut. L. Ins. Co. 95 Md. 115, 51 Atl. 838, holding proceeds of insurance payable to beneficiary or legal representatives belong to estate of beneficiary dying before insured; United States Casualty Co. v. Kacer, 169 Mo. 317, 58 L. R. A. 442, 92 Am. St. Rep. 641, 69 S. W. 370, holding policy payable to certain person, "if surviving," creates vested interest, subject to devestiture by prior death; Gould v. United Traction Employees' Mut. Aid Asso. 26 R. I. 145, 58 Atl. 624, holding beneficiary fund of mutual aid society does not go into estate of insured so as to permit of action therefor by his administrator.

Cited in footnotes to Supreme Council, C. K. of A. v. Densford, 49 L. R. A. 776, which holds deceased beneficiary's share in certificate transmissible to his issue on beneficiary's death before insured; Warner v. Modern Woodmen, 61 L. R. A. 603, which holds that fund reverts to benefit society on death of member leaving no one entitled to be made beneficiary under certificate.

Cited in note (17 L.R.A.(N.S.) 1084) on disposition of fund in benefit society upon failure of beneficiary.

Assignment of policy.

Cited in Dale v. Brumbly, 96 Md. 677, 54 Atl. 655, holding benefit insurance policy payable to insured's estate after his death, when so drawn, although assigned by him to creditor, when such assignment is forbidden by by-laws.

Similarity of insurance and benefit association laws.

Cited in Littleton v. Wells & M. Council No. 14, Jr. O. U. A. M. 98 Md. 461, 56 Atl. 798, on similarity of rules of law governing fraternal and ordinary life insurance companies.

46 L. R. A. 164, COWLEY v. TWOMBLY, 173 Mass. 393, 53 N. E. 886.

Followed without special discussion in Ham v. Twombly, 181 Mass. 171, 63 N. E. 336.

Uncertainty of trust.

Cited in footnote to Holmes v. Walter, 62 L. R. A. 986, which holds trust sufficiently expressed within the statute, when beneficiaries and subject are sufficiently certain so as to be judicially determined by court of equity.

Trusts void because of public policy.

Cited in Coe v. Hill, 201 Mass. 21, 86 N. E. 959, holding stipulation that trust in favor of wife shall terminate so as to give her the cash funds upon death of or divorce from her husband is valid.

46 L. R. A. 166, CARLETON v. CHINA MUT. INS. CO. 174 Mass. 280, 54 N. E. 559.

46 L. R. A. 168, DENNIS v. HOLSAPPLE, 148 Ind. 297, 62 Am. St. Rep. 526, 47 N. E. 631.

Parol evidence to determine testator's intention.

Cited in Pate v. Bushong, 161 Ind. 539, 63 L. R. A. 597, 100 Am. St. Rep. 287, 69 N. E. 291, recognizing admissibility of evidence of circumstances and surroundings of testator when making will, to ascertain intention.

Sufficiency of reference in will to documents.

Cited in Schillinger v. Bawek, 135 Iowa, 138, 112 N. W. 210, holding specific description of property referred to in will solely for purpose of identification is unnecessary.

46 L. R. A. 171, HILPIPRE v. CLAUDE, 109 Iowa, 159, 77 Am. St. Rep. 524, 80 N. W. 332.

Revocation of will by adoption of child.

Cited in Glascott v. Bragg, 111 Wis. 609, 56 L. R. A. 260, 87 N. W. 853, holding will revoked by subsequent marriage and adoption of child; Flannigan v. Howard, 200 Ill. 402, 59 L. R. A. 666, footnote p. 664, 93 Am. St. Rep. 201, 65 N. E. 782, holding devises and legacies in will ratably abated by adoption of child after its execution; Rowe v. Rowe, 120 Iowa, 19, 94 N. W. 258, holding that prior to adoption of Code of 1897, birth or adoption of child after making of will, but before testator's death, revokes will.

— Implied from changed conditions.

Distinguished in Re Brown, 139 Iowa, 227, 117 N. W. 260, holding divorce with division of property insufficient to revoke will where facts do not amount to a common law revocation.

Adoption of children.

Cited in Bresser v. Saarman, 112 Iowa, 723, 84 N. W. 920, holding that statute governing adoption of children must be strictly construed; Sires v. Melvin, 135 Iowa, 470, 113 N. W. 106, holding adoption of child under statute requiring names of child's parents is valid although name of father is not filled in.

Cited in note (109 Am. St. Rep. 678) on effect of adoption on kindred of adopting person.

— Inheritance.

Cited in Shick v. Howe, 137 Iowa, 252, 14 L.R.A.(N.S.) 982, 114 N. W. 916, holding adopted child inherits from foster parent under statute making relation of foster parents same as lawful blood parents; Van Derlyn v. Mack, 137 Mich.

149, 66 L.R.A. 438, 109 Am. St. Rep. 669, 100 N. W. 278, 4 Ann. Cas. 879, on interpretation of statutes regarding inheritance by adopted children.

Cited in notes (30 L.R.A.(N.S.) 916) as to whether terms "child," "children," "issue," etc., in statutes of distribution include adopted children; (118 Am. St. Rep. 686) on right of adopted children to inherit.

46 L. R. A. 175, CACHE LA POUDRE RESERVOIR CO. v. WATER SUPPLY & STORAGE CO. 25 Colo. 161, 71 Am. St. Rep. 131, 53 Pac. 331.

Reaffirmed on second appeal in 27 Colo. 532, 62 Pac. 420.

Explained in Windsor Reservoir & Canal Co. v. Lake Supply Ditch Co. 44 Colo. 228, 98 Pac. 729, a subsequent litigation involving the same water rights.

Right of prior appropriator of water.

Cited in Colorado Mill. & Elevator Co. v. Larimer & W. Irrig. Co. 26 Colo. 50, 56 Pac. 185, holding that prior appropriation of water cannot be enlarged to prejudice of subsequent appropriator; Cache La Poudre Reservoir Co. v. Windsor Reservoir & Canal Co. 25 Colo. 56, 52 Pac. 1104, raising, without deciding, question of relative rights of first user of water appropriated by mill and appropriator senior to mill, upon abandonment of mill ditch; Head v. Hale, 38 Mont. 308, 100 Pac. 222, holding railroad as successor of prior appropriator who used only a small appropriation for a garden and placer mining cannot take large quantities of flow for engine purposes to detriment of lower appropriators; Vogel v. Minnesota Canol & Reservoir Co. 47 Colo. 542, 107 Pac. 1108, holding junior appropriator has a vested right in condition of flow.

Cited in footnotes to Crawford Co. v. Hall, 60 L. R. A. 889, which holds right to use water, acquired by appropriation, superior to that of subsequent riparian proprietor; Salt Lake City v. Salt Lake City Water & Electrical Power Co. 61 L. R. A. 648, which denies prior appropriator's right to complain of noninjurious use by upper proprietor.

Cited in notes (46 L.R.A. 322) on right to store appropriated water; (17 L.R.A.(N.S.) 331) on same point.

Abandonment of prior appropriation of water.

Cited in Windsor Reservoir & Canal Co. v. Hoffman Mill Co. 48 Colo. 85, 30 L.R.A.(N.S.) 618, 109 Pac. 422, holding that where mill for which water has been appropriated is idle part of time, water not then needed for its purpose is subject to appropriation by user above point of mill intake.

Cited in footnote to Salt Lake City v. Salt Lake City Water & Electrical Power Co. 61 L. R. A. 649, which holds appropriator's right to use water not forfeited by not putting to actual use, through opposition of prior appropriators.

Cited in note (30 L.R.A.(N.S.) 615, 617) on right as between mill-owner above, and junior appropriator below, during periods when water not used by mill.

46 L. R. A. 181, TUCKER v. STATE, 89 Md. 471, 43 Atl. 778, 44 Atl. 1004.

Opinion evidence.

Cited in Tall v. Baltimore Steam Packet Co. 90 Md. 258, 47 L. R. A. 124, 44 Atl. 1007, holding witness's opinion that injury was avertable had another acted with appropriate promptness, incompetent; Hillers v. Taylor, 108 Md. 152, 69 Atl. 715, holding statements made by husband to wife as to wishes of defendant but not made in presence of defendant are inadmissible in action for alienation of affections of husband.

Burden of proof.

Cited in Rutherford v. Foster, 60 C. C. A. 133, 125 Fed. 191, hold-

ing burden upon defendant, in action for killing, to rebut presumption that killing was wrongful; Baltimore & O. R. Co. v. Stumpf, 97 Md. 90, 54 Atl. 978, holding burden of proving contributory negligence on defendant, when plaintiff shows prima facie case of negligence without disclosing want of care upon his own part; Bernheimer Bros. v. Bager, 108 Md. 563, 129 Am. St. Rep. 458, 70 Atl. 91, holding in action for injuries caused by negligence of defendant burden of proving contributory negligence is on him; Anne Arundel County v. Carr, 111 Md. 152, 73 Atl. 668, holding refusal to instruct jury not to find for plaintiff if they believed him guilty of contributory negligence properly refused where defendant offered no evidence to establish it; Suell v. Derricott, 161 Ala. 267, 23 L.R.A.(N.S.) 999, 49 So. 895, 18 Ann. Cas. 636, holding in action for damages for intentional killing burden of proof is on plaintiff to establish intent.

Cited in note (33 L.R.A.(N.S.) 1230) on burden of proof as to contributory negligence.

Statute giving right of action for wrongful death.

Cited in Stewart v. United Electric Light & P. Co. 104 Md. 341, 8 L.R.A.(N.S.) 392, 118 Am. St. Rep. 410, 65 Atl. 49, holding statute giving compensatory action for wrongful death for benefit of surviving relatives and statute giving administrator a right to maintain surviving action for the wrong to the decedent, are distinct and actions may be concurrent.

46 L. R. A. 187, CONSOLIDATED GAS CO. v. BLONDELL, 89 Md. 732, 43 Atl. 817.

Mandatory order to compel performance of duty.

Cited in Atchison, T. & S. F. R. Co. v. Billings, 77 Kan. 123, 93 Pac. 590, holding mandatory order will issue to compel construction of cattle guard by railroad where it is bound to do so but has failed for a long time.

Cited in footnote to Allen v. Stowell, 68 L.R.A. 223, which sustains right to mandatory injunction to compel removal of dams wrongfully diverting water onto plaintiff's property so as to destroy trees and cut gulches.

Injunction against repeated trespass.

Cited in note (13 L.R.A.(N.S.) 179) on injunction against repeated trespass.

Parties to action for injunction.

Cited in Goldfield Consol. Mines Co. v. Richardson, 194 Fed. 204, holding that owners of mines in severalty might join in action for injunction against persons who purchased product of mines from employees which product employees had stolen.

Liability of gas company for failure to perform duty.

Cited in Consolidated Gas Co. v. Connor, 114 Md. 159, 32 L.R.A.(N.S.) 824, 78 Atl. 725, holding that gas company is liable to third perosns for injury caused by failure to keep in repair service pipes, where it assumed that duty by contract with city.

46 L. R. A. 193, SHREVEPORT v. PRESCOTT, 51 La. Ann. 1895, 26 So. 664.

Jurisdiction of supreme court over appeals from local assessments.

Cited in Kelly v. Chadwick, 104 La. 722, 29 So. 295, holding court has appellate jurisdiction of assessment for street improvement levied under compulsion of law; Ayers Asphalt Pav. Co. v. Loewengardt, 109 La. 440, 33 So. 553, denying jurisdiction over local assessments levied at instance of taxpayers.

Distinguished in Rosetta Gravel Paving & Improv. Co. v. Adler, 52 La. Ann. 693, 27 So. 183, denying jurisdiction of supreme court where legality of paving tax not in issue, and less than $2,000 involved.

Forced contribution as tax.

Cited in Vicksburg, S. & P. R. Co. v. Traylor, 104 La. 292, 29 So. 141, holding that statutory penalty for delinquent ordinary taxes does not apply to taxes levied in aid of railroad.

Liability of street railroad for paving assessment.

Cited in Shreveport v. Shreveport City R. Co. 104 La. 273, 29 So. 129, sustaining assessment of street railroad company for such proportion of cost of paving as length of cross ties bears to width of street; Louisiana Improv. Co. v. Baton Rouge Electric & Gas Co. 114 La. 540, 38 So. 444, holding Baton Rouge charter of 1898 repealed a statute imposing on street railways without their knowledge or consent cost of paving the streets.

Cited in footnotes to Lake Street Elev. R. Co. v. Chicago, 47 L.R.A. 624, which holds elevated railroad structure subject to street pavement assessment; Union Trust Co. v. Richmond City R. Co. 48 L. R. A. 41, which holds lien on street railway for paving assessments superior to lien of mortgage; Fielders v. North Jersey Street R. Co. 59 L. R. A. 455, which holds void, ordinance requiring street railway companies to pave and keep in repair space between tracks; Chicago, R. I. & P. R. Co. v. Ottumwa, 51 L. R. A. 763, which denies liability of railroad running along side of street to street paving assessment; United R. & Electric Co. v. Baltimore, 52 L. R. A. 772, which holds railroad right of way and tracks not within provision as to increasing taxes on "landed property."

Cited in notes (46 L. R. A. 193) on liability of street railroad company for paving assessment; (52 L. R. A. 448) on liability of street railway company for defect in track or street; (66 L.R.A. 51) on nature of railroad as realty or personalty for purposes of taxation; (12 L.R.A.(N.S.) 116; 15 L.R.A.(N.S.) 489) on liability of railway occupying street, to assessment for improvements; (28 L.R.A.(N.S.) 1126) on assessments for improvements by front-foot rule.

Assessments for paving streets having street railroad tracks.

Cited in Scranton v. Koehler, 14 Pa. Super. Ct. 19, holding abutter assessable for remainder after deducting paving done in front of premises by street railroad, and referring particularly to annotation in 46 L. R. A. 193.

46 L. R. A. 215, TILLMAN v. BEARD, 121 Mich. 475, 80 N. W. 248.

Liability for prosecuting under void ordinance or without right.

Followed in Gardner v. Couch, 137 Mich. 362, 109 Am. St. Rep. 684, 100 N. W. 673, holding justice of peace not liable in action of false imprisonment for conviction of vagrant because of errors in proceedings where justice had jurisdiction.

Cited in James v. Sweet, 125 Mich. 137, 84 N. W. 61, denying citizen's liability for malicious prosecution in testing validity of ordinance; Smith v. Clark, 37 Utah, 124, 26 L.R.A.(N.S.) 957, 106 Pac. 653, Ann. Cas. 1912B, 1366, holding that one who merely verifies complaint upon which arrest is made cannot be required to justify arrest in action for false imprisonment, although complaint states no offense.

Arrest without warrant.

Cited in Klein v. Pollard, 149 Mich. 204, 10 L.R.A.(N.S.) 1010, 119 Am. St. Rep. 670, 112 N. W. 717, holding arrest of woman at late hour of the night, who had just left house of prostitution but was walking quietly along street making no attempt to ply her trade, without warrant is illegal; Schnider v. Montross, 158 Mich. 264, 122 N. W. 534, holding arrest of person selling meat without license without warrant is illegal.

Cited in footnotes to McCullough v. Greenfield, 62 L.R.A. 906, which holds

that possession by officer of a warrant will not justify arrest of accused by police department of other town under direction by telephone by officer holding warrant; State ex rel. Livingstone v. Williams, 67 L.R.A. 166, which holds that mandamus will not lie to compel arrest without warrant of designated persons for alleged commission of a misdemeanor.

Cited in note (84 Am. St. Rep. 691) on right of policeman to make arrest.

46 L. R. A. 218, PEOPLE v. GILMAN, 121 Mich. 187, 80 Am. St. Rep. 490, 80 N. W. 4.

Cheats without particular intent.

Cited in State v. Hillman, 42 Wash. 617, 85 Pac. 63, holding indictment alleging attempt to cheat a specified person of his money sufficient although evidence shows a general attempt to cheat any person that might be entrapped without reference to any particular individual.

Effect of participation of detective in crime.

Cited in footnotes to People v. Mills, 67 L.R.A. 131, which holds that district attorney, even with permission of judge, cannot consent to removal of indictments from court records, so as to relieve one removing them from liability to prosecution; State v. Currie, 69 L.R.A. 405, which holds mere fact that person who assisted in a burglary was a detective no defense if detective did not instigate the crime.

46 L. R. A. 219, ATKINSON v. JOHN E. DOHERTY & CO. 121 Mich. 372, 80 Am. St. Rep. 507, 80 N. W. 285.

Right of privacy.

Cited in Roberson v. Rochester Folding Box Co. 171 N. Y. 553, 59 L. R. A. 484, footnote p. 479, 89 Am. St. Rep. 828, 64 N. E. 442, Reversing 64 App. Div. 39, 71 N. Y. Supp. 876, Which Affirms 32 Misc. 350, 65 N. Y. Supp. 1109, denying right to injunction or damages for unauthorized publication of likeness for advertising purposes; Hillman v. Star Pub. Co. 64 Wash. 695, 35 L.R.A.(N.S.) 598, 117 Pac. 594, holding that no actionable wrong arises out of unauthorized publication of one's portrait, although it is in connection with that of another person who is accused of crime; Klug v. Sheriffs, 129 Wis. 470, 7 L.R.A.(N.S.) 364, 116 Am. St. Rep. 967, 109 N. W. 656, 9 Ann. Cas. 1013, on enforcible right of privacy; Mabry v. Kettering, 89 Ark. 552, 117 S. W. 746, 16 Ann. Cas. 1123, on right of individual to invoke chancery to restrain improper use of his photograph; Henry v. Cherry, 30 R. I. 24, 24 L.R.A.(N.S.) 1001, 136 Am. St. Rep. 928, 73 Atl. 97, 18 Ann. Cas. 1006, holding right to privacy a personal right and not one of property.

Cited in notes (50 L.R.A. 401) on use of negative or engraved plates without consent of party who has paid for same; (1 L.R.A.(N.S.) 1148) on injunction to protect personal right; (24 L.R.A.(N.S.) 992, 995; 34 L.R.A.(N.S.) 1138) on right of action for use of photograph or name for advertising; (89 Am. St. Rep. 844, 847, 850, 851, 852) on right of privacy.

Distinguished in Pavesich v. New England L. Ins. Co. 122 Ga. 210, 69 L.R.A. 115, 106 Am. St. Rep. 104, 50 S. E. 68, 2 Ann. Cas. 561, holding publication of person's photograph in manner damaging to him a violation of his right of privacy such as is actionable by him; Von Thodorovich v. Franz Josef Beneficial Asso. 154 Fed. 912, holding insurance company may be restrained in action by Austrian consul in his public capacity from using Austrian emperor's photograph in such a way as to lead public to believe him interested in company; Edison v. Edison Polyform & Mfg. Co. 73 N. J. Eq. 140, 67 Atl. 392, holding in-

junction will issue to restrain unauthorized use of name as part of title to corporation.

Disapproved in Munden v. Harris, 153 Mo. 654, 134 S. W. 1076, holding that right of privacy is legal right of property and is entitled to protection by injunction.

46 L. R. A. 224, PETER v. CHICAGO & N. W. R. CO. 121 Mich. 324, 80 Am. St. Rep. 500, 80 N. W. 295.

Insurance as affecting right to damages.

Cited in United States Casualty Co. v. Bagley, 129 Mich. 72, 55 L. R. A. 617, 95 Am. St. Rep. 424, 87 N. W. 1044, sustaining right of insurer, though negligently taking risk, to recover from one whose negligence caused loss.

Cited in note (23 L.R.A.(N.S.) 870) as to whether destroyer of insured property may defeat owner's suit upon ground that right of action is in insurer.

Statutory liability of railroad for loss by emission of sparks from engine.

Cited in Fraser v. Pere Marquette R. Co. 18 Ont. L. Rep. 596, on statutory exemption of railroad from liability for loss by sparks emitted from engines, in Michigan; Chicago, B. & Q. R. Co. v. Bautsch, 129 Ill. App. 26, on contributory negligence of land owner but holding it not contributory negligence for owner of land along railroad not to investigate smoke seen by him coming from right of way where he had no knowledge that it was apt to come upon his land.

Cited in footnotes to Dyer v. Maine Central R. Co. 67 L.R.A. 416, which holds clause in statute making railroad company liable for losses by fire set out by engines which gives it the benefit of insurance inapplicable to loss due to its own negligence; Norfolk & W. R. Co. v. Fritts, 68 L.R.A. 864, which sustains liability for fire of railroad company unnecessarily running heavy freight train up grade at double its scheduled speed in dry season and during heavy wind.

46 L. R. A. 229, FRIAR v. SMITH, 120 Mich. 411, 79 N. W. 633.

Broker's right to double commissions.

Followed in Horwitz v. Pepper, 128 Mich. 689, 87 N. W. 1034, denying real estate broker's right of recovery of compensation from seller in absence of latter's knowledge that he was also to receive commission from purchasers.

Cited in Hannan v. Prentis, 124 Mich. 420, 83 N. W. 102, holding broker employed to exchange property forfeits commission by accepting commission from other party without employer's knowledge.

Cited in note (24 L.R.A.(N.S.) 661) on commissions of real-estate broker acting for both parties.

Performance of contract to find purchaser or effect exchange.

Cited in note (44 L. R. A. 593) on performance by real estate broker of his contract to find a purchaser or effect exchange of principal's property.

46 L. R. A. 232, GARESCHE v. LEVERING INVEST. CO. 146 Mo. 436, 48 S. W. 653.

Estoppel by conduct.

Cited in Reed v. Union Cent. L. Ins. Co. 21 Utah, 310, 61 Pac. 21, holding waiver of right of which party ignorant not deducible from conduct; St. Louis Safe Deposit & Sav. Bank v. Kennett, 101 Mo. App. 400, 74 S. W. 474, holding one who objected to construction of smokestack and was told that it was authorized by law, not estopped, after waiting until its completion, to enjoin its maintenance.

Executor's right to commissions.

Cited in footnote to *Re* Rutledge, 47 L. R. A. 721, which sustains surrogate's discretion in withholding commissions from executor neglecting duties.

Nature of suit for partition.

Cited in Donaldson v. Allen, 213 Mo. 299, 127 Am. St. Rep. 601, 111 S. W. 1128, holding partition an equitable action; Stewart v. Jones, 219 Mo. 635, 118 S. W. 1, 131 Am. St. Rep. 595, holding trust suit having settlement of trust and partition for its end was an equitable partition suit.

46 L. R. A. 237, LOWE v. PROSPECT HILL CEMETERY ASSO. 58 Neb. 94, 78 N. W. 488.

Injunction removed upon subsequent showing that nuisance had been abated, 75 Neb. 87, 106 N. W. 429.

Injunction against polluting waters.

Cited in Todd v. York, 3 Neb. (Unof.) 766, 92 N. W. 1040, holding equity will not restrain city from polluting stream where lower court found that facts did not warrant injunction.

Cited in footnote to Weston Paper Co. v. Pope, 56 L. R. A. 899, which authorizes injunction against pollution of stream by discharge from strawboard works.

Cited in note (34 L.R.A.(N.S.) 52) on underground pollution of water.

— Against cemetery as nuisance.

Cited in Nelson v. Swedish Evangelical Lutheran Cemetery Asso. 111 Minn. 152, 34 L.R.A.(N.S.) 566, 126 N. W. 723, 20 Ann. Cas. 790, holding that where place of sepulture is so situated that burial there will injure health, either by contaminating atmosphere or water of wells or springs, injunction will be granted to restrain such use of land; Payne v. Wayland, 131 Iowa, 661, 109 N. W. 203, holding equity will enjoin use of ground for cemetery where such use would clearly constitute a nuisance; Braasch v. Cemetery Asso. 69 Neb. 305, 95 N. W. 646, 5 Ann. Cas. 132, holding equity will not enjoin use of ground for cemetery where it is not clearly apparent that such use would be detrimental to health and comfort of community.

Cited in notes (107 Am. St. Rep. 233; 31 L.R.A.(N.S.) 947) on burial ground or cemetery as nuisance.

Evidence of nuisance.

Cited in Vernon v. Wedgeworth, 148 Ala. 493, 42 So. 749, holding in action to abate privy as nuisance evidence that plaintiff could see paper and droppings fall while at his dinner table was properly admitted.

Pleas in confession and avoidance.

Cited in Eddy v. Omaha, 72 Neb. 558, 101 N. W. 25, holding waiver of defect in paving notice must be pleaded specially in city's answer in action to enjoin collection of assessment as void.

Right of one in possession to enjoin nuisance.

Cited in notes (3 L.R.A.(N.S.) 448) on right of lessee to enjoin nuisance; (34 L.R.A.(N.S.) 563) on right of one in possession to maintain action to enjoin nuisance without proving title.

Liability for harming another in exercise of legal right.

Cited in note (25 Eng. Rul. Cas. 84) on liability for wilfully and intentionally harming another in exercise of a legal right.

46 L. R. A. 244, GERNER v. MOSHER, 58 Neb. 135, 78 N. W. 384.

Stockholder's right to inspect books.

Cited in note (45 L. R. A. 449) on right of stockholder to inspect books of corporation.

Constructive notice of fraud.

Cited in Raymond v. Schriever Bros. 63 Neb. 721, 89 N. W. 308, holding mere opportunity to discover fraud, where nothing suspicious appears, will not set statute of limitations running; Cole v. Boyd, 68 Neb. 150, 93 N. W. 1003, holding in action to recover lands purchased illegally but in good faith by administrator plaintiffs who were minors at time of transaction and knew of purchase over four years prior to suit which was not brought till the youngest was thirty-one years old cannot maintain suit.

Liability for making false representations.

Second appeal in Gerner v. Yates, 61 Neb. 101, 84 N. W. 596, holding director liable to action for deceit by purchaser of stock relying on false financial report, although defendant not particularly relied on.

Cited in Killen v. Barnes, 106 Wis. 563, 82 N. W. 536, holding officers misrepresenting condition of bank liable to depositor misled thereby; Warfield v. Clark, 118 Iowa, 72, 91 N. W. 833, holding purchaser of stock in insurance company entitled to damages in action for deceit against officer filing fraudulent statement with state auditor; Omaha Electric Light & P. Co. v. Union Fuel Co. 88 Neb. 429, 129 N. W. 989, holding that in order to obtain redress from consequences of deceit complaining party must show that adversary made false representations of material facts; that complainant believed them to be true; that they were made with intent to deceive, and that they were acted upon; Davis v. Louisville Trust Co. 30 L.R.A.(N.S.) 1019, 104 C. C. A. 24, 181 Fed. 19, holding that person relying on report by corporation to mercantile agency in purchase of stock may rescind if information was false; Martin v. Hutton, 90 Neb. 36, 36 L.R.A.(N.S.) 605, 132 N. W. 727, holding that person is justified in relying on representation made to him in all cases where representation is positive statement of fact and where investigation would be required to discover truth; Yates v. Jones Nat. Bank, 74 Neb. 739, 105 N. W. 287, holding action by creditors will lie against bank and individual officers thereof misleading them into remaining its creditors in their own name and behalf; Bauer v. Taylor, 4 Neb. (Unof.) 712, 98 N. W. 29, holding intent of falsifier immaterial where damages result from reliance upon false representations; Farmer's Mut. Ins. Co. v. Cole, 4 Neb. (Unof.) 135, 93 N. W. 730, holding it unnecessary for person to plead or prove false representations where known to be false when made, in order to obtain relief.

Cited in footnotes to Hindman v. First Nat. Bank, 57 L. R. A. 108, which holds bank falsely certifying that all of authorized capital of insurance company is on deposit, liable to one purchasing stock in reliance on same; Hindman v. First Nat. Bank, 48 L. R. A. 210, which holds bank liable for cashier's false statement as to amount insurance company has on deposit; Tecumseh Nat. Bank v. Chamberlain Bkg. House, 57 L. R. A. 811, which holds false representations by defaulting president as to liability to bank and value of securities already furnished, not binding on bank; Boddy v. Henry, 53 L. R. A. 769, which denies deceit of land owner making false representations as to quantity, under belief in their truth; H. W. Williams Transp. Line v. Darius Cole Transp. Co. 56 L. R. A. 939, which denies right to rely on false representations as to speed of steamboat, if warranty as to speed inserted in contract; Spead v. Tomlinson, 68 L.R.A. 432, which denies right to recover damages from healer on ground of deceit in stating

that he could and would cure intending patient whom he fails to benefit unless the statement was made with fraudulent intent.

Cited in notes (6 L.R.A.(N.S.) 874) on false statements in required reports to public officers as basis of common law action by individuals for deceit against officers or directors; (85 Am. St. Rep. 389, 391) on liability for misrepresentations indirectly made to complaining party.

Distinguished in Yates v. Jones Nat. Bank, 206 U. S. 171, 51 L. ed. 1011, 27 Sup. Ct. Rep. 638, holding rule of leading case not applicable where liability of directors for false representations in bank statement is governed by federal acts.

Disapproved in Mason v. Moore, 73 Ohio St. 295, 4 L.R.A.(N.S.) 606, 76 N. E. 932, 4 Ann. Cas. 240, holding directors not insurers of correctness of report on financial condition of bank although signed by them where all details thereof were compiled by cashier who drew up statement.

46 L. R. A. 253, RUSTIN v. STANDARD LIFE & ACCI. INS. CO. 58 Neb. 792, 76 Am. St. Rep. 136, 79 N. W. 712.

Accident or voluntary exposure to risk.

Approved in Beard v. Indemnity Ins. Co. 65 W. Va. 293, 64 S. E. 119, holding question of "unnecessary exposure to danger" in lying on bench on top of high wall and near edge thereof is for jury.

Cited in Hastings v. Travelers' Ins. Co. 190 Fed. 260, holding that accident insurance company was not liable for death of insured caused by overexertion in raising and lowering himself in and from morris chair by use of hands and arms alone; Schmid v. Indiana Travelers Acci. Asso. 42 Ind. App. 491, 85 N. E. 1032, holding it not accidental death where deceased in carrying baggage up an unusually long flight of stairs dropped dead upon reaching top thereof; Hunt v. United States Acci. Asso. 146 Mich. 523, 7 L.R.A.(N.S.) 940, 117 Am. St. Rep. 655, 109 N. W. 1042, 10 Ann. Cas. 449, holding recovery may be had under policy stipulating against unnecessary exposure to danger where insured in playing indoor baseball put out his foot to stop himself suddenly and broke his ankle.

Cited in notes (139 Am. St. Rep. 706) on voluntary exposure of insured to danger; (2 Brit. Rul. Cas. 379) on accident insurance as covering injury from exertion or strain.

Distinguished in Garcelon v. Commercial Traveller's Eastern Acci. Asso. 195 Mass. 537, 10 L.R.A.(N.S.) 963, 81 N. E. 201, holding insurance for injuries caused in part by contributory negligence where policy stipulates for use of prudence by insured.

46 L. R. A. 255, TRENTON POTTERIES CO. v. OLIPHANT, 58 N. J. Eq. 507, 78 Am. St. Rep. 612, 43 Atl. 723.

Contracts in restraint of trade.

Cited in Melick v. Foster, 64 N. J. L. 398, 45 Atl. 911, holding vendor's covenant not to re-engage in business in certain place for certain time, valid; Rosenbaum v. United States Credit System Co. 65 N. J. L. 259, 53 L. R. A. 452, 48 Atl. 237, holding covenant not to re-engage in business for certain period after agency ceases does not invalidate contract; Swigert v. Tilden, 121 Iowa, 658, 63 L. R. A. 612, footnote p. 608, 100 Am. St. Rep. 374, 97 N. W. 82, sustaining contract by seller of good will of business not to be connected with competing business for ten years; Artistic Porcelain Co. v. Boch, 76 N. J. Eq. 535, 74 Atl. 680, holding that contract that covenantor will not engage in competitive business, is not

against public policy, when restraint contracted for is partial and reasonable; Harris v. Theus, 149 Ala. 135, 10 L.R.A.(N.S.) 208, 123 Am. St. Rep. 17, 43 So. 131, holding contract not to engage in turpentine business within ten miles made ancillary to sale of pine lands not void; Re Consolidated Gas Co. 56 Misc. 59, 106 N. Y. Supp. 407, holding anti-monopoly act does not prevent corporations from purchasing stock in other companies where statutory authority so to do exists; Locker v. American Tobacco Co. 121 App. Div. 450, 106 N. Y. Supp. 115, holding control of ninety per cent of trade by one employing sole selling agent within state who refuses to sell to plaintiff not an unlawful restraint of trade; Taylor Iron & Steel Co. v. Nichols, 73 N. J. Eq. 687, 24 L.R.A.(N.S.) 937, 133 Am. St. Rep. 753, 69 Atl. 186, holding equity will not enforce contract for personal services which stipulates that employee shall never divulge any knowledge acquired by him in such work; McCarter v. Firemen's Ins. Co. 74 N. J. Eq. 408, 29 L.R.A.(N.S.) 1212, 135 Am. St. Rep. 708, 73 Atl. 414, 18 Am. Cas. 1048 (dissenting opinion), on contracts in restraint of trade as not necessarily illegal; Fleckenstein Bros. Co. v. Fleckenstein, 76 N. J. L. 615, 24 L.R.A. (N.S.) 918, 71 Atl. 265, holding contract of seller to refrain from business of a like kind "within five hundred miles of" its location is enforcible to the extent of that locality where it appears that so much restraint was necessary to protect vendee.

Cited in footnotes to Tuscaloosa Ice Mfg. Co. v. Williams, 50 L. R. A. 175, which holds void, contract by owner of ice machine to abandon manufacture of ice in certain town for five years, giving other party monopoly of business; Clark v. Needham, 51 L. R. A. 785, which holds void, lease of manufacturing machinery with agreement against lessor engaging in business for five years; Stovall v. McCutchen & Co. 47 L. R. A. 287, which sustains contract between merchants to close business places at certain hour each day; Steichen v. Fehleisen, 51 L. R. A. 412, which holds individual partners not bound by firm agreement not to re-engage in certain business for specified period; Pohlman v. Dawson, 54 L. R. A. 913, which holds agreement on sale of barber business not to engage in such business in any manner, violated by working as employee in other shop; Bancroft v. Union Embossing Co. 64 L. R. A. 298, which sustains contract by one selling right to manufacture and sell machine invented by him to make, or transfer to others right to make, such machines; Slaughter v. Thacker Coal & Coke Co. 65 L.R.A. 343, holds void contract by different coal mining companies giving exclusive right to sell entire output at uniform prices to corporation organized as their regular sales agent.

Cited in notes (24 L.R.A.(N.S.) 931) on validity of agreement in restraint of trade, ancillary to sale of business or profession, as affected by territorial scope; (24 L.R.A.(N.S.) 943, 945) on divisibility in respect of time or territorial extent of contracts in restraint of trade; (74 Am. St. Rep. 239, 243) on combinations constituting unlawful trusts.

Distinguished in Central New York Teleph. & Teleg. Co. v. Averill, 58 Misc. 65, 110 N. Y. Supp. 273, holding contract of telephone company that it have its phones exclusively installed in hotel is not voidable at instance of party receiving benefit by it.

Disapproved in Merchants' Ice Cold Storage Co. v. Rohrman, 138 Ky. 549, 30 L.R.A.(N.S.) 980, 137 Am. St. Rep. 390, 128 S. W. 599, holding that contracts by which corporation buys up and consolidate all but small percentage of ice manufacturing plants of city in order to control market are void.

— Construction of.

Cited in Fleckenstein Bros. Co. v. Fleckenstein, 76 N. J. L. 617, 24 L.R.A.(N.S.)

920, 71 Atl. 265, holding contract not to engage in business "within 500 miles" of city meant not to re-enter business therein or within 500 miles thereof.

Combinations to control prices.

Cited in Arnold v. Searing, 78 N. J. L. 159, 78 Atl. 762, holding that agreement between rolling chair proprietors in Atlantic City to maintain fixed schedule of rates is valid, where it appears that such schedule is same as is fixed by city ordinance, and that such rates are reasonable, and no monopoly exists.

Cited in footnotes to Cummings v. Union Blue Stone Co. 52 L. R. A. 262, which holds void, agreement by persons controlling 90 per cent of sale of blue stone, to sell through common agent and maintain agreed prices; John D. Park & Sons Co. v. National Wholesale Druggists' Asso. 62 L. R. A. 632, which sustains plan by which manufacturers of proprietary medicines shall sell at fixed prices, with rebate only to concerns which can be relied on to maintain price decided upon.

Validity of contracts not to compete with purchaser of all rivals.

Cited in Booth v. Seibold, 37 Misc. 103, 74 N. Y. Supp. 776, holding validity of contract not to re-engage in business for certain time unaffected by purchaser's buying out other dealers on same conditions.

Cited in footnotes to Eugene Dietzgen Co. v. Kokosky, 66 L.R.A. 503, which sustains right to injunction against member of former partnership agreeing on sale of business not to engage directly or indirectly in competitive business within specified city for designated period from continuing in rival business into which he entered in violation of such agreement; Keene Syndicate v. Wichita Gas, E. L. & P. Co. 67 L.R.A. 61, which holds void lease by corporation generating electricity to rival company with agreement not to engage in business for ten years.

Cited in notes (15 L.R.A.(N.S.) 848; 52 L. ed. U. S. 866) on validity of agreement not to compete, ancillary to sale or lease of property as affected by covenantee's purpose to procure a monopoly.

Right of corporation to buy competitor's business.

Followed without discussion in Dittman v. Distilling Co. 64 N. J. Eq. 545, 54 Atl. 570.

Cited in Metcalf v. American School Furniture Co. 122 Fed. 121, holding purchase by corporation, having power, of business of competing corporation, not invalid although made for purpose of obtaining monopoly.

Public policy.

Cited in Earle v. American Sugar Ref. Co. 74 N. J. Eq. 762, 71 Atl. 391, on source of public policy being in legislature rather than in the courts.

Implied powers of corporations.

Cited in notes (103 Am. St. Rep. 557) on power of corporation to purchase at sale of all assets of other corporations; (111 Am. St. Rep. 310) on implied power of corporations to borrow money and give evidence of indebtedness and security therefor.

46 L. R. A. 264, HUMBOLDT LUMBER MFRS.' ASSO. v. CHRISTOPHERSON, 19 C. C. A. 481, 44 U. S. App. 434, 73 Fed. 239.

Enforcement of state law by court of admiralty.

Cited in The Schooner Robert Lewers Co. v. Kekauoha, 52 C. C. A. 485, 114 Fed. 851, holding common-law right of action for negligently causing death enforceable in court of admiralty; The Robert Dollar, 115 Fed. 225, and McRae v. Bowers Dredging Co. 86 Fed. 350, holding state statute creating lien on vessels

for services or supplies furnished within state enforceable by admiralty court; Aurora Shipping Co. v. Boyce, 112 C. C. A. 372, 191 Fed. 966, holding that admiralty courts may take cognizance of cases founded upon marine torts causing death and award damages therefor.

Jurisdiction over sea.

Cited in United States v. Newark Meadows Improv. Co. 173 Fed. 429, holding federal courts of state had jurisdiction of a criminal act committed at sea within the three mile limit.

Cited in note (46 L. R. A. 272) on jurisdiction over sea.

Action for death or bodily injury.

Cited in notes (56 L.R.A. 193) on conflict of laws as to action for death or bodily injury; (70 Am. St. Rep. 681) on actions for death of human being.

Duty of captain of tug in stormy weather.

Cited in The Printer, 155 Fed 444, holding captain of tug bound to use prudence and discretion in putting out to sea in threatening weather.

46 L. R. A. 288, GREEFF v. EQUITABLE LIFE ASSUR. SOC. 160 N. Y. 19, 73 Am. St. Rep. 659, 54 N. E. 712.

Effect of demurrer.

Cited in Hackett v. Equitable Life Assur. Soc. 30 Misc. 526, 63 N. Y. Supp. 847, holding conclusions of law and irrelevant matter pleaded not admitted by demurrer; Black v. Vanderbilt, 70 App. Div. 22, 74 N. Y. Supp. 1095, and Tilley v. Coykendall, 69 App. Div. 95, 74 N. Y. Supp. 631, holding that demurrer admits facts alleged and inferences fairly deducible therefrom; McCann v. Hazard, 36 Misc. 9, 72 N. Y. Supp. 45, holding that in disposing of demurrer, court must resort to pleadings to test rights of respective parties; Frank v. Mandel, 76 App. Div. 415, 78 N. Y. Supp. 855, holding that demurrer admits only facts stated in pleading, and necessary inferences resulting therefrom; Crockett v. McLanahan, 109 Tenn. 525, 61 L. R. A. 916, 72 S. W. 950, holding that demurrer does not admit inferences from facts nor conclusions of law; Bregman v. Kress, 83 App. Div. 2, 81 N. Y. Supp. 1072, holding allegation in complaint in action for malicious prosecution, that defendant "falsely and maliciously" charged plaintiff, good as against demurrer; Blum v. Whitney, 185 N. Y. 242, 77 N. E. 1159; Newton v. Jay, 107 App. Div. 467, 95 N. Y. Supp. 413,—holding allegations not supported by facts alleged are not admitted by demurrer; E. T. Burrowes Co. v. Rapid Safety Filter Co. 49 Misc. 546, 97 N. Y. Supp. 1048, holding allegations of a mere conclusion are not admitted on demurrer; Tepfer v. Ideal Gas & Electrical Fixtures Co. 58 Misc. 396, 109 N. Y. Supp. 664, holding a demurrer to a complaint concedes to the plaintiff the most favorable construction of a pleading; Norris v. Hoffman, 62 Misc. 388, 115 N. Y. Supp. 890; Avon Springs Sanitarium Co. v. Weed, 119 App. Div. 561, 104 N. Y. Supp. 58,—on a demurrer as admitting facts alleged and inferences that may be drawn therefrom; General Electric Co. v. Westinghouse Electric & Mfg. Co. 144 Fed. 467; Gminder v. Zeltner Brewing Co. 126 App. Div. 778, 111 N. Y. Supp. 215 (dissenting opinion),—on allegations as to legal effect of a contract as not being admitted on demurrer.

Right to surplus profits or savings of corporation.

Cited in Gadd v. Equitable Life Assur. Soc. 97 Fed. 835, holding, in absence of fraud, action of insurance society in apportioning surplus to policy-holders not reviewable; Alsop v. De Koven, 107 Ill. App. 205, holding that stockholder has no title to undivided earnings; Lowry v. Farmers' Loan & T. Co. 56 App.

Div. 412, 67 N. Y. Supp. 759, holding (*obiter*) action at law not maintainable by stockholders to compel distribution of surplus; Peters v. Equitable Life Assur. Soc. 200 Mass. 587, 86 N. E. 885, holding an apportionment made to a policy holder at the end of a tontine dividend period was prima facie correct; Petrie v. Mutual Ben. L. Ins. Co. 92 Minn. 496, 100 N. W. 236, holding a resolution declaring a provisional dividend conditioned upon the payment of the annual premiums was not a discrimination against one paying premiums for the year, because it prevented the application of such dividend in payment of premiums; Equitable Life Assur. Soc. v. Host, 124 Wis. 667, 102 N. W. 579, 4 Ann. Cas. 413, on the issuance of "deferred dividend insurance" as being properly authorized by statute.

Distinguished in Hackett v. Equitable Life Assur. Soc. 30 Misc. 528, 63 N. Y. Supp. 847, holding action maintainable at law on stipulation of insurance policy to apportion equitable share of surplus profits; United States L. Ins. Co. v. Spinks, 126 Ky. 431, 13 L.R.A.(N.S.) 1061, 96 S. W. 889, on the application of "dividend additions" and "surplus."

Actions against insurance companies without attorney-general's approval.

Distinguished in Hackett v. Equitable Life Assur. Soc. 50 App. Div. 270, 63 N. Y. Supp. 1092, holding action to recover "accumulated reserve" and "equitable portion of surplus or profits" maintainable without attorney general's approval.

— Action by attorney general.

Cited in State v. Milwaukee Electric R. & Light Co. 136 Wis. 185, 18 L.R.A. (N.S.) 677, 116 N. W. 900, on legislative regulation of state's right to sue for the protection of rights of individuals, in corporations but holding that attorney general using statutory authority to invoke general chancery powers could not sue for that purpose.

Rights of life tenants in stock dividends.

Cited in Lowry v. Farmers' Loan & T. Co. 172 N. Y. 144, 64 N. E. 796, holding life beneficiary of securities, and not remainderman, entitled to stock dividend; De Koven v. Alsop, 205 Ill. 311, 63 L. R. A. 589, 68 N. E. 930, sustaining right of life tenant of stock to dividends earned during testator's lifetime, but not distributed until after his death.

Right of mutual policy holder to maintain suit against company.

Cited in Peters v. Equitable Life Assur. Soc. 200 Mass. 585, 86 N. E. 885, holding a bill would lie on the part of a policy holder for an accounting where alleged that an equitable apportionment had not been made and defendant refused to render an accounting; Russell v. Pittsburgh Life & T. Co. 132 App. Div. 228, 116 N. Y. Supp. 841, holding a policy holder in a mutual insurance company could not maintain a suit in equity to enjoin the sale of corporate assets to another company; Equitable Life Assur. Soc. v. Brown, 213 U. S. 43, 53 L. ed. 690, 29 Sup. Ct. Rep. 404, (reversing 151 Fed. 3, 81 C. C. A. 1, 10 Ann. Cas. 402, which reversed 142 Fed. 839), denying right of stock holder to maintain suit for an accounting because of alleged inequitable distribution of surplus; Young v. Equitable Life Assur. Soc. 49 Misc. 353, 99 N. Y. Supp. 446, on policy holder as not being entitled to maintain an action for an accounting; Lord v. Equitable Life Assur. Soc. 47 Misc. 208, 94 N. Y. Supp. 65, on the rights of policy holders in a stock insurance company.

Cited in note (28 L.R.A.(N.S.) 559) on right of policy holder to accounting by insurer.

Judicial interference in corporate affairs.

Cited in Von Are v. Magenheimer, 126 App. Div. 264, 110 N. Y. Supp. 629, on courts as not interfering with the discretion of the directors of a corporation concerning its internal affairs where acting in good faith.

Force of allegations of construction of contract.

Cited in Schuler v. Southern Iron & Steel Co. 77 N. J. Eq. 62, 75 Atl. 552, holding that allegations of bill as to contents of document, copy of which is attached to it, are not controlling; but document will be read and construed by court.

Discretionary power of directors as to dividends.

Cited in Gehrt v. Collins Plow Co. 156 Ill. App. 103, holding that declaration of dividend from surplus is within discretionary power of directors, and courts will not interfere unless directors act oppressively or unreasonably.

Construction of fire insurance policies.

Cited in note (132 Am. St. Rep. 439) on construction of fire insurance policies.

46 L. R. A. 295, STATE PRISON v. DAY, 124 N. C. 362, 32 S. E. 748.

Lucrative public office as vested right.

Cited in State *ex rel.* Bryan v. Patrick, 124 N. C. 661, 33 S. E. 151, holding act attempting to transfer lucrative office without incumbent's consent, void; State *ex rel.* McCall v. Webb, 125 N. C. 248, 34 S. E. 430, holding that legislature cannot deprive incumbent of right to compensation by abolishing and practically re-establishing office; State *ex rel.* Dalby v. Hancock, 125 N. C. 327, 34 S. E. 516; State *ex rel.* Greene v. Owen, 125 N. C. 215, 34 S. E. 424 (distinguished in dissenting opinion), holding that legislature cannot transfer duties and emoluments of county board of education to another board; Southern R. Co. v. North Carolina Corp. Commission, 99 Fed. 166; State *ex rel.* Abbott v. Beddingfield, 125 N. C. 263, 34 S. E. 412, holding that change of name from railroad to corporation commission does not deprive commissioner of office; Mial v. Ellington, 134 N. C. 159, 65 L. R. A. 707, 46 S. E. 961, holding one appointed for definite time to legislative office has no vested interest therein during term, of which legislature may not deprive him; White v. Ayer, 126 N. C. 589, 36 S. E. 132 (dissenting opinion), majority holding legislature cannot deprive incumbent of compensation by transferring duties of inspector of shellfish; Taylor v. Vann, 127 N. C. 251, 37 S. E. 263 (dissenting opinion), majority sustaining right of member of board of education to compensation after transfer of duties to another board; Nichols v. Edenton, 125 N. C. 16, 34 S. E. 71 (dissenting opinion), majority holding town councilmen, upon whom duties of abolished board of commissioners devolve, entitled to same salary; Atlantic & N. C. R. Co. v. Dortch, 124 N. C. 664, 33 S. E. 1014 (dissenting opinion), majority holding legislature cannot transfer functions of board of internal improvement before expiration of term; Malone v. Williams, 118 Tenn. 417, 121 Am. St. Rep. 1002, 103 S. W. 798, holding void an act abolishing certain offices where it recreated them under different names with substantially the same duties.

What offices legislative.

Cited in State *ex rel.* Cherry v. Burns, 124 N. C. 765, 33 S. E. 136, sustaining legislature's power to appoint keeper of capitol; Cunningham v. Sprinkle, 124 N. C. 641, 33 S. E. 138, sustaining legislature's power to appoint members of board of agriculture.

46 L. R. A. 306, JAMES v. WESTERN NORTH CAROLINA R. CO. 121 N. C. 523, 28 S. E. 537.

Action to enforce judgment in 123 N. C. 303, 31 S. E. 707.

Corporation's liability for purchaser's or lessee's negligence.

Cited in Guardian Trust & D. Co. v. Greensboro Water Supply Co. 115 Fed. 188, holding sale of plant on foreclosure does not relieve company from liability for purchaser's negligence in carrying out contract to supply water; Perry v. Western North Carolina R. Co. 128 N. C. 473, 39 S. E. 27; Perry v. Western North Carolina R. Co. 129 N. C. 334, 40 S. E. 191; Pierce v. North Carolina R. Co. 124 N. C. 93, 44 L. R. A. 317, 32 S. E. 399,— holding lessor railroad liable for lessee's negligence, unless expressly exempted by charter or law; Harden v. North Carolina R. Co. 129 N. C. 359, 55 L. R. A. 786, 85 Am. St. Rep. 747, 40 S. E. 184, holding that lessor railroad cannot, without statutory authority, exempt itself from liability to lessee's employees for lessee's negligence; Chicago & G. T. R. Co. v. Hart. 104 Ill. App. 62, holding lessor railroad company liable for injury to servant of lessee from defect in appliance furnished by latter.

Disapproved in Julian v. Central Trust Co. 193 U. S. 102, 48 L. ed. 635, 24 Sup. Ct. Rep. 399, holding that purchaser of railroad under foreclosure sale in Federal court may restrain levy thereon by parties subsequently obtaining judgments in state courts against former owners; Chicago & G. T. R. Co. v. Hart, 209 Ill. 423, 66 L. R. A. 80, 70 N. E. 654 (dissenting opinion), majority holding lessor railroad company not absolved from liability for injury to employee from lessee's negligence, unless statute so prescribes.

Foreclosure of railroad mortgage.

Distinguished in Central Trust Co. v. Western North Carolina R. Co. 89 Fed. 30, upholding right of purchaser of railroad at foreclosure sale to file supplemental bill in Federal court, wherein foreclosure proceedings were had, to enjoin stockholders and creditors of railroad from maintaining suit in state court attacking sale; Parker v. Southern R. Co. 137 N. C. 219, 49 S. E. 115, holding on the foreclosure of a mortgage given by a railroad company the purchaser takes whatever rights were acquired by the mortgagor under its charter.

Action against railroad for negligence.

Cited in Mowery v. Southern R. Co. 129 N. C. 354, 40 S. E. 88, holding action for personal injuries against foreign corporation operating purchased railroad in state removable to Federal court.

Appellant's duty to set out error.

Cited in State v. Wilson, 121 N. C. 652, 28 S. E. 416, holding appellant complaining of refusal of instruction that evidence was insufficient must state fact or set out evidence in case on appeal.

Dissolution of corporation by sale.

Overruled in Carolina Coal & Ice Co. v. Southern R. Co. 144 N. C. 748, 57 S. E. 444, holding Southern Railroad Co. by purchase under foreclosure of second mortgage of Western North Carolina Railroad became under statute a new domestic corporation succeeding the one sold.

Mortgage as affecting title.

Cited in Modlin v. Atlantic F. Ins. Co. 151 N. C. 41, 65 S. E. 605, on the giving of a mortgage as how affecting title.

46 L. R. A. 312, STATE v. CRAWFORD, 8 N. D. 539, 73 Am. St. Rep. 772, 80 N. W. 193.

What breaking constitutes criminal offense.

Cited in footnotes to State v. Howard, 58 L. R. A. 685, which holds servant entitled to lodge in master's house, guilty of burglary in opening door or raising window to steal goods; State v. King, 54 L. R. A. 853, which holds concealment

in crevice in stone quarry where prisoners working, and walking forth after guard's withdrawal, not prison breach; Claiborne v. State, 68 L.R.A. 859, which holds raising partly opened window sufficient breaking within statute defining burglary.

Cited in note (139 Am. St. Rep. 1061) on breaking and entry in burglary.

46 L. R. A. 314, NELSON BUSINESS COLLEGE CO. v. LLOYD, 60 Ohio St. 448, 71 Am. St. Rep. 729, 54 N. E. 471.

Followed without discussion in Mahoning Valley Ry. v. De Pascale, 70 Ohio St. 188, 65 L.R.A. 864, 71 N. E. 633.

Liability of master for unauthorized torts of servant.

Cited in Holland v. Columbus R. Co. 12 Ohio S. & C. P. Dec. 693, holding allegation that master authorized doing of the particular wrongful act complained of was unnecessary in petition; Goodwin v. Greenwood, 16 Okla. 495, 85 Pac. 1115, holding judgment for plaintiff for the tortious assault of a waiter in defendant's restaurant in view of defendant who failed to prevent it was proper.

Cited in footnotes to Enright v. Pittsburgh Junction R. Co. 53 L. R. A. 330, which denies right to eject or frighten ten-year-old boy from rapidly moving train; Dorsey v. Kansas City, P. & G. R. Co. 52 L. R. A. 92, which holds carrier liable for death of trespasser falling under wheels in escaping from rocks thrown by brakeman; Lamb v. Littman, 53 L. R. A. 852, which holds employer liable for assault by cruel overseer on minor employee; Galveston, H. & S. A. R. Co. v. Zantzinger, 47 L. R. A. 282, which sustains liability for engineer's ejection of trespasser from footboard of moving engine; Alsever v. Minneapolis & St. L. R. Co. 56 L. R. A. 748, which sustains liability for injuries by engineer operating blow-off cock to frighten children; Lynch v. Florida C. & P. R. Co. 54 L. R. A. 810, which denies company's liability for assault by station agent as result of personal quarrel; Palmisano v. New Orleans City R. Co. 58 L. R. A. 405, which denies master's liability for injury to boy running blindly against moving car, after release by employee who had caught and lectured him; Guille v. Campbell, 55 L. R. A. 111, which denies master's liability for injury to bystander by slipping of hook from servant's hand while pretending to throw at boys playing on cotton bales; Southern R. Co. v. James, 63 L. R. A. 257, which holds master liable for injury inflicted by night watchman shooting trespasser while running away while under arrest; Evers v. Krouse, 66 L.R.A. 593, which holds servant alone responsible for act by him while engaged in master's work but entirely disconnected therefrom; Bowen v. Illinois Central R. Co. 70 L.R.A. 915, which holds railroad company not liable for wanton act of station agent in killing a person who had come to station to inquire about demurrage on car of coal and whom agent shot as he was about to sign receipt for a package.

Cited in notes (88 Am. St. Rep. 791) on liability of principal for unauthorized acts of agent; (56 L.R.A. 748) on master's liability for act of servant towards one without contractual relation to master; (25 Eng. Rul. Cas. 143) on master's liability for tort committed by servant.

Voluntary or malicious acts of servant within scope of employment.

Cited in Whistler v. Cowan, 4 Ohio C. C. N. S. 631, 26 Ohio C. C. 517, on the liability of railroad company for injury to trespassers from unauthorized act of its servants; Blakely v. Greer, 7 Ohio C. C. N. S. 172, 28 Ohio C. C. 35, holding master liable for act of servant in negligently shooting supposed trespasser where master had armed servant to protect its property and authorized servant to exercise his own judgment in determining necessity for use of weapon; Cincinnati, H. & D. R. Co. v. Klute, 8 Ohio C. C. N. S. 411, 29 Ohio C. C. 704, hold-

ing railroad employees were acting within scope of their employment where in unloading ties to build track on street against orders of city they threw ties upon policeman attempting to prevent such track construction and road was liable; Scioto Valley Traction Co. v. Graybill, 8 Ohio C. C. N. S. 470, 29 Ohio C. C. 96, holding street railroad liable for malicious and wilful wrong of conductor in ejecting intoxicated passenger from car on orders from company; Block Light Co. v. Tappehorn, 2 Ohio N. P. N. S. 562, 15 Ohio S. & C. P. Dec. 605, holding master liable for wrongful act of salesman in selling spurious article as genuine article asked for by customer; Penas v. Chicago, M. & St. P. R. Co. 112 Minn. 220, 30 L.R.A.(N.S.) 627, 140 Am. St. Rep. 470, 127 N. W. 926, on the liability of a person owing a duty to another for the wrongful or negligent acts of a servant and holding it a jury question whether the pushing of a boy from a train was within scope of brakeman's service.

Cited in footnotes to McNamara v. St. Louis Transit Co. 66 L.R.A. 486, which holds exemplary damages against street car company justified by conductor's intentional and unjustified kicking of boy attempting to board car; Dixon v. Northern P. R. Co. 68 L.R.A. 895, which sustains master's liability for injuries caused by brakeman wantonly and wilfully kicking trespasser from moving car.

— Servant's authority as jury question.

Cited in Harmon v. McGuire, 6 Ohio N. P. N. S. 602, 18 Ohio S. & C. P. Dec. 860, holding it was for jury to say whether steam cocks on locomotive alleged to have been wilfully or negligently opened were opened by servant acting within scope of authority or in course of employment.

Submission of evidence to jury.

Cited in Quay v. Quay, 4 Ohio N. P. N. S. 539, 16 Ohio S. & C. P. Dec. 443, holding it waes duty of judge where motion was made for directed verdict to weigh evidence and where evidence adduced was such as to lead to different inferences by fair minded men motion must be refused and evidence submitted to jury.

46 L. R. A. 317, JAMIESON v. WIGGIN, 12 S. D. 16, 76 Am. St. Rep. 585, 80 N. W. 137.

Who is "learned in the law."

Cited in Howard v. Burns, 14 S. D. 388, 85 N. W. 920, holding certificate of admission to practice in supreme court of another state conclusive evidence that person "learned in the law:" Freiler v. Schuylkill County, 46 Pa. Super. Ct. 62, holding justice of peace, while a constitutional, judicial and public officer, is not within class of judges "learned in law" enumerated in constitution; Danforth v. Egan, 23 S. D. 54, 139 Am. St. Rep. 1030, 119 N. W. 1021, 20 Ann. Cas. 418, holding that provision of constitution that state's attorney must be one learned in the law meant duly licensed attorney, so that disbarred attorney could not hold office.

46 L. R. A. 319, MEACHAM v. GALLOWAY, 102 Tenn. 415, 78 Am. St. Rep. 886, 52 S. W. 859.

Who are hotel guests.

Cited in note (14 L.R.A.(N.S.) 476) on payment of board by week as affecting relation between hotel proprietor and guest; (99 Am. St. Rep. 601) on liability of innkeepers for injury to, or loss of, guest's property.

Distinguished in Rains v. Maxwell House Co. 112 Tenn. 219, 64 L. R. A. 474, 79 S. W. 114, holding watch within statute releasing hotel from liability for loss of jewels of guests failing to deposit them in place provided; Holstein v. Phil-

lips, 146 N. C. 372, 14 L.R.A.(N.S.) 478, 59 S. E. 1037, 14 Ann. Cas. 323, holding a person staying at a summer hotel without any arrangements as to the length of her stay was a guest.

46 L. R. A. 322, WATER SUPPLY & STORAGE CO. v. LARIMER & W. IRRIG. CO. 24 Colo. 322, 51 Pac. 496.

Priority as between reservoirs.

Followed without special discussion in Water Supply & Storage Co. v. Tenney, 24 Colo. 356, 51 Pac. 505; Cache La Poudre Reservoir Co. v. Windsor Reservoir & Canal Co. 25 Colo. 54, 52 Pac. 1104.

Right of prior appropriator of water.

Cited in footnotes to Crawford Co. v. Hall, 60 L. R. A. 889, which holds right to use water, acquired by appropriation, superior to that of subsequent riparian proprietor; Salt Lake City v. Salt Lake City Water & Electrical Power Co. 61 L. R. A. 648, which denies prior appropriator's right to complain of non-injurious use by upper proprietor.

Right to store appropriated water.

Cited in footnote to New Loveland & G. Irrig. & Land Co. v. Consolidated Home Supply Ditch & Reservoir Co. 52 L. R. A. 266, which holds right to store water for use in nonirrigating season not acquired by prior appropriation for immediate use.

Cited in notes (46 L.R.A. 322) on right to store appropriated water; (17 L.R.A.(N.S.) 329) on same point.

What reviewable on rehearing.

Cited in Orman v. Ryan Bros. 25 Colo. 393, 55 Pac. 168, and Clipper Min. Co. v. Eli Min. & Land Co. 29 Colo. 388, 64 L. R. A. 212, 93 Am. St. Rep. 89, 68 Pac. 286, holding new questions cannot be raised upon petition for rehearing.

Res judicata.

Cited in O'Brien v. King, 41 Colo. 490, 92 Pac. 945; Platte Valley Irrig. Co. v. Central Trust Co. 32 Colo. 105, 75 Pac. 391,—holding the volume of priorities awarded a ditch in a proceeding to adjudicate priorities is res judicata in a suit to restrain an unlawful diversion; Alamosa Creek Canal Co. v. Nelson, 42 Colo. 149, 93 Pac. 1112, on an adjudication of priorities to the use of water as being res judicata in a collateral action.

Presumption as to validity of appropriation of water.

Cited in MacRae v. Small, 48 Or. 144, 85 Pac. 503, holding an appropriation of water might be made from another's ditch if consented to by ditch owner and assuring that it was so done.

46 L. R. A. 332, DAGGETT v. SIMONDS, 173 Mass. 340, 53 N. E. 907.

Effect of delivery in escrow.

Cited in note (130 Am. St. Rep. 938) on operation and effect of delivery of instrument in escrow.

46 L. R. A. 334, STATE v. LIFFRING, 61 Ohio St. 39, 76 Am. St. Rep. 358, 55 N. E. 168.

Osteopathy.

Cited in Nelson v. State Bd. of Health, 108 Ky. 780, 50 L.R.A. 387, footnote p. 383, 57 S. W. 501; Hayden v. State, 81 Miss. 299, 95 Am. St. Rep. 471, 33 So. 653,—holding practice of osteopathy not within statute regulating practice of medicine; State v. McKnight, 131 N. C. 721, 59 L.R.A. 189, footnote p. 187,

42 S. E. 580, holding license unnecessary to practice of osteopathy; Com. v. Pierce, 10 Pa. Dist. R. 338; State v. Herring, 70 N. J. L. 36, 56 Atl. 670, 1 Ann. Cas. 51,—holding practice of osteopathy is not within a statute regulating the practice of medicine; State v. Johnson, 84 Kan. 425, 41 L.R.A.(N.S.) 539, 114 Pac. 390, (dissenting opinion) on osteopathy as not within statute regulating practice of medicine.

Cited in footnotes to Bragg v. State, 58 L. R. A. 925, which requires license for practice of osteopathy; Little v. State, 51 L. R. A. 717, which holds practice of osteopathy, practice of medicine; State v. Gravett, 55 L. R. A. 791, which holds void, statute discriminating against osteopathists; State v. Biggs, 64 L. R. A. 140, which holds that license cannot be required to permit treatment of disease by baths, manipulation of muscles, and advice as to diet.

Cited in notes (98 Am. St. Rep. 744; 59 L.R.A. 187) on practise of osteopathy.

Distinguished in People v. Gordon, 194 Ill. 569, 88 Am. St. Rep. 165, 62 N. E. 858, Reversing 96 Ill. App. 458, and State v. Gravett, 65 Ohio St. 306, 55 L.R.A. 792, 87 Am. St. Rep. 605, 62 N. E. 325, holding osteopathy within statute regulating practice of medicine.

Practice of medicine.

Cited in Bennett v. Ware, 4 Ga. App. 300, 61 S. E. 546, holding one professing to cure by the laying on of hands through divine power is not practising medicine within the meaning of a statute regulating the same; State v. Heath, 125 Iowa, 590, 101 N. W. 429, holding one professing to heal by magnetic treatment is engaged in the practise of medicine within the meaning of statute; People v. Allcutt, 117 App. Div. 551, 102 N. Y. Supp. 678, holding one professing to be a mechano-neural theropath is a practitioner of medicine within meaning of statute regulating same; State v. Marble, 72 Ohio St. 27, 70 L.R.A. 835, 106 Am. St. Rep. 570, 73 N. E. 1063, 2 Ann. Cas. 898, holding same in case of Christian Science practitioner; Territory v. Newman, 13 N. M. 108, 68 L.R.A. 783, 79 Pac. 706, (dissenting opinion), denying that one professing to be a magnetic healer is a medical practitioner within the meaning of a statute; Anderson v. Cloud Co. 84 Kan. 425, 111 Pac. 464 (dissenting opinion) majority holding a statute regulating the practice of medicine, surgery and osteopathy included chiropractic treatment.

Cited in footnote to State v. Yegge, 69 L.R.A. 504, which holds license required of ophthalmologist who prefixes letters "Dr." on sign and on notices in which he undertakes to correct certain diseased conditions by fitting glasses to eyes.

Cited in note (3 L.R.A.(N.S.) 765) on application of statutes regulating practice of medicine to persons giving special kinds of treatment.

Distinguished in State v. Smith, 223 Mo. 262, 33 L.R.A.(N.S.) 179, 135 S. W. 465, where it was held that a statute regulating attempts to treat the sick included chiropractic treatments.

46 L. R. A. 337, JACKSON v. NORFOLK & W. R. CO. 43 W. Va. 380, 27 S. E. 278, 31 S. E. 258.

Conductor as fellow servant of other employees.

Cited in Norfolk & W. R. Co. v. Houchims (Norfolk & W. R. Co. v. Swaine), 95 Va. 407, 46 L. R. A. 365, 64 Am. St. Rep. 791, 28 S. E. 578, holding conductor is brakeman's fellow servant.

Cited in footnotes to Grattis v. Kansas City, P. & G. R. Co. 48 L.R.A. 399, which holds freight conductor and engineer to be fellow servants of fireman; Alabama G. S. R. Co. v. Baldwin, 67 L.R.A. 340, which holds railroad conductor signaling engineer to back engine to effect a coupling not a fellow servant of

brakeman attempting to prepare cars for coupling: Louisville & N. R. Co. v. Dillard, 69 L.R.A. 746, which holds conductor of passenger train a fellow servant of a brakeman of freight train with which former train collides.

Cited in note (46 L. R. A. 354) as to when conductor is deemed coservant of other railway employees.

Who are fellow servants.

Cited in Seldomridge v. Chesapeake & O. R. Co. 46 W. Va. 572, 33 S. E. 293, holding train crew to be fellow servants of engineer with whose engine cars collided in switching; Sanderson v. Panther Lumber Co. 50 W. Va. 45, 55 L. R. A. 910, 88 Am. St. Rep. 841, 40 S. E. 368, holding foreman of lumber camp to be fellow servant of crew of logging train; St. Louis & S. F. R. Co. v. Furry, 52 C. C. A. 525, 114 Fed. 905 (dissenting opinion), majority holding telegraph operator failing to deliver orders not fireman's fellow servant, under Arkansas statute; Leach v. Martin, 69 W. Va. 221, 71 S. E. 170, holding that all who serve same master, working under same control, and are engaged in same general business, though in different departments are fellow servants; McMillan v. Middle States Coal & Coke Co. 61 W. Va. 536, 11 L.R.A.(N.S.) 842, 57 S. E. 129; Purkey v. Southern Coal & Transp. Co. 57 W. Va. 597, 50 S. E. 755,—holding a mine boss was a fellow servant with a co-employee: Kniceley v. West Virginia Midland R. Co. 64 W. Va. 285, 17 L.R.A.(N.S.) 380, 61 S. E. 811, considering who are fellow servants and rejecting as a test the question whether servant was paid by piece or whether power of hiring was delegated; Collingwood v. Illinois & I. Fuel Co. 125 Iowa, 544, 101 N. W. 283, holding boss driver of mine was vice principal as to duty of warning as to danger of taking cars down a slope; Moore v. Dublin Cotton Mills, 127 Ga. 624, 10 L.R.A.(N.S.) 779, 56 S. E. 839, affirming liability of a master to servant for the negligence of a superintendent who gave an order to clean a machine while in motion.

Cited in note (50 L. R. A. 420) on what servants are deemed to be in same common employment, apart from statutes, where no questions as to vice principalship arise.

Distinguished in Harris v. City & Elm Grove R. Co. 69 W. Va. 66, — L.R.A. (N.S.) —, 70 S. E. 859, Ann. Cas. 1912 D, 59, holding that servant employed in power house of railroad, and who is furnished with free pass, is passenger, and not fellow servant of motorman in charge of car in which such servant is riding.

— When vice principal a fellow servant.

Cited in McVey v. St. Clair Co. 49 W. Va. 419, 38 S. E. 648, denying employer's liability for foreman's negligence in starting machine; Cochran v. Shanahan, 51 W. Va. 139, 41 S. E. 140, denying master's liability for negligence of foreman ordering employee to clean out obstructed drillhole; Southern R. Co. v. Mauzy, 98 Va. 697, 37 S. E. 285, holding foreman to be fellow servant of employee in assisting to load car wheels.

Cited in notes (54 L. R. A. 40, 42, 61, 124) on vice principalship as determined with reference to character of act which caused injury; (51 L. R. A. 519, 526, 593, 602, 611, 621) on vice principalship considered with reference to superior rank of negligent servant; (75 Am. St. Rep. 589, 592, 593, 594, 596, 602, 603, 604, 605, 610) on who is a vice principal.

Risks assumed by employee.

Cited in Sanderson v. Panther Lumber Co. 50 W. Va. 46, 55 L. R. A. 910, 88 Am. St. Rep. 841, 40 S. E. 368, holding that employee continuing in service assumes risk of master's known negligence.

Duty owed by master to servant.

Cited in Wilson v. Valley Improv. Co. 69 W. Va. 781, 45 L.R.A.(N.S.) 277,

73 S. E. 64, to the point that master must exercise ordinary care in providing and retaining competent servants and sufficient number of them; Newhouse v. Kanawha & W. V. R. Co. 62 W. Va. 565, 59 S. E. 1071, holding the duty owed by defendant to plaintiff to provide a safe place to work included the entire track over which he was required to pass in the course of his duties; Goshorn v. Wheeling Mold & Foundry Co. 65 W. Va. 255, 64 S. E. 22; Vickers v. Kanawha & W. V. R. Co. 64 W. Va. 478, 20 L.R.A.(N.S.) 797, 131 Am. St. Rep. 929, 63 S. E. 367,—affirming the nonassignability of the duty of master to provide servant with a reasonably safe place to work; Squilache v. Tidewater Coal & Coke Co. 64 W. Va. 342, 62 S. E. 446, on same point; Fulton v. Crosby & B. Co. 57 W. Va. 94, 49 S. E. 1012, on the duties owed by a master to a servant to provide him with a suitable and safe place to work.

46 L. R. A. 359, NORFOLK & W. R. CO. v. SWAINE, 95 Va. 398, 64 Am. St. Rep. 791, 28 S. E. 578.

Who are fellow servants.

Cited in Seldomridge v. Chesapeake & O. R. Co. 46 W. Va. 572, 33 S. E. 293, holding train crew to be fellow servants of engineer with whose engine cars collided in switching; Southern R. Co. v. Mauzy, 98 Va. 697, 37 S. E. 285, holding foreman assisting to load car wheels is fellow servant of employee whom he can discharge; W. R. Trigg Co. v. Lindsay, 101 Va. 195, 43 S. E. 349, holding two servants in same employment, engaged in erecting piece of machinery, fellow servants; Louisville & N. R. Co. v. Pointer, 113 Ky. 968, 69 S. W. 1108, holding track repairer not fellow servant of fireman; Driver v. Southern R. Co. 103 Va. 658, 49 S. E. 1000, holding conductor a fellow servant with flagman on a train; Southern R. Co. v. Smith, 107 Va. 558, 59 S. E. 372, holding yard master a fellow servant with an engineer running an engine in the yards.

Cited in notes (46 L. R. A. 338, 352) on when conductor deemed coservant of other railway employees; (50 L. R. A. 430, 431) on what servants are deemed to be in same common employment, apart from statutes, where no questions as to vice principalship arise; (51 L. R. A. 519, 526, 621) on vice principalship considered with reference to superior rank of negligent servant; (75 Am. St. Rep. 588, 592, 593, 596, 597, 600, 605, 610) on who is a vice principal.

Railroad's duty to employees.

Cited in Norfolk & W. R. Co. v. Phillips, 100 Va. 374, 41 S. E. 726, holding that where master's negligence in inspecting cars concurs with negligent act of fellow servant, master is liable.

Limited in Norfolk & W. R. Co. v. Stevens, 97 Va. 636, 46 L. R. A. 370, 34 S. E. 525, denying railroad company's liability to fireman injured by negligence of independent contractor replacing bridge.

Necessity that defense be specially pleaded.

Cited in Longpre v. Big Blackfoot Mill. Co. 38 Mont. 105, 99 Pac. 131, holding a defense that an injury was due to negligence of fellow servant must be specially pleaded to be available as a defence.

Duty of master to provide safe place to work.

Annotation cited in Vickers v. Kanawha & W. V. R. Co. 64 W. Va. 481, 20 L.R.A.(N.S.) 798, 131 Am. St. Rep. 929, 63 S. E. 367, affirming the nonassignability of duty of master to provide servant with a reasonably safe place to work.

Assumption of risks.

Cited in note (97 Am. St. Rep. 887) on assumption of risks.

46 L. R. A. 367, NORFOLK & W. R. CO. v. STEVENS, 97 Va. 631, 34 S. E. 525.

Liability for negligence of independent contractor.

Cited in footnotes to Boomer v. Wilbur, 53 L. R. A. 172, which denies owner's liability for injury by fall of bricks through negligence of independent contractor repairing chimney; Uppington v. New York, 53 L. R. A. 551, which holds city retaining right to inspect and supervise construction of sewer not liable for negligence of independent contractor; Hoff v. Shockley, 64 L. R. A. 538, which holds property owner not liable for injuries to traveler by obstructions placed in street, without danger signals, by independent contractor for construction of building.

Cited in notes (54 L.R.A. 55) on vice principalship as determined with reference to character of act which caused injury; (65 L.R.A. 458) as to who are independent contractors; (1 L.R.A.(N.S.) 285) on liability of master to servant for failure to provide independent contractor with safe appliances; (20 L.R.A. (N.S.) 794, 795) on effect on master's liability of delegation of personal duty to independent contractor; (76 Am. St. Rep. 382, 414) on liability for negligence and torts of independent contractors.

Distinguished in Walton v. Miller, 109 Va. 218, 132 Am. St. Rep. 908, 63 S. E. 458, holding railroad company was not relieved from liability for the death of an engineer in a wreck caused by the obstructions on track due to the negligence of employee of independent contractor.

Disapproved in Vickers v. Kanawha & W. V. R. Co. 64 W. Va. 480, 20 L.R.A. (N.S.) 798, 131 Am. St. Rep. 929, 63 S. E. 367, holding railroad liable to an employee for injuries resulting from the negligence of an independent contractor and also citing annotation on this point.

Mental suffering of parent as element of damages for death of child.

Cited in note (2 L.R.A.(N.S.) 899) on mental suffering of parent as element of damages in action for death of child.

46 L. R. A. 371, RUGGLES v. CANNEDY, 127 Cal. 290, 53 Pac. 411, 59 Pac. 827.

Creditors' rights in irregular chattel mortgages.

Cited in First Nat. Bank v. Menke, 128 Cal. 108, 60 Pac. 675, holding unverified chattel mortgage valid as against assignee subsequently elected by creditors after voluntary assignment to sheriff for their benefit; First Nat. Bank v. Ludvigsen, 8 Wyo. 246, 80 Am. St. Rep. 928, 56 Pac. 994, holding chattel mortgage given by decedent of insolvent estate, not renewed as required by statute, not valid as against creditors.

Distinguished in Re Grainger, 87 C. C. A. 225, 160 Fed. 73, holding chattel mortgage good as against trustee in bankruptcy.

Delay in filing chattel mortgage.

Cited in Re Hickerson, 162 Fed. 352, on delay in recording a chattel mortgage as rendering it void as to creditors of mortgagor.

Cited in note (137 Am. St. Rep. 491) on effect of failure to execute and record chattel mortgage as prescribed by statute.

Distinguished in Summerville v. Kelliher, 144 Cal. 157, 77 Pac. 889, holding chattel mortgage of a crop by lessee is not rendered void by reason of a fifteen day's delay in recording as against a subsequent sale of the leasehold interest on execution; Hammels v. Sentous, 151 Cal. 525, 91 Pac. 327, 12 Ann. Cas. 945, holding the right of mortgagee in personalty removed by mortgagor to another county is not destroyed by a failure to record in such county.

Essentials of chattel mortgage.

Cited in Hopper v. Keys, 152 Cal. 492, 92 Pac. 1017, on possession by mortgagee and recording as necessary to the validity of a chattel mortgage.

Change of possession necessary to transfer of personalty.

Cited in Runge v. Wilson, 7 Cal. App. 579, 95 Pac. 178, holding a sale of personalty by a testator in his life time without a change of possession was invalid as to a bona fide purchaser from the executor without notice.

Conditions precedent to equitable remedies of creditors.

Cited in note (23 L.R.A.(N.S.) 81) on conditions precedent to equitable remedies of creditors.

46 L. R. A. 377, DAVENPORT v. BUFFINGTON, 38 C. C. A. 453, 97 Fed. 234.

Taxpayer's right to restrain diversion of public property.

Cited in McIntyre v. El Paso County, 15 Colo. App. 88, 61 Pac. 237, holding that resident taxpayer may maintain action to restrain erection of courthouse upon public city park; Kellogg v. School Dist. No. 10, 13 Okla. 303, 74 Pac. 110, sustaining taxpayer's right to injunction restraining unauthorized construction of schoolhouses; Manson v. South Bound R. Co. 64 S. C. 121, 41 S. E. 832 (lower court opinion), appellate court denying right of taxpayer, not abutter upon public park, to enjoin its condemnation for railway purposes; Jordan v. Logansport, 171 Ind. 283, 86 N. E. 47, holding a tax payer may maintain a suit to restrain the making of public improvements which will increase the municipal debt beyond the constitutional limits; Herald v. Board of Education, 65 W. Va. 769, 31 L.R.A.(N.S.) 592, 65 S. E. 102, holding taxpayers may sue to have annulled a lease of school lands as being void.

Revocation of dedication of lands to public.

Cited in Atty. Gen. v. Vineyard Grove Co. 181 Mass. 509, 64 N. E. 75, raising, without deciding, question whether legislature can give to private person lands dedicated to public; Wilkins v. Chicago, St. L. & N. O. R. Co. 110 Tenn. 450, 75 S. W. 1026, on want of power in city to divert land dedicated to a public use to some other incompatible use; Zevely v. Weimer, 5 Ind. Terr. 690, 82 S. W. 941 (dissenting opinion), on the irrevocability of a dedication of land to a public use.

Cited in footnote to Riverside v. Maclean, 66 L.R.A. 288, which denies right to devote to establishment of public highway portion of tract of land dedicated for public park where result will be to cut the tract into small parcels and destroy their utility for the original purpose intended.

46 L. R. A. 381, PRITCHARD v. MAGOUN, 109 Iowa, 364, 80 N. W. 512.

Public purposes.

Cited in footnotes to Dodge v. Mission Twp. 54 L. R. A. 242, which holds promotion of construction and operation of sugar mills a private purpose not authorizing taxation; Knowlton v. Williams, 47 L. R. A. 314, which holds statutory restriction of height of buildings adjacent to public square, for promotion of its beauty and attractiveness, for a public purpose.

Application of "Australian Ballot Law" to special elections.

Cited in Bras v. McConnell, 114 Iowa, 403, 87 N. W. 290, holding that "Australian Ballot Law" does not apply to special elections held for purpose of voting taxes.

Applicability of "election" laws.

Cited in Willis v. Kalmbach, 109 Va. 487, 21 L.R.A.(N.S.) 1013, 64 S. E.

342, holding a constitutional qualification of electors only applied to elections provided for by the constitution.

Cited in note (14 L.R.A.(N.S.) 851) on applicability of provisions relating to general elections, to elections other than of officers.

46 L. R. A. 384, HUFFAKER v. GERMANIA SAFETY VAULT & T. CO. 107 Ky. 200, 53 S. W. 288.

Right of corporate directors to compensation.

Cited in Dunlap v. Montana-Tonopah Min. Co. 192 Fed. 716, holding that compensation for services rendered by vice-president of corporation outside scope of official duty may be recovered.

Cited in footnote to Bassett v. Fairchild, 52 L. R. A. 611, which sustains director's right, without direct contract, to compensation for services not connected with office.

Cited in note (136 Am. St. Rep. 917) on right of corporate officers to compensation for services rendered.

46 L. R. A. 388, COLTON v. DOVER PERPETUAL BLDG. & L. ASSO. 90 Md. 85, 78 Am. St. Rep. 431, 45 Atl. 23.

Dissolution of bank.

Cited in James Clark Co. v. Colton, 91 Md. 206, 49 L. R. A. 702, 46 Atl. 386, holding that bill under which receivers were appointed for South Baltimore bank must be considered as filed under statute providing for dissolution of insolvent corporations.

Necessity of demand of deposit upon bank's insolvency.

Cited in Thompson v. Union Trust Co. 130 Mich. 509, 97 Am. St. Rep. 494, 90 N. W. 294, holding that deposits are due without demand upon insolvency of bank.

Set-off of indebtedness.

Cited in Strauss v. Denny, 95 Md. 694, 53 Atl. 571, holding that indorser may set off, in action to enforce stockholder's liability, amount refunded to receiver, upon payment of bank's note being adjudged preferential; National Exch. Bank v. Ginn & Co. 114 Md. 183, 33 L.R.A.(N.S.) 966, 78 Atl. 1026, holding that bank which pays its customers check from funds on deposit in ignorance of drawer's insolvency, will not be permitted to compel return of funds by payee to enable it to utilize funds so paid as set-off upon its claim against depositor; Records v. McKim, 115 Md. 305, 43 L.R.A.(N.S.) 201, 80 Atl. 968, holding that bank has right to apply deposits to payment of debts due it by depositor; Richardson v. Anderson, 109 Md. 645, 25 L.R.A.(N.S.) 397, 130 Am. St. Rep. 543, 72 Atl. 485, holding a debtor of an insolvent making an assignment for creditors cannot set off against his debt claims purchased by him after the assignment; Dubreuil v. Gaither, 98 Md. 544, 56 Atl. 965, on the allowance of equitable set-off.

Cited in note (25 L.R.A.(N.S.) 396) on effect of immaturity of claim at time of insolvency proceedings upon right of set-off.

Deposit as debt to depositor.

Cited in T. S. Reed Grovery Co. v. Canton Nat. Bank, 100 Md. 304, 70 L.R.A. 963, 59 Atl. 716, holding on the deposit of a draft in a bank which the bank collects and credits to the general account of the depositor the bank becomes his debtor to that extent.

46 L. R. A. 393, LUMAN v. HITCHINS BROS. CO. 90 Md. 14, 44 Atl. 1051.

Equal privileges and protection.

Cited in State v. Potomac Valley Coal Co. 116 Md. 384, 81 Atl. 686, holding that statute requiring all corporations or individuals engaged in mining coal to pay employees twice a month, is arbitrary classification and void; Queen Anne's County v. Talbot County, 99 Md. 18, 57 Atl. 1, holding an act limiting and controlling the expenditure of money for bridges in certain counties might contain a prohibition on the levy of taxes for bridges not in whole or in part within the county; Storek v. Baltimore, 101 Md. 484, 61 Atl. 330, holding an act void as conferring unequal privileges which provided that city might in one section thereof authorize the erection of steps beyond the building line of the street; Watson v. State, 105 Md. 657, 66 Atl. 635, holding a statute requiring all persons commencing the practice of medicine after a certain date to obtain a license, except such as were engaged in the practise prior to an earlier date was not an arbitrary classification; Mt. Vernon-Woodberry Cotton Duck Co. v. Frankfort Marine Acci. & Plate Glass Ins. Co. 111 Md. 571, 134 Am. St. Rep. 636, 75 Atl. 105, holding an act prohibiting the employment of children under a certain age in factories in certain counties was not unconstitutional; Phipps v. Wisconsin C. R. Co. 133 Wis. 160, 113 N. W. 456, holding unconstitutional an act which allowed the examination of a former employee of a corporation but denies the same right to an individual as being an unreasonable discrimination; Shaw v. Marshalltown, 131 Iowa, 152, 10 L.R.A.(N.S.) 836, 104 N. W. 1121, 9 Ann. Cas. 1039 (dissenting opinion); People v. Richards & K. Mfg. Co. 1 Ill. C. C. 180,—on when legislative enactments are invalid as denying the equal protection of the laws.

Cited in note (60 L. R. A. 331, 340, 342) on constitutional equality in United States in relation to corporate taxation.

Title and subject matter of act.

Cited in Curtis v. Mactier, 115 Md. 395, 80 Atl. 1066, holding that act of 1910, chapter 382, entitled "An act to incorporate the village of Chevy Chase, is void as to provision as to levying of taxes because not included in title, Worcester County v. School Comrs. 113 Md. 311, 77 Atl. 605, holding that statute relating to course of instructions and qualifications of teachers in certain schools is not void because of insufficient title; Nutwell v. Anne Arundel County, 110 Md. 671, 73 Atl. 710, holding a title inadequate which indicated that all owners of vehicles should take out a license and the body of the act exempted certain classes of vehicles; Croxton v. Truesdel, 75 S. C. 427, 56 S. E. 45, holding where the body of the act provided for the removal of the restriction of dispensaries to incorporated towns while the title indicated that the exemption of certain counties from such restriction was removed, such variance rendered it void; Baltimore v. Flack, 104 Md. 118, 64 Atl. 702, holding title providing for an improvement commission and defining its duties would embrace section providing for a substitute body to act; Christmas v. Warfield, 105 Md. 542, 66 Atl. 491, holding title relating to insurance on and rebuilding of state tobacco warehouses was too narrow to cover the creation of a new warehouse building commission; Kafka v. Wilkinson, 99 Md. 241, 57 Atl. 617, holding title insufficiently expresses the subject-matter of an act where in addition to indicated subjects there is a wholly distinct section; State v. Cumberland & P. R. Co. 105 Md. 484, 66 Atl. 458, holding "An act to amend" a charter too narrow to embrace provisions extraneous to the charter.

46 L. R. A. 397, BREWER v. CHASE, 121 Mich. 526, 80 Am. St. Rep. 527, 80 N. W. 575.

What publications libelous.

Cited in Smurthwaite v. News Pub. Co. 124 Mich. 385, 83 N. W. 116, holding considerable latitude allowable in discussing fitness of candidates for public office.

Privilege to answer libel.

Cited in Weston v. Grand Rapids Pub. Co. 128 Mich. 376, 87 N. W. 258, holding plaintiff's publications on other subjects inadmissible to excuse libel; Fish v. St. Louis County Printing & Pub. Co. 102 Mo. App. 21, 74 S. W. 641, holding irrelevant attack, published as reply to libel, not privileged; Patton v. Cruce, 72 Ark. 425, 65 L.R.A. 940, 105 Am. St. Rep. 46, 81 S. W. 380, holding erroneous an instruction to the effect that if plaintiff and defendant both equally at fault engage in a controversy and libel each other, neither can claim damage from the other; Israel v. Israel, 109 Mo. App. 378, 84 S. W. 453, on right to show in mitigation of damages that slanderous words were spoken in the heat of passion; Byrne v. Funk, 38 Wash. 512, 80 Pac. 772, 3 Ann. Cas. 647, holding a libelous publication that plaintiff was a liar and a poltroon is not privileged by reason of being made in reply to attacks in the newspapers by defendant.

Privileged publications.

Cited in Flynn v. Boglarsky, 164 Mich. 518, 32 L.R.A.(N.S.) 742, 129 N. W. 674, holding that privilege does not extent to false publications made to persons who have no interest in subject-matter; Lawrence v. Herald Pub. Co. 158 Mich. 463, 25 L.R.A.(N.S.) 800, 122 N. W. 1084, holding the publication of false statements concerning the plaintiff who had formerly been a police commissioner but who no longer held public office was not privileged.

Cited in note (104 Am. St. Rep. 144) on what libelous statements are privileged.

Justification of libel.

Cited in Bennett v. Crumpton, 1 Ga. App. 479, 58 S. E. 104, holding it no defense for the uttering of slanderous statements that it was the common belief of the neighborhood that they were true; Register Newspaper Co. v. Stone, 31 Ky. L. Rep. 460, 11 L.R.A.(N.S.) 242, 102 S. W. 800, holding a newspaper article charging plaintiff with being one of the worst thieves arrested in a long time is not justified by proof that on one occasion he had entered a plea of guilty to a charge of petit larceny.

Cited in footnote to Patton v. Cruce, 65 L.R.A. 938, which holds previous publication of libel against one not justification for publication of recriminatory libel.

Cited in notes (31 L.R.A.(N.S.) 134, 144) on truth as defense to civil action for defamation; (91 Am. St. Rep. 287) on justification in slander and libel.

Libelousness as law question.

Cited in Bohlinger v. Germania L. Ins. Co. 100 Ark. 484, 36 L.R.A.(N.S.) 455, 140 S. W. 257, holding that court must determine whether communication was privileged or if qualifiedly privileged, whether there is evidence of malice; Bodine v. Times-Journal Pub. Co. 26 Okla. 138, 31 L.R.A.(N.S.) 149, 110 Pac. 1096, holding that where language of alleged libel is clear and unambiguous and facts are undisputed, question as to whether or not it is libelous or its publication is privileged is one of law for court; Harriman v. New Nonpariel Co. 132 Iowa, 620, 110 N. W. 33, holding the question of whether an article in a newspaper was libelous per se was for the court and should not have been submitted to the jury.

46 L. R. A. 403, KIMBALL v. RANNEY, 122 Mich. 160, 80 Am. St. Rep. 548, 80 N. W. 992.

Agent's duty to principal.

Cited in Pikes Peak Co. v. Pfuntner, 158 Mich. 416, 123 N. W. 19, holding an officer of a corporation could not acquire the lease of property of which it was the tenant so as to deprive it of the privilege of renewing its lease; Backus v. Cowley, 162 Mich. 590, 127 N. W. 775, holding that agent to pay taxes and redeem land could not obtain title by purchasing in his own name.

Cited in footnotes to Holmes v. Cathcart, 60 L. R. A. 734, which requires agent, authorized to make sale or exchange at specified terms, to disclose to principal facts as to more advantageous one learned of; Trice v. Comstock, 61 L. R. A. 176, which denies right of one employed to conduct probable customers to principals engaged in reselling at advances, options procured from owners, to purchase for own benefit adversely to principals, even after agency terminates; Strong v. Brennan, 47 L. R. A. 792, which denies right of attorney to recover for services to association employing him, when also engaged and paid by adverse party; Van Dusen v. Bigelow, 67 L.R.A. 288, which holds that agent for collecting rent, paying tax, seeing to repairs, and giving advice as to value of farm lands, cannot purchase for himself without full disclosure of all facts bearing on the value of the land; State v. Edwards, 69 L.R.A. 667, which denies right of commission merchants to whom grain is consigned for sale on commissions to purchase themselves after business hours at highest price of the day on the board of trade.

Estoppel of principal.

Cited in footnote to Thompson v. New South Coal Co. 62 L. R. A. 551, which holds principal not estopped to assert invalidity of unauthorized contract by agent for sale of land, by accepting part of purchase money.

46 L. R. A. 407, OREN *ex rel.* BARBOUR v. PINGREE, 120 Mich. 550, 79 N. W. 814.

Validity of appropriations or acts for internal improvements.

Cited in Michigan Sugar Co. v. Auditor General, 124 Mich. 682, 56 L. R. A. 332, 83 Am. St. Rep. 354, 83 N. W. 625, holding beet-sugar bounty act unconstitutional; State *ex rel.* Jones v. Froehlich, 115 Wis. 40, 58 L. R. A. 763, 95 Am. St. Rep. 894, 91 N. W. 115, holding levees and dikes restraining navigable-river, within constitutional provision prohibiting state from engaging in works of internal improvement; Warner v. Auditor General, 129 Mich. 658, 89 N. W. 591, holding unconstitutional, act providing for compensation to board of state auditors, composed of officers receiving annual salaries, when prohibition exists against their receiving additional compensation; State ex rel. Coleman v. Kelly, 71 Kan. 831, 70 L.R.A. 461, 81 Pac. 450, 6 Ann. Cas. 298, holding a state oil refinery was a work of internal improvement forbidden to be undertaken by state.

Cited in footnote to State ex rel. Coleman v. Kelly, 70 L.R.A. 450, which holds construction, operation, and maintenance of oil refinery for receiving, manufacturing, storing, and handling crude and refined oil and its by-products and marketing of same a "work of internal improvement."

— Public operation or interest in street railways.

Cited in Atty. Gen. ex rel. Brotherton v. Detroit, 148 Mich. 75, 111 N. W. 860, holding the authority to improve streets does not give city right to lay tracks in the streets for the purpose of leasing them to private persons for the operation of a street railroad.

Cited in note (28 L.R.A.(N.S.) 415) on power of legislature to authorize political divisions to build, purchase, or operate railroad, as affected by restrictions on power to aid private enterprises.

Distinguished in Detroit v. Detroit United R. Co. 133 Mich. 611, 95 N. W. 736, holding a provision in a franchise to a street railway company that repaving or repairing of streets would be done at the expense of the city was not an engagement for work of internal improvement.

46 L. R. A. 417, SOUTHERN EXP. CO. v. STATE, 107 Ga. 670, 73 Am. St. Rep. 146, 33 S. E. 637.

Carrier's liability for transporting liquor.

Cited in footnote to State v. Cairns, 58 L. R. A. 55, which denies guilt of express company's agent delivering to consignee goods sent C. O. D., though having reason to believe that they are liquors.

Cited in notes (46 L.R.A. 417) on liability of carrier for transporting intoxicating liquors; (18 L.R.A.(N.S.) 1182) on ignorance of contents of package as defense in prosecution for unlawfully transporting liquor.

Distinguished in Southern Exp. Co. v. State, 1 Ga. App. 704, 58 S. E. 67, holding an express company delivering intoxicating liquor to a minor to whom it was consigned might be convicted of furnishing intoxicating liquor to minors

— Duty of carrier.

Cited in Southern Exp. Co. v. Rose Co. 124 Ga. 593, 5 L.R.A.(N.S.) 627, 53 S. E. 185, denying right of express company to refuse to carry intoxicating liquors into a city which has passed an invalid ordinance making it unlawful for railroad or express company to do so without taking out a license.

"Furnishing" liquor.

Cited in Scott v. State, 6 Okla. Crim. Rep. 493, 119 Pac. 1023, holding that indictment which charges accused with crime of "furnishing" liquors is too indefinite.

Distinguished in Newsome v. State, 1 Ga. App. 793, 58 S. E. 71, holding a liquor dealer in one county delivering liquor to a carrier to be delivered to a minor in another county may be indicted therefor in either county.

46 L. R. A. 424, UNION FRATERNAL LEAGUE v. WALTON, 109 Ga. 1, 77 Am. St. Rep. 350, 34 S. E. 317.

Life insurance for stranger's benefit.

Cited in Fidelity Mut. Life Asso. v. Jeffords, 53 L. R. A. 209, 46 C. C. A. 385, 107 Fed. 411, and Ancient Order, U. W. v. Brown, 112 Ga. 548, 37 S. E. 890 (distinguished in dissenting opinion), sustaining validity of insurance for beneficiary without insurable interest, who pays assessments; Rylander v. Allen, 125 Ga. 208, 6 L.R.A.(N.S.) 131, 53 S. E. 1032, 5 Ann. Cas. 355, holding an assignment of a policy to one having no insurable interest in the life of the insured is valid where it does not appear it was done for speculative purposes; Dolan v. Supreme Council C. M. B. A. 152 Mich. 271, 16 L.R.A.(N.S.) 558, 116 N. W. 383, 15 Ann. Cas. 232; Pollock v. Household of Ruth, 150 N. C. 213, 63 S. E. 940; Hess v. Segenfelter, 127 Ky. 352, 14 L.R.A.(N.S.) 1174, 128 Am. St. Rep. 343, 105 S. W. 476,—on an insured as being able to designate whomever he pleases as beneficiary; Deal v. Hainley, 135 Mo. App. 514, 116 S. W. 1, on rights of beneficiary having no insurable interest in life of the insured.

Cited in notes (54 L.R.A. 230, 231, 233) on insurable interest in life of parent or child or other relative by blood; (16 L.R.A.(N.S.) 556) on designation, as beneficiary of insurance, of one without insurable interest, as affected by public

policy; (128 Am. St. Rep. 311, 312) on life insurance in favor of persons having no insurable interest.

Distinguished in Quillian v. Johnson, 122 Ga. 56, 49 S. E. 801, denying the right of a policy holder to make the policy the subject-matter of a speculative contract.

Disapproved in Mutual L. Ins. Co. v. Lane, 151 Fed. 281, holding invalid an assignment of a life insurance policy to one having no insurable interest in the life of the insured.

Mutual benefit insurance.

Second appeal in 112 Ga. 316, 37 S. E. 389, holding designation of beneficiary without insurable interest, contrary to benefit society's rule, void.

46 L. R. A. 428, LONG v. ELBERTON, 109 Ga. 28, 77 Am. St. Rep. 363, 34 S. E. 333.

Authorized erections as nuisances.

Cited in Georgia R. & Bkg. Co. v. Maddox, 116 Ga. 77, 42 S. E. 315, holding that railroad terminal yard, authorized by statute, cannot be adjudged a nuisance, unless operated in improper manner.

Cited in notes (34 L.R.A.(N.S.) 46) on municipal liability for injury to property from maintenance of prison; (109 Am. St. Rep. 914) on erection of objectionable buildings as "damage" to property with provision that property shall not be taken or damaged for public use without compensation.

Liability of city for negligence in respect to public buildings.

Cited in footnotes to Fox v. Philadelphia, 65 L.R.A. 214, which holds city liable for injuries due to negligence of operator of elevator in public building, although he was employed by a legislative commission; Kelly v. Boston, 66 L.R.A. 429, which holds portion of city building devoted to housing of executive departments which collect money for city within rule that city is not liable for negligence of those to whom are entrusted care and custody of buildings used exclusively for performance of municipal duties.

46 L. R. A. 431, KATES v. ATLANTA BAGGAGE & CAB CO. 107 Ga. 636, 34 S. E. 372.

Carrier's right to discriminate between hackmen.

Followed in Hart v. Atlanta Terminal Co. 128 Ga. 767, 58 S. E. 452, sustaining validity of the grant of an exclusive privilege.

Cited in New York, N. H. & H. R. Co. v. Bork, 23 R. I. 224, 49 Atl. 965 (sustaining right of common carrier to exclude from its premises all hackmen soliciting passengers thereon without its permission; Hedding v. Gallagher, 72 N. H. 394, 64 L. R. A. 821, footnote p. 811, 57 Atl. 225, sustaining right of railroad company to give to one teamster exclusive right to enter on railroad property to solicit privilege of carrying baggage and passengers; Donovan v. Pennsylvania Co. 61 L. R. A. 143, footnote p. 140, 57 C. C. A. 366, 120 Fed. 219, sustaining carrier's power to give to one hackman exclusive right to solicit patrons within station; Dingman v. Duluth, S. S. & A. R. Co. 164 Mich. 332, 32 L.R.A.(N.S.) 1185, 130 N. W. 24, holding that railroad company may grant exclusive right to particular person engaged in transferring passengers and baggage; Oregon Short Line R. Co. v. Davidson, 33 Utah, 376, 16 L.R.A.(N.S.) 783, 94 Pac. 10, 14 Ann. Cas. 489; State ex rel. Sheets v. Union Depot Co. 71 Ohio St. 391, 68 L.R.A. 797, 73 N. E. 633, 2 Ann. Cas. 186,—affirming right of railroad or union depot company to grant the exclusive privilege to use a certain portion of its grounds for hackmen and the standing of hacks; Lewis v. Weatherford, M. W.

& N. R. Co. 36 Tex. Civ. App. 51, 81 S. W. 111, holding a railroad company might properly grant an exclusive privilege of soliciting business for a hack line on its trains.

Cited in footnotes to Norfolk & W. R. Co. v. Old Dominion Baggage Transfer Co. 50 L. R. A. 722, which upholds special privilege to baggage transfer company to another depot to solicit business; Godbout v. St. Paul Union Depot Co. 47 L. R. A. 532, which authorizes discrimination by carrier between hackmen within, but not outside of, depot; Boston & A. R. Co. v. Brown, 52 L. R. A. 418, which holds driver of public carriage entering railroad grounds to get passenger ordering carriage, a trespasser on soliciting other passengers; Pennsylvania Co. v. Chicago, 53 L. R. A. 223, which denies carrier's power to prevent others than lessee occupying hack stands in street; Hedding v. Gallagher, 64 L.R.A. 811, which sustains right of railroad company to give exclusive right to one teamster to enter on its grounds, if reasonable requirements of passengers are fully met; State ex rel. Sheets v. Union Depot Co. 68 L.R.A. 793, which sustains right of union depot company to grant transfer company exclusive right to use specified part of depot grounds for hacks and vehicles and soliciting patronage of passengers.

Cited in notes (8 L.R.A.(N.S.) 1027) on injunction for unlawful discrimination by railroad against hack driver; (16 L.R.A.(N.S.) 778) on right to discriminate between solicitors of patronage at depots, wharves, etc.; (32 L.R.A. (N.S.) 1182) on right of carrier to grant exclusive train privilege to transfer companies.

Right to grant exclusive privilege.

Cited in Missouri, K. & T. R. Co. v. New Era Mill. Co. 79 Kan. 448, 100 Pac. 273, denying right of railroad in fixing its tariff rates to discriminate between shippers whose shipments originate on its lines and shipments originating on other lines; Atlantic Terminal Co. v. American Baggage & Transfer Co. 125 Ga. 687, 54 S. E. 711, holding a railroad company might properly grant the exclusive privilege to another corporation to maintain a check room in station.

Unlawful discriminations.

Cited in Ft. Worth & D. City R. Co. v. State, 99 Tex. 44, 70 L.R.A. 957, 87 S. W. 336, holding a contract between a sleeping car company and a railroad company for the exclusive privilege of operating of sleeping cars over the road was not illegal.

46 L. R. A. 437, STATE v. FINCH, 78 Minn. 118, 80 N. W. 856.

Right to make arbitrary discriminations.

Cited in Northwestern Teleph. Exch. Co. v. Minneapolis, 81 Minn. 149, 53 L. R. A. 185, 83 N. W. 527, holding ordinance reserving arbitrary right to direct removal of overhead telephone wires, illegal; Drew v. Tifft, 79 Minn. 183, 47 L. R. A. 527, 79 Am. St. Rep. 446, 81 N. W. 839, holding inheritance tax law not uniform in operation, unconstitutional; Howland v. State, 56 Fla. 434, 21 L.R.A. (N.S.) 198, 47 So. 963 (dissenting opinion), on invalidity of ordinance making liquor license fee larger in one district of city.

Cited in note (129 Am. St. Rep. 286) on constitutional limitations on power to impose license taxes on hackman etc.

46 L.R.A. 440, State *ex rel.* SCOTT v. LOWELL, 78 Minn. 166, 79 Am. St. Rep. 358, 80 N. W. 877.

Validity of marriage.

Cited in Willits v. Willits, 76 Neb. 231, 5 L.R.A.(N.S.) 770, 107 N. W. 379,

44 Ann. Cas. 883, holding that a marriage where one of the parties is under the statutory age of consent but is competent by the common law is voidable only: Dunphy v. Dunphy, 161 Cal. 89, 118 Pac. 445, holding that marriage must continue to be accepted as valid until decree of annulment therein has become final.

Cited in notes (22 L.R.A.(N.S.) 1203) on marriage of persons of nonage; (96 Am. St. Rep. 268) on effect of void marriage; (124 Am. St. Rep. 121) on common law marriages.

Emancipation of infants by marriage.

Cited in Cochran v. Cochran, 196 N. Y. 89, 24 L.R.A.(N.S.) 163, 89 N. E. 470, 17 Ann. Cas. 782, holding that minor validly married is entitled to his earnings as against his father.

Cited in notes (113 Am. St. Rep. 118; 24 L.R.A.(N.S.) 161) on marriage of infant as working emancipation.

46 L. R. A. 442, STATE *ex rel.* BEEK v. WAGENER, 77 Minn. 483, 77 Am. St. Rep. 681, 80 N. W. 633.

Followed without discussion in State *ex rel.* Mohler v. Megaarden, 77 Minn. 483, note, 80 N. W. 1134.

Constitutionality of laws delegating legislative powers.

Cited in State v. Atlantic Coast Line R. Co. 56 Fla. 625, 32 L.R.A.(N.S.) 652, 47 So. 969, holding that legislature may authorize railroad commission to prescribe duties on which law may operate in imposing penalty; Elwell v. Comstock, 99 Minn. 269, 7 L.R.A.(N.S.) 626, 109 N. W. 698, 9 Ann. Cas. 270, holding an act appointing a delegation to determine the efficiency of voting machines to be used at elections, is not void as delegating legislative powers; State v. Great Northern R. Co. 100 Minn. 478, 10 L.R.A.(N.S.) 255, 111 N. W. 289, holding that a law which attempted to delegate to a commission the control of the increase of stock of railroad companies, was invalid where it was a grant of discretionary powers.

Validity of license taxes on business.

Cited in State v. Rocky Mountain Bell Teleph. Co. 27 Mont. 401, 71 Pac. 311, holding license tax on telephones not invalid as restrictive, because not applying to instruments used in interstate traffic; State ex rel. Coleman v. Western U. Teleg. Co. 75 Kan. 628, 90 Pac. 299, holding a law that provided for the payment of a charter fee as a condition precedent to permission to doing business within the state was not an interference with interstate commerce and was therefore constitutional; State v. Edwards, 94 Minn. 231, 69 L.R.A. 672, 102 N. W. 697, holding a law requiring commission merchants to render statement of sales to his consignor, was not unconstitutional as interfering with interstate commerce.

Cited in footnotes to Lasher v. People, 47 L. R. A. 802, which holds void, statute requiring each of certain incorporated associations to appoint member of state board for licensing commission merchants; People *ex rel.* Valentine Coolidge, 50 L. R. A. 493, which holds void, act requiring large bond from merchants selling farm produce.

Distinguished in State v. Northern P. Exp. Co. 27 Mont. 425, 94 Am. St. Rep. 824, 71 Pac. 404, holding statute imposing occupation tax on carriers without discriminating between intrastate and interstate business, illegal.

— Imposing restrictions on private rights.

Cited in State ex rel. Simpson v. Sperry & H. Co. 110 Minn. 395, 30 L.R.A. (N.S.) 971, 126 N. W. 120, holding trading stamp act valid; State v. Duluth

Bd. of Trade, 107 Minn. 522, 23 L.R.A.(N.S.) 1269, 121 N. W. 395, on regulation of business of handling grain; McGuire v. Chicago, B. & Q. R. Co. 131 Iowa, 374, 108 N. W. 902, holding an act declaring invalid any contract limiting the liability of a railway company for personal injuries resulting from negligence of fellow servant was valid as it did not take away the right to contract; State v. Bridgeman, 117 Minn. 189, 134 N. W. 496; State ex rel. Young v. Standard Oil Co. 111 Minn. 96, 126 N. W. 527,—holding that legislature may impose special restrictions regulating sale of one class of commodities unless beyond doubt no substantial conditions or usages of trade differentiate that class from others.

46 L. R. A. 448, WANEK v. WINONA, 78 Minn. 98, 79 Am. St. Rep. 354, 80 N. W. 851.

Court's power to compel physical examination.

Cited in Aske v. Duluth & I. Range R. Co. 83 Minn. 198, 85 N. W. 1011, sustaining court's power to order physical examination of plaintiff in negligence action; Wittenberg v. Onsgard, 78 Minn. 349, 47 L. R. A. 144, 81 N. W. 14, raising, without deciding, question whether court may, upon seasonable application, require party to submit to X-ray photography; Larson v. Salt Lake City, 34 Utah, 323, 23 L.R.A.(N.S.) 462, 97 Pac. 483, holding that court has no inherent power to compel plaintiff to submit, in advance of trial, to physical examination by defendant's physician; Gray v. State, 55 Tex. Crim. Rep. 111, 22 L.R.A. (N.S.) 525, 114 S. W. 635, holding that court has power to order disinterment and autopsy of deceased to determine guilt or innocence of slayer; Murphy v. Southern P. Co. 31 Nev. 141, 101 Pac. 322, 21 Ann. Cas. 502, holding that rulings of trial court in granting or refusing order for physical examination of plaintiff in action for personal injuries will not be disturbed, unless discretion is abused; Pest v. Columbia Street R. Light & P. Co. 85 S. C. 429, 67 S. E. 1 (dissenting opinion),—on power of courts to order physical examination of plaintiff in action for personal injuries; Clark v. Tulare Lake Dredging Co. 14 Cal. App. 438, 112 Pac. 564, holding that court has power in action for personal injuries to servant caused by dangerous machinery, to make order that witness for plaintiff be allowed to inspect machinery; Johnston v. Southern P. Co. 150 Cal. 542, 89 Pac. 348, 11 Ann. Cas. 841; Western Glass Mfg. Co. v. Schoeninger, 42 Colo. 362, 15 L.R.A.(N.S.) 668, 126 Am. St. Rep. 165, 94 Pac. 34; Brown v. Chicago, M. & St. P. R. Co. 12 N. D. 69, 102 Am. St. Rep. 564, 95 N. W. 153,—holding that court has power to compel plaintiff to submit to physical examination and to dismiss the action in case of refusal; Mutual L. Ins. Co. v. Griesa, 156 Fed. 402, holding that court has power to have a body exhumed and examined, where suicide by poison is set up as defense to recovery on insurance policy.

Cited in footnote to Bagwell v. Atlanta Consol. Street R. Co. 47 L. R. A. 486, which holds action for injury to minor daughter should not be dismissed for her refusal, after attaining majority, to submit to physical examination.

Cited in note (23 L.R.A.(N.S.) 463, 467) on power to compel physical examination.

Disapproved in May v. Northern P. R. Co. 32 Mont. 529, 70 L.R.A. 114, 81 Pac. 328, 4 Ann. Cas. 605; Austin & N. W. R. Co. v. Cluck, 97 Tex. 176, 64 L.R.A. 456, 104 Am. St. Rep. 863, 77 S. W. 403, 1 Ann. Cas. 261,—holding that courts have no power to compel plaintiff in action for personal injuries to submit to an examination by physicians appointed for that purpose.

46 L. R. A. 450, FIDELITY & C. CO. v. LOEWENSTEIN, 38 C. C. A. 29, 97 Fed. 17.

What constitutes accident, within insurance policy.

Cited in Bader v. New Amsterdam Casualty Co. 102 Minn. 191, 120 Am. St. Rep. 613, 112 N. W. 1065, on when death accidental within the meaning of an insurance policy.

Cited in footnote to Preferred Acci. Ins. Co. v. Robinson, 61 L. R. A. 145, which denies right to recover under accident policy for inflammation of eyes from accidental contact with poison ivy.

Cited in notes (1 L.R.A.(N.S.) 423) on injury to insured by own act while asleep as an accident; (2 L.R.A.(N.S.) 169) on liability of insurer for death from inhalation of gas; (30 L.R.A.(N.S.) 1181) on death or injury from substance taken internally as caused by external means.

Construction of policy.

Followed without discussion in Hurt v. Employers' Liability Assur. Corp. 122 Fed. 831.

46 L. R. A. 454, THOMAS v. STATE, 40 Tex. Crim. Rep. 562, 76 Am. St. Rep. 740, 51 S. W. 242.

Effect of omission of revenue stamp.

Cited in State v. Peterson, 129 N. C. 557, 85 Am. St. Rep. 756, 40 S. E. 9, holding that absence of revenue stamp has no bearing on question of forgery of note; State v. Shields, 112 Iowa, 30, 83 N. W. 807, holding check not properly stamped admissible in evidence in prosecution for forgery, and referring particularly to annotation in 46 L. R. A. 454; Richardson v. Roberts, 195 Ill. 30, 62 N. E. 840, holding that omission of revenue stamp does not render note inadmissible in evidence in state courts.

Cited in footnotes to Small v. Slocumb, 53 L. R. A. 130, which holds act of Congress against receiving instruments in evidence inapplicable to state courts; Wingert v. Zeigler, 51 L. R. A. 316, which holds assignment of mortgage not avoided by inadvertent omission of revenue stamp.

Cited in notes (48 L.R.A. 305) on effect of omission to stamp instrument on which law requires stamp, or to cancel stamps on such instrument; (84 Am. St. Rep. 186, 198) on failure to comply with statute requiring stamping of writings.

What may be subject of forgery.

Cited in footnotes to Hickson v. State, 54 L. R. A. 327, which holds instrument requesting addressee to let bearer have a "single rig," which the signer promises to return, subject of forgery; Gordon v. Com. 57 L. R. A. 744, which holds irregular check may be subject of forgery after payment as to its effect as receipt.

46 L. R. A. 457, CITIZENS' R. CO. v. FORD, 93 Tex. 110, 53 S. W. 575.

46 L. R. A. 459, PRICE v. WARD, 25 Nev. 203, 58 Pac. 849.

46 L. R. A. 467, CRIPPEN, L. & CO. v. LAGHTON, 69 N. H. 540, 76 Am. St. Rep. 192, 44 Atl. 538.

Nature of stockholder's liability.

Cited in Kulp v. Fleming, 65 Ohio St. 337, 87 Am. St. Rep. 611, 62 N. E. 334, holding stockholder's liability for corporate debts not penal.

Enforcement of liability of stockholder in foreign corporation.

Cited in footnotes to Howarth v. Angle, 47 L. R. A. 725, which sustains foreign

receiver's right of action against stockholder in foreign corporation; Fidelity Ins. Trust & S. D. Co. v. Mechanics' Sav. Bank, 56 L. R. A. 228, which holds stockholder's liability enforceable in Federal court, or any court where personal service obtainable; Blair v. Newbegin, 58 L. R. A. 644, which sustains right to enforce stockholder's liability in other state without making corporation a party; Bank of China v. Morse, 56 L. R. A. 139, which holds assessment under English statute in proceeding to wind up corporation will not be enforced here against resident: Miller v. Smith, 66 L.R.A. 473, which holds that courts of state of stockholder's residence will not take jurisdiction of suit by corporate creditor on behalf of all to enforce his statutory liability to contribute toward payment of corporate debts in advance of judicial determination of his proportionate liability where laws of state of incorporation contemplate pro rata contribution to be enforced in equitable proceeding against all stockholders.

Cited in note (33 L.R.A.(N.S.) 898, 901) on right to enforce stockholders' liability outside of state of incorporation.

Disapproved in Howarth v. Lombard, 175 Mass. 580, 49 L. R. A. 308, 56 N. E. 888; Kulp v. Fleming, 65 Ohio St. 340, 87 Am. St. Rep. 611, 62 N. E. 334; Love v. Pusey & J. Co. 3 Penn. (Del.) 579, 52 Atl. 542,—holding stockholder's liability for corporate debts enforceable in courts of another state.

Extraterritorial effect of statutes or judgments.

Cited in Shannon v. Georgia State Bldg. & L. Asso. 78 Miss. 972, 57 L. R. A. 804, 84 Am. St. Rep. 657, 30 So. 51, holding question as to usury of loan association contract payable in another state having dissimilar statutes determinable by local laws.

Limited in MacDonald v. Grand Trunk R. Co. 71 N. H. 450, 59 L. R. A. 451, 93 Am. St. Rep. 550, 52 Atl. 982, holding that judgment on merits of foreign court having jurisdiction bars subsequent suit in state court.

46 L. R. A. 473, ROSENPLANTER v. PROVIDENT SAV. LIFE ASSUR. SOC. 37 C. C. A. 566, 96 Fed. 721.

Computation of time.

Cited in note (49 L. R. A. 209) on rule as to first and last days in computation of time.

Necessity of notice before forfeiting insurance policy.

Cited in McMaster v. New York L. Ins. Co. 40 C. C. A. 150, 99 Fed. 887, dissenting opinion by Caldwell, J., who holds notice of maturity of premium (not therein set forth), defective.

Cited in footnotes to Mutual L. Ins. Co. v. Hill, 49 L. R. A. 127, which requires notice of accrual of premium before forfeiting policy for nonpayment; Johnson v. New York L. Ins. Co. 50 L. R. A. 99, which holds necessity of giving notice before forfeiting policy for nonpayment of premium dispensed with by converting life policy into nonforfeitable policy for fixed term of years; McQuillan v. Mutual Reserve Fund Life Asso. 56 L. R. A. 233, which holds forfeiture of policy waived by retaining payment made after default, without notice of any condition affixed.

Distinguished in Hathaway v. Mutual L. Ins. Co. 99 Fed. 537, holding amendment limiting to one year, protection of statute requiring notice given before forfeiting insurance for default in premium, not retroactive.

Constitutionality of statute validating contract.

Cited in Burget v. Merritt, 155 Ind. 149, 57 N. E. 714, sustaining change in law of descent validating conveyances in fee by children, subject to life estate of father's childless second wife.

Time during which statute operates.

Cited in McDougalld v. New York L. Ins. Co. 77 C. C. A. 100, 146 Fed. 678, holding statute derived partly from prior statute not for that reason retrospective in its operation.

46 L. R. A. 478, MELMS v. PABST BREWING CO. 104 Wis. 7, 79 N. W. 738.

Reversioner's right to sue for injury to premises.

Cited in Watson v. Harrigan, 112 Wis. 280, 87 N. W. 1079, holding that landlord may maintain action for permanent injuries to premises while in possession of tenant.

46 L. R. A. 481, SKAVDALE v. MOYER, 21 Wash. 10, 56 Pac. 841.

Affirmed on rehearing in 22 Wash. 694, 60 Pac. 62.

46 L. R. A. 502, JOHNSON v. GEORGIA R. & BKG. CO. 108 Ga. 496, 34 S. E. 127.

Validity of extra charge for fare paid on train.

Cited in note (24 L.R.A.(N.S.) 761) on rights of passenger unable to get ticket before train starts.

Distinguished in Phillips v. Southern R. Co. 114 Ga. 286, 40 S. E. 268, denying railroad company's right to require greater rate of fare from passengers without ticket than customarily charged to certain point.

46 L. R. A. 506, MORRIS v. GEORGIA LOAN, SAV. & BKG. CO. 109 Ga. 12, 34 S. E. 378.

When knowledge of officer imputable to bank.

Cited in Fouche v. Merchant's Nat. Bank, 110 Ga. 846, 36 S. E. 256, holding knowledge of president making and accepting transfer, that stock not fully paid, imputable to bank; First Nat. Bank v. Northrup, 82 Kan. 644, 136 Am. St. Rep. 119, 109 Pac. 672, which holds bank not charged with notice of undisclosed knowledge of cashier who acted as agent of corporation in negotiating loan from bank.

Cited in note (2 L.R.A.(N.S.) 994) as to how far corporation charged with knowledge of managing officer engaged in illegal act.

Distinguished in English-American Loan & T. Co. v. Hiers, 112 Ga. 826, 38 S. E. 103, holding knowledge of director acting exclusively for himself in selling note not imputable to bank; People's Bank v. Exchange Bank, 116 Ga. 828, 94 Am. St. Rep. 144, 43 S. E. 269, holding bank dealing with its president as an individual, not chargeable with notice of knowledge acquired by him in that capacity.

Notice through personally interested agent.

Cited in Cook v. American Tubing & Webbing Co. 28 R. I. 76, 9 L.R.A.(N.S.) 212, 65 Atl. 641, holding trust company bound by knowledge of its president authorized to make loan in negotiating loan for another company in which he was interested; Taylor v. Felder, 3 Ga. App. 291, 59 S. E. 844, which holds undisclosed knowledge of agent of corporation acting as agent of partnership in dealing with other officers of corporation not imputable to corporation.

Cited in note (29 L.R.A.(N.S.) 563) on imputation of knowledge of personally interested officers to bank.

Distinguished in Pursley v. Stahley, 122 Ga. 364, 50 S. E. 139, holding principal not charged with notice of fraud perpetrated by agent for his own benefit outside scope of agency.

Rights of assignee of policy.

Cited in Quillian v. Johnson, 122 Ga. 56, 49 S. E. 801, holding proceeds of insurance policy paid to assignee of purely wagering contract recoverable by executor of insured's estate; Des Moines Sav. Bank v. Kennedy, 142 Iowa, 281, 120 N. W. 742, denying pledgee of insurance policy and land can apply proceeds from sale of land to payment of premium on policy where it was not shown this was contemplated in assignment.

Cited in note (87 Am. St. Rep. 510, 511, 513) on rights of assignee of policy.

Validity of assignment of life insurance policy.

Cited in notes (3 L.R.A.(N.S.) 943) on validity of assignment of interest in life insurance to one paying premiums; (87 Am. St. Rep. 486) on validity of assignment of life insurance policies.

46 L. R. A. 513, GORRELL v. GREENSBORO WATER SUPPLY CO. 124 N. C. 328, 70 Am. St. Rep. 598, 32 S. E. 720.

Liability for failure to furnish water to extinguish fire.

Cited in Planters' Oil Mill v. Monroe Waterworks & Light Co. 52 La. Ann. 1251, 27 So. 684; Jones v. Durham Water Co. 135 N. C. 554, 47 S. E. 615; Graves County Water Co. v. Ligon, 112 Ky. 781, 66 S. W. 725,—holding company contracting with municipality to supply water liable to citizen for loss due to its failure; Guardian Trust & D. Co. v. Greensboro Water Supply Co. 115 Fed. 189, holding judgment against water company negligently failing to provide fire protection within statute giving priority to judgments against corporations for torts; Wadsworth v. Concord, 133 N. C. 594, 45 S. E. 948, recognizing right of action of beneficiaries of municipal contracts for supply of light and water, upon breach thereof, although not parties thereto; Ukiah City v. Ukiah Water & Improv. Co. 142 Cal. 179, 64 L. R. A. 235, footnote p. 231, 100 Am. St. Rep. 107, 75 Pac. 773, holding contract to compensate municipality for loss of property by fire through negligent failure to furnish water not shown by mere acceptance, and payment for furnishing, of water for general fire purposes; Niehaus Bros. Co. v. Contra Costa Water Co. 159 Cal. 315, 36 L.R.A.(N.S.) 1052, 113 Pac. 375, holding that permission to property owners to erect on his premises hydrant or fire plug to be supplied by water company for such amount as may be agreed upon does not obligate company to furnish water to extinguish fire. Woodbury v. Tampa Water Works Co. 57 Fla. 253, 21 L.R.A.(N.S.) 1039, 49 So. 559; Mugge v. Tampa Waterworks Co. 52 Fla. 379, 6 L.R.A.(N.S.) 1177, 42 So. 81,—holding water company under contract with city to supply water, liable to taxpayer for fire loss from its failure to comply with contract where compensation to company is obtained by special tax levy; Milford v. Bangor R. & Electric Co. 106 Me. 324, 30 L.R.A.(N.S.) 531, 76 Atl. 696, 20 Ann. Cas. 622, holding that water company is not liable for loss of municipal property through failure to maintain sufficient water pressure to extinguish fire, in absence of stipulation to that effect in contract; Milford v. Bangor R. & Electric Co. 104 Me. 246, 30 L.R.A.(N.S.) 537, 71 Atl. 759, holding town may maintain action against water company for loss by fire to town property occasioned by failure of water company to furnish water as agreed to.

Cited in footnotes to Middlesex Water Co. v. Knappmann Whiting Co. 49 L. R. A. 572, which holds water company failing to supply sufficient water for fire purposes liable to consumer for loss of property by fire; Ukiah City v. Ukiah Water & Improv. Co. 64 L.R.A. 231, which holds contract by water company to compensate municipality for loss of property by fire due to negligent failure to furnish water not established by mere acceptance of, and payment for, service

of such company in the furnishing of water; Allen & Currey Mfg. Co. v. Shreeveport Waterworks Co. 68 L.R.A. 650, which denies citizen's right of action against water company for destruction of property by fire because of failure to keep fire hydrants in good condition.

Cited in notes (61 L.R.A. 96) on establishment and regulation of municipal water supply; (1 L.R.A.(N.S.) 959) on consumer's right to compel water company to furnish water at rates stipulated in contract with municipality; (6 L.R.A.(N.S.) 1172) on liability of water company in tort for loss to individual by its failure to comply with contract with municipality; (21 L.R.A.(N.S.) 1022, 1023) on right of action of property owner against water company for breach of contract obligation to municipality to supply sufficient water for fire purposes; (81 Am. St. Rep. 483) on liability of water companies.

Distinguished in Hunt Bros. Co. v. Lorenzo Water Co. 150 Cal. 54, 7 L.R.A. (N.S.) 915, 87 Pac. 1093, denying liability of water company for loss from fire occasioned by its failure to install fire-hydrant where contract silent as to when same should be installed and where no rate charged until service complete.

Disapproved in Greenville Water Co. v. Beckham, 55 Tex. Civ. App. 93, 118 S. W. 889, holding that citizen cannot maintain action against water company for loss sustained because of company's breach of contract with city to furnish water for fire purposes; Lovejoy v. Bessemer Waterworks Co. 146 Ala. 380, 6 L.R.A.(N.S.) 431, 41 So. 76, 9 Ann. Cas. 1068, which holds citizen cannot maintain action against water company under contract with city to supply water for loss occasioned by failure to do so; Metropolitan Trust Co. v. Topeka Water Co. 132 Fed. 704; German Alliance Ins. Co. v. Home Water Supply Co. 42 L.R.A.(N.S.) 105, 99 C. C. A. 258, 174 Fed. 766; Pack v. Sterling Water Co. 118 Ill. App. 537; Allen & C. Mfg. Co. v. Shreveport Waterworks Co. 113 La. 1112, 68 L.R.A. 660, 104 Am. St. Rep. 525, 37 So. 980, 2 Ann. Cas. 471; Hone v. Presque Isle Water Co. 104 Me. 232, 21 L.R.A.(N.S.) 1028, 71 Atl. 769; Ancrum v. Camden Water, Light & Ice Co. 82 S. C. 298, 21 L.R.A.(N.S.) 1034, 64 S. E. 151; Nichol v. Huntington Water Co. 53 W. Va. 356, 44 S. E. 290; Holloway v. Macon Gas Light & Water Co. 132 Ga. 395, 64 S. E. 330, denying liability of water company under contract with city to supply water for loss by fire to citizen occasioned by its failure to do so.

Beneficiary's right to maintain suit on contract.

Cited in Lacy v. Webb, 130 N. C. 546, 41 S. E. 549, holding (*obiter*) state can maintain action on bond to secure deposit of public money; Gastonia v. McEntee-Peterson Engineering Co. 131 N. C. 366, 42 S. E. 858, holding that laborers and material men, being express beneficiaries of contract between engineering company and town, may bring action thereon; Voorhees v. Porter, 134 N. C. 602, 65 L. R. A. 741, 47 S. E. 31, holding that if vendee of goods, agreeing to pay vendor's debts out of purchase price, makes assignment to one who guaranteed his doing so, vendor's creditors may compel accounting by assignee, of funds applicable to their claims; Duval v. Atlantic Coast Line R. Co. 134 N. C. 332, 65 L. R. A. 723, 101 Am. St. Rep. 830, 46 S. E. 750, holding violation by railroad company of contract with municipality as to speed limit of trains, evidence of negligence in action for injury; Cumberland Teleph. & Teleg. Co. v. Cartwright Teleph. Co. 128 Ky. 405, 108 S. W. 875, holding telephone company under contract with city to supply telephones to all applicants, liable to third parties for failure to connect private wire with its exchange; Morganton Hardware Co. v. Morganton Graded Schools, 151 N. C. 509, 66 S. E. 583, which holds public school house cannot be sold under execution of judgment recovered by subcontractor for materials furnished in its construction; Wood v. Kincaid,

144 N. C. 395, 57 S. E. 4; Helms v. Western U. Teleg. Co. 143 N. C. 393, 8 L.R.A.(N.S.) 253, 118 Am. St. Rep. 811, 55 S. E 831, 10 Ann. Cas. 643; Kernodle v. Western U. Teleg. Co. 141 N. C. 445, 54 S. E. 423, 8 Ann. Cas. 469,—on right of privy to contract to maintain action thereon.

Cited in note (71 Am. St. Rep. 181, 196) on right of third person to sue on contract made for his benefit.

Distinguished in Clark v. Bonsal & Co. 157 N. C. 275, 72 S. E. 954, holding that injured employee may not proceed originally against indemnity company which has insured employer against loss from such injury.

46 L. R. A. 517, BEATY v. RICHARDSON, 56 S. C. 173, 34 S. E. 73.

Rights in homestead.

Cited in *Ex parte* Bullock, 58 S. C. 239, 36 S. E. 563, holding that widow rejecting testamentary provisions cannot have homestead out of lands devised; Sloan v. Hunter, 65 S. C. 241, 43 S. E. 788, holding homestead in hands of administrator not subject to judgment which was not lien thereon in hands of intestate.

Cited in note (56 L. R. A. 40, 47) on rights of child or children in homestead of parent.

Effect of husband's adultery to prevent his relying on wife's adultery as defense.

Cited in note (19 L.R.A.(N.S.) 469) on effect of husband's adultery to prevent his relying on wife's adultery as defense to action for support.

46 L. R. A. 525, GREEN v. GREEN, 56 S. C. 193, 34 S. E. 249.

Remedies of beneficiary for misuse of trust funds.

Cited in Buist v. Williams, 88 S. C. 280, 70 S. E. 817, holding that rule that beneficiary has option to follow trust fund into new investments and claim profits or hold trustee liable does not apply where fund is used for removing lien, but in such case trust fund should be subrogated to lien removed; Red Bud Realty Co. v. South, 96 Ark. 293, 131 S. W. 340, holding that where trustee uses trust funds to purchase property and takes title in his own name, beneficiary may elect whether he will take property or recover funds.

46 L. R. A. 541, SARRAZIN v. W. R. IRBY CIGAR & TOBACCO CO. 35 C. C. A. 496, 93 Fed. 624.

Followed without discussion in Sarrazin v. Augustus Craft Co. 35 C. C. A. 679, 93 Fed. 989; Sarrazin v. Preston, 35 C. C. A. 679, 94 Fed. 1023.

What appropriable as trade name.

Cited in Thomas G. Plant Co. v. May Co. 44 C. C. A. 537, 105 Fed. 378, holding word "Queen" appropriable as trade name; Traiser v. J. W. Doty Cigar Co. 198 Mass. 329, 84 N. E. 462, 15 Ann. Cas. 219, sustaining injunction restraining use of trademark "Peep in" as an infringement of trademark "Pippin."

Transferability of trade name.

Cited in Peck Bros. & Co. v. Peck Bros. Co. 62 L. R. A. 87, 51 C. C. A. 259, 113 Fed. 299, holding that right to corporation's trade name passes under receiver's sale of "franchises, name, and good will."

What passes to trustee in bankruptcy.

Cited in footnote to Fisher v. Cushman, 51 L. R. A. 292, which holds liquor license to be property passing under bankrupt law.

Cited in note (5 L.R.A.(N.S.) 1079) on good will as impliedly passing with transfer of business.

Jurisdiction as to trade marks.

Cited in Baglin v. Cusenier Co. 90 C. C. A. 499, 164 Fed. 35 (dissenting opinion), on jurisdiction of Federal courts in trade mark cases.

Infringement of trademark.

Cited in E. T. Fraim Lock Co. v. Shimer, 43 Pa. Super. Co. 225, Affirming 12 North. Co. Rep. 5, on right of person to be actual owner of trademark while another person may be registered owner.

Cited in note (25 Eng. Rul. Cas. 219) on infringement of trademark.

46 L. R. A. 549, KNOXVILLE TRACTION CO. v. LANE, 103 Tenn. 376, 53 S. W. 557.

Liability for acts of independent contractor.

Cited in footnote to Pittsfield Cottonwear Mfg. Co. v. Pittsfield Shoe Co. 60 L. R. A. 117, which holds landlord liable to tenants of lower floor for injury from freezing of automatic fire extinguisher in portion retained by former, though building heated by independent contractor.

Carrier's liability for abuse of passenger.

Cited in Gillespie v. Brooklyn Heights R. Co. 178 N. Y. 356, 66 L. R. A. 622, 102 Am. St. Rep. 503, 70 N. E. 857, holding company liable for malicious act of motorman in calling passenger "dead beat," and refusing to return change; Missouri P. R. Co. v. Divinney, 66 Kan. 778, 71 Pac. 855, holding railroad company liable for assault upon passenger, by employee acting outside scope of employment; Seawell v. Carolina C. R. Co. 132 N. C. 859, 44 S. E. 610, holding refusal to nonsuit justified by evidence in action by passenger for alleged assault permitted by railroad company; Bleecker v. Colorado & S. R. Co. 50 Colo. 143, 33 L.R.A.(N.S.) 388, 114 Pac. 481, holding that railroad is liable for mental suffering inflicted upon passenger by insulting language addressed to him by conductor without provocation; Jackson v. Old Colony Street R. Co. 206 Mass. 486, 30 L.R.A.(N.S.) 1049, 92 N. E. 725, 19 Ann. Cas. 615, holding that assault by conductor upon passenger who is leaving car at his command is unjustifiable, and will render carrier liable; Humphrey v. Michigan United R. Co. 166 Mich. 649, 132 N. W. 447, holding that breach of carrier's duty to protect passengers from insulting, abusive or opprobrious language affords ground of action; Gulf, C. & S. F. R. Co. v. Luther, 40 Tex. Civ. App. 522, 90 S. W. 44, holding railroad company liable for misconduct and abusive language of negro waitress toward woman passenger; Cincinnati, N. O. & T. P. R. Co. v. Harris, 115 Tenn. 512, 5 L.R.A.(N.S.) 783, 91 S. W. 211, holding railroad company liable for personal indignities and abusive language of employee to passenger; Memphis Street R. Co. v. Shaw, 110 Tenn. 479, 75 S. W. 713, which holds street railway liable for misconduct of conductor toward aged woman passenger; St. Louis, I. M. & S. R. Co. v. Taylor, 84 Ark. 51, 13 L.R.A.(N.S.) 162, 104 S. W. 551, refusing to allow damages for mental suffering caused by use of indecent language of carrier's employees when unaccompanied by physical injury.

Cited in footnote to Gillespie v. Brooklyn Heights R. Co. 66 L.R.A. 618, which holds street car company not absolved from liability for malicious act of conductor in calling passenger a deadbeat when asked for change due her.

Cited in notes (4 L.R.A.(N.S.) 502) on liability for malicious act of servant when master owes special duty to party injured; (13 L.R.A.(N.S.) 160, 161) on liability of carrier for mental suffering of passenger from mere verbal abuse; (40 L.R.A.(N.S.) 1041, 1053, 1058, 1059) on liability of carrier for wilful torts of servants to passengers.

Distinguished in Osteryoung v. St. Louis Transit Co. 108 Mo. App. 707, 84

S. W. 179, holding mere use of insulting language not amounting to brutality by employee of carrier to passenger does not authorize recovery.

Recovery of punitive damages.

Cited in American Lead Pencil Co. v. Davis, 108 Tenn. 255, 66 S. W. 1129, sustaining instruction making "gross negligence," if proved, basis for exemplary damages.

Carrier's contract.

Cited in Chudnovski v. Eckels, 232 Ill. 318, 83 N. E. 846, holding implied contract exists between passenger for hire and street railway company.

46 L. R. A. 552, WEAKLEY v. PAGE, 102 Tenn. 178, 53 S. W. 551.

Injunction against nuisance.

Cited in Pierce v. Gibson County, 107 Tenn. 229, 55 L. R. A. 480, 89 Am. St. Rep. 946, 64 S. W. 33, holding that injunction lies against intended discharge of waterclosets through sewer onto another's land; Richi v. Chattanooga Brewing Co. 105 Tenn. 653, 58 S. W. 646, sustaining right of abutter to enjoin obstruction of street by railroad interfering with ingress and egress; Hoyt v. McLaughlin, 250 Ill. 448, 95 N. E. 464, holding that if individual suffers special damage from public nuisance he may enjoin the continuance; Chimene v. Baker, 32 Tex. Civ. App. 524, 75 S. W. 330, sustaining granting of injunction at instance of adjoining property owner restraining erection of building with combustible materials within fire limits; Madison v. Ducktown Sulphur, Copper & Iron Co. 113 Tenn. 351, 83 S. W. 658, holding injunction will not issue to restrain pollution of air with smoke when an adequate remedy exists at law.

Cited in footnote to People *ex rel.* L'Abbe v. District Court, 46 L. R. A. 850, which denies jurisdiction to enjoin gambling in absence of claim that property or civil right violated.

Cited in note (3 L.R.A.(N.S.) 623) on injunction against commission of crime when property right involved.

— Bawdy or disorderly houses.

Cited in Seifert v. Dillon, 83 Neb. 327, 19 L.R.A.(N.S.) 1020, 131 Am. St. Rep. 642, 119 N. W. 686, 17 Ann. Cas. 1126, which upholds granting of injunction restraining bawdy house in red light district at suit of near-by merchant; Ingersoll v. Rousseau, 35 Wash. 99, 76 Pac. 513, 1 Ann. Cas. 35, upholding granting of injunction at instance of adjoining owner restraining bawdy house; Fedeski v. Berger, 150 Ala. 652, 11 L.R.A.(N.S.) 1062, 43 So. 960, holding landlord renting premises for use as bawdy house liable to have same abated at instance of adjoining property owner; State v. Vaughan, 81 Ark. 124, 7 L.R.A. (N.S.) 935, 118 Am. St. Rep. 29, 98 S. W. 685, 11 Ann. Cas. 277, denying injunction at instance of state to abate turf exchange or pool room.

Cited in note (11 L.R.A.(N.S.) 1060) on right of neighbors to enjoin maintenance of bawdy house.

46 L. R. A. 559, TERRY v. McDANIEL, 103 Tenn. 415, 53 S. W. 732.

Barbering as trade or labor.

Cited in Jackson v. State, 55 Tex. Crim. Rep. 559, 117 S. W. 818, holding barbering is a mechanical pursuit within meaning of constitution exempting such occupations from tax; Re Caldwell, 82 Neb. 550, 118 N. W. 133, holding barber a common laborer within meaning of statute forbidding keeping of barber shops open on Sunday.

Exemption of tools.

Cited in footnote to Williams v. Vincent, 68 L.R.A. 634, which holds bowling alley not exempt from execution as tools or implements of trade.

Cited in note (123 Am. St. Rep. 147) on exemption of tools and implements.

46 L. R. A. 561, BAILEY v. MASTER PLUMBERS' ASSO. 103 Tenn. 99, 52 S. W. 853.

Combinations in restraint of trade.

Cited in Brown v. Jacobs' Pharmacy Co. 115 Ga. 442, 57 L. R. A. 554, 90 Am. St. Rep. 126, 41 S. E. 553, holding combination of dealers refusing to buy from those selling to nonmembers, illegal; State *ex rel.* Astor v. Schlitz Brewing Co. 104 Tenn. 734, 78 Am. St. Rep. 941, 59 S. W. 1033, sustaining constitutionality of anti-trust statute; Ferd Heim Brewing Co. v. Belinder, 97 Mo. App. 72, 71 N. W. 691, holding invalid, agreement by breweries not to sell to anyone indebted to any of them; Martell v. White, 185 Mass. 262, 64 L. R. A. 265, footnote p. 260, 102 Am. St. Rep. 341, 69 N. E. 1085, holding action maintainable on behalf of quarry owner against members of association to which he does not belong, enforcing by-law imposing fine on members dealing with nonmembers; Retail Lumber Dealers' Asso. v. State, 95 Miss. 343, 35 L.R.A.(N.S.) 1057, 48 So. 1021, holding that undertaking among members of organization of retail plumbers that they will purchase only from wholesalers who do not sell direct to consumers is violation of statute against criminal conspiracies; State v. Witherspoon, 115 Tenn. 142, 90 S. W. 852; Knight & J. Co. v. Miller, 172 Ind. 45, 87 N. E. 823, 18 Ann. Cas. 1146,—sustaining validity of anti-trust law; State ex rel. Cates v. Standard Oil Co. 120 Tenn. 178, 110 S. W. 565, Standard Oil Co. v. State, 117 Tenn. 660, 10 L.R.A.(N.S.) 1026, 100 S. W. 705,—holding agreement to give oil to former customer gratis to induce him to cancel order with competitor, a violation of anti-trust law; Arnold & Co. v. Jones Cotton Co. 152 Ala. 504, 12 L.R.A.(N.S.) 154, 44 So. 662, holding invalid, contract between competing cotton buyers providing for payment to the other on all cotton purchased in district and for notification of other when purchasing for certain mills; Chicago, W. & V. Coal Co. v. People, 114 Ill. App. 115, sustaining conviction of coal dealers under anti trust statute for conspiring to restrain trade in and fix price of coal; Purington v. Hinchliff, 120 Ill. App. 532, holding combination between building contractors, brick manufacturer and bricklayers of certain district to use only brick made by one concern which agrees to sell to no one else, illegal; Hunt v. Riverside Co.-op. Club, 140 Mich. 548, 112 Am. St. Rep. 420, 104 N. W. 40, holding combination of wholesale dealers in plumber's supplies and master plumbers agreeing to buy and sell only among members and at fixed price illegal; State v. Duluth Bd. of Trade, 107 Minn. 539, 23 L.R.A.(N.S.) 1277, 121 N. W. 395, holding combination whose main purpose is to increase trade and only remotely restricts competition, legal; Berry v. Donovan, 188 Mass. 362, 5 L.R.A. (N.S.) 905, 108 Am. St. Rep. 499, 74 N. E. 603, 3 Ann. Cas. 738, holding walking delegate of labor union liable to workman for inducing master to discharge him; Hein v. New York Stock Exch. 64 Misc. 537, 118 N. Y. Supp. 591, on right of third party to enjoin illegal restraint of trade.

Cited in footnote to Martell v. White, 64 L.R.A. 260, which sustains right of action by quarry owner against members of voluntary association to which he does not belong for enforcement of by-law imposing fine on members dealing with nonmembers.

Cited in notes (64 L.R.A. 734) on illegal trusts under modern anti-trust laws; (5 L.R.A.(N.S.) 138) on legality, under modern anti-trust acts of combina-

tions or agreements which restrict class of persons to whom commodities shall be sold or from whom bought; (74 Am. St. Rep. 267) on combinations constituting unlawful trusts.

Validity of by-laws.

Cited in note (136 Am. St. Rep. 1028) on validity of by-laws of corporations as to transfer of stock on their books.

46 L. R. A. 567, McCULLEY v. STATE, 102 Tenn. 509, 53 S. W. 134.

Legislative power to change judicial circuits.

Cited in State *ex rel.* Tyler v. King, 104 Tenn. 162, 57 S. W. 150, and State *ex rel.* Robinson v. Lindsay, 103 Tenn. 636, 53 S. W. 950, sustaining constitutionality of statutes redistricting judicial circuits; Proulx v. Graves, 143 Cal. 247, 76 Pac. 1025, sustaining ordinance passed by board of supervisors abolishing judicial townships containing justice's court in each, and consolidating them into one; Granger County v. State, 111 Tenn. 248, 80 S. W. 750, holding legislature has power to abolish particular chancery and circuit courts under constitution.

Cited in footnote to Love v. Liddle, 62 L. R. A. 482, which denies power to regulate jurisdiction of justices of peace by classification of cities in which they reside.

— To abolished existing offices.

Cited in Malone v. Williams, 118 Tenn. 479, 121 Am. St. Rep. 1002, 103 S. W. 798, holding statute vacating officer existing under city charter and creating similar ones in their places void; Grainger County v. State, 111 Tenn. 250, 80 S. W. 750, holding occupant of office created by constitution cannot be deprived of his office by legislative act, nor can his term be shortened nor his powers lessened.

Cited in footnote to McDonald v. Doust, 69 L.R.A. 220, which holds void statute abolishing county and creating two new counties from same territory with new county seat for each.

Effect of abolition of office.

Cited in State ex rel. Harris v. Hamby, 114 Tenn. 365, 84 S. W. 622, holding statute abolishing civil districts of county destroys all offices dependent upon district for their existence; Grainger County v. State, 111 Tenn. 249, 80 S. W. 750, holding circuit judge deprived of his office by act abolishing circuit court.

Constitutional provision for home rule.

Cited in Condon v. Maloney, 108 Tenn. 103, 65 S. W. 871, holding that legislature may authorize governor to fill by appointment newly created office until next general election.

Cause for removal from office.

Cited in Hagerty v. Shedd, 75 N. H. 396, 74 Atl. 1055, holding that "cause" means legal cause and contemplates a charge, notice, hearing and judgment of removal upon cause.

Cited in note (135 Am. St. Rep. 254) on what is cause for removal from office.

46 L. R. A. 614, O'ROUKE v. CITIZENS' STREET R. CO. 103 Tenn. 124, 76 Am. St. Rep. 639, 52 S. W. 872.

Passage ticket as contract.

Cited in Chudnovski v. Eckels, 232 Ill. 318, 83 N. E. 846, holding implied contract exists between passenger and street railway; Samuelson v. State, 116 Tenn. 490, 115 Am. St. Rep. 805, 95 S. W. 1012, holding passenger ticket not

property within meaning of statute prohibiting sale of montransferable signature tickets at discount.

Distinguished in Watson v. Louisville & N. R. Co. 104 Tenn. 200, 49 L. R. A. 456, 56 S. W. 1024, holding that purchaser of excursion ticket must comply with reasonable conditions printed thereon.

Liability for ejecting passenger presenting defective ticket.

Cited in Lawshe v. Tacoma R. & Power Co. 29 Wash. 685, 59 L. R. A. 352, footnote p. 350, 70 Pac. 118, sustaining right to substantial damages by one ejected from street car because of unnoticed mistake in transfer slip given by other conductor; Indianapolis Street R. Co. v. Wilson, 161 Ind. 159, 100 Am. St. Rep. 261, 66 N. E. 950, holding railway company liable for expulsion of passenger innocently presenting defective transfer and refusing to otherwise pay fare; Smith v. Southern R. Co. 88 S. C. 426, 34 L.R.A.(N.S.) 711, 70 S. E. 1057, holding that conductor must before expelling passenger holding ticket which he thinks was issued in violation of rules of road, had reasonable explanation of passenger as to how he obtained possession of ticket; Little Rock R. & Electric Co. v. Goerner, 80 Ark. 163, 7 L.R.A.(N.S.) 101, 95 S. W. 1007, 10 Ann. Cas. 273; Memphis Street R. Co. v. Graves, 110 Tenn. 235, 100 Am. St. Rep. 803, 75 S. W. 729; Morrill v. Minneapolis Street R. Co. 103 Minn. 377, 123 Am. St. Rep. 341, 115 N. W. 395,—holding street railway liable for expulsion of passenger innocently presenting defective transfer and refusing otherwise to pay fare; Georgia R. & Electric Co. v. Baker, 125 Ga. 567, 7 L.R.A.(N.S.) 106, 114 Am. St. Rep. 246, 54 S. E. 639, 3 Ann. Cas. 484, allowing damages for threat to expell passenger innocently presenting defective transfer and refusing to otherwise pay fare; Hornesby v. Georgia R. & Electric Co. 120 Ga. 915, 48 S. E. 339, 1 Ann. Cas. 391, holding street railway not liable for ejection of passenger presenting overdue transfer where initial car was delayed and passenger made unsuccessful attempt to reach transfer point in time; Cincinnati, N. O. & T. P. R. Co. v. Harris, 115 Tenn. 510, 5 L.R.A.(N.S.) 782, 91 S. W. 211, holding railroad company liable for indignities to woman passenger by employees where through its negligence she was prevented from procuring ticket over its line; Golden v. Pittsburg R. Co. 28 Pa. Super. Ct. 317, holding non suit improper where passenger ejected from car for producing defective transfer.

Cited in footnotes to Southern R. Co. v. Wood, 55 L. R. A. 536, which holds carrier liable for ejection of passenger whose round-trip ticket was unstamped through inability to find agent; Nashville Street R. Co. v. Griffin, 49 L. R. A. 451, which denies authority to eject passenger who, after paying fare inside station, enters car which has stopped just outside station.

Cited in note (122 Am. St. Rep. 646) on liability of railroad companies for negligence, mistakes, and misrepresentations of ticket agents.

Street car transfers.

Cited in Illinois C. R. Co. v. Gortikov, 90 Miss. 806, 14 L.R.A.(N.S.) 468, 122 Am. St. Rep. 324, 45 So. 363; Hornesby v. Georgia R. & Electric Co. 120 Ga. 916, 48 S. E. 339, 1 Ann. Cas. 391,—on reasonableness of conditions on transfer slip.

Cited in footnote to *Ex parte* Lorenzen, 50 L. R. A. 55, which sustains penal ordinance against passenger selling or giving away street railway transfer.

Cited in notes (118 Am. St. Rep. 463, 465; 7 L.R.A.(N.S.) 99) on rights and duties of passenger receiving defective transfer.

Prejudicial instruction.

Cited in Louisville & N. R. Co. v. Satterwhite, 112 Tenn. 208, 79 S. W. 106,

holding instruction based upon assumed facts which are disproved by evidence, reversible error if prejudicial to losing party.

Admissibility of exclamations as part of res gestae.

Cited in note (20 L.R.A.(N.S.) 142) on nonparticipation in accident or affray as rendering one's statements or exclamations inadmissible as res gestae.

Validity of regulation requiring passenger to pay disputed fare.

Cited in note (2 L.R.A.(N.S.) 695) on validity of regulation requiring passenger to pay disputed fare.

46 L. R. A. 618, BLIEN v. RAND, 77 Minn. 110, 79 N. W. 606.

46 L. R. A. 623, McKAY v. WARD, 20 Utah, 149, 57 Pac. 1024.

Liability of grantee assuming mortgage.

Cited in Colchester Sav. Bank v. Brown, 75 Conn. 70, 52 Atl. 316, upholding mortgagees right of action against last grantee assuming mortgage, when chain of assumptions from mortgagor to defendant, unbroken.

Cited in note (22 L.R.A.(N.S.) 496) on right of mortgagee to enforce purchaser's promise to pay mortgage where grantor or promisee was not himself liable.

Right of third person to sue on contract for his benefit.

Cited in Utah Nat. Bank v. Nelson, 38 Utah, 188, 111 Pac. 907, holding that where contract has been made between two parties for benefit of third, action will lie in name of party to be benefited.

46 L. R. A. 636, HUGHES v. AUBURN, 161 N. Y. 96, 55 N. E. 389.

Municipal liability for negligence.

Approved in Metz v. Ashville, 150 N. C. 753, 22 L.R.A.(N.S.) 944, 64 S. E. 881, denying city's liability for death of person from fever communicated to him from defective sewer.

Cited in Williams v. Greenville, 130 N. C. 96, 57 L. R. A. 208, footnote p. 207, 89 Am. St. Rep. 860, 40 S. E. 977 (disapproved in dissenting opinion), denying city's liability for sickness, etc., from permitting filth from drainage ditch to flow on adjoining land; Folk v. Milwaukee, 108 Wis. 363, 84 N. W. 420, denying city's liability for death of pupil caused by escape into school building of gas from defective sewer; Workman v. New York, 179 U. S. 580, 45 L. ed. 327, 21 Sup. Ct. Rep. 212 (dissenting opinion), majority holding city liable for collision of fire boat with another vessel while responding to fire alarm; Oakes Mfg. Co. v. New York, 141 App. Div. 132, 125 N. Y. Supp. 1030, holding that city is not liable for negligence for nonuser or misuser in maintenance of its water supply system so far as furnishing water itself is concerned.

Cited in footnotes to Uppington v. New York, 53 L. R. A. 551, which denies city's liability for failure to select best possible route or adopt best possible plan for sewer; Huffmire v. Brooklyn, 48 L. R. A. 421, which sustains city's liability for destruction of oysters by sewage cast on beds.

Cited in notes (61 L.R.A. 699) on duty and liability of municipality with respect to drainage; (22 L.R.A.(N.S.) 940) on liability of municipality for death or sickness caused by sewage or drainage; (38 L.R.A.(N.S.) 152) on liability of municipality for death caused by negligence in the performance of a governmental function.

Distinguished in Munn v. Hudson, 61 App. Div. 347, 70 N. Y. Supp. 525, holding municipality liable for injury to property and health of owner by flooding of basement of house from negligently constructed sewer; Keever v. Mankato,

113 Minn. 67, 33 L.R.A.(N.S.) 344, 129 N. W. 158, Ann. Cas. 1912 A, 216, holding that city was liable for its negligence in its private capacity for permitting its water supply to become polluted by reason whereof plaintiff contracted typhoid fever; Ft. Worth & R. G. R. Co. v. Glenn, 97 Tex. 589, 65 L.R.A. 819, 104 Am. St. Rep. 894, 80 S. W. 992, 1 Ann. Cas. 270, holding action may be maintained for sickness resulting from nuisance on adjoining property of private person.

Rights of deceased as basis of action for causing death.

Cited in Louisville R. Co. v. Raymond (Louisville R. Co. v. Taylor) 135 Ky. 747, 27 L.R.A.(N.S.) 180, 123 S. W. 281, holding action for death by wrongful act barred by settlement made with deceased before his death.

Cited in footnote to Southern Bell Teleph. & Teleg. Co. v. Cassin, 50 L. R. A. 694, which holds right of action by widow or children for death barred by voluntary settlement of cause of action for injuries during deceased's lifetime.

Who may maintain action for nuisance.

Cited in Elliott v. Mason, 76 N. H. 231, 37 L.R.A.(N.S.) 362, 81 Atl. 701, holding that mere licensee of right of way cannot maintain action against township for nuisance in maintaining open ditch rendering private way unsafe.

Cited in note (34 L.R.A.(N.S.) 560) on right of one in possession to maintain action for nuisance without proving title.

46 L. R. A. 641, PEOPLE v. FIELDING, 158 N. Y. 542, 70 Am. St. Rep. 495, 53 N. E. 497.

Referred to in case of witness tried for perjury, in People v. Doody, 172 N. Y. 171, 64 N. E. 807, Affirming 72 App. Div. 375, 76 N. Y. Supp. 606.

Improper language of counsel as ground for reversal.

Cited in People v. Priori, 164 N. Y. 467, 58 N. E. 668, holding declarations by district attorney as to law of case, and statements as to light punishment for murder in defendant's native country, improper; People v. Mull, 167 N. Y. 253, 60 N. E. 629, holding district attorney's appeal to jury's fears as to public imputation of improper motives should they acquit, ground for reversal; People v. Shanley, 49 App. Div. 63, 63 N. Y. Supp. 449, holding statement that prisoner's counsel offered to let him plead guilty, reversible error; People v. Smith, 55 App. Div. 372, 66 N. Y. Supp. 886, holding district attorney's statement that he would use prisoner, if convicted, to give state's evidence, and ask court to suspend sentence, reversible error; People v. Milks, 55 App. Div. 384, 66 N. Y. Supp. 889, holding district attorney's statement in opening arson case, that defendant had other fires, and statements as to reputation of defendant's counsel for fixing witnesses and jurors, reversible error; People v. Bissert, 71 App. Div. 132, 75 N. Y. Supp. 630 (distinguished in dissenting opinion), holding statement on trial of officer for bribe-taking, that it was common knowledge that disorderly houses could not run without police approval, and that jury failing to convict would be *particeps criminis*, reversible error; Stewart v. Metropolitan Street R. Co. 72 App. Div. 465, 76 N. Y. Supp. 540, holding counsel's misstatement of evidence and inflammatory language regarding defendant corporation, reversible error; Blackman v. West Jersey & S. R. Co. 68 N. J. L. 5, 52 Atl. 370, holding reversible error, failure of court to interpose, upon objection, against attorney's going outside facts in summing up; People v. Benham, 160 N. Y. 435, 55 N. E. 11, holding characterization of defendant by district attorney, objected to as unwarranted, sufficiently retracted by asking jury to disregard it; People v. Doody, 72 App. Div. 388, 76 N. Y. Supp. 606, dissenting opinion by Fursman, J., who holds statements by district attorney in opening, not susceptible of proof, ex-

citing prejudice, error; People v. Snyder, 90 App. Div. 424, 86 N. Y. Supp. 415, declaring that district attorney in presenting case to jury must keep in more narrow groove than counsel in civil action; People v. Conrow, 200 N. Y. 369, 93 N. E. 943, holding that statements and charges of third person repeated to jury by district attorney in murder case for purpose of influencing it in its deliberation upon question of defendant's guilt is reversible error; State v. Kaufmann, 22 S. D. 439, 118 N. W. 337, holding that under code prejudicial misconduct of counsel for state is reviewable on appeal from order denying new trial; State v. Holburn, 23 S. D. 213, 121 N. W. 100, holding that where defendant did not ask court to advise jury that it was misconduct for state's attorney to ask certain question of defendant's witness may not complain if that court did not so advise; State v. Hinkley, 81 Kan. 848, 850, 106 Pac. 1088, holding refusal to instruct jury to disregard prosecuting attorney's statement as to his opinion of accused's guilt not prejudicial error where it appears opinion might reasonably be derived from evidence; Cox v. Territory, 2 Okla. Crim. Rep. 679, 104 Pac. 378, holding statement by prosecuting attorney that if defendant was not guilty he would stop prosecuting horse thieves, prejudicial; Vickers v. United States, 1 Okla. Crim. Rep. 465, 98 Pac. 467, granting new trial where prosecuting attorney over objection used language calculated to prejudice jury and attempted to coerce them and appealed to their passions; People v. Wolf, 183 N. Y. 472, 76 N. E. 592, granting new trial where prosecuting attorney in opening address related heinous crimes not charged in indictment committed on complaining witness by other persons; People v. Wolf, 107 App. Div. 455, 95 N. Y. Supp. 264 (dissenting opinion) on prejudicial remarks of prosecuting attorney as error.

Annotation in 46 L. R. A. 641, referred to particularly in State v. Landano, 74 Conn. 645, 51 Atl. 860, refusing to reverse conviction for improper remarks of the state's attorney in his argument, to which no objection was made on the trial; Powers v. State, 75 Neb. 230, 121 Am. St. Rep. 801, 106 N. W. 332, holding remarks of prosecuting attorney to jury that refusal of married woman to testify as to acts of adultery was proof of her guilt, prejudicial; State v. Williams, 28 Nev. 412, 82 Pac. 353, holding statement by prosecuting attorney in opening argument that confession by accused was voluntarily made and reference to contents thereof which he said he "might" introduce in evidence but which he did not, not prejudicial.

Cited in footnote to State v. Irwin, 60 L. R. A. 716, which holds repeatedly asking on cross-examination, son of one accused of rape, if he had not stated suspicion of father's having committed similar offense with other girls, reversible error.

Cited in notes (30 L.R.A.(N.S.) 797) on reference by prosecuting attorney, in argument to jury, to attempts to tamper with witnesses or jurymen as ground for reversal; (34 L.R.A.(N.S.) 811) on prosecutor's comment on failure to produce witness as ground for reversal; (38 L.R.A.(N.S.) 1130) on reference by prosecuting attorney, in argument to jury, to result in another case.

Distinguished in People v. Reilly, 49 App. Div. 221, 63 N. Y. Supp. 18, holding district attorney's reading indictment in opening, not reversible error; Howell v. Press Pub. Co. 48 App. Div. 320, 62 N. Y. Supp. 908, holding discussion of pictures in paper placed in evidence, containing alleged libel, not reversible error; Mainz v. Lederer, 21 R. I. 373, 43 Atl. 876, holding counsel's statement in breach of promise case that outside of New England defendant would have been hung for what he did, not reversible error; People v. Hallen, 48 App. Div. 41, 62 N. Y. Supp. 573, holding improper statements by prosecutor not reversible error where

court corrects their effect; State v. Barker, 68 N. J. L. 27, 52 Atl. 284, holding remark made by counsel in summing up, justifiable.

Necessity that conviction be according to legal principles.

Cited in People v. Cronk, 40 App. Div. 207, 58 N. Y. Supp. 13, holding one cannot be convicted on suspicion.

46 L. R. A. 672, HOFFMAN v. KING, 160 N. Y. 618, 73 Am. St. Rep. 715, 55 N. E. 401.

Followed without discussion in Van Inwegen v. Port Jervis, M. & N. Y. R. Co. 165 N. Y. 626, 58 N. E. 878; Dougherty v. King, 165 N. Y. 657, 59 N. E. 1121; Scott v. King, 51 App. Div. 619, 64 N. Y. Supp. 626.

Liability for setting fire.

Approved in Hitchcock v. Riley, 44 Misc. 264, 89 N. Y. Supp. 890, holding farmer clearing land by use of fire not liable for burning of property on lot second removed where fire not directly communicated.

Cited in footnotes to Owen v. Cook, 47 L. R. A. 646, which holds one starting back fire to protect own property not liable for loss which would have resulted from original fire; Kansas City, Ft. S. & M. R. Co. v. Blaker, 64 L. R. A. 81, which holds placing structure on railroad right of way with company's consent not contributory negligence preventing recovery for burning of other property by fire spreading therefrom.

Cited in note (123 Am. St. Rep. 578) on duty and liability of land owners to adjoining proprietors.

Disapproved in Alabama & V. R. Co. v. Barrett, 78 Miss. 437, 28 So. 820, holding railroad company liable for fire spreading from lands of third person.

Proximate cause.

Cited in Trapp v. McClellan, 68 App. Div. 365, 74 N. Y. Supp. 130, holding, where evidence as to cause of accident undisputed, question of proximate cause of injury is for court; Murphy v. New York, 89 App. Div. 97, 85 N. Y. Supp. 445, holding negligent act of city in breaking gas main not proximate cause of death of one entering manhole to assist another overcome with gas; Koch v. Fox, 71 App. Div. 298, 75 N. Y. Supp. 913, raising, without deciding, question whether negligent injury causing insanity of person jumping into river and dying of pneumonia was proximate cause of death; Hartman v. Berlin & J. Envelope Co. 71 Misc. 38, 127 N. Y. Supp. 187, holding that master's failure to guard belt, when it is apparent accident would not have happened if belt had been guarded, is proximate cause of injury to employee where latter was struck by barrel he was trying to lift, which threw him against unguarded belt; Neale v. New York Steam Co. 147 App. Div. 730, 132 N. Y. Supp. 71, holding that construction of sewer is proximate cause of damage to wine in cellar where it appears that such work caused street to subside which caused pipes of steam heating company to break and overheat cellar in which wine was stored; Fanizzi v. New York & Q. C. R. Co. 113 App. Div. 442, 99 N. Y. Supp. 281; Kremer v. New York Edison Co. 102 App. Div. 442, 92 N. Y. Supp. 883,—holding where evidence as to cause of accident undisputed, question of proximate cause of injury is for court; McGovern v. Degnon-McLean Contracting Co. 120 App. Div. 527, 105 N. Y. Supp. 408, holding starting of horses, not swinging of bucket, proximate cause of injury to bystander by bucket where he sought to avoid horses scared by bucket and ran into bucket.

Fires set by locomotives.

Cited in O'Reilly v. King, 72 App. Div. 359, 76 N. Y. Supp. 515, holding, in action for fire alleged to have started from locomotive sparks, evidence that

other locomotives scattered fire at another point, improper; Connelly v. Erie R. Co. 68 App. Div. 546, 74 N. Y. Supp. 277, dissenting opinion by McLennan, J., who holds railroad negligent in permitting accumulation of combustible material on right of way; Decora v. Rutland R. Co. 142 App. Div. 914, 126 N. Y. Supp. 1100 (dissenting opinion), on liability of railroad company for fire originating from sparks from locomotives; Nichols v. Lehigh Valley R. Co. 61 Misc. 197, 114 N. Y. Supp. 942, holding railroad company negligent in permitting accumulation of dry hay on right of way; Phelps v. New York C. & H. R. R. Co. 48 Misc. 29, 96 N. Y. Supp. 72, holding railroad company liable for damage by fire negligently started by it on adjoining land belonging to third party; McDonough v. New York C. & H. R. R. Co. 124 App. Div. 40, 108 N. Y. Supp. 270, holding railroad company not liable for burning of trees on land remote from right of way where fire is indirectly communicated thereto.

Criticised in Florida East Coast R. Co. v. Welch, 53 Fla. 167, 44 So. 250, 12 Ann. Cas. 210, holding railroad company liable for fire spreading from lands of third person.

46 L. R. A. 679, SATTLER v. HALLOCK, 160 N. Y. 291, 73 Am. St. Rep. 686, 54 N. E. 667.

Construction of contracts.

Cited in Water Comrs. v. Westchester County Waterworks Co. 71 App. Div. 549, 76 N. Y. Supp. 11, holding entire agreement is to be regarded in determining true construction; Hargraves Mills v. Gordon, 137 App. Div. 701, 122 N. Y. Supp. 245, holding that contracts must be construed according to intention of parties, if their intention be clear, and if not, then as they have shown it by practical construction; Williams v. Gridley, 110 App. Div. 527, 96 N. Y. Supp. 978, holding failure of vendor to deliver all goods by April first not breach of contract "to fill all orders by April first or as soon thereafter as possible."

— According to practice of parties.

Cited in Ferguson Contracting Co. v. State, 70 Misc. 489, 126 N. Y. Supp. 808, holding that interpretation placed upon contract by parties is sound criterion by which to determine what contract means; Delaware Securities Co. v. Metropolitan Trust Co. 146 Fed. 606, holding practical construction given to trust agreement by parties thereto not controlling where meaning of instrument is clear; Doubleday, P. & Co. v. Shumaker, 60 Misc. 234, 113 N. Y. Supp. 83, holding construction placed upon transaction by parties thereto is controlling; Webb's Academy & Home for Shipbuilders v. Hidden, 118 App. Div. 717, 103 N. Y. Supp. 659, holding practical interpretation of contract by parties thereto of great weight in ascertaining what parties intended.

Bailment or sale.

Cited in Clark v. Gault, 77 Ohio St. 517, 83 N. E. 900, which holds delivery of United States bonds to bank at agreed interest to be returned in kind upon demand a bailment and not a sale; Farrow v. Wooley, 149 Ala. 378, 43 So. 144, on distinction between bailment and sale.

Cited in note (94 Am. St. Rep. 218) on what constitutes a transaction a sale.

46 L. R. A. 682, SOLOMON v. CONTINENTAL F. INS. CO. 160 N. Y. 595, 73 Am. St. Rep. 707, 55 N. E. 279.

Construction of insurance policies.

Cited in Porter v. Traders' Ins. Co. 164 N. Y. 510, 52 L. R. A. 429, 58 N. E. 641, holding condition in policy requiring submission to examination under oath,

production of books of account, etc., construable liberally in insured's favor; Meech v. National Acci. Soc. 50 App. Div. 147, 63 N. Y. Supp. 1008, holding that provisions of insurance policy should be reasonably construed; Employers Liability Assur. Corp. v. Light, Heat & Power Co. 28 Ind. App. 441, 63 N. E. 54, sustaining liberal construction of word "immediately" in provision that corporation may provide medical attendance immediately necessary on account of seriousness of accident; St. Paul, F. & M. Ins. Co. v. Mittendorf, 24 Okla. 655, 28 L.R.A.(N.S.) 654, 104 Pac. 354, which holds failure to make proof of loss under oath insufficient compliance with policy requiring proof of loss to be sworn to.

Provisions as to time of giving notice of loss or injury.

Cited in Comstock v. Fraternal Acci. Asso. 116 Wis. 390, 93 N. W. 22, holding one entirely incapacitated by accident not bound to give notice thereof within time stated in policy; Munz v. Standard Life & Acci. Ins. Co. 26 Utah, 74, 62 L. R. A. 488, footnote p. 485, 99 Am. St. Rep. 830, 72 Pac. 182, holding insurer not released from liability for failure to furnish notice and proofs of death within required time by beneficiary not learning of death or of policy within such time; Will & B. Co. v. Rochester German Ins. Co. 140 App. Div. 692, 125 N. Y. Supp. 606, holding that if insured gives notice of loss within reasonable time he will be deemed to have complied with terms of policy requiring "immediate" notice; Whalen v. Western Assur. Co. 107 C. C. A. 590, 185 Fed. 493, holding that notice given nearly one month after boat sank, was not "prompt" within requirement of insurance policy, to give "prompt notice of disaster;" Continental Casualty Co. v. Lindsay, 111 Va. 391, 69 S. E. 344, holding that compliance with terms of accident insurance policy as to notice and proof of loss within reasonable time after knowledge of its existence is all that is necessary, although policy requires notice within 15 days after accident; Bacigalupi v. Phœnix Bldg. & Constr. Co. 14 Cal. App. 642, 112 Pac. 892, holding that requirement in surety bond that notice of default or loan should be given "promptly and immediately" means only that it be given within reasonable time; St. Paul F. & M. Ins. Co. v. Mittendorf, 24 Okla. 655, 28 L.R.A.(N.S.) 654, 104 Pac. 354, holding that in action on insurance policy, substantial compliance with requirement as to proof of loss is sufficient; Cady v. Fidelity & C. Co. 134 Wis. 329, 17 L.R.A.(N.S.) 269, 113 N. W. 967, holding service of notice of death by beneficiary as soon as possible after learning of existence of policy although sixty days after death, sufficient compliance with policy requiring immediate notice.

Cited in footnotes to Peabody v. Satterlee, 52 L. R. A. 956, which requires reception within time specified, not mere mailing, of statement as to time and origin of fire; Woodmen Acci. Asso. v. Byers, 55 L. R. A. 291, which holds failure to give notice of injury excused by derangement of insured; Travelers' Ins. Co. v. Myers, 49 L. R. A. 760, which holds nine months' delay in giving notice of injury fatal to recovery on employer's liability policy.

Presumption as to findings and judgment of lower court.

Cited in Fayerweather v. Ritch, 195 U. S. 304, 49 L. ed. 212, 25 Sup. Ct. Rep. 58, holding judgment of trial court against party executing releases, the validity of which was put in issue, res adjudicata as to their validity notwithstanding no special finding is made in regard thereto.

46 L. R. A. 687, SKANEATELES WATERWORKS CO. v. SKANEATELES, 161 N. Y. 154, 55 N. E. 562.

Motion for reargument denied in 161 N. Y. 658, 57 N. E. 1124.

Followed without special discussion in Warsaw Waterworks Co. v. Warsaw, 161 N. Y. 180, 55 N. E. 486.

Right of municipality to construct competing water system.

Affirmed in 184 U. S. 355, 46 L. ed. 585, 22 Sup. Ct. Rep. 400, sustaining constitutionality of statute authorizing municipality to construct competing water system.

Approved in Bienville Water Supply Co. v. Mobile, 186 U. S. 219, 46 L. ed. 1135, 22 Sup. Ct. Rep. 820, and Mobile v. Bienville Water Supply Co. 130 Ala. Ala. 383, 30 So. 445, holding grant of franchise to water company does not preclude legislature's authorizing city to construct water system.

Cited in Beauty Springs Water Co. v. Lyons Falls, 71 Misc. 578, 130 N. Y. Supp. 845, holding that water company operating under village franchise, cannot maintain action to restrain collection of taxes levied against it for purpose of paying bonds issued and expenses incurred for maintenance of municipal water systems; Waverly v. Waverly Waterworks Co. 69 Misc. 378, 125 N. Y. Supp. 339, holding that where village was empowered to secure water plant of its own, it is no answer to petition for that purpose, that village is already satisfactorily supplied by defendant.

Cited in footnote to North Springs Water Co. v. Tacoma, 47 L. R. A. 214, which sustains city's right to build own water works after granting franchise to water company.

Cited in notes (50 L. R. A. 145) on privilege of using streets as a contract within constitutional provision against impairing obligation of contracts; (61 L. R. A. 83, 87) on establishment and regulation of water supply.

Distinguished in Re Beauty Spring Water Co. 134 App. Div. 20, 118 N. Y. Supp. 659, holding water company supplying only part of village with water is subject to assessment for maintenance of municipal water plant.

City's rights after expiration of water company's franchise.

Cited in Cedar Rapids Water Co. v. Cedar Rapids, 118 Iowa, 257, 91 N. W. 1081, holding that water company cannot complain, after termination of franchise, of regulation of rates by city unfavorably affecting value of its property.

Power of village to purchase water works.

Cited in Water Comrs. v. Westchester County Waterworks Co. 71 App. Div. 549, 76 N. Y. Supp. 11, holding that village may, under statute providing for acquisition of water works, reserve in franchise right to purchase.

Obligation to take water.

Cited in Water Comrs. v. Westchester County Waterworks Co. 71 App. Div. 553, 76 N. Y. Supp. 11, holding that water company on condemnation cannot recover damages for deprivation of future business, where contract with village terminated.

Legislative dominion over streets.

Cited in Barhite v. Home Teleph. Co. 50 App. Div. 31, 63 N. Y. Supp. 659, holding power to grant franchise for instalation of telephone system vested in legislature; Heerwagen v. Crosstown Street R. Co. 90 App. Div. 279, 86 N. Y. Supp. 218, recognizing tendency of legislature to commit control of streets, as regards street railroads, to municipal authorities.

— Dominion over franchises.

Cited in Rochester & L. O. Water Co. v. Rochester, 84 App. Div. 78, 82 N. Y. Supp. 455, denying legislative power to impair vested property rights of water company in franchise granted by state; Electric City R. Co. v. Niagara Falls, 48 Misc. 93, 95 N. Y. Supp. 73, which holds city may grant franchise to street railway over same streets included in franchise of other company; Mt. Vernon v.

New York Inter Urban Water Co. 115 App. Div. 660, 101 N. Y. Supp. 232, on nature of right to supply water to city and private consumers.

Construction of public grants.

Cited in Palmer v. Hickory Grove Cemetery, 84 App. Div. 602, 82 N. Y. Supp. 973, holding public grants construable strictly so as to prevent rights taken from public or given to corporations, beyond words of grant.

Impairment of contract obligations.

Cited in Rochester v. Rochester R. Co. 98 App. Div. 537, 91 N. Y. Supp. 87, holding statute and ordinance requiring street railway to maintain surface roads inside its tracks, a contract which cannot be impaired by subsequent legislation.

Partial invalidity of statute.

Cited in Edwards v. Bruorton, 184 Mass. 531, 69 N. E. 328, holding that unconstitutional provision directing assessment without reference to benefits received does not invalidate whole statute in regard to construction of highways; Brennan v. New York, 122 App. Div. 480, 107 N. Y. Supp. 150, which holds unconstitutional provision as to appointment of successors of former police clerks does not invalidate provision in same act as to salary of police clerks; Metz v. Maddox, 121 App. Div. 154, 105 N. Y. Supp. 702, which holds unconstitutional provision abridging supreme court's jurisdiction in action to determine title to office of mayor does not invalidate whole statute providing for recount; People ex rel. American Exch. Nat. Bank v. Purdy, 196 N. Y. 285, 89 N. E. 838, holding unconstitutional provision prohibiting courts from granting relief in cases pending when act passed does not invalidate whole statute providing for reassessment.

46 L. R. A. 694, MARDEN v. DORTHY, 160 N. Y. 39, 54 N. E. 726.

What questions not reviewable by court of appeals.

Cited in Reed v. McCord, 160 N. Y. 335, 54 N. E. 737, holding that court of appeals cannot review sufficiency of evidence to sustain undirected verdict unanimously affirmed by appellate division, upon appeal allowed in action for personal injury; Genet v. Delaware & H. Canal Co. 167 N. Y. 609, 60 N. E. 1111, and Krekeler v. Aulbach, 169 N. Y. 374, 62 N. E. 416, holding that exception to finding of fact unanimously affirmed presents no question reviewable by court of appeals; Cronin v. Lord, 161 N. Y. 96, 55 N. E. 397, holding exception directed to sufficiency of evidence unavailable in court of appeals where judgment unanimously affirmed by appellate division; Consolidated Electric Storage Co. v. Atlantic Trust Co. 161 N. Y. 611, 56 N. E. 145, and Niagara Falls v. New York C. & H. R. R. Co. 168 N. Y. 611, 61 N. E. 185, holding that court of appeals cannot review sufficiency of evidence on appeal from unanimous decision; Kennedy v. Mineola, H. & F. Traction Co. 178 N. Y. 512, 71 N. E. 102, holding that court of appeals may not construe conveyances upon which title is based, when question of title was determined by trial court and unanimously affirmed by appellate division; Carpenter v. Taylor, 164 N. Y. 182, 58 N. E. 53, dissenting opinion by Parker, Ch. J., who holds that court of appeals cannot review right to judgment upon undirected verdict, unanimously affirmed by appellate division; Kelley v. Buffalo Sav. Bank, 180 N. Y. 176, 69 L.R.A. 322, 105 Am. St. Rep. 720, 72 N. E. 995, holding court of appeals will assume every fact found is based on sufficient evidence where appellate division has unanimously affirmed judgment; McManus v. McManus, 179 N. Y. 341, 72 N. E. 235, holding court of appeals will not review error in decision based upon undisputed evidence not contained within finding of fact where appellate division has unanimously affirmed same.

Review of decisions without findings of fact.

Cited in Critten v. Chemical Nat. Bank, 171 N. Y. 231, 57 L. R. A. 535, 63 N. E. 969, holding on appeal from short form decision, that all facts necessary to support judgment will be presumed found; Hutton v. Smith, 175 N. Y. 378, 67 N. E. 633, holding short form decision, unanimously affirmed by appellate division, conclusive upon court of appeals as to facts necessary to sustain it; Young v. Valentine, 177 N. Y. 350, 69 N. E. 643, sustaining assumption under short form decision in plaintiff's favor of finding of all facts alleged by him, and failure to find facts alleged by defendant; Brokaw v. Duffy, 165 N. Y. 404, 59 N. E. 196, dissenting opinion by O'Brien, J., who holds in short form decision that facts supporting are deemed found, and inconsistent facts negatived.

Estoppel.

Cited in Larremore v. Squires, 30 Misc. 65, 62 N. Y. Supp. 885, holding tenant estopped by lease from asserting, against mortgagee, possession under prior landlord; Wilcox v. American Teleph. & Teleg. Co. 176 N. Y. 118, 98 Am. St. Rep. 650, 68 N. E. 153, holding party signing conveyance without reading it not estopped to show fraudulent statement by grantee's agent that it was a receipt; Conklin v. Benson, 159 Cal. 792, 36 L.R.A.(N.S.) 544, 116 Pac. 34, holding that person who signs papers knowing that they would convey property when delivered, and delivers them to her agent, cannot set up fraud of agent as against innocent purchaser; Black v. Mutual L. Ins. Co. 117 App. Div. 454, 102 N. Y. Supp. 722, holding insurance company not estopped from denying liability on policy where assignee of policy (plaintiff) represented that forged signature of beneficiary was genuine.

Notice as affecting validity of title or encumbrances.

Cited in Reilly v. Reilly, 63 App. Div. 171, 71 N. Y. Supp. 287, sustaining mortgage given by grantee of an incompetent; Treadwell v. Clark, 114 App. Div. 504, 100 N. Y. Supp. 1, holding transferee of pledgee of certificate of stock unindorsed by pledgor does not acquire title thereto in absence of estoppel of pledgor; Vogel & B. Co. v. Montgomery, 133 App. Div. 841, 118 N. Y. Supp. 10, holding mechanic's lien filed against one in possession under unrecorded deed takes priority over subsequent liens filed against owner of record.

Cited in note (13 L.R.A.(N.S.) 91) on possession of land as notice of title.

Distinguished in Cornell v. Maltby, 165 N. Y. 561, 59 N. E. 291, sustaining mortgage taken in reliance on record title from transferee of fraudulent grantee; Swanstrom v. Day, 46 Misc. 313, 93 N. Y. Supp. 192, refusing to set aside mortgage in land conveyed to mortgagor through undue influence where mortgagee had no notice thereof.

Issues raised by allegation of fraud.

Cited in Austen v. Richardson, 67 App. Div. 167, 73 N. Y. Supp. 731, holding only issues of fact raised by allegation of defendant in foreclosure that signature to mortgage was obtained by fraud.

Validity of deed procured by fraud.

Cited in Reilly v. Reilly, 63 App. Div. 171, 71 N. Y. Supp. 287, holding grantor entitled to have deed, procured from him while too ill to understand business, declared void; Darragh v. Rowe, 109 App. Div. 565, 96 N. Y. Supp. 666, holding heir or grantor of lands conveyed to grantee through fraud cannot assert equitable lien on other lands purchased by fraudulent grantee with proceeds derived from land so conveyed.

Cited in note (36 L.R.A.(N.S.) 540) on right, as against subsequent bona

fide purchaser, to avoid deed because of deception as to contents or character of paper signed.

Burden of proving validity of transaction.

Cited in Reilly v. Reilly, 63 App. Div. 171, 71 N. Y. Supp. 287, holding burden on grantee to show validity of transaction where relations of parties such as to render unfair advantage probable.

46 L. R. A. 706, WHITE v. UNDERWOOD, 125 N. C. 25, 74 Am. St. Rep. 630, 34 S. E. 104.

46 L. R. A. 712, BOLLES v. OUTING CO. 23 C. C. A. 594, 45 U. S. App. 449, 77 Fed. 966.

Affirmed in 175 U. S. 262, 44 L. ed. 156, 20 Sup. Ct. Rep. 119.

Reaffirmed on second appeal in 32 C. C. A. 604, 45 U. S. App. 757, 89 Fed. 1014.

Penalty recoverable for infringing copyright.

Cited in Falk v. Curtis Pub. Co. 46 C. C. A. 203, 107 Fed. 128, Affirming 102 Fed. 968, holding penalty recoverable for infringing copyright limited to copies found in infringer's possession; Hills & Co. v. Hoover, 220 U. S. 333, 55 L. ed. 487, 31 Sup. Ct. Rep. 402, Ann. Cas. 1912 C, 562, holding that in Federal circuit court within Pennsylvania owner of copyright for engraving is restricted to single action to find and seize copies alleged to infringe and to recover money penalty therefor; Werckmeister v. American Tobacco Co. 207 U. S. 382 52 L. ed. 256, 28 Sup. Ct. Rep. 124, holding under statute owner of copyright cannot maintain separate action to recover penalty after having recovered possession of articles infringing copyright; American Tobacco Co. v. Werckmeister, 76 C. C. A. 647, 146 Fed. 376, holding right to maintain action under statute for infringement of copyright not dependent upon plaintiff's ownership or former right of possession.

Essentials of copyright notice.

Cited in Hoertel v. Raphael Tuck Sons & Co. 94 Fed. 845, holding notice omitting date will not sustain action for penalty for false copyright notice; Hills & Co. v. Austrich, 120 Fed. 863, holding sufficient, copyright notice reciting "Copyright, 1902, Published by Hills & Co., Ltd., London, England;" Record & Guide Co. v. Bromley, 175 Fed. 166, holding copyright notice void for want of date where date placed below black line drawn completely across column, rest of notice being above.

Cited in note (66 L.R.A. 446) on immaterial omissions from notice of copyright.

Jurisdiction of suits to recover penalty for infringing copyright.

Cited in Falk v. Curtis Pub. Co. 100 Fed. 79, holding that circuit court has jurisdiction of suits to recover penalty for infringing copyright.

Enforcing forfeiture of infringing publications.

Cited in Morrison v. Pettibone, 87 Fed. 331, holding replevin proper to enforce forfeiture of infringing plates and sheets; Falk v. Curtis Pub. Co. 102 Fed. 970, discussing, without deciding, proper form of action to enforce forfeiture of infringing publication.

What are proper subjects of copyright.

Cited in Edison v. Lubin, 58 C. C. A. 606, 122 Fed. 242, holding celluloid sheet containing 4,500 slightly differing pictures, "photograph" subject to copyright as work of art.

46 L. R. A. 715, OSBORNE v. LINDSTROM, 9 N. D. 1, 81 Am. St. Rep. 516, 81 N. W. 72.

When cause of action on judgment accrues.

Cited in footnote to Citizens' Nat. Bank v. Lucas, 56 L. R. A. 812, which holds that limitation runs against action on judgment from time of rendition.

Constitutionality of change in statute of limitations.

Cited in Power v. Kitching, 10 N. D. 258, 88 Am. St. Rep. 691, 86 N. W. 737, holding statute of limitations subject to change, provided sufficient time be given for bringing actions; Tipton v. Smythe, 78 Ark. 400, 7 L.R.A.(N.S.) 718, 115 Am. St. Rep. 44, 94 S. W. 678, 8 Ann. Cas. 521, sustaining statute fixing time within which state bonds might be called under varying conditions in as reasonable; Clark v. Beck, 14 N. D. 288, 103 N. W. 755, which holds amendatory statute limiting time in which to begin proceeding to foreclose by advertisement not applicable to right accruing before statute took effect until full limitation period has run thereafter; Wooster v. Bateman, 126 Iowa, 555, 102 N. W. 521, sustaining statute limiting time within which action to enforce judgment might be brought where same was approved March 27 and went into effect July 4 following; Mulvey v. Boston, 197 Mass. 184, 83 N. E. 402, 14 Ann. Cas. 349, holding thirty days a reasonable time for statute, limiting time within which to bring tort actions against cities, to take effect; Davidson v. Witthaus, 106 App. Div. 180, 94 N. Y. Supp. 428, holding six months a reasonable time for statute, limiting time within which to bring action to recover penalty imposed by statute on corporation, to take effect; Lamb v. Powder River Live Stock Co. 67 L.R.A. 561, 65 C. C. A. 570, 132 Fed. 443, which holds statute allowing but ninety days to bring action on foreign judgments accruing more than six years before enactment of statute, void as unreasonable; State Finance Co. v. Mather, 15 N. D. 388, 109 N. W. 350, 11 Ann. Cas. 1112, sustaining statute limiting time within which to assert right to land acquired by tax title and allowing one year for holders of certificates acquired prior to passage of act to enforce their rights.

Cited in note (1 L.R.A.(N.S.) 528) on constitutionality of statutes shortening period of limitations.

Criticised in Adams & F. Co. v. Kenoyer, 17 N. D. 304, 308, 16 L.R.A.(N.S.) 683, 116 N. W. 98, holding statute excepting from operation of prior statute, suspending running of statute of limitations during debtor's absence from state, actions foreclosing real estate mortgages, not applicable to such actions which accrued prior to passage of statute.

Retroactive statutes.

Cited in Schauble v. Schulz, 69 C. C. A. 581, 137 Fed. 391, holding words "have been or hereafter may be" in statute make same retroactive in operation.

Cited in footnote to Lamb v. Powder River Live Stock Co. 67 L.R.A. 558, which holds re-enactment of statute of limitations with shortened period as to judgments rendered outside of the state applicable to actions on judgments existing on time of its passage.

Cited in note (111 Am. St. Rep. 457, 459, 460) on retrospective operation of statutes of limitation.

Circumstances tolling statute of limitations.

Cited in note (133 Am. St. Rep. 77) on circumstances tolling statute of limitations as to judgments.

46 L. R. A. 721, DONOVAN v. ST. ANTHONY & D. ELEVATOR CO. 8 N. D. 585, 73 Am. St. Rep. 779, 80 N. W. 772.

Disqualification of witness by interest.

Cited in Ames v. Parrott, 61 Neb. 850, 87 Am. St. Rep. 536, 86 N. W. 503, holding plaintiff in attachment not proper witness of levy; Cross v. Robinson Point Lumber Co. 55 Fla. 382, 46 So. 6, 15 Ann. Cas. 588, holding cestui que trust competent witness to deed of land to his trustee where deed did not show his interest and subsequent grantee had no knowledge thereof.

Improper record as constructive notice.

Cited in American Mortg. Co. v. Mouse River Live Stock Co. 10 N. D. 295, 86 N. W. 965, holding record of instruments of which acknowledgment is defective not constructive notice; Betts-Evans Trading Co. v. Bass, 2 Ga. App. 722, 59 S. E. 8, holding record of conditional sale by corporation attested by notary public who was stockholder thereof, not constructive notice.

Cited in footnote to Blackman v. Henderson, 56 L. R. A. 902, which holds record of mortgage in name of fictitious person, acknowledged before mortgagor, not constructive notice to subsequent purchasers.

Cited in note (137 Am. St. Rep. 475) on effect of failure to execute and record chattel mortgage as prescribed by statute.

46 L. R. A. 724, PHILADELPHIA BALL CLUB v. PHILADELPHIA, 192 Pa. 632, 73 Am. St. Rep. 835, 44 Atl. 265.

Damages in eminent domain cases.

Cited in *Re* Race Street, 9 Pa. Dist. R. 616, 24 Pa. Co. Ct. 435, holding that good will of business cannot be considered in assessing value of property condemned; *Re* Chatham Street, 16 Pa. Super. Ct. 111, holding city's failure to relay pavement cannot be considered in assessing damages resulting from construction of sewer; Stevenson v. Ebervale Coal Co. 203 Pa. 332, 52 Atl. 201, holding damages for detention not allowable in action for injury to realty, when delay was caused by the exorbitance of the demands; Shevalier v. Postal Teleg. Co. 22 Pa. Super. Ct. 518, holding insruction in condemnation proceedings, to add "interest" from time party entitled to recovery, error; Davis v. Pennsylvania R. Co. 23 Lanc. L. Rev. 18, holding that measure of damages for taking of farm land for railroad is difference in market value of farm considered as whole, before and after taking; Burns v. Reynoldsville Borough, 48 Pa. Super. Ct. 132, holding that right to compensation for detention of payment of damages depends upon whether detention was caused by plaintiff's unreasonable demands or improper action of defendant; Pierce v. Lehigh Valley Coal Co. 15 Luzerne Leg. Reg. 255, holding that question of compensation for delay should not be submitted to jury where plaintiff's demand is clearly extravagant; Detroit v. Detroit United R. Co. 156 Mich. 115, 120 N. W. 600, allowing difference in value of abutting property before and after change of grade as damages therefor; Reece v. Rodgers, 40 Pa. Super. Ct. 181, holding instruction to include interest as damages in tort action, reversible error; Bond v. Philadelphia, 15 Pa. Dist. R. 894, holding legal rate of interest proper damages for detention of payment in condemnation proceedings.

Cited in footnotes to Earle v. Com. 57 L. R. A. 292, which holds doctor having office and practice in town within statutory provision for compensation to one having established business on land injured by its taking; Sawyer v. Com. 59 L. R. A. 726, which holds business not within statute for jury trial in eminent domain to determine damage to "property."

Cited in notes (51 L.R.A. 327) on damages in eminent domain cases as affect-

ed by loss of profits; (28 L.R.A.(N.S.) 66) on interest on unliquidated damages for change of grade.

Distinguished in Rea v. Pittsburgh & C. R. Co. 229 Pa. 112, 140 Am. St. Rep. 721, 78 Atl. 73, holding that action of trial judge in submitting to jury right of compensation for delay will not be reversed in proceedings for compensation for land appropriated by railroad where it appears delay was caused by appeals from award of viewers.

Who may recover for injury from change of grade.

Cited in Howley v. Pittsburg, 204 Pa. 431, 54 Atl. 347, holding owner acquiring title after passage of ordinance establishing grade, and owning the property at time actual damage by grading occurs, proper one to recover; Re Norwood Street, 12 Pa. Dist. R. 310, holding owner of property at time grading done is one entitled to damages therefor.

When statute begins to run.

Cited in *Re* Norwood Street, 28 Pa. Co. Ct. 558, holding that statute runs, not from establishment of grade, but from commencement of grading, upon right of action for damages from change of grade.

When damages and liability for assessment determinable.

Cited in Allegheny City v. King, 18 Pa. Super. Ct. 185, holding assessability of property for sewer determinable as of time when work done.

46 L. R. A. 730, IANNONE v. NEW YORK, N. H. & H. R. CO. 21 R. I. 452, 79 Am. St. Rep. 812, 44 Atl. 592.

Railroad employees or officers as passengers.

Cited in Shannon v. Union R. Co. 27 R. I. 476, 63 Atl. 488, holding switch tender riding on cars going to work an employee and not a passenger; Iarussi v. Missouri P. R. Co. 155 Fed. 657, holding under statute railroad company liable for injury to track repairer riding in caboose caused by collision.

Cited in footnotes to Travelers' Ins. Co. v. Austin, 59 L. R. A. 107, which holds railroad paymaster traveling on company's business from station to station not a passenger within meaning of accident policy; Sanderson v. Panther Lumber Co. 55 L. R. A. 908, which holds foreman of lumber camp riding on log train to and from camp, not passenger in absence of contract requiring him to pay fare; Peterson v. Seattle Traction Co. 53 L.R.A. 586, which holds member of construction gang riding home on ticket furnished as part consideration for services, is passenger; Dickinson v. West End Street R. Co. 52 L. R. A. 326, which holds street railway employee riding gratuitously under rule of company is passenger; Chattanooga Rapid Transit Co. v. Venable, 51 L. R. A. 886, which holds night watchman at depot getting on train to announce readiness to resume duty, a passenger; Louisville & N. R. Co. v. Weaver, 50 L. R. A. 381, which holds station agent riding on train without paying fare, several hours after work ended, a passenger; Whitney v. New York, N. H. & H. R. Co. 50 L. R. A. 615, which holds employee riding for own convenience on pass given in pursuance of contract, a passenger.

Cited in notes (12 L.R.A.(N.S.) 857) on existence of relationship where servant goes on master's premises at other than hours of actual labor; (19 L.R.A. (N.S.) 717) on employee of railroad or street railway as a passenger while being carried to or from work.

Distinguished in Simmons v. Oregon R. Co. 41 Or. 163, 69 Pac. 440, holding as passenger, employee traveling on private business when time is his own, although on ticket received on account of employment; Enos v. Rhode Island

Suburban R. Co. 28 R. I. 295, 12 L.R.A.(N.S.) 246, 67 Atl. 5, holding servant receiving passenger tickets in addition to money as wages, a passenger when riding on cars.

Right of employee to be carried to his work.

Cited in King v. Interstate Consol. R. Co. 23 R. I. 590, 51 Atl. 301, holding railroad company not bound, in absence of custom or agreement, to carry employee to or from work.

Who are fellow servants.

Cited in Dishon v. Cincinnati, N. O. & T. P. R. Co. 126 Fed. 200, holding employees operating train, fellow servants of one injured by trying to pass between cars left apart according to custom, although injury occurred after working hours; Dayton Coal & I. Co. v. Dodd, 37 L.R.A.(N.S.) 461, 110 C. C. A. 395, 188 Fed. 603, holding that employees being carried to and from work free by employer as part of contract of service are fellow servants of other employees and not passengers; Taylor v. George W. Bush & Sons Co. 6 Penn. (Del.) 313, 12 L.R.A.(N.S.) 860, 66 Atl. 884, holding employee of stable fellow servant of driver injured in stable while getting lunch box after working hours.

46 L. R. A. 732, NATIONAL BANK OF COMMERCE v. FEENEY, 9 S. D. 550, 70 N. W. 874.

Cited in National Bank v. Feeney, 12 S. D. 156, 46 L.R.A. 736, 76 Am. St. Rep. 594, 80 N. W. 186, giving history of case on former appeal.

When cashier's knowledge imputable to bank.

Cited in State Sav. Bank v. Montgomery, 126 Mich. 335, 85 N. W. 879, holding bank not chargeable with knowledge of fraud of cashier discounting notes made for his accommodation.

Cited in notes (2 L.R.A.(N.S.) 994) as to how far corporation charged with knowledge of managing officer engaged in illegal act; (29 L.R.A.(N.S.) 560, 563) on imputation of knowledge of personally interested officers to bank.

Presumption as to time of alteration in instrument.

Cited in Northwestern Mortg. Trust Co. v. Levtzow, 23 S. D. 563, 122 N. W. 600, holding that in absence of contrary evidence, erasure in deed is presumed to have been made prior to execution, and such presumption is stronger where instrument is act of public officer.

Cited in notes (39 L.R.A.(N.S.) 106) on presumption as to time of alteration in instrument and its effect on burden of proof; (127 Am. St. Rep. 443) on presumption as to time when indorsements of memoranda on negotiable instruments were made.

Burden of proof of alteration.

Cited in Colby v. Foxworthy, 80 Neb. 242, 114 N. W. 174, holding burden of proof of alteration of note by holder thereof after execution is on party alleging same.

Stipulation as to attorney's fees in note.

Cited in Cherry v. Sprague, 187 Mass. 117, 67 L.R.A. 38, 105 Am. St. Rep. 381, 72 N. E. 456, on validity of stipulation as to attorney's fees in note.

Allegation of value.

Cited in Johnson v. Hillenbrand, 18 S. D. 450, 101 N. W. 33, holding value of property need not be alleged in action to recover possession thereof unaccompanied by claim for immediate delivery.

Stipulations affecting negotiability.

Cited in Garnett v. Meyers, 65 Neb. 285, 91 N. W. 400, which holds agree-

ment in mortgage to pay taxes and assessments does not render note it is given to secure non-negotiable; Davis v. Brady, 17 S. D. 513, 97 N. W. 719, holding interest clause which made amount uncertain destroyed negotiability.

Cited in notes (40 L.R.A.(N.S.) 178) on negotiability as affected by discount for payment before maturity; (125 Am. St. Rep. 203, 204, 212) on agreements and conditions destroying negotiability.

Effect of memoranda on negotiable instruments.

Cited in Kimball v. Costa, 76 Vt. 294, 104 Am. St. Rep. 937, 56 Atl. 1009, 1 Ann. Cas. 610, holding that figures upon margin of note may be referred to for purpose of removing ambiguity or to supply amount when that has been omitted from body of note.

Cited in note (127 Am. St. Rep. 433) on effect of indorsements of memoranda on negotiable instruments at time of execution.

Directing jury to find value of property.

Cited in Albien v. Smith, 24 S. D. 215, 123 N. W. 675, holding that in action by chattel mortgagee against receiver of mortgagor where mortgage is valid and amount due not disputed, court may direct verdict for plaintiff on all issues except as to value of property.

46 L. R. A. 737, McCORD-BRADY CO. v. MILLS, 8 Wyo. 258, 56 Pac. 1003.

Levy on property after void conveyance.

Cited in footnote to Westervelt v. Hagge, 54 L. R. A. 333, which holds lien created by attachment levied on land fraudulently conveyed by debtor.

46 L. R. A. 745, BROWN v. EDISON ELECTRIC ILLUMINATING CO. 90 Md. 400, 78 Am. St. Rep. 442, 45 Atl. 182.

Negligence as to electric wires.

Cited in Griffith v. New England Teleph. & Teleg. Co. 72 Vt. 444, 52 L. R. A. 920, footnote p. 919, 48 Atl. 643, requiring telephone company to exercise care to prevent accident by lightning being conducted into house over wires; Potts v. Shreveport Belt R. Co. 110 La. 7, 98 Am. St. Rep. 452, 34 So. 103, holding electric company bound to make electric wires safe as to telephone wiremen, who by their occupation necessarily come in contact with them; Rowe v. Taylorville Electric Co. 114 Ill. App. 540, holding electric company liable for death of telephone lineman from shock received by electric wire negligently being permitted to touch telephone wire; Byron Teleph. Co. v. Sheets, 122 Ill. App. 10, holding telephone company liable for fire caused by negligently permitting ground wire to remain in customer's home; Shawnee Light & P. Co. v. Sears, 21 Okla. 24, 95 Pac. 449, holding electric company liable for injury to pedestrian touching charged guywire on public street; Ziehm v. United Electric Light & P. Co. 104 Md. 60, 64 Atl. 61, holding it duty of electric company to have its wires so placed and insulated as not to come in contact with telephone lineman; Martin v. Des Moines Edison Light Co. 131 Iowa, 740, 106 N. W. 359, which holds electric company must exercise high degree of watchfulness to protect employees from electric shocks.

Cited in footnotes to Brush Electric Light & P. Co. v. Lefevre, 49 L. R. A. 771, which denies liability for death by uninsulated electric light wire running above awning 16 feet above street; Boyd v. Portland General Electric Co. 52 L. R. A. 509, which holds want of sufficient assistance to promptly replace wires broken by severe storm not excuse, as matter of law, for delay; Cumberland Teleg. & Teleph. Co. v. Martin, 63 L. R. A. 469, which denies liability of telephone company negligently stretching inadequately insulated wire over roof of store porch,

to passerby who while taking refuge under roof from storm is killed by lightning escaping from wire; Alexander v. Nanticoke L. Co. 67 L.R.A. 475, which holds that corporation contracting to light building by electricity undertakes to protect occupants from injury by electric current so far as it can do so by highest degree of care, skill, and diligence in maintaining plant.

Cited in notes (34 L.R.A.(N.S.) 1091) on duty of company maintaining electric wire over private property; (100 Am. St. Rep. 521) on duties and liabilities of electric corporations.

Distinguished in Cumberland v. Lottig, 95 Md. 47, 51 Atl. 841, denying liability for maintaining electric wire near cornice of house where it is touched by boy taken there to look into adjoining theater.

Presumption of negligence.

Cited in Thomas v. Wheeling Electrical Co. 54 W. Va. 400, 46 S. E. 217, holding injury to theatre employee coming in contact with charged wire only eighteen inches from balcony raises presumption of negligence; Walter v. Baltimore Electric Co. 109 Md. 525, 22 L.R.A.(N.S.) 1181, 71 Atl. 953, holding injury to pedestrian caused by electric wire falling on him raises presumption of negligence.

Sufficiency of evidence.

Cited in Ohrstrom v. Tacoma, 57 Wash. 127, 106 Pac. 629, which holds evidence sufficient to establish that decedent met his death by coming in contact with wire.

46 L. R. A. 748, TOWNE v. THOMPSON, 68 N. H. 317, 44 Atl. 492.

Landlord's liability for defective premises.

Cited in Gallagher v. Button, 73 Conn. 176, 46 Atl. 819, denying landlord's liability to tenant for fall of fire escape; Cate v. Blodgett, 70 N. H. 317, 48 Atl. 281, denying lessor's liability to tenant, in absence of warranty, covenant to repair, or fraudulent concealment, for agent's failure to disclose defects; Smith v. State, 92 Md. 530, 51 L. R. A. 775, footnote p. 772, 48 Atl. 92, denying landlord's liability for injury to subtenant's child from defective balustrade on porch; Graff v. William J. Lemp Brewing Co. 145 Mo. App. 367, 129 S. W. 1005, holding landlord liable for injury to tenant from floor in dangerous condition where he had knowledge thereof and promised to repair; Dustin v. Curtis, 74 N. H. 269, 11 L.R.A.(N.S.) 509, 67 Atl. 220, 13 Ann. Cas. 169, denying liability of landlord for injuries to tenant resulting from failure to make agreed repairs; Glenn v. Hill, 210 Mo. 301, 16 L.R.A.(N.S.) 703, 109 S. W. 27, denying liability of landlord for death of tenant caused by failure to install furnace as orally agreed to; Stevens v. United Gas & Electric Co. 73 N. H. 170, 70 L.R.A. 124, 60 Atl. 848, on liability of landlord to third persons for defective condition of premises; Norris v. McFadden, 159 Mich. 438, 124 N. W. 54 (dissenting opinion), on liability of landlord for defects in rented premises; Clark v. St. Louis & S. R. Co. 234 Mo. 425, 137 S. W. 583, to the point that contractor's servant should not be permitted to maintain action against owner of premises merely because he is such servant, unless contractor could have maintained action if he instead of servant was injured.

Cited in footnote to Brady v. Klein, 62 L. R. A. 909, which denies right of action by licensee of tenant on landlord's covenant to repair, for injury due to defective condition of premises.

Cited in notes (17 L.R.A.(N.S.) 1165) on liability of owner for injury to tenant's guests or employees by defect in premises; (34 L.R.A.(N.S.) 799) on liability of landlord for injury to tenants from defects in premises; (92 Am.

St. Rep. 509, 510) on liability to third persons of lessors of real or personal property.

Infringement of common-law right.

Cited in Rhobidas v. Concord, 70 N. H. 115, 51 L. R. A. 387, 85 Am. St. Rep. 604, 47 Atl. 82, holding city liable for failure to furnish employee reasonably safe place to work.

46 L. R. A. 750, STATE v. BOARDMAN, 93 Me. 73, 44 Atl. 118.

Restrictions as to use of streets.

Cited in State v. Phillips, 107 Me. 255, 78 Atl. 283, holding that legislature has power to exclude automobiles from use of certain highways.

Cited in footnotes to State v. Bradford, 47 L. R. A. 144, which holds establishment of bicycle paths in highway by county authorities ratified by statute; State v. Rohart, 54 L. R. A. 947, which holds void, ordinance excluding heavily loaded vehicle with narrow tires from parkway.

Cited in note (31 L.R.A.(N.S.) 685) on validity of statutes or ordinances regulating horsedrawn vehicles in city streets.

Reasonableness as test of validity of ordinance.

Cited in Richmond Safety Gate Co. v. Ashbridge, 116 Fed. 222, enjoining enforcement of general regulation of bureau of building inspection requiring removal of full automatic elevator gates; People v. Detroit United R. Co. 134 Mich. 693, 63 L.R.A. 752, 97 N. W. 36, requiring clear showing of no necessity for more effective brake, or that one required will not meet needs, before declaring ordinance requiring equipment of cars with specified brakes unreasonable; Bishop v. State, 122 Tenn. 739, 127 S. W. 698, holding that question of reasonableness of ordinances is one for court and not for jury.

46 L. R. A. 753, YOUNG MEN'S CHRISTIAN ASSO. GYMNASIUM CO. v. ROCKFORD NAT. BANK, 179 Ill. 599, 70 Am. St. Rep. 175, 54 N. E. 297.

Rights of transferees of commercial paper.

Cited in Fidelity Trust Co. v. Palmer, 22 Wash. 475, 79 Am. St. Rep. 953, 61 Pac. 158, holding that bona fide purchaser of city warrant indorsed in blank, from apparent owner, acquires good title; Zeis v. Potter, 44 C. C. A. 668, 105 Fed. 674, holding that purchaser of certificate of purchase of real estate takes subject to equity of another known to have interest therein; Zollman v. Jackson Trust & Sav. Bank, 141 Ill. App. 269, which holds purchaser of negotiable note secured by trust deed for value and before maturity without notice of lack of consideration may enforce same notwithstanding insurance policy given at same time gives permission to insured to finish building covered by trust deed.

Cited in footnote to Tradesmen's Nat. Bank v. Curtis, 52 L. R. A. 430, which sustains right to enforce draft discounted for value before maturity, with knowledge that consideration was promise to deliver coal in future.

Cited in notes (46 L.R.A. 789) on rights of holder of negotiable paper transferred after maturity; (2 L.R.A.(N.S.) 767) on title and right to overdue note as between one induced by fraud to transfer it and one buying in good faith of fraudulent transferee.

Distinguished in Hide & Leather Nat. Bank v. Alexander, 184 Ill. 420, 56 N. E. 809, holding that bank taking note indorsed in blank, after maturity, from one fraudulently converting it, acquires no title; State Trust Co. v. Turner, 111 Iowa, 676, 53 L. R. A. 141, 82 N. W. 1029, holding that transferee of overdue note cannot enforce liability of holder of stock issued for overvalued property, where assignor could not have done so; Merchants' Loan & T. Co. v. Welter, 205 Ill.

649, 68 N. E. 1082, holding holder of note fraudulently put into circulation bound to show that he took it in good faith, for value, before maturity, in usual course of business.

Denied in Mayer v. Columbia Nat. Bank, 86 Mo. App. 113, holding that ward may replevin note transferred after maturity by curator.

Negotiability of instruments.

Cited in footnote to Thorpe v. Mindeman, 68 L.R.A. 146, which holds negotiability of note not destroyed by provision in mortgage securing same that insurance premiums paid by mortgagee shall constitute a lien added to the note.

46 L. R. A. 814, KANSAS CITY, FT. S. & M. R. CO. v. BECKER, 67 Ark. 1, 77 Am. St. Rep. 78, 53 S. W. 406.

Law of place governing actions for negligence.

Cited in Maloney v. Winston Bros. Co. 18 Idaho, 762, 47 L.R.A.(N.S.) 642, 111 Pac. 1080, to the point that parties to action for injury from negligence are bound by law of place where injury occurred.

Cited in footnote to Baltimore & O. S. W. R. Co. v. Read, 56 L. R. A. 468, which denies right to recover in other state for injury from fellow servant's negligence in state where no remedy given.

Cited in note (56 L. R. A. 216, 217) on conflict of laws as to action for death or bodily injury.

Effect of fellow servant's negligence on master's concurrent liability.

Cited in Chicago Mill & Lumber Co. v. Cooper, 90 Ark. 334, 119 S. W. 672, holding master furnishing defective machinery liable for injuries to servant caused thereby even though negligence of fellow servant contributes to injury; Marcum v. Three States Lumber Co. 88 Ark. 37, 113 S. W. 357, holding master liable for injuries of servant where negligence of vice-principal concurred with fellow servant's negligence.

Who are fellow servants.

Cited in St. Louis & S. F. R. Co. v. Furry, 52 C. C. A. 521, 114 Fed. 901, holding fireman not fellow servant with telegraph operator; St. Louis, I. M. & S. R. Co. v. Thurmond, 70 Ark. 415, 68 S. W. 488, holding locomotive hostler having men under him not fellow servant of the fire-knocker, under Arkansas statute; St. Louis, I. M. & S. R. Co. v. Harmon, 85 Ark. 507, 109 S. W. 295, holding section man riding in box car to place of work by order of his foreman not fellow servant of train crew on foreman; St. Louis, I. M. & S. R. Co. v. Holmes, 88 Ark. 184, 114 S. W. 221, holding brakeman and car inspector, not fellow servants.

Cited in footnote to Buck v. New Jersey Zinc Co. 60 L. R. A. 453, which holds blacksmith in factory working link for chain to keep box of dump car in position fellow servant of one using car.

Actions ex delicto, when barred.

Cited in St. Louis, I. M. & S. R. Co. v. Mynott, 83 Ark. 8, 102 S. W. 380, which holds action for wrongful expulsion of passenger barred by three year limitation, not by one year.

46 L. R. A. 820, VINELAND IRRIG. DISTRICT v. AZUSA IRRIGATING CO. 126 Cal. 486, 58 Pac. 1057.

Percolating waters.

Cited in McClintock v. Hudson, 141 Cal. 280, 74 Pac. 849, as to what is necessary to constitute underground water part of stream.

— Appropriation of.

Cited in Roberts v. Krafts, 141 Cal. 27, 74 Pac. 281, holding accumulation of subsurface water by means of tunnels and cuts, "development" thereof, within meaning of contract.

Cited as *dictum* in Katz v. Walkinshaw, 141 Cal. 131, 64 L. R. A. 252, 99 Am. St. Rep. 35, 74 Pac. 766, advocating adoption of different rule than common-law rule as to correlative rights in percolating waters, when physical features and character of a state require it.

Cited in footnotes to Willow Creek Irrig. Co. v. Michaelsen, 51 L. R. A. 280, which holds streams or springs or other waters arising through percolation after segregation from public domain not subject to appropriation; Brosnan v. Harris, 54 L. R. A. 628, which sustains right under statute to appropriate water of spring without natural outlet; Stillwater Water Co. v. Farmer, 60 L. R. A. 875, which sustains right to injunction against land owner draining, collecting, and diverting percolating waters solely to waste them; Huber v. Merkel, 62 L. R. A. 589, which holds that land owner's right to sink wells and gather percolating water cannot be taken away by legislation unless by exercise of eminent domain or police power.

— Injunctive remedy.

Cited in Montecito Valley Water Co. v. Santa Barbara, 144 Cal. 588, 77 Pac. 1113, advising granting of mandatory injunction rather than prohibitory one to restrain slight impairment of flow of stream by construction of tunnels for water supply of city; Barton v. Riverside Water Co. 155 Cal. 517, 23 L.R.A. (N.S.) 335, 101 Pac. 790, holding injunction will not issue at instance of one standing by for nine years and permitting sinking of well in artesian basin to restrain continuance of same.

Cited in footnote to Gagnon v. French Lick Springs Hotel Co. 68 L.R.A. 176, which sustains right to interlocutory injunction against malicious pumping by owners of surface of mineral water from large subterranean reservoir coming to surface in valuable springs on neighboring property.

"Development."

Cited in Garvey Water Co. v. Huntington Land & Improv. Co. 154 Cal. 242, 97 Pac. 428, holding installation of pumping station constituted "development work" within meaning of contract.

Old San Gabriel River.

Cited in Arroyo Ditch & Water Co. v. Baldwin, 155 Cal. 283, 100 Pac. 874, on where location of source of Old San Gabriel River is.

46 L. R. A. 825, CALIFORNIA NAV. & IMPROV. CO. v. UNION TRANSP. CO. 126 Cal. 433, 58 Pac. 936.

Dedication by agent.

Cited in note (31 L.R.A.(N.S.) 1024) on dedication of land by owner only.

Distinguished in Southern P. Co. v. Pomona, 144 Cal. 349, 77 Pac. 929, holding dedication of street by local agent of railroad company acting within apparent scope of his authority whose act is unquestioned by company is binding on it.

46 L. R. A. 829, GEORGE v. LOS ANGELES R. CO. 126 Cal. 357, 77 Am. St. Rep. 184, 58 Pac. 819.

Liability for maintaining attractions dangerous to children.

Cited in footnotes to Kramer v. Southern R. Co. 52 L. R. A. 359, which denies railroad company's liability for death of child by fall of pile of cross-ties in un-

used portion of street; Kopplekom v. Colorado Cement Pipe Co. 54 L. R. A. 284, which holds owner of uninclosed city lot liable for injury to young child by toppling over of large cement pipe used by children as plaything.

Cited in note (19 L.R.A.(N.S.) 1160) on attractive nuisance.

Distinguished in Lackett v. Henderson Bros. Co. 12 Cal. App. 668, 108 Pac. 151, holding electric company liable for death of eleven year old child from sagging charged wire having appearance of guywire; Cahill v. Stone, 153 Cal. 575, 19 L.R.A.(N.S.) 1098, 96 Pac. 84, holding railroad company liable for injury to twelve-year-old boy from push car left standing unguarded on public street.

Contributory negligence of children.

Cited in footnote to Gleason v. Smith, 55 L. R. A. 622, which denies liability for injury by collision with team, to twelve-year-old boy using street as playground.

Cited in notes (11 L.R.A.(N.S.) 169) on what acts of child in attempting to cross car tracks are negligence per se; (116 Am. St. Rep. 114) on presumption of exercise of care by children.

Contributory negligence question for jury.

Cited in Wahlgren v. Market Street R. Co. 132 Cal. 664, 62 Pac. 308, holding question whether plaintiff was contributorily negligent in crossing street car track which ran over sidewalk into car-barn, for jury.

Liability as to obstructions in street.

Cited in note (6 L.R.A.(N.S.) 908) on duty towards children with respect to obstructions or defects in street.

Distinguished in Grant v. Sunset Teleph. & Teleg. Co. 7 Cal. App. 277, 94 Pac. 368, holding telephone company liable for injuries received from driving into guy wire over roadway at might plaintiff not being negligent.

Proximate cause of injury.

Cited in note (26 L.R.A.(N.S.) 721) on proximate cause of injury from car or engine set in motion by third person.

46 L. R. A. 832, FENTON v. EDWARDS, 126 Cal. 43, 77 Am. St. Rep. 141, 58 Pac. 320.

Validity of foreign assignment for creditors.

Cited in note (65 L.R.A. 357, 362) on validity of foreign assignment for creditors.

46 L. R. A. 835, *Ex parte* CLARKE, 126 Cal. 235, 77 Am. St. Rep. 176, 58 Pac. 546.

Right to compel production of documents, etc.

Followed without discussion in Hibernia Sav. & L. Soc. v. Kaufman, 140 Cal. 72, 73 Pac. 750.

Cited in Morehouse v. Morehouse, 136 Cal. 337, 68 Pac. 976, holding it duty of court to order production of documents appearing from plaintiff's testimony to bear on issue; San Fernando Copper Min. & Reduction Co. v. Humphrey, 111 Fed. 773, holding that application for order to inspect must show that documents are competent evidence and material to issue; People v. Glaze, 139 Cal. 158, 72 Pac. 965, refusing to order production of typewritten copy of stenographer's notes of statement made by witness upon preliminary examination, in absence of proof as his assent as to its correctness as copy of his statements; *Ex parte* Rickert, 126 Cal. 244, 58 Pac. 549, holding commitment for contempt for instructing witness to disobey order to produce books and papers, when not done in presence of court, illegal; Kullman, S. & Co. v. Superior Ct. 15 Cal. App. 285, 114 Pac.

589, holding that order of subpœna duces tecum for private books and papers is in absence of clear showing that they contain evidence material to inquiry is absolutely void; Madera R. Co. v. Raymond Granite Co. 3 Cal. App. 686, 87 Pac. 27, which holds order to compel production of all of adverse parties books, unauthorized when no showing made that they contained material evidence: Ehrich v. Root, 134 App. Div. 438, 119 N. Y. Supp. 395, which holds order of court for examination of debtor's safe by receiver in supplementary proceedings, an unauthorized invasion of personal rights.

Cited in footnote to Reynolds v. Burgess Sulphite Fibre Co. 57 L. R. A. 949, which holds production of broken machinery for examination by experts intending to testify compellable.

Habeas corpus to review commitment for contempt.

Cited in Re Jewett, 69 Kan. 836, 77 Pac. 567, holding question of illegal commitment for contempt by court without jurisdiction may be raised in habeas corpus.

Cited in footnote to *Ex parte* Miskimins, 49 L. R. A. 831, which authorizes release by habeas corpus of witness punished for refusal to answer incriminating questions.

Cited in note (87 Am. St. Rep. 183) on release of prisoner on habeas corpus after judgment and sentence.

Disobedience of void order as contempt.

Cited in note (16 L.R.A.(N.S.) 1066) on disobedience of void order as contempt.

Right to bill of discovery.

Cited in footnote to Brown v. McDonald, 68 L.R.A. 462, which sustains right of receivers appointed to enforce stockholder's liability to maintain bill against person in whose name stock stands to discover true owner.

46 L. R. A. 839, HIRSHFELD v. FITZGERALD, 157 N. Y. 166, 51 N. E. 997.

Motion for reargument denied in 157 N. Y. 707, 52 N. E. 1124.

Power of court of appeals to determine existence of questions of fact.

Cited in Bini v. Smith, 161 N. Y. 122, 55 N. E. 395, holding that upon appeal from reversal by appellate division upon the facts, court of appeals may determine whether question of fact involved; Westerfield v. Rogers, 174 N. Y. 240, 66 N. E. 813, holding that appellate division cannot reverse judgment on facts where all facts are uncontroverted; Spies v. Lockwood, 165 N. Y. 483, 59 N. E. 267, and Griggs v. Day, 158 N. Y. 9, 53 N. E. 692, holding that judgment of appellate division stating that reversal was upon law and facts does not preclude court of appeals from determining whether question of fact involved; Buffalo & L. Land Co. v. Bellevue Land & Improv. Co. 165 N. Y. 253, 51 L. R. A. 954, 59 N. E. 5, holding form of order of reversal immaterial where no disputed questions of fact exist; People *ex rel.* Manhattan R. Co. v. Barker, 165 N. Y. 320, 59 N. E. 151, dissenting opinion by O'Brien, J., who holds form of order of reversal immaterial where no disputed questions of fact exist; Re Mosher, 185 N. Y. 437, 78 N. E. 145, holding judgment absolute against appellant instead of dismissal will be awarded by court of appeals in appeal from order of appellate division reversing judgment upon the facts where facts existed upon which reversal could properly be based; Allen v. Corn Exch. Bank, 181 N. Y. 280, 73 N. E. 1026, dismissing appeal from order of appellate division reversing upon law and facts judgment entered on jury's verdict where motion for new trial on ground verdict against evidence had been denied; Reich v. Dyer, 180 N. Y. 112, 72 N. E.

922, holding court of appeals without jurisdiction to review reversal of judgment by appellate division on law and facts where question of fact invalid; Duryea v. Zimmerman, 123 App. Div. 807, 108 N. Y. Supp. 548, explaining when court of appeals will review judgment of appellate division.

Distinguished in Livingston v. Albany, 161 N. Y. 604, 56 N. E. 148, holding order of reversal stated by appellate division to be upon facts and law not reviewable where record shows material facts controverted.

Plaintiff's right to control action after assignment.

Cited in Rodgers v. Pitt, 96 Fed. 673, holding plaintiff transferring interest has no further control over action.

Plaintiff's control of action brought for all similarly situated.

Cited in Lewisohn Bros. v. Anaconda Copper Min. Co. 26 Misc. 618, 56 N. Y. Supp. 807, and Mills v. Ross, 39 App. Div. 567, 57 N. Y. Supp. 680, holding that plaintiff has full control of action brought on behalf of all similarly situated, where none elect to come in; Manning v. Mercantile Trust Co. 37 Misc. 217, 75 N. Y. Supp. 168, holding that plaintiff in representative action to which others made parties plaintiff cannot unreasonably delay trial.

Actions on behalf of all similarly situated.

Cited in Whiting v. Elmira Industrial Asso. 45 App. Div. 350, 61 N. Y. Supp. 27, holding suit brought for all similarly situated, in effect the same as if all joined as plaintiffs; Hallett v. Metropolitan Messenger Co. 69 App. Div. 263, 74 N. Y. Supp. 639, holding judgment in stockholders' liability action, brought on behalf of all creditors similarly situated, should provide for accounting and equitable distribution; Hagmayer v. Alten, 41 App. Div. 488, 58 N. Y. Supp. 684, sustaining right of other creditors to be made parties to action to enforce bank stockholders' liability, three years after commencement; Raymond v. Security Trust & L. Ins. Co. 44 Misc. 35, 89 N. Y. Supp. 753, holding judgment creditor of insolvent corporation suing on behalf of himself and all other creditors but in effect for receiver, may maintain action to set aside illegal transfer by corporation; Niccolls v. Rice, 147 Cal. 641, 82 Pac. 321, holding creditor not joining in action brought in behalf of particular creditors cannot recover any part of proceeds of compromise made therein; Guffanti v. National Surety Co. 196 N. Y. 458, 134 Am. St. Rep. 848, 90 N. E. 174, Affirming 133 App. Div. 612, 118 N. Y. Supp. 207, holding bond given under statute by emigrant agent and ticket seller was suable by one for benefit of all of many persons secured; Nicholas v. Lord, 118 App. Div. 809, 103 N. Y. Supp. 681, modifying judgment for creditor bringing action in behalf of himself and other creditors by authorizing such persons to become parties and prove their claims.

Distinguished in MacArdell v. Olcott, 62 App. Div. 130, 70 N. Y. Supp. 930, holding application to be made party plaintiff in action brought for all similarly situated barred by laches.

Receiver's right to enforce stockholder's liability.

Cited in Persons v. Gardiner, 26 Misc. 665, 56 N. Y. Supp. 822, holding that receiver could not enforce stockholder's liability prior to statute of 1897; Persons v. Gardner, 42 App. Div. 499, 59 N. Y. Supp. 463, Affirming 26 Misc. 666, 56 N. Y. Supp. 822, upholding constitutionality of statutes, retroactive in effect, authorizing suit by receiver to enforce bank stockholders' liability.

Cited in footnotes to Colton v. Mayer, 47 L. R. A. 617, which denies receiver's right to enforce stockholder's liability; Howarth v. Lombard, 49 L. R. A. 301, which authorizes action by receiver to enforce stockholder's liability in foreign jurisdiction.

Cited in note (31 L.R.A.(N.S.) 365, 372) on right of receiver, assignee, or trustee to recover statutory added liability of corporate shareholder.

Actions to enforce stockholder's liability.

Cited in Hirshfeld v. Bopp, 39 App. Div. 617, 57 N. Y. Supp. 699, holding action to enforce liability of stockholders of insolvent bank maintainable only against all; Barnes v. Arnold, 45 App. Div. 317, 61 N. Y. Supp. 85, holding statute imposing liability upon bank stockholders constitutional although applicable to banks theretofore organized; Mahoney v. Bernhardt, 27 Misc. 349, 58 N. Y. Supp. 748, holding that in action to enforce bank stockholders' liability plaintiff must show himself creditor, corporation's insolvency, and necessity for stockholders' contribution; Lang v. Lutz, 83 App. Div. 537, 82 N. Y. Supp. 319, holding that remedy of creditor of corporation is by suit in equity on behalf of himself and all others similarly situated; Creteau v. Foote & T. Glass Co. 54 App. Div. 172, 66 N. Y. Supp. 370, holding illegal payments by insolvent corporation, when recovered, inure to benefit of all creditors; Marsh v. Kaye, 44 App. Div. 79, 60 N. Y. Supp. 439 (dissenting opinion), majority holding action not maintainable in equity to enforce director's liability for corporate debts.

Liability of stockholders of bank.

Cited in Assets Realization Co. v. Howard, 70 Misc. 687, 127 N. Y. Supp. 798, holding that in determining liability of stockholder for corporate debts section 71 of Banking Law is to be construed in connection with section 59 of stock Corporation Law; Richards v. Gill, 138 App. Div. 77, 122 N. Y. Supp. 620, holding that fact that testator was stockholder in bank and contingently liable under statute to the creditors, creates no cause of action against his devisee, Re Thompson, 184 N. Y. 44, 76 N. E. 870, on individual liability of stockholders of state bank for its debts.

46 L. R. A. 848, DENVER v. BACH, 26 Colo. 530, 58 Pac. 1089.

Validity of ordinances regulating suspension of business.

Followed in Mergen v Denver, 46 Colo. 385 104 Pac. 399, holding ordinance prohibiting sale of meats or groceries on Sunday invalid as class legislation.

Cited in footnotes to Watson v. Thomson, 59 L. R. A. 602, which denies city's power to prevent carrying on of lawful avocation on Christmas day; State v. Ray, 60 L. R. A. 634, which holds unauthorized, ordinance for closing stores at 7:30 P. M., except Saturdays; State *ex rel.* Hoffman v. Justus, 64 L. R. A. 510, which sustains statute prohibiting keeping butcher shops open on Sunday, though authorizing sale of confectionery and tobacco.

Distinguished in State v. Dolan, 13 Idaho, 718, 14 L.R.A.(N.S.) 1269, 92 Pac. 995, upholding conviction of grocer selling goods on Sunday in violation of general Sunday closing law applicable to most occupations; McClelland v. Denver, 36 Colo. 488, 86 Pac. 126, 10 Ann. Cas. 1014, sustaining validity of ordinance prohibiting keeping of barber shops open on Sunday and applicable to all barbers alike.

46 L. R. A. 850, PEOPLE *ex rel.* L'ABBE v. DISTRICT COURT, 26 Colo. 386, 58 Pac. 604.

Supervisory jurisdiction of superior tribunals.

Cited in People *ex rel.* Lindsley v. District Court, 30 Colo. 490, 71 Pac. 388, holding jurisdiction of supreme court in prohibition proceedings conferred by Constitution, and not governed by statute.

Cited in note (51 L. R. A. 46, 109) on superintending control and supervisory jurisdiction of superior over inferior or subordinate tribunal.

Injunctions.

Cited in Tebbetts v. People, 31 Colo. 472, 73 Pac. 869, as to distinction between power to issue injunction restraining action of municipal authorities when complaint is merely defective, and when it does not show court's jurisdiction; Campbell v. Jackman Bros. 140 Iowa, 484, 27 L.R.A.(N.S.) 292, 118 N. W. 755, holding injunction will not issue to restrain operation of saloon whose proprietor has complied with law; People ex rel. Atty. Gen. v. News-Times Pub. Co. 35 Colo. 291, 84 Pac. 912, on authority of court to enjoin commission of crime.

— Against gambling.

Cited in People v. Condon, 102 Ill. App. 458, denying state's right to injunction against bookmaking and pool selling.

Cited in footnotes to State v. O'Leary, 52 L. R. A. 299, which denies state's right to injunction to suppress gambling house; Greenville v. Kemmis, 50 L. R. A. 725, which holds rented room in hotel, occupant's "place" or "house" within ordinance against gambling.

— Against doing business on Sunday.

Cited in York v. Ysaguarirre, 31 Tex. Civ. App. 29, 71 S. W. 563, denying barber injunction restraining another barber from unlawfully doing business on Sunday, in absence of invasion of his property rights.

When writs of prohibition or certiorari issuable.

Cited in People *ex rel.* Calumet Gold Min. & Mill. Co. v. De France, 29 Colo. 312, 68 Pac. 267, holding that prohibition will not lie to prevent proceedings after final judgment, where other adequate remedy exists; Paul v. Rooks, 16 Colo. App. 48, 63 Pac. 711, holding that judgment appealable is not conclusive against right to issue writ of certiorari; People *ex rel.* Lackey v. Second Judicial Dist. Ct. 30 Colo. 131, 69 Pac. 597, sustaining writ of prohibition compelling removal of cause to proper county, notwithstanding appeal lies from court's decision refusing application for removal; Keefe v. District Ct. 16 Wyo. 394, 94 Pac. 459, allowing writ of prohibition to prevent court, granting change of venue in murder case, from proceeding with trial while case pending in other court.

Cited in note (111 Am. St. Rep. 933, 954, 962) on writ of prohibition.

46 L. R. A. 855, PEOPLE *ex rel.* CAMPBELL v. DISTRICT COURT, 26 Colo. 380, 58 Pac. 608.

What reviewable on habeas corpus.

Approved in People ex rel. Miller v. District Ct. 33 Colo. 330, 108 Am. St. Rep. 98, 80 Pac. 888, 3 Ann. Cas. 579, issuing writ of prohibition restraining district court from releasing by writ of habeas corpus person convicted of crime on ground ordinance on which conviction based was invalid.

Cited in Tindall v. Westcott, 113 Ga. 1133, 55 L. R. A. 229, 39 S. E. 450, holding right to jury trial not reviewable by another court on habeas corpus. Chemgas v. Tynan, 51 Colo. 39, 116 Pac. 1045, holding that one convicted under information in which phrase "and against the peace and dignity of the same" will not be discharged on habeas corpus because of such omission; Martin v. District Ct. 37 Colo. 118, 119 Am. St. Rep. 262, 86 Pac. 85, holding district court of one district without authority by habeas corpus to pass on validity of judgment of district court of other district; Re Newcomb, 56 Wash. 401, 105 Pac. 1042, denying writ of habeas corpus to one convicted of murder where jury drawn under unconstitutional statute; Re Stidger, 37 Colo. 418, 86 Pac. 219, denying writ of habeas corpus to one guilty of contempt of court

where he has adequate remedy by writ of error; Martin v. District Ct. 37 Colo. 115, 119 Am. St. Rep. 262, 86 Pac. 85, holding person serving indeterminate sentence for crime committed before law went into effect cannot be released on habeas corpus.

Effect of other remedy upon right to extraordinary remedy.

Cited in Aichele v. Johnson, 30 Colo. 466, 71 Pac. 367, refusing writ of prohibition preventing district court from proceeding in contempt proceedings when remedy by writ of error exists.

46 L. R. A. 858, FIRST M. E. CHURCH v. DONNELL, 110 Iowa, 5, 81 N. W. 171.

Validity of Sunday church subscription.

Cited in Hodges v. Nalty, 113 Wis. 573, 89 N. W. 535, holding church subscription made on Sunday, within statutory exception of "works of necessity or charity."

Cited in footnote to Pepin v. Societe St. Jean Baptiste, 60 L. R. A. 626, which authorizes hearing and determination on Sunday of charges against member of benefit society, resulting in expulsion.

Subscriptions to charitable institutions.

Cited in King v. Carroll, 129 Iowa, 367, 105 N. W. 705, holding binding subscription to endowment fund of college not taxable under statute.

Validity of Sunday contracts.

Cited in footnote to Rodnan v. Robinson, 65 L.R.A. 682, which sustains Sunday contract for purchase and sale of real estate.

46 L. R. A. 860, JONES v. GERMAN INS. CO. 110 Iowa, 75, 81 N. W. 188.

Effect on prior obligations of statute changing remedy.

Cited in Jack v. Cold, 114 Iowa, 354, 86 N. W. 374, holding statute making change in mode of redemption applicable to prior foreclosure; Rausen v. Prudential Ins. Co. 129 Iowa, 730, 106 N. W. 198, on effect of statute providing for action on existing insurance policies.

Cited in footnotes to Kirkman v. Bird, 58 L. R. A. 670, which sustains as to prior obligations, statute exempting wages for sixty days preceding levy; Miners' & Merchants' Bank v. Snyder, 68 L.R.A. 313, which holds corporate creditor's contract rights not impaired by statute requiring all creditors to unite in one suit against all stockholders for equitable distribution of liability fund among creditors.

Standard time.

Cited in Orvik v. Casselman, 15 N. D. 37, 105 N. W. 1105, holding "two o'clock P. M." in notice of foreclosure sale means two o'clock P. M. standard time.

Cited in note (1 L.R.A.(N.S.) 364) on intention of parties to contract to adopt standard instead of sun time.

Time of expiration of policy.

Distinguished in Liverpool, L. & G. Ins. Co. v. McFadden, 27 L.R.A.(N.S.) 1096, 95 C. C. A. 429, 170 Fed. 180, holding principle that loss is regarded as having occurred within life of policy when destruction begins just before expiration thereof not applicable by analogy to determine value of goods destroyed.

— "Noon" of stated day.

Cited in Rochester German Ins. Co. v. Peaslee-Gaulbert Co. 120 Ky. 763, 1 L.R.A.(N.S.) 368, 87 S. W. 1115, 9 Ann. Cas. 324, holding that where the term "noon" was used in an insurance policy to designate the time of commencing and

terminating the risk, noon standard time was meant instead of sun time, where the former was the one ordinarily used in that vicinity.

46 L. R. A. 862, STATE v. ABLEY, 109 Iowa, 61, 77 Am. St. Rep. 520, 80 N. W. 225.

Instigation or consent to crime to detect criminal as defense.

Cited in footnotes to People v. Mills, 67 L.R.A. 131, which holds one proposing scheme and putting in motion forces by which court records are removed for purpose of destroying them guilty as principal, though the records are actually removed under permission of a judge of the court; State v. Currie, 69 L.R.A. 405, which holds mere fact that person who assisted in a burglary was a detective no defense if detective did not instigate the crime.

Cited in notes (30 L.R.A.(N.S.) 951) on instigation or consent to crime for purpose of detecting criminal as defense; (139 Am. St. Rep. 1061, 1062) on breaking and entry in burglary with consent of owner.

Privilege of witness as to incriminating testimony.

Cited in note (75 Am. St. Rep. 332) on privilege of witness as to incriminating testimony on cross-examination.

L. R. A. CASES AS AUTHORITIES.

CASES IN 47 L. R. A.

47 L. R. A. 33, BENTON v. COLLINS, 125 N. C. 83, 34 S. E. 242.

Grounds for new trial.

Cited in Hall v. Hall, 131 N. C. 186, 42 S. E. 562, holding that new trial may be granted as to one or more issues, and judgment affirmed as to others; Gray v. Little, 127 N. C. 306, 37 S. E. 270, holding that inadequacy of damages for malpractice may be ground for new trial; Tathwell v. Cedar Rapids, 122 Iowa, 55, 97 N. W. 96, and Bodie v. Charleston & W. C. R. Co. 66 S. C. 314, 44 S. E. 943, sustaining power of trial court to grant new trial for inadequacy of damages in action for personal injuries; Aboltin v. Henry, 62 Wash. 67, 113 Pac. 245, holding that trial court has same discretion to set aside verdict for inadequate damages as it has to set it aaside for excessive damages; Toledo R. & Light Co. v. Mason, 81 Ohio St. 467, 28 L.R.A.(N.S.) 135, 91 N. E. 292; Leavitt v. Dow, 105 Me. 53, 134 Am. St. Rep. 534, 72 Atl. 735, 17 Ann. Cas. 1072,—holding new trial may be granted on ground of inadequacy of damages; Abernethy v. Yount, 138 N. C. 339, 50 S. E. 696, on power of judge to set aside verdict and grant new trial for inadequacy of damages; Isley v. Virginia Bridge & Iron Co. 143 N. C. 53, 55 S. E. 416, holding verdict may be set aside as to damages either excessive or inadequate.

Annotation in 47 L. R. A. 33, referred to with approval in Barette v. Carr, 75 Vt. 428, 56 Atl. 93, holding that verdict in action for assault may be set aside for inadequacy; O'Reilly v. Hoover, 70 Neb. 361, 97 N. W. 470, on grant of new trial on ground of inadequacy of damages.

Review of ruling on motion for new trial.

Followed in Burns v. Ashboro & M. R. Co. 125 N. C. 306, 34 S. E. 495, holding decision of trial judge as to adequacy of recovery for personal injuries not reviewable.

Cited in Billings v. Charlotte Observer, 150 N. C. 543, 64 S. E. 435, holding grant of new trial in exercise of discretion not reviewable where no matter of law or legal inference is involved; Harby v. Florida East Coast Hotel Co. 59 Fla. 283, 52 So. 193, holding that amount of damages to be awarded for pain and suffering in personal injury actions is for jury to determine subject to review by court in case of abuse of discretion.

Cited in note (28 L.R.A.(N.S.) 130, 131) on review of ruling on motion for new trial in action for bodily injuries on ground of inadequacy of damages.

Distinguished in Louisville & N. R. Co. v. Street, 164 Ala. 160, 51 So. 396, 20 Ann. Cas. 877, holding that under section 2486, Code 1907, damages recoverable are punitive only, amount resting in discretion of jury, whose verdict is not subject to review by trial court for inadequacy.

Disapproved in Toledo R. & Light Co. v. Mason, 81 Ohio St. 467, holding refusal of new trial on ground damages are inadequate is reviewable.

Allotment of homestead.

Cited in Jordan v. Newsome, 126 N. C. 558, 36 S. E. 154, holding that court will reallot homestead reserved, but irregularly allotted.

Issues in new trial.

Cited in Jones v. Life Ins. Co. 153 N. C. 392, 69 S. E. 266, holding that partial new trial will be ordered as to error upon question of plaintiff's waiving right to rely on alleged false representations it being apparent that matter involved in that issue is entirely distinct from matters involved in others, without danger of complication; Gregg v. Wilmington, 155 N. C. 30, 70 S. E. 1070, holding that appellate court may order new trial as to all issues when it appears that trial judge erroneously set aside issues as to disability for negligence of one defendant and rendered judgment against other; Table Rock Lumber Co. v. Branch, 158 N. C. 253, 73 S. E. 164, holding that it is error for trial judge to restrict trial to one issue, when new trial ordered by supreme court, is general in its terms; Satterthwaite v. Goodyear, 137 N. C. 305, 49 S. E. 205, holding new trial restricted to issue, verdict upon which is excepted to; Jarrett v. High Point Trunk & Bag Co. 144 N. C. 302, 56 S. E. 937, holding partial new trial granted only when matter involved is distinct from other issues, and no injustice will be done, or complications caused; Isler v. Goldsboro Lumber Co. 146 N. C. 558, 60 S. E. 503, holding new trial granted only as to issue affected by error; Hawk v. Pine Lumber Co. 149 N. C. 16, 62 S. E. 754, granting new trial generally in exercise of discretion of court; Rushing v. Seaboard Air Line R. Co. 149 N. C. 163, 62 S. E. 890, limiting new trial to issue as to damages where there was no error as to other issues.

47 L. R. A. 52, *Re* MORGAN, 26 Colo. 415, 77 Am. St. Rep. 269, 58 Pac. 1071.

Statutory limitation of hours of labor.

Followed without discussion in *Re* Sweeney, 26 Colo. 452, 58 Pac. 1116.

Cited in Seattle v. Smyth, 22 Wash. 329, 79 Am. St. Rep. 939, 60 Pac. 1120, holding ordinance forbidding contractor upon public works to permit day laborer or mechanic to work more than eight hours per day, void; State v. Buchanan, 29 Wash. 605, 59 L. R. A. 344, footnote p. 342, 92 Am. St. Rep. 930, 70 Pac. 52, sustaining prohibition against employment of women more than ten hours per day in certain establishments; Wenham v. State, 65 Neb. 406, 58 L. R. A. 830, 91 N. W. 421, sustaining statute limiting hours of work of women in certain employments; State v. Cantwell, 179 Mo. 274, 78 S. W. 569, sustaining act prohibiting working of laborers under ground more than eight hours daily; *Re* Ten-Hour Law, 24 R. I. 611, 61 L. R. A. 615, footnote p. 612, 54 Atl. 602, which sustains limitation to ten hours a day of work of street railway employees; Keefe v. People, 37 Colo. 320, 8 L.R.A.(N.S.) 135, 87 Pac. 791, holding statute limiting number of hours workmen may be employed on public work is not sustainable as exercise of police power.

Cited in footnotes to *Re* Dalton, 47 L. R. A. 380, which sustains eight-hour law applicable only to employees of state, municipality, or subdivision of state; Fiske v. People, 52 L. R. A. 291, which holds void, restriction of hours of labor on city contracts to eight hours per day; Cleveland v. Clements Bros. Constr.

Co. 59 L. R. A. 775, which holds void, act limiting to eight hours a day work of laborers on public contract.

Cited in notes (65 L.R.A. 38, 43) on legislative limitation of hours of labor; (48 L. ed. U. S. 150) on validity of legislation regulating hours of labor.

Disapproved in California Wine Asso. v. Commercial Union F. Ins. Co. 157 Cal. 56, 122 Pac. 858, holding that statute regulating hours of employment in mines and in smelting and reduction works, is constitutional; Re Martin, 157 Cal. 56, 26 L.R.A.(N.S.) 247, 106 Pac. 235; Ex parte Kair, 28 Nev. 427, 82 Pac. 453, 6 Ann. Cas. 897; Ex parte Boyce, 27 Nev. 346, 65 L.R.A. 61, 75 Pac. 1, 1 Ann. Cas. 66,—sustaining act prescribing eight hour day for workmen in mines, smelters and ore reducing and refining establishments; Re Broad, 36 Wash. 456, 70 L.R.A. 1015, 78 Pac. 1004, 2 Ann. Cas. 212, sustaining ordinance prescribing eight hour day for workmen engaged on work for city under contract or sub-contract.

Statutory protection of employees.

Cited in Starne v. People, 222 Ill. 198, 113 Am. St. Rep. 389, 78 N. E. 61, holding law requiring maintenance of wash room at top of mine for miners is not within constitutional provisions for protection of miners.

Cited in footnotes to Indianapolis Union R. Co. v. Houlihan, 54 L. R. A. 787, which sustains statute making railroad company liable to employees for injuries by negligence of specified servants; Chicago, W. & V. Coal Co. v. People, 48 L. R. A. 554, and Consolidated Coal Co. v. People, 56 L. R. A. 266, which sustains statute for inspection, at owner's expense, of coal mines as often as inspector deems necessary.

Cited in note (78 Am. St. Rep. 245) on acts as to employment which legislature may declare criminal.

Liberty to contract.

Cited in Greenwich Ins. Co. v. Carroll, 125 Fed. 128, holding statute prohibiting insurance companies to contract as to amount of agent's commissions, void.

Cited in footnote to Toney v. State, 67 L.R.A. 286, which holds void, statute making it a misdemeanor for one under contract to labor to enter into new contract with third person without former employer's consent and a sufficient excuse.

Distinguished in McClelland v. Denver, 36 Colo. 490, 86 Pac. 126, 10 Ann. Cas. 1014, sustaining conviction for violation of ordinance prohibiting keeping barber shops open on Sunday.

Personal liberty of action.

Cited in Rase v. Minneapolis, St. P. & S. Ste. M. R. Co. 107 Minn. 267, 21 L.R.A. (N.S.) 147, 120 N. W. 360, on intelligent choice or assumption of risk as distinguished from carelessness or contributory negligence.

Police power.

Cited in Wolf v. Smith, 149 Ala. 463, 9 L.R.A.(N.S.) 347, 42 So. 824, on definition of police power; Burcher v. People, 41 Colo. 501, 93 Pac. 14, 124 Am. St. Rep. 148, on power of courts to decide as to validity of exercise of police power; Bowes v. Aberdeen, 58 Wash. 547, 30 L.R.A.(N.S.) 714, 109 Pac. 369 holding that power of exercise of right of eminent domain for taking and damaging property, is sufficiently broad to authorize filling in low lands under police power as sanitary measure.

Power of legislature.

Cited in Ex parte Anderson, 46 Tex. Crim. Rep. 390, 81 S. W. 973, denying power of legislature to change framework of municipal government.

47 L. R. A. 67, STATE *ex rel.* McCAUSLAND v. FREEMAN, 61 Kan. 90, 58 Pac. 959.

Effect of failure of majority to vote.

Cited in Sumner County High School Trustees v. Sumner County, 61 Kan. 799, 60 Pac. 1057, holding that failure of majority to vote against continuance of summer school continues same.

Statutory hours of labor.

Cited in State v. Atkin, 64 Kan. 177, 97 Am. St. Rep. 343, 67 Pac. 519, and *Re* Dalton, 61 Kan. 264, 47 L. R. A. 383, 59 Pac. 336, sustaining statute providing that eight hours shall constitute a day's work for laborers employed on public work.

Legislative authority over local public matters.

Cited in Wulf v. Kansas City, 77 Kan. 366, 94 Pac. 207, sustaining act providing for appointment of boards of park commissioners with power to levy taxes in cities; Roby v. Shunganunga Drainage Dist. 77 Kan. 757, 95 Pac. 399, holding though land is not subject to overflow, it may be assessed by drainage district board, if within district; State v. Lawrence, 79 Kan. 260, 100 Pac. 485, sustaining act authorizing city to issue bonds in aid of state university and levy tax to pay same; Benedict v. New Orleans, 115 La. 661, 39 So. 792, holding legislation to acquire site for and construct and maintain courthouse in city is not local and special; Davidson v. Hine, 151 Mich. 308, 15 L.R.A.(N.S.) 583, 123 Am. St. Rep. 267, 115 N. W. 246, 14 Ann. Cas. 352 (dissenting opinion) on establishment of local boards by state to control matters of public interest.

Legislative authority as to education.

Cited in State ex rel. Jackson v. Pauley, 83 Kan. 463, 112 Pac. 141, holding that legislature had power to provide for high schools and their maintenance by taxes to be levied in various counties without submitting question to vote; Evers v. Hudson, 36 Mont. 150, 92 Pac. 462, holding legislature may establish schools other than those whose establishment is expressly required by constitution.

47 L. R. A. 68, *Re* PAGE, 60 Kan. 842, 58 Pac. 478.

Uniformity of taxation.

Cited in Hamilton v. Wilson, 61 Kan. 517, 48 L. R. A. 240, 59 Pac. 1069, holding act providing for taxation of judgments, void.

Cited in note (60 L. R. A. 340, 360) on constitutional equality in United States in relation to corporate taxation.

Validity of ordinance.

Distinguished in *Re* Gray, 64 Kan. 854, 68 Pac. 658, denying court's power to inquire into validity of city ordinance upon application of one arrested for violation and committed for trial.

Power to prescribe method of levying and collecting tax.

Cited in Hadley v. Hadley, 114 Tenn. 172, 87 S. W. 250, holding under statute remaindermen are liable for taxes assessed to but unpaid by life tenant.

47 L. R. A. 71, STATE v. WILSON, 61 Kan. 32, 58 Pac. 981.

Statutes restricting contracts.

Cited in State v. Haun, 61 Kan. 171, 47 L. R. A. 378, 59 Pac. 340, holding act prescribing manner of paying wages to miners, void; McGuire v. Chicago, B. & Q. R. Co. 131 Iowa, 375, 33 L.R.A.(N.S.) 723, 108 N. W. 902, on extent to which police power may restrict liberty of contract.

Disapproved in *Re* Preston, 63 Ohio St. 439, 52 L. R. A. 525, footnote p. 523, 81 Am. St. Rep. 642, 59 N. E. 101, holding statute against screening coal before weighing and crediting to miner, void.

Regulation of weights and measures.

Cited in McLean v. State, 81 Ark. 308, 126 Am. St. Rep. 1037, 98 S. W. 729, 11 Ann. Cas. 72, sustaining act which prohibits passing miner's output of coal over screen which takes part of value therefrom before weighing; Chicago v. Bowman Dairy Co. 234 Ill. 299, 17 L.R.A.(N.S.) 687, 123 Am. St. Rep. 100, 84 N. E. 913, 14 Ann. Cas. 700, upholding ordinance penalizing persons selling milk for having in their possession bottles of less than their purported capacity; House v. Mayes, 227 Mo. 637, 127 S. W. 305, sustaining act requiring sales of grain, seed, hay or coal to be made on basis of actual weight and forbidding deduction under board of trade rule.

Police power.

Cited in Puget Sound Warehouse Co. v. Northern P. R. Co. 58 Wash. 326, 108 Pac. 955, holding that tax for inspection of grain shipped by owner to himself cannot be sustained by reference to police power, where same was not to go through public warehouse.

47 L. R. A. 77, ATCHISON, T. & S. F. R. CO. v. CLARK, 60 Kan. 826, 58 Pac. 477.

Uniformity of taxation.

Followed in 60 Kan. 831, 58 Pac. 561, holding statute providing for fire tax invalid as to railroads excluded from its benefit and protection.

Cited in Hamilton v. Wilson, 61 Kan. 518, 48 L. R. A. 241, 59 Pac. 1069, holding statute providing for taxation of judgments invalid, because of exemption of certain classes of judgments; Johnson County v. Johnson, 173 Ind. 87, 89 N. E. 590, holding that taxation is not uniform when it applies to portion only of class, or singles out individuals or exempts unequally individuals or classes; Teagan Transp. Co. v. Board of Assessors, 139 Mich. 7, 69 L.R.A. 440, 111 Am. St. Rep. 391, 102 N. W. 273, holding legislation imposing onerous burden of taxation on property of corporations engaged in maritime commerce and navigation is void.

— Discrimination.

Cited in Zimmer v. Bay County, 159 Mich. 220, 123 N. W. 899, holding invalid statute permitting county supervisor who considers his township aggrieved by tax apportionment to appoint member of committee, on appeal.

47 L. R. A. 79, LEBUS v. BOSTON, 107 Ky. 98, 92 Am. St. Rep. 333, 51 S. W. 609, 52 S. W. 956.

Easements in passageways.

Cited in Muir v. Cox, 110 Ky. 566, 62 S. W. 723, holding that vendee of part of one of several lots allotted in partition and subject to easement of passageways takes subject to passageway between such lot and part retained by vendor; O'Daniel v. Baxter, 112 Ky. 336, 65 S. W. 805, holding cotenants accepting partition deeds take passway and concurrent right to its use; Rogers v. Flick, 144 Ky. 848, 139 S. W. 1098, holding that where one buys land having passway over it in form of plainly marked road, he will be charged with notice that there was pass-way over land.

Sale of property by cotenant.

Cited in Irvine v. McCreary, 108 Ky. 502, 49 L. R. A. 421, 56 S. W. 966, deny-

ing right of cotenant to sell right to cut logs from land owned in common, so that purchaser can convey good title.

Implied easements.

Cited in Carrigg v. First Nat. Bank, 136 Iowa, 270, 111 N. W. 329, holding foreclosing mortgage of land and buildings taxes easement upon adjoining land of same owner sufficient for comfortable enjoyment of property taken.

47 L. R. A. 82, BOSTON EXCELSIOR CO. v. BANGOR & A. R. CO. 93 Me. 52, 44 Atl. 138.

Railroad company's absolute liability for fires.

Cited in Bowen v. Boston & A. R. Co. 179 Mass. 527, 61 N. E. 141, holding owner of mill destroyed by fire communicated by locomotive entitled to recover, without proof of exercise of ordinary care; Indiana Clay Co. v. Baltimore & O. S. W. R. Co. 31 Ind. App. 261, 67 N. E. 704, holding instruction that jury may consider character of roof and whether water appliances maintained, error, in action for damage for loss of building by fire set by sparks from locomotive; Ide v. Boston & M. R. Co. 83 Vt. 83, 74 Atl. 401, holding that question as to whether or not plaintiff in action against railroad for loss by fire set by sparks from locomotive, exercised due care, was for jury.

Cited in footnote to Kansas City, Ft. S. & M. R. Co. v. Blaker, 64 L. R. A. 81, which holds placing structure on railroad right of way with company's consent not contributory negligence preventing recovery for burning of other property by fire spreading therefrom.

Cited in notes (1 L.R.A.(N.S.) 534) on liability of railroad for burning property stored or piled on right of way by licensee; (12 L.R.A.(N.S.) 624) on duty of abutter to prevent accumulation of combustibles near railway.

47 L. R. A. 87, MICHIGAN TELEPH. CO. v. ST. JOSEPH, 121 Mich. 502, 80 Am. St. Rep. 520, 80 N. W. 383.

Right to place poles and wires in street.

Cited in Michigan Teleph. Co. v. Benton Harbor, 121 Mich. 512, 47 L. R. A. 106, 80 N. W. 386, enjoining city's interference with poles and wires of telephone company; Wyandotte Electric Light Co. v. Wyandotte, 124 Mich. 47, 82 N. W. 821, restraining city's interference with electric light poles and wires lawfully in street; New Hope Teleph. Co. v. Concordia, 81 Kan. 518, 106 Pac. 35, holding city may regulate but cannot deny right of telephone company to establish plant in city under grant by state; Sunset Teleph. & Teleg. Co. v. Eureka, 172 Fed. 759, on rights of telephone company with established system to extend its lines.

Cited in footnote to Northwestern Teleph. Exchange Co. v. Minneapolis, 53 L. R. A. 175, which requires council's discretion in compelling telegraph company to put underground, wires placed overhead under ordinance, to be reasonably exercised.

Contractual rights in street.

Cited in Northwestern Teleph. Exch. Co. v. Anderson, 12 N. D. 590, 65 L.R.A. 774, 102 Am. St. Rep. 580, 98 N. W. 706, 1 Ann. Cas. 110, holding city cannot by granting use of street for private purposes, impair contract rights of telephone company which has accepted franchise and constructed plant; People ex rel. Shallburg v. Central U. Teleph. Co. 232 Ill. 282, 83 N. E. 829 (dissenting opinion), on want of power of city to impair rights of telephone company accepting and acting on franchise.

Cited in note (50 L. R. A. 146) on privilege of using streets as a contract within constitutional provision against impairing obligation of contracts.

Contractual rights and duties of public service corporation.

Cited in Rushville v. Rushville Natural Gas Co. 164 Ind. 165, 73 N. E. 87, 3 Ann. Cas. 86, holding rights of gas company accepting franchise and constructing plant cannot be impaired by subsequent municipal action; Mitchell v. Dakota Central Teleph. Co. 25 S. D. 417, 127 N. W. 582, holding that telephone company accepting franchise requiring payment to city of portion of receipts over certain amount is estopped from pleading that requirement is ultra vires.

Distinguished in Mahan v. Michigan Teleph. Co. 132 Mich. 245, 93 N. W. 629, holding telephone company acquiring assets and franchise rights of another company in same city is bound to give subscribers of latter company access to its own subscribers.

47 L. R. A. 92, OREN v. ABBOTT, 121 Mich. 540, 80 N. W. 372.

Right of women to hold office.

Cited in note (27 L.R.A.(N.S.) 532) on right of women to hold office.

Power of legislature as to public officers.

Cited in State ex rel. Workman v. Goldthait, 172 Ind. 218, 87 N. E. 133, 19 Ann. Cas. 737, holding legislature cannot impose qualifications upon officers beyond those prescribed by constitution.

47 L. R. A. 104, MICHIGAN TELEPH. CO. v. BENTON HARBOR, 121 Mich. 512, 80 N. W. 386.

Municipal control of streets.

Cited in Wyandotte Electric Light Co. v. Wyandotte, 124 Mich. 47, 82 N. W. 821, restraining city from interfering with poles and wires of electric light company lawfully erected in street; State *ex rel.* Wisconsin Teleph. Co. v. Sheboygan, 111 Wis. 39, 86 N. W. 657, denying city's authority to regulate telephone rates and demand right to use poles and line free, as condition of company's privilege to use street; *Re* Johnston, 137 Cal. 121, 69 Pac. 973, holding ordinance making it misdemeanor to lay pipes in street without permit, void; Texarkana v. Southwestern Teleg. & Teleph. Co. 48 Tex. Civ. App. 22, 106 S. W. 915, holding that ordinance vesting in city marshall authority to issue permits to erect poles in streets when same were deemed necessary by him, is void; South McAlester-Eufaula Teleph. Co. 25 Okla. 539, 106 Pac. 962, holding that municipality has no power to fix rates for telephone charges or prevent use of streets for noncompliance with ordinance fixing such charges; State v. Nebraska Teleph. Co. 127 Iowa, 197, 103 N. W. 120, holding telephone company's acceptance of grant to use streets, if not limited, includes right to extend service; New Hope Teleph. Co. v. Concordia, 81 Kan. 518, 106 Pac. 35, holding right of telephone company to enter city granted by state may be regulated but not denied by city; Jonesville v. Southern Michigan Teleph. Co. 155 Mich. 89, 130 Am. St. Rep. 562, 118 N. W. 736, 16 Ann. Cas. 439, holding city may wholly exclude telephone poles and wires from single block of single street; State ex rel. Rocky Mountain Bell Teleph. Co. v. Red Lodge, 30 Mont. 342, 76 Pac. 758, holding city's power to control streets must be construed as subordinate to legislative grant of right to establish telephone plant in cities, also that term "public roads" includes streets; Wisconsin Teleph. Co. v. Milwaukee, 126 Wis. 12, 1 L.R.A.(N.S.) 587, 110 Am. St. Rep. 886, 104 N. W. 1009, holding city not empowered to license telephone company cannot exact license fee

from it as revenue measure; Wichita v. Old Colony Trust Co. 66 C. C. A. 19, 132 Fed. 646, holding law authorizing telephone companies to establish telephone system in city streets is not repealed by law empowering cities to grant right of way in streets.

Distinguished in Mahan v. Michigan Teleph. Co. 132 Mich. 246, 93 N. W. 629, holding telephone company buying out another company in same city is bound to furnish service to subscribers of such other company.

Telephone as included in term "telegraph."

Cited in Sunset Teleph. & Teleg. Co. v. Eureka, 172 Fed. 759, holding word "telegraph" in statute includes telephone.

47 L. R. A. 108, PEOPLE v. YOUNGS, 122 Mich. 292, 81 N. W. 114.

Attempt to commit crime.

Cited in People v. Webb, 127 Mich. 32, 86 N. W. 406, holding statute defining attempt to commit crime declaratory of common law; State v. Doran, 99 Me. 332, 105 Am. St. Rep. 278, 59 Atl. 440, holding indictment for attempting to break and enter railroad car defective for failure to state overt acts constituting attempt.

Cited in footnote to Groves v. State, 59 L. R. A. 598, which holds mere preparatory acts for commission of crime not an attempt.

Cited in note in (6 L.R.A.(N.S.) 805) on procuring or providing instrumentalities with intent to commit crime, as an attempt.

Distinguished in State v. Taylor, 47 Or. 459, 4 L.R.A.(N.S.) 420, 84 Pac. 82, 8 Ann. Cas. 627, holding person paying others to burn, furnishing means and giving directions, is guilty of attempt to commit arson.

47 L. R. A. 112, TURNER v. ST. CLAIR TUNNEL CO. 121 Mich. 616, 80 N. W. 720.

Duty to furnish safe place.

Cited in footnotes to Hanley v. California Bridge & Constr. Co. 47 L. R. A. 597, which denies assumption by servant of risk of caving in of completed part of tunnel; Finn v. Cassidy, 53 L. R. A. 877, which holds safe *per se* place not provided by contractor having employees work in tunnel under foundation of chimney, with knowledge that undisturbed earth saturated with water; Ellsworth v. Metheney, 51 L. R. A. 389, which holds mine owner required to properly guard electric wire in passageway where miners accustomed to go; Cox v. American Agri. Chemical Co. 60 L. R. A. 629, which holds master sending servant to clean out drain filled with decaying animal matter not, as matter of law, free from duty to protect and warn as to danger from deadly gases.

Cited in note (87 Am. St. Rep. 561) on duty of mine owners to prevent injury to employees.

47 L. R. A. 117, ALLEN v. STATE AUDITORS, 122 Mich. 324, 80 Am. St. Rep. 573, 81 N. W. 113.

Grant of judicial powers.

Cited in People v. Dickerson, 164 Mich. 153, 33 L.R.A.(N.S.) 920, 129 N. W. 199, Ann. Cas. 1912B, 688, holding that prosecuting attorney is constitutional officer whose executive duties may not be conferred by legislature on judiciary.

Cited in footnote to State *ex rel.* Ellis v. Thorne, 55 L. R. A. 956, which sustains statute for appointing commissioners by circuit judge to review and correct apportionment of state and county taxes.

Sufficiency of vote to pass bill.

Cited in note (40 L.R.A.(N.S.) 18) on sufficiency of vote by which bill was passed.

47 L. R. A. 120, TALL v. BALTIMORE STEAM PACKET CO. 90 Md. 248, 44 Atl. 1007.

Carrier's liability for injury to passenger by one not under his control.

Approved in Anderson v. South Carolina & G. R. Co. 77 S. C. 436, 122 Am. St. Rep. 591, 58 S. E. 149, holding carrier not liable for injury of passenger by fellow-passenger, unless carrier knows of or has reason to anticipate danger.

Cited in United R. & Electric Co. v. State, 93 Md. 624, 54 L. R. A. 943, footnote p. 942, 86 Am. St. Rep. 453, 49 Atl. 923, holding carrier liable for injuries inflicted on passenger by drunken passenger permitted to return after removal; Fewings v. Mendenhall, 88 Minn. 342, 60 L. R. A. 604, 97 Am. St. Rep. 519, 93 N. W. 127, denying street car company's liability to passenger injured by being hit by stone thrown by strike sympathizer; McWilliams v. Lake Shore & M. S. R. Co. 146 Mich. 222, 109 N. W. 272, on distinction between liability of carrier for torts of servants and those of passengers or strangers: Woas v. St. Louis Transit Co. 198 Mo. 677, 7 L.R.A.(N.S.) 236, 96 S. W. 1017, 8 Ann. Cas. 584, holding carrier not liable for injury of passenger by missile thrown at motorman by stranger; Bosworth v. Union R. Co. 26 R. I. 313, 58 Atl. 982, 3 Ann. Cas. 1080, holding carrier not liable for injury of passenger who fell while trying to alight from car being showered with stones by mob; Franklin v. Atlanta & C. Air Line R. Co. 74 S. C. 359, 54 S. E. 578 (dissenting opinion), on duty of carrier to protect passengers from injury by fellow-passengers.

Cited in footnotes to Savannah, F. & W. R. Co. v. Boyle, 59 L. R. A. 104, which denies carrier's liability for shooting passenger by negro tramp attempting to escape from arrest for stealing ride; Spangler v. St. Joseph & G. I. R. Co. 63 L. R. A. 634, which holds carrier liable for injury to passenger by missile thrown through window by fellow passengers known to be intoxicated and to have threatened revenge on those interfering with their disorderly conduct.

Cited in notes (55 L. R. A. 719) on carrier's liability for assault on passenger by strikers, mob, or third persons; (2 L.R.A.(N.S.) 105, 107) on liability of carrier for stranger's assault on passenger.

Disapproved in Pittsburgh, C. C. & St. L. R. Co. v. Richardson, 40 Ind. App. 506, 82 N. E. 536, holding carrier owes passenger duty of highest degree of care to protect him from injury by other passengers.

Non-expert opinion evidence.

Cited in Hillers v. Taylor, 108 Md. 152, 69 Atl. 715, holding in action against woman for alienation of affections of husband, his declarations of opinion as to defendant's attitude toward wife are inadmissible.

Mode of presenting exceptions.

Cited in Citizens' Mut. F. Ins. Co. v. Conowingo Bridge Co. 116 Md. 439, 82 Atl. 372, holding that bill of exceptions that includes several exceptions will not be considered by court of appeals; Baltimore & O. R. Co. v. Rueter, 114 Md. 699, 80 Atl. 220, holding that bill of exceptions containing ruling of court on prayers for instructions should not also contain rulings on motion to strike out evidence; Junkins v. Sullivan, 110 Md. 544, 73 Atl. 264; Acker, M. & C. Co. v. McGaw, 106 Md. 561, 68 Atl. 17, — disapproving practice of presenting more than one question of law in one bill of exceptions.

47 L. R. A. 124, HOPKINS v. COWEN, 90 Md. 152, 44 Atl. 1062.

Title to goods delivered by carrier or other agent.

Cited in Richardson v. Smith, 101 Md. 21, 70 L.R.A. 325, 109 Am. St. Rep. 552, 60 Atl. 612, 4 Ann. Cas. 184, holding property in goods shipped f. o. b. sight draft bill of lading attached does not pass to buyer until draft is paid; Hammond v. American Exp. Co. 108 Md. 298, 68 Atl. 496, holding consignment of goods to himself by seller is not delivery passing title to buyer; Lochnar v. State, 111 Md. 666, 76 Atl. 586, 19 Ann. Cas. 579, holding where seller of intoxicating liquors delivers them in person or by agent, no common carrier intervening, place of delivery is place of sale.

Cited in note (2 L.R.A.(N.S.) 79) on effect of attaching draft to bill of lading to prevent title passing upon delivery of goods to carrier.

Distinguished in Greenwood Grocery Co. v. Canadian Mill & Elevator Co. 72 S. C. 454, 2 L.R.A.(N.S.) 81, 110 Am. St. Rep. 627, 52 S. E. 191, 5 Ann. Cas. 261, holding where goods are deliverable to consignee by terms of bill of lading, consignor is presumed to intend to pass title.

47 L. R. A. 127, LION v. BALTIMORE CITY PASS. R. CO. 90 Md. 266, 44 Atl. 1045.

Notice as basis of liability.

Cited in Guest v. Church Hill, 90 Md. 695, 45 Atl. 882, holding notice to city of its causing nuisance by failing to provide outlet for surface water after change of grade unnecessary before suit; Davis v. Rich, 180 Mass. 236, 62 N. E. 375, holding owner liable to one falling over ridge of ice formed from water conveyed to walk because of visible defect in spout; Baltimore v. Walker, 98 Md. 644, 57 Atl. 4, holding city not entitled to notice before being sued for injury due to nuisance it permits in highway.

Distinguished in Fahnestock v. Feldner, 98 Md. 345, 56 Atl. 785, holding persons making contributing to or allowing making of obstructions to stream passing across their lands before such obstructions, not entitled to notice before suit.

Liability for act of independent contractor.

Cited in Giaconi v. Astoria, 60 Or. 34, 37 L.R.A.(N.S.) 1157, 118 Pac. 180, holding city liable for injury to private property by soft earth forced thereon by contractor dumping earth on unstable, sloping bottom of gulch in changing grade of street.

Cited in footnotes to Pittsfield Cottonwear Mfg. Co. v. Pittsfield Shoe Co. 60 L. R. A. 117, which holds landlord liable to tenants of lower floor for injury from freezing of automatic fire extinguisher in portion retained by former, though building heated by independent contractor; Hoff v. Shockley, 64 L. R. A. 538, which holds property owner not liable for injuries to traveler by obstructions placed in street, without danger signals, by independent contractor for construction of building.

47 L. R. A. 131, BOWEN v. PORT HURON ENGINE & THRESHER CO. 109 Iowa, 255, 77 Am. St. Rep. 539, 80 N. W. 345.

Levy as satisfaction of judgment.

Cited in Valley Nat. Bank v. Des Moines Nat. Bank, 116 Iowa, 546, 90 N. W. 342, holding that levy of execution upon personal property works as satisfaction of judgment, when to abandon it would injure subsequent lienors.

47 L. R. A. 136, THIBERT v. SUPREME LODGE, K. OF H. 78 Minn. 448, 79 Am. St. Rep. 412, 81 N. W. 220.

Benefit association's amendment of provisions.

Followed in Teba v. Supreme Council, R. A. 89 Minn. 11, 93 N. W. 513, holding amendment of by-laws of benefit association prohibiting members to engage as freight brakeman void as to member who was brakeman before amendment.

Cited in Gilmore v. Knights of Columbus, 77 Conn. 62, 107 Am. St. Rep. 17, 58 Atl. 223, 1 Ann. Cas. 715, holding that member of benefit society is bound by reasonable amendments to by-laws adopted after he has become a member; Flakne v. Minnesota Farmers Mut. Ins. Co. 105 Minn. 483, 117 N. W. 785, holding that mutual insurance company may by change in by-laws make certain the time of expiration of policies by specifying "at noon" in place of "after such day;" Pearson v. Knight Templars & Masons Indemnity Co. 114 Mo. App. 289, 89 S. W. 588, holding that benefit society cannot materially increase rate of assessments without consent of member insured though he agrees in policy to abide by changes in constitution and rules; Hicks v. Northwestern Aid Asso. 117 Tenn. 222, 96 S. W. 962, holding that benefit society cannot change the rate of premium, fixed by its contract with members, without their consent merely to facilitate reorganization on a safer basis; Olson v. Court of Honor, 100 Minn. 120, 8 L.R.A.(N.S.) 527, 117 Am. St. Rep. 676, 110 N. W. 374, 10 Ann. Cas. 622, holding member of benefit association not bound by unreasonable changes in by-laws.

Cited in footnotes to Bragaw v. Supreme Lodge K. & L. of H. 54 L. R. A. 602, which denies power of benefit society to change at will, contract of insurance made with each member; Strauss v. Mutual Reserve Fund Life Asso. 54 L. R. A. 605, which holds unauthorized, changes in constitution and by-laws destroying value of contract with insured; Gaut v. Supreme Council A. L. of H. 55 L. R. A. 465, which denies power of benefit society to reduce amount of certificate after payment of assessments for years; Parish v. New York Produce Exchange, 56 L. R. A. 149, which denies power to bind dissenting members by amending by-laws so as to distribute among living members, fund accumulated for persons dependent on members at time of death; Shipman v. Protected Home Circle, 63 L. R. A. 347, which holds adoption of by-law relieving benefit society from liability in case of suicide applicable to existing members who agreed to be bound by all rules enacted.

Cited in note (83 Am. St. Rep. 709) on effect of changes in by-laws of beneficial association as against pre-existing members.

— Manner of changing by-laws.

Cited in Manufactures' Exhibition Bldg. Co. v. Landay, 121 Ill. App. 102, holding that corporation has power to prescribe the manner in which its by-laws shall be amended, and if reasonable, such mode must be followed.

Compliance with existing laws.

Cited in footnote to Peterson v. Gibson, 54 L. R. A. 836, which holds provision in benefit certificate for compliance with constitution and by-laws refers to existing ones only.

Waiver of unreasonable assessment.

Cited in Mutual Reserve Fund Life Asso. v. Taylor, 99 Va. 219, 37 S. E. 854, holding that vote at stockholders' meeting for increase of assessment estops member to claim rate unreasonable.

Question for jury.

Cited in Soehner v. Grand Lodge, O. S. H. 74 Neb. 408, 104 N. W. 871.

holding that question of understanding between a deceased member and the local secretary of a benefit society in regard to payment of arrears and re-instatement was for the jury.

47 L. R. A. 141, WITTENBERG v. ONSGARD, 78 Minn. 342, 81 N. W. 14.

Cross-examination of expert as to medical authorities.

Cited in Landro v. Great Northern R. Co. 117 Minn. 309, 135 N. W. 991, to the point that when expert witness has testified that authorities support his view, he may be asked on cross-examination whether medical work, admitted by him to be standard authority, does not express contrary view.

Waiver of trial by jury.

Cited in Schumacher v. Crane-Churchill Co. 66 Neb. 444, 92 N. W. 609, holding that waiver of jury upon a first trial will not prevent either party from demanding jury trial upon a second trial after the judgment in the first has been set aside; J. L. Roper Lumber Co. v. Elizabeth City Lumber Co. 137 N. C. 440, 49 S. E. 946, holding that the trial court, in its sound discretion, may disregard an agreement between the parties waiving a jury, and may submit the issues to a jury for trial; Alcorn v. Dennis, 25 Okla. 137, 105 Pac. 1012, holding that where party before trial waived the jury, and during trial amendment to pleadings were made, and judgment entered, such party will not be heard to complain for first time on appeal that he had been deprived of trial by jury.

47 L. R. A. 144, STATE v. BRADFORD, 78 Minn. 387, 81 N. W. 202.

Bicycle law.

Cited in footnotes to Foote v. American Product Co. 49 L. R. A. 764, which holds bicyclist entitled to keep to right unless reason for exception shown; Richardson v. Danvers, 50 L. R. A. 127, which holds bicycle not within statute for keeping highways reasonably safe for carriages.

Charging crime in language of statute.

Cited in footnote to Haughn v. State, 59 L. R. A. 789, which holds that following language of statute in indictment for bunco steering insufficient.

47 L. R. A. 147, COYLE v. A. A. GRIFFING IRON CO. 63 N. J. L. 609, 44 Atl. 665.

Assuming risk of employment.

Cited in Weatherby v. Newfield Smyrna Rug Co. 80 N. J. L. 366, 78 Atl. 190: Kent Mfg. Co. v. Zimmerman, 48 Colo. 400, 110 Pac. 187,—holding that servant assumes risk reasonably and naturally incident to employment and those arising from defects in machinery which are obvious and which should have been observed; Campbell v. T. A. Gillespie Co. 69 N. J. L. 282, 55 Atl. 276, holding master liable for loss of servant's eye struck by piece of steel flying from drift pin" used to rivet holes of pipe together; McDonald v. Standard Oil Co. 69 N. J. L. 450, 55 Atl. 289, holding servant cutting heads from rivets of tank assumed risk of injury by flying chip of metal; Tompkins v. Marine Engine & Mach. Co. 70 N. J. L. 335, 58 Atl. 393, holding employee assumed risk of injury to his eye by chip of steel flying from steel tool struck with steel hammer.

— Revolving wheels and rolls.

Cited in Murphy v. Rockwell Engineering Co. 70 N. J. L. 376, 57 Atl. 444, holding servant injured by having hand drawn into cog wheels through hole on outside of column wherein wheels revolved assumed risk; Mika v. Passaic Print Works, 76 N. J. L. 564, 70 Atl. 327, holding risk of having hand caught in re-

volving cylinders of machine for stretching, pressing and finishing cloth assumed by servant.

Cited in footnote to Stager v. Troy Laundry Co. 53 L. R. A. 459, which holds risk of hand passing under guard rails into rollers not assumed, as matter of law, by servant operating mangle in laundry.

Distinguished in Dowd v. Erie R. Co. 70 N. J. L. 455, 57 Atl. 248, where promise was made to servant that cog wheels would be covered when he made complaint.

Effect of violation of duty of self-protection.

Cited in McGrath v. Delaware, L. & W. R. Co. 68 N. J. L. 428, 53 Atl. 207, holding railroad employee's failure to notice defective condition of block used to put under wheel of car to stop it, bar to his recovery for crushing of hand by wheels.

Direction of verdict.

Cited in Anderson v. Central R. Co. 68 N. J. L. 270, 53 Atl. 391, and Meyer v. Madreperla, 68 N. J. L. 260, 96 Am. St. Rep. 536, 53 Atl. 477, holding that in reviewing action of trial court in controlling verdict by peremptory instruction, question is whether jury could promptly find contrary verdict; Vandegrift Constr. Co. v. Camden & T. R. Co. 74 N. J. L. 672, 65 Atl. 986, sustaining verdict directed where testimony would not have supported any other.

47 L. R. A. 149, NORTHERN P. R. CO. v. McCLURE, 9 N. D. 73, 81 N. W. 52.

Continuing covenants.

Cited in Kennedy Bros. v. Iowa State Ins. Co. 119 Iowa, 36, 91 N. W. 831, holding covenant in lease of part of right of way for elevator, protecting railroad company for loss to building by fire from trains, binding upon successors to lessee; Bull v. Beiseker, 16 N. D. 294, 14 L.R.A.(N.S.) 518, 113 N. W. 870, holding that where covenantor has neither title nor possession, covenants do not run with land.

Cited in footnote to Doty v. Chattanooga Union R. Co. 48 L. R. A. 160, which holds covenant for running certain trains binding on subsequent purchaser of railroad.

Cited in note (82 Am. St. Rep. 669) on what covenants run with the land.

Railroad company's right to limit liability.

Cited in Missouri, K. & T. R. Co. v. Carter, 95 Tex. 477, 68 S. W. 159, holding railroad company's right to limit liability for damage caused by fire to property in its possession, but not as carrier, not prohibited by statute forbidding limitation of carrier's liability.

47 L. R. A. 153, STATE v. SCHUMAN, 36 Or. 16, 78 Am. St. Rep. 754, 58 Pac. 661.

Game laws and interstate commerce.

Cited in *Re* Davenport, 102 Fed. 544, denying state's authority to forbid traffic in game imported from another state where it was lawfully killed; People v. Booth Fisheries Co. 253 Ill. 430, 97 N. E. 837, holding that statute which makes it unlawful, to sell or expose for sale certain kinds of fish invalid and applies to fish brought from without state; People ex rel. Silz v. Hesterberg, 109 App. Div. 306, 96 N. Y. Supp. 286 (dissenting opinion), as to whether laws to preserve game are legitimate exercise of police power of states.

Cited in footnotes to State v. Snowman, 50 L. R. A. 544, which sustains statute requiring license for business of guiding in inland fishing and forest hunting; Smith v. State, 51 L. R. A. 404, which sustains statute prohibiting posses-

sion of quail during close season; People v. Buffalo Fish Co. 52 L. R. A. 803, which holds void, act prohibiting possession of certain fish during close season: State v. Mallory, 67 L.R.A. 773, denying right of state to forbid nonresident landowner to take fish and game on his property within the state.

Cited in notes (3 L.R.A.(N.S.) 163) on prohibition of possession of game: (53 L. ed. U. S. 76) on game laws as affecting imported game.

Presumption from possession of stolen property.

Cited in State v. Sally, 41 Or. 368, 70 Pac. 396, holding refusal to instruct jury that if possession of property, alleged to have been stolen, was credibly explained, presumption of guilt is overcome, no error.

Laws concerning fish.

Cited in State v. Nielsen, 51 Or. 595, 131 Am. St. Rep. 765, 95 Pac. 720, 16 Ann. Cas. 1113, holding fishing laws of Oregon and Washington having concurrent jurisdiction of boundary waters of Columbia river are valid if in harmony but if in conflict, law of state most restrictive prevails; State v. Hume, 52 Or. 7, 95 Pac. 808, holding title to fish taken from navigable streams is held by favor of state, which can impose license tax on canners thereof.

Prohibition of acts legal in themselves.

Cited in State v. Thompson, 47 Or. 500, 4 L.R.A.(N.S.) 485, 84 Pac. 476, 8 Ann. Cas. 646, holding legislature may prohibit railroad ticket brokerage business.

Waiver of point not raised on trial.

Cited in State v. Reyner, 50 Or. 231, 91 Pac. 301, holding party seeking review of action of trial court because of lack of evidence must point out below legal principle he contends for.

47 L. R. A. 156, SCHRODER v. OVERMAN, 61 Ohio St. 1, 76 Am. St. Rep. 354, 55 N. E. 158.

Local assessment; basis of.

Cited in Cincinnati, L. & N. R. Co. v. Cincinnati, 62 Ohio St. 482, 49 L.R.A. 571, 57 N. E. 229, denying right to assess entire cost of land taken for highway on remaining land of same owner; Adams v. Shelbyville, 154 Ind. 477, 49 L. R. A. 802, footnote p. 797, 77 Am. St. Rep. 484, 57 N. E. 114, sustaining statute providing for local assessments by frontage, with provisions for hearing grievances before final assessment; Indianapolis v. Holt, 155 Ind. 240, 57 N. E. 966, holding assessment for street improvements by front foot rule, prima facie correct, but not exclusive right to make assessment according to benefits; Shoemaker v. Cincinnati, 68 Ohio St. 614, 68 N. E. 1, holding assessment for local improvements based upon frontage instead of in terms according to benefits, valid; Price v. Toledo, 4 Ohio C. C. N. S. 61, 25 Ohio C. C. 622, holding that an assessment for street improvements will not be enjoined on account of the assessment exceeding the benefits after the improvement has been made unless the action of the council has been fraudulent or the assessment greatly exceeds the benefits; Cincinnati v. Shoemaker, 1 Ohio C. C. N. S. 12, 25 Ohio C. C. 258, holding that if the benefits conferred by street improvements are equal to the assessment, a court of equity will not enjoin the assessment though the statute under which the assessment was estimated is invalid; Benham v. Cincinnati, 4 Ohio C. C. N. S. 36, 26 Ohio C. C. 17, holding that the findings of benefits by the assessing board is prima facie correct and the courts will not disturb it in the absence of grounds calling for equitable intervention; Queen City Foundry Co. v. Cincinnati, 8 Ohio N. P. 168, 11 Ohio S. & C. P. Dec. 414, holding that the courts will not enjoin an assess-

ment for street improvements according to the front foot where the assessment does not exceed the benefits.

Cited in footnotes to Ramsey County v. Robert P. Lewis Co. 53 L. R. A. 421, which sustains annual frontage tax on land in front of which water pipes laid; Barber Asphalt Paving Co. v. French, 54 L. R. A. 492, which sustains paving assessment according to frontage; King v. Portland, 55 L. R. A. 812, which upholds street improvement assessment, plan of which not obviously shown to impose burdens in substantial excess of benefit; Webster v. Fargo, 56 L. R. A. 156, which sustains statute assessing entire cost of paving on abutters according to frontage; Sears v. Street Comrs. 62 L. R. A. 145, which authorizes consideration of benefit to abutting property from newly located passenger station in assessing cost of improving streets leading thereto; Iowa Pipe & Tile Co. v. Callanan, 67 L.R.A. 408, which holds void, assessment for sewer on abutting property only eight feet deep at same front foot rate as full sized lots.

Cited in note (28 L.R.A.(N.S.) 1182, 1187) on assessments for improvements by front-foot rule.

— Notice of.

Cited in footnote to Norfolk v. Young, 47 L. R. A. 574, which holds insufficient, notice of assessment failing to show when, where, or before whom assessment may be contested.

— Decision of legislature as to benefit.

Cited in footnote to Smith v. Worcester, 59 L. R. A. 728, which holds conclusive, decision of legislature that land owners within assessment district are benefitted by sewer.

— Recovery of money paid for.

Cited in footnote to Rogers v. St. Paul, 47 L. R. A. 537, which denies right to recover back money paid on assessment for uncompleted street improvement.

— New assessment.

Cited in footnote to Kersten v. Milwaukee, 48 L. R. A. 831, which holds injunction against wrongful paving assessment will not prevent new assessment.

47 L. R. A. 161, O'MALEY v. SOUTH BOSTON GASLIGHT CO. 158 Mass. 135, 32 S. E. 1119.

Assumption of risk.

Cited in Indiana Natural Gas & Oil Co. v. O'Brien, 160 Ind. 272, 65 N. E. 918, holding that one driving in park for pleasure does not assume risk of injury from falling of temporary bridge over wide ditch; Indiana Natural Gas & Oil Co. v. O'Brien, 160 Ind. 272, 65 N. E. 918, holding doctrine of assumption of risk applicable in action for injury due to defective bridge over trench which gave way under traveler's horse, exposure to known danger being voluntary.

Cited in footnote to St. Louis Cordage Co. v. Miller, 63 L.R.A. 551, which holds assumption of risk and contributory negligence distinct and separate defenses.

Cited in note (3 L.R.A.(N.S.) 1098) on assumption by tenant's employee of risk of unsafe portions of building in landlord's possession.

— By servants.

Cited in Daigle v. Lawrence Mfg. Co. 159 Mass. 379, 34 N. E. 458, holding that employee assumes risk of injury while removing waste from inside of cylinder; Kleinest v. Kunhardt, 160 Mass. 231, 35 N. E. 458, holding servant cannot recover for injuries due to catching hand in pulley to prevent falling on soapy floor, if conditions same when employment began; Kanz v. Page, 168 Mass. 218, 46 N. E.

620, denying liability to employee injured by piece of iron falling from ceiling in engine room, where he was sent by superintendent to clear out rubbish after explosion of fly wheel; Murch v. Thomas Wilson's Sons & Co. 168 Mass. 411, 47 N. E. 111, denying ship owner's liability to employee for injuries caused by rolling from lounge in boat against hot stove while asleep; French v. Columbia Spinning Co. 169 Mass. 534, 48 N. E. 269, denying company's liability to servant injured by inadvertently stepping too near end of running board to clean coupling 6 feet farther on; Davis v. Forbes, 171 Mass. 555, 47 L. R. A. 177, 51 N. E. 20, denying employer's liability to boy of two years' experience in riding colts, for injury resulting from breaking of stirrup strap which latter knew to be defective; Gleason v. Smith, 172 Mass. 52, 51 N. E. 460, denying right of recovery of person of several years' experience, injured by revolving knife in ordinary molding machine in perfect condition; Johansen v. Eastmans Co. 44 App. Div. 272, 60 N. Y. Supp. 708, holding servant, unfamiliar with machinery, does not assume risk of injury from rapidly revolving shaft not protected as required by statute; Knisley v. Pratt, 148 N. Y. 379, 32 L. R. A. 369, 42 N. E. 986, denying employer's liability to servant who assumed obvious risk of unguarded cogwheels; Anderson v. C. N. Nelson Lumber Co. 67 Minn. 82, 69 N. W. 630, holding assumption of risk of injury not changed by mere fact that statute requires employer to guard shingle saws; Dempsey v. Sawyer, 95 Me. 302, 49 Atl. 1035, holding question as to reassumption of risk for jury, where servant continues in service after notifying master of defective condition of saw, who promises to remedy defects, and referring particularly to annotation in 47 L. R. A. 161; Munn v. L. Wolff Mfg. Co. 94 Ill. App. 126, denying right of recovery of employee exposing himself to danger with knowledge of unguarded condition of machinery; Cudahy Packing Co. v. Marcan, 54 L. R. A. 261, 45 C. C. A. 517, 106 Fed. 648, holding that minor of four weeks' experience in factory assumes risk incident to greasy condition of floor; Green v. Western American Co. 30 Wash. 109, 70 Pac. 310, holding that minor does not assume risk of injury from caving in of walls, where statute requires operator to furnish timbers to support works; St. Louis Cordage Co. v. Miller, 63 L. R. A. 563, footnote p. 551, 61 C. C. A. 491, 126 Fed. 509, which holds defense of assumption of risk not limited by existence of contributory negligence; Drake v. Auburn City R. Co. 173 N. Y. 473, 66 N. E. 121, holding that street car conductor who has been over line about two hundred times assumes risk of injury from contact with tree near track; Fisk v. Fitchburg R. Co. 158 Mass. 239, 33 N. E. 510, denying company's liability to employee injured while descending side of train, by contact with wooden awning without apparent defect; Gleason v. New York & N. E. R. Co. 159 Mass. 69, 34 N. E. 79, holding that railroad employee assumes risk of injury from falling into space between planking between rails of track; Goodes v. Boston & A. R. Co. 162 Mass. 289, 38 N. E. 500, denying liability for death of brakeman while uncoupling cars, by contact with switch-stand located close to track; Cassady v. Boston & A. R. Co. 164 Mass. 170, 41 N. E. 129, denying freight handler's recovery for injuries from car door falling upon him, after he had swung it against roof and hooked it; Caron v. Boston & A. R. Co. 164 Mass. 531, 42 N. E. 112, holding that brakeman working in freight yard assumes risk of dangers incident to coupling cars; Content v. New York, N. H. & H. R. Co. 165 Mass. 270, 43 N. E. 94, denying liability to brakeman injured while on side ladder of moving car by contact with unusually wide car standing on side track; Dowd v. New York, O. & W. R. Co. 170 N. Y. 471, 63 N. E. 541, affirming recovery for death of car repairer while working under car, as result of "kicking" cars from main track onto siding, and referring particularly to annotation in 47 L. R. A. 161; Narra-

more v. Cleveland, C. C. & St. L. R. Co. 48 L. R. A. 76, 37 C. C. A. 504, 96 Fed. 303, holding continuance with company without complaint, knowing it has not complied with requirement as to blocking switches, not constitute assumption of risk; Martin v. Chicago, R. I. & P. R. Co. 118 Iowa, 155, 59 L. R. A. 702, footnote p. 698, 91 N. W. 1034, which holds risk of excessive speed assumed by brakeman accepting or continuing in employment with knowledge and without complaint; Philadelphia, B. & W. R. Co. v. Tucker, 35 App. D. C. 148, holding that doctrine of assumption of risks cannot be successfully interposed as defense by carrier to action under employer's liability act of Congress of 1906, for death of employee; Green v. Western American Co. 30 Wash. 109, 70 Pac. 310; Sans Bois Coal Co. v. Janeway, 22 Okla. 433, 99 Pac. 153,—on basis of doctrine of assumption of risk; Drake v. Auburn City R. Co. 173 N. Y. 473, 66 N. E. 121; Illinois C. R. Co. v. Fitzpatrick, 227 Ill. 482, 118 Am. St. Rep. 280, 81 N. E. 529,—holding assumption of risk does not rest wholly on contract but upon waiver by servant; Ross v. Chicago, R. I. & P. R. Co. 243 Ill. 445, 90 N. E. 701, holding claim for damages waived by foreman of switching crew in working with engine having defective headlight to his knowledge; American Rolling Mill Co. v. Hullinger, 161 Ind. 678, 67 N. E. 986, holding doctrine of assumed risk is involved in action under employers' liability act; Hofnauer v. R. H. White Co. 186 Mass. 50, 70 N. E. 1038, holding risk of injury by articles falling from slanting shelf assumed by saleswoman where defect was obvious; Daily v. Fiberloid Co. 186 Mass. 319, 71 N. E. 554, holding risk of warped and twisted runway assumed by workman wheeling ashes thereon with knowledge of its condition; Moylon v. D. S. McDonald Co. 188 Mass. 501, 74 N. E. 929, holding injured servant assuming risk of defective elevator by his conduct not barred by recovery unless he knew of and appreciated danger also; Cooney v. Commonwealth Ave. Street R. Co. 196 Mass. 16, 81 N. E. 905, holding risk assumed by servant must be by conduct, where there is no assumption by contract; Anderson v. Marrinan, 202 Mass. 196, 88 N. E. 782, holding servant did not assume risk of injury by piece of steel flying from defective tube expander where defect was not known or obvious; Goudie v. Foster, 202 Mass. 228, 88 N. E. 663, holding launderer not liable to employee who slipped upon starch saturated with water throwing his arm into moving machinery, where same method of work existed at time of employment; McGinty v. Waterman, 93 Minn. 244, 101 N. W. 300, 3 Ann. Cas. 39, holding expert workman neglecting to use device for guarding machinery known to him to be furnished by master cannot recover, notwithstanding master's statutory duty to guard machinery; Adolff v. Columbia Protzel & Baking Co. 100 Mo. App. 206, 73 S. W. 321, on conflict of precedents concerning doctrine of assumption of risk; Millsap v. Beggs, 122 Mo. App. 7, 97 S. W. 956, on assumption of risk as defense when case of liability is made out under statute; James v. Cranford, 123 App. Div. 562, 108 N. Y. Supp. 142, holding risk of injury from bringing metal swab for painting into contact with third rail assumed by servant, though he did not understand electrical phenomena; Langlois v. Dunn Worsted Mills, 25 R. I. 650, 57 Atl. 910, holding master not liable to servant who assumed risk of unguarded gearing, notwithstanding statutory duty of master to guard same; Wilson v. New York, N. H. & H. R. Co. 29 R. I. 174, 69 Atl. 364, holding servant may assume risk in writing or by implication; Hall v. West & S. Mill Co. 39 Wash. 475, 81 Pac. 915, 4 Ann. Cas. 587 (dissenting opinion), on defense of assumption of risk where statute has been violated by master; Denver & R. G. R. Co. v. Gannon, 40 Colo. 206, 11 L.R.A.(N.S.) 221, 90 Pac. 853, holding law of assumption of risk is noncontractual and is unaffected by law requiring proper blocking of railroad frogs and guard rails; Denver & R. G. R. Co. v. Norgate, 6

L.R.A.(N.S.) 993, 72 C. C. A. 365, 141 Fed. 255, 5 Ann. Cas. 448, to same effect.

Annotation in 47 L. R. A. 161, referred to particularly in Adolff v. Columbia Pretzel & Baking Co. 100 Mo. App. 206, 73 S. W. 321, holding risk of operating dangerous machine not assumed *per se* by minor employee employed for less dangerous work, by undertaking it under threat of discharge unless she did so; English v. Amidon, 72 N. H. 303, 56 Atl. 548, holding whether servant assumed risk in necessarily using dark and defective stairway was question for jury; Rase v. Minneapolis, St. P. & S. Ste. M. R. Co. 107 Minn. 268, 21 L.R.A.(N.S.) 147, 120 N. W. 360, holding conclusion to be reached dependent upon whether assumption of risk is placed upon contract or maxim volenti non fit injuria, also citing annotation on assumption of risk.

Cited in footnotes to McGuire v. Bell Teleph. Co. 52 L. R. A. 437, which holds risk of employer's lack of right to inspect third person's poles used, not assumed by telephone company lineman; Stager v. Troy Laundry Co. 53 L. R. A. 459, which holds risk of hand passing under guard rails into rollers not assumed, as matter of law, by servant operating mangle in laundry; Cox v. American Agri. Chemical Co. 60 L. R. A. 629, which holds risk of injuries from unknown dangerous gases not assumed by servant undertaking to clean drain filled with decaying animal matter; Simmons v. Southern Traction Co. 61 L.R.A. 205, which holds that street car conductor accepts the risk of injury from absence of signals when running on single track extending beyond termination of double tracks.

Cited in notes (49 L.R.A. 42, 47, 49, 50) on contributory negligence in entering or remaining in employment; (28 L.R.A.(N.S.) 1216, 1229) as to whether servant may assume risk of dangers created by master's negligence; (19 Eng. Rul. Cas. 167) on assumption of risks by employee.

Distinguished in Wagner v. Boston Elev. R. Co. 188 Mass. 442, 74 N. E. 919, holding elevated railway company liable for injury of riveter in employ of subcontractor knocked off temporary platform by trolley pole flying up.

Disapproved in Western Furniture & Mfg. Co. v. Bloom, 76 Kan. 130, 11 L.R.A.(N.S.) 227, 123 Am. St. Rep. 123, 90 Pac. 821, holding assumption of risk is not available as defense to action based on factory act, also citing annotation on this subject; Welsh v. Barber Asphalt Paving Co. 93 C. C. A. 101, 167 Fed. 466, holding assumption of risk not available as defense to employer violating statutory duty to guard machinery.

Employers' liability to servants.

Cited in Matrusciello v. Milliken Bros. 141 App. Div. 772, 126 N. Y. Supp. 739, holding that servant injured by cars operated on private railroad while crossing it for purpose of getting tool cannot recover on theory that master failed to provide safe place to work.

Cited in footnote to Tarbell v. Rutland R. Co. 56 L. R. A. 656, which holds void, contract by next of kin releasing employer from liability for future injuries to employee.

Cited in notes (41 L. R. A. 123) on knowledge as element of employer's liability to injured servant; (48 L. R. A. 763) on servant's right of action for injuries received in obeying direct command; (48 L. R. A. 798, 808) on liability for injuries received in performance of duties outside scope of original contract; (57 L. R. A. 843) on statutory liability of employers for defects in condition of their plant; (98 Am. St. Rep. 319) on liability to servant for injuries due to defective machinery and appliances; (19 Eng. Rul. Cas. 58) on liability for injury due to neglect of statutory precautions.

Contributory negligence.

Cited in Regan v. Lombard, 192 Mass. 322, 78 N. E. 476, holding servant guilty of contributory negligence at time of injury by sliding of stones insecurely piled, cannot recover under statute notwithstanding negligence of superintendent.

47 L. R. A. 170, DAVIS v. FORBES, 171 Mass. 548, 51 N. E. 20.

Assuming risk of employment.

Cited in Leazotte v. Boston & M. R. Co. 70 N. H. 7, 45 Atl. 1084, holding that servant voluntarily continuing in employment of one habitually negligent assumes risk; Carver v. Minneapolis & St. L. R. Co. 120 Iowa, 350, 94 N. W. 862, holding that mail carrier does not assume risk of injury from collision with mail bag thrown from passing train into unaccustomed place, and referring particularly to annotation in 47 L.R.A. 170; Bonin v. Ballard, 196 Mass. 528, 82 N. E. 702, holding manager of stone quarry not bound to warn teamster of danger of stones falling from pile not part of ways and appliances.

Cited in footnotes to Cudahy Packing Co. v. Marcan, 54 L. R. A. 258, which holds risk of block on which minor employee works, slipping on greasy floor, assumed; Marino v. Lehmaier, 61 L. R. A. 812, which holds risk of employment not assumed *per se* by child whose employment is forbidden by statute because of immature age.

Cited in notes (47 L. R. A. 161) on *volenti non fit injuria* as defense to actions by injured servants; (49 L. R. A. 38) on contributory negligence in entering or remaining in employment; (13 L.R.A.(N.S.) 692) on assumption of risk of defective tool, machine, or appliance, where defect obvious, but its importance not appreciated; (28 L.R.A.(N.S.) 1215) on servant's assumption of risks from master's negligence.

Distinguished in Haley v. Lombard, 207 Mass. 547, 93 N. E. 633, holding that where there is evidence of due care on part of person killed, question whether he assumed risk by voluntarily exposing himself to danger was for jury; Shannon v. Willard, 201 Mass. 383, 87 N. E. 610, holding employee who, unaware of the risk, slipped upon oil upon hatch cover of elevator well and was jammed when elevator ascended, might recover; Carriere v. Merrick Lumber Co. 203 Mass. 327, 89 N. E. 544, holding question of due care of employee for jury, where he was injured by falling of pile of lumber which superintendent assured him was safe.

Employers' statutory liability.

Cited in note (57 L. R. A. 843) on statutory liability of employers for defects in condition of their plant.

Duty or implied authority to furnish medical aid.

Cited in Vorass v. Rosenberry, 85 Ill. App. 627, denying parent's liability for medical aid furnished adult son; Weinsberg v. St. Louis Cordage Co. 135 Mo. App. 568, 116 S. W. 461, holding whether negligence of employer calling physician to attend employee caused latter's injury is immaterial in action by physician to recover for services from employer; Voorhees v. New York C. & H. R. R. Co. 129 App. Div. 783, 114 N. Y. Supp. 242, holding employer is not required to furnish medical attendance for employee, in absence of agreement, also that settlement between employer and employe is not admission of liability inuring to physician's benefit.

Cited in footnote to Spelman v. Gold Coin Min. & Mill. Co. 55 L. R. A. 640, which denies presumption of general manager's implied authority to bind mining company for medical aid to injured employees.

Cited in note (4 L.R.A.(N.S.) 53, 55) on duty to provide medical assistance for servant.

47 L. R. A. 201, COLE v. UNION CENT. L. INS. CO. 22 Wash. 26, 60 Pac. 68.

Agent's power to bind insurance company.

Cited in Nixon v. Travellers' Ins. Co. 25 Wash. 259, 65 Pac. 195, holding agent's agreement to extend time of payment of premium not binding on company; German Ins. Co. v. Shader, 68 Neb. 5, 60 L.R.A. 920, footnote, p. 918, 93 N. W. 972, which holds provision against liability for loss occurring before premium paid waived by receiving premium after all property destroyed; Foster v. Pioneer Mut. Ins. Asso. 37 Wash. 294, 79 Pac. 798, holding insurer liable upon fire policy where agent wrote false answers to questions in application truthfully answered by insured for agent.

Cited in footnotes to McCabe v. Ætna Ins. Co. 47 L. R. A. 641, which sustains authority of agent of foreign insurance company orally to renew policy issued by him; Kocher v. Supreme Council C. B. L. 52 L. R. A. 861, which denies power of officers of benefit society to waive judgment of assessments for death benefits.

Cited in notes (13 L.R.A.(N.S.) 850) on acts of agent as estopping insurance company; (13 L.R.A.(N.S.) 861) on effect of nonwaiver agreement as tested by rule that principal may limit power of agent.

Conflict between receipt and application.

Cited in Starr v. Mutual L. Ins. Co. 41 Wash. 232, 83 Pac. 116, holding where blanks of printed application are unfilled and receipt is wholly in writing receipt controls in case of conflict.

Ignorance of assured as to stipulations of contract.

Cited in Campbell v. Order of Washington, 53 Wash. 407, 102 Pac. 410 (dissenting opinion), on duty of insurer to call attention of assured to printed conditions of contract.

47 L. R. A. 205, FLEETWOOD v. READ, 21 Wash. 547, 58 Pac. 665.

Tax on occupations; uniformity of taxation.

Approved in Oilure Mfg. Co. v. Piddick-Ross Co. 38 Wash. 141, 80 Pac. 276, upholding ordinance imposing $600 license on any one transacting trading stamp business and $100 on any merchant using stamps.

Cited in Stull v. De Mattos, 23 Wash. 77, 51 L. R. A. 895, 62 Pac. 451, sustaining license tax of $25 per day on sales of merchandise at auction; Lent v. Portland, 42 Or. 493, 71 Pac. 645, sustaining ordinance imposing annual license tax of $1 to $15 on attorneys; State v. Clark, 30 Wash. 446, 71 Pac. 20, holding exemption of estates below $10,000 from provisions of inheritance tax law not void for lack of uniformity; Abraham v. Roseburg, 55 Or. 362, 105 Pac. 401, Ann. Cas. 1912A, 597, holding that charter authorizing city "to license and regulate all such callings, trades and employments as public good may require" is sufficiently broad to include raising revenue; Re Watson, 17 S. D. 499, 97 N. W. 463, 2 Ann. Cas. 321, sustaining statute imposing license tax on peddlers dealing in goods, except certain kinds, and not applying to traveling salesmen dealing with certain enumerated classes of persons; Salt Lake City v. Christensen Co. 34 Utah, 43, 17 L.R.A.(N.S.) 902, 95 Pac. 523, holding constitutional requirements of uniformity and equality of taxation inapplicable to occupation tax; Re Garfinkle, 37 Wash. 653, 80 Pac. 188, holding same and that city may license for both revenue and police regulation; Thurston County v. Tenino Stone Quarries, 44 Wash. 360, 9 L.R.A.(N.S.) 310, 87 Pac. 634, 12 Ann. Cas. 314, as bearing upon

validity of poll tax upon males between 21 and 50 years to be paid by employer when due from employee.

Cited in footnotes to Knisely v. Cotterel, 50 L. R. A. 87, which sustains statute fixing different rates of license for retailers, wholesalers, and sellers on board of trade; Morton v. Macon, 50 L. R. A. 485, which denies power to subject to prohibitory license tax, business of loaning money on household furniture; Harrodsburg v. Renfro, 51 L. R. A. 897, which holds, void, ordinance imposing greater license fee for sale of liquors on main street of town than elsewhere; Price v. People, 55 L. R. A. 588, which sustains license fee on employment agencies; State v. Garbroski, 56 L. R. A. 570, which holds void, statute exempting veterans from requirement for peddling license; Com. use of Titusville v. Clark, 57 L. R. A. 348, which holds void, exemption from license tax of contractors and real estate dealers, but not others, whose business less than $1,000.

Cited in notes (5 L.R.A.(N.S.) 620) on power of municipality to make constituent elements or operations of a business independent subjects of license tax; (129 Am. St. Rep. 251) on constitutional limitations on power to impose license or occupation taxes.

Distinguished in State v. Ide, 35 Wash. 582, 67 L.R.A. 283, 102 Am. St. Rep. 914, 77 Pac. 961, 1 Ann. Cas. 634, holding statute authorizing imposition by cities of street poll tax and exempting members of volunteer fire companies violates requirements of uniformity and equality.

— On users of trading stamps.

Cited in footnotes to Winston v. Beeson, 65 L.R.A. 167, which holds that concern selling trading stamps to merchants to be given to customers does not conduct a gift enterprise; Hewin v. Atlanta, 67 L.R.A. 795, which holds furnishing of trading stamps by merchants to customers in consideration of cash payment not taxable as a separate business: Montgomery v. Kelly, 70 L.R.A. 209, which holds void ordinance requiring payment of license fee under penalty by merchant who having already paid privilege tax on business issues trading stamps in connection therewith.

Cited in note (2 L.R.A.(N.S.) 594) on trading stamps.

Distinguished in Hewin v. Atlanta, 121 Ga. 735, 67 L.R.A. 801, 49 S. E. 765, 2 Ann. Cas. 296, holding furnishing of trading stamps by merchants is not itself a business subject to classification for taxation; State ex rel. Simpson v. Sperry & H. Co. 110 Minn. 392, 30 L.R.A.(N.S.) 970, 126 N. W. 120, sustaining statute in so far as it prohibits trading stamp schemes involving chance, uncertainty or contingency; Ex parte Hutchinson, 137 Fed. 950, holding ordinance imposing $600 license on any one selling trading stamps to merchants and $100 on merchants using stamps is invalid.

Disapproved in Montgomery v. Kelly, 142 Ala. 559, 70 L.R.A. 212, 110 Am. St. Rep. 43, 38 So. 67, holding license tax imposed by ordinance on merchants issuing trading stamps in addition to regular license tax is invalid.

Class legislation.

Cited in Washington ex rel. Davis-Smith Co. v. Clausen, 65 Wash. 204, 37 L.R.A.(N.S.) 484, 117 Pac. 1101, holding that working men's compensation act of 1911, is not void as class legislation.

Cited in footnote to People *ex rel.* Valentine v. Coolidge, 50 L. R. A. 493, which holds void, act requiring large bond from merchants selling farm produce.

47 L. R. A. 208, STATE *ex rel.* WEINBERG v. PACIFIC BREWING & MALTING CO. 21 Wash. 451, 58 Pac. 584.

Inspection of corporate books.

Cited in Varney v. Baker, 194 Mass. 241, 80 N. E. 524, 10 Ann. Cas. 989,

holding stockholder seeking in good faith to examine books of corporation to ascertain its financial condition is entitled to do so.

Cited in footnotes to Cincinnati Volksblatt Co. v. Hoffmeister, 48 L.R.A. 732, which holds absolute, stockholder's right to inspect corporate books; McClintock v. Young Republicans, 68 L.R.A. 459, which sustains right of member of corporation organized in interests of political organization to inspect membership roll for purpose of instituting measures to promote objects of the organization.

Cited in notes (20 L.R.A.(N.S.) 186, 191, 200) on right of stockholder to inspect books; (105 Am. St. Rep. 123) on necessary parties to proceedings in mandamus; (107 Am. St. Rep. 675, 677, 678, 679, 681, 682) on right of stockholder to inspect corporate books and remedies for its enforcement.

Distinguished in Brown v. Kildea, 58 Wash. 190, 108 Pac. 453, holding that under code, in order to subject officer of corporation to penalty for refusal to permit inspection of books by stockholder, demand must have been made for particular book or paper desired.

Mandamus.

Cited in State ex rel. Brown v. McQuade, 36 Wash. 586, 79 Pac. 207, holding mandamus lies to compel officers of school district to pay teacher his salary.

— In whose name.

Cited in State ex rel. Cicoria v. Corgiot, 50 Wash. 97, 96 Pac. 689; State ex rel. Richardson v. Superior Ct. 41 Wash. 442, 83 Pac. 1027,—holding application for writ of mandate in interest of private party properly made in name of state: Brown v. Crystal Ice Co. 122 Tenn. 247, 122 S. W. 84, 19 Ann. Cas. 308, holding that where name of state is omitted from writ of mandamus and objection is made upon that ground, court may allow amendment.

47 L. R. A. 214, NORTH SPRINGS WATER CO. v. TACOMA, 21 Wash. 517, 58 Pac. 773.

Right to use street.

Cited in Cedar Rapids Water Co. v. Cedar Rapids, 118 Iowa, 257, 91 N. W. 1081, holding city's grant to water company of right to use streets beyond statutory twenty-five years void as to excess.

Cited in note (50 L. R. A. 146) on privilege of using streets as a contract within constitutional provision against impairing obligations of contracts.

Distinguished in State *ex rel.* Spokane & B. C. Teleph. & Teleg. Co. v. Spokane, 24 Wash. 58, 63 Pac. 1116, holding refusal of municipality to grant to telephone company same rights to use of streets as had been granted other telephone company, not violation of constitutional provision against grant of exclusive privileges.

Establishment and regulation of municipal water supply.

Cited in Farmers' Loan & T. Co. v. Sioux Falls, 131 Fed. 901, holding grant of right to use streets for waterworks for certain period does not prevent city from constructing its own works after period expires.

Cited in footnote to Skaneateles Waterworks Co. v. Skaneateles, 46 L. R. A. 687, which upholds power of village establishing own water works as against existing water company, to impose rates for fire protection on property where village works not used.

Cited in note (61 L. R. A. 38, 82) on establishment and regulation of municipal water supply.

Distinguished in Mitchell v. Tulsa Water, Light, Heat & P. Co. 21 Okla. 257, 95 Pac. 961, holding exclusive privilege granted by ordinance to use streets for

certain purposes excludes right of city to use or grant use of them for same purposes.

— Public competition with licensed or franchised service.

Cited in State ex rel. Watts v. Cain, 78 S. C. 351, 58 S. E. 937, holding that the grant of a license to the petitioner to bottle malt liquors not being exclusive, he could not complain of the establishment of a bottling works by the county dispensary board.

47 L. R. A. 221, GOLDBERG v. AHNAPEE & W. R. CO. 105 Wis. 1, 76 Am. St. Rep. 899, 80 N. W. 920.

Patron's right to sleep in waiting room.

Cited in footnote to Central R. Co. v. Motes, 62 L. R. A. 507, which sustains regulation against patrons sleeping or lying down on benches in waiting room while awaiting arrival or departure of trains.

Liability of carrier for loss of baggage.

Cited in Cone v. Southern R. Co. 85 S. C. 528, 67 S. E. 779, 21 Ann. Cas. 158, holding that where drayman left baggage in usual place to be checked, without notice to carrier's agent, night before owner intended to take train, it cannot be said as matter of law that carrier is not liable; Fleischman v. Southern R. Co. 76 S. C. 244, 9 L.R.A.(N.S.) 522, 56 S. E. 974, holding a railroad company liable as a warehouseman for the loss of baggage delivered and accepted for transportation an unreasonable time before the departure of the train.

Cited in notes (97 Am. St. Rep. 101) on commencement of liability as carrier; (99 Am. St. Rep. 372, 383) on liability for loss of baggage.

Distinguished in Tallman v. Chicago, M. & St. P. R. Co. 136 Wis. 652, 118 N. W. 205, 16 Ann. Cas. 711, holding railroad company liable as common carrier for articles missing from baggage called for on morning after its arrival.

47 L. R. A. 223, STATE v. HOSKINS, 109 Iowa, 656, 77 Am. St. Rep. 560, 80 N. W. 1063.

Privileged communications.

Cited in Nichols v. Eaton, 110 Iowa, 513, 47 L. R. A. 485, 80 Am. St. Rep. 319, 81 N. W. 792, holding communication by life insurance company to agent concerning alleged forgery of examining physician, privileged: State v. Cooper, 138 Iowa, 521, 116 N. W. 91, holding publication libeling lawyer made to members of temperance organization, in periodical circulating out of state, not privileged; Bee Pub. Co. v. Shields, 68 Neb. 755, 94 N. W. 1029, holding evidence admissible to show extensive circulation of newspaper containing libel of public officer at home and in other states.

Cited in footnote to Star Pub. Co. v. Donahoe, 65 L.R.A. 980, which holds newspaper publication charging candidate for office with a criminal offense, not privileged.

Criticized in Coleman v. MacLennan, 78 Kan. 743, 20 L.R.A.(N.S.) 377, 130 Am. St. Rep. 390, 98 Pac. 281, holding state newspaper not deprived of its privilege in discussion of matters of state-wide concern, because of small circulation elsewhere.

— Of political candidates.

Cited in footnotes to Eikhoff v. Gilbert, 51 L. R. A. 451, which denies privilege to circular to voters announcing that candidate for re-election has championed legislation opposed to moral interests of community; Wofford v. Meeks, 55 L. R. A. 214, which holds libelous, publication imputing to county officials prostitution of county finances by awarding contracts to persons of same political faith; Coffin

v. Brown, 55 L. R. A. 732, which denies right to falsely attack character of appointee of governor to prevent latter's re-election.

Distinguished in Morse v. Times-Republican Printing Co. 124 Iowa, 723, 100 N. W. 867, where publication was in relation to private citizen pursuing private business.

Justification of libel.

Cited in State v. Cooper, 138 Iowa, 522, 116 N. W. 691, holding false publication, though based upon reasonable and probable cause is not justifiable, if not privileged.

Cited in note (91 Am. St. Rep. 290) on justification in slander and libel.

47 L. R. A. 226, SMITH v. FURBISH, 68 N. H. 123, 44 Atl. 398.

Conveyance of standing timber.

Cited in Dyer v. Hartshorn, 73 N. H. 510, 63 Atl. 231, holding title to trees reserved in deed providing for their removal before certain date is absolute.

Cited in note (55 L. R. A. 533) on conveyance of title to standing timber without conveying title to land.

Liability for damming back water.

Cited in Schlag v. Gooding-Coxe Co. 98 Minn. 263, 108 N. W. 11, holding deed of right of flowage caused by mill-dam to certain number of acres properly described need not state precise quantity overflowed.

Cited in note (59 L. R. A. 830, 834) on liability for damming back water of stream.

Construction of covenants.

Cited in Gill v. Ferrin, 71 N. H. 424, 52 Atl. 558, holding taxes which purchaser orally agrees to pay not within general covenant of warranty against encumbrances; First Nat. Bank v. Portsmouth Sav. Bank, 71 N. H. 550, 53 Atl. 1017, holding easements created by mutual covenant not to change building, extinguished by subsequent alterations by common consent; Weed v. Woods, 71 N. H. 583, 53 Atl. 1024, holding that deed reserving premises so long as religious society may want them creates determinable fee.

Proof required to show title.

Cited in Currier v. Thompson, 70 N. H. 251, 46 Atl. 1055, holding lack of possession and absence of proof of deed applicable to property, defeat claim of title.

Forfeiture of title to timber by failure to remove.

Cited in Peirce v. Finerty, 76 N. H. 40, 29 L.R.A.(N.S.) 552, 76 Atl. 194, holding that purchaser of standing timber does not lose his title by failure to remove timber within time limited in conveyance.

Conveyance of land leaving quantity to be ascertained.

Cited in Van Slyke v. Arrowhead Reservoir & Power Co. 155 Cal. 682, 102 Pac. 816, on conveyance of property whose limits are to be ascertained by subsequent act of grantor or grantee or both; Jones v. Mount, 166 Ind. 572, 77 N. E. 1089, holding grantee's covenant to surrender if certain number of oil and gas wells are not drilled, is enforceable though land to be reconveyed is originally uncertain; Perry v. Acme Oil Co. 44 Ind. App. 211, 88 N. E. 859, holding that lessee has no cause to complain if uncertainty in description of undescribed ten-acre piece surrounding successful oil well which such lessee had right to retain, where he had right to select such tract.

Grant of water power.

Cited in note (67 L.R.A. 370, 371) on grant of water power.

47 L. R. A. 246, ROCHESTER & K. F. LAND CO. v. RAYMOND, 158 N. Y. 576, 53 N. E. 507.

Transfer of stock as affecting liability for unpaid subscriptions.

Cited in Beals v. Buffalo Expanded Metal Constr. Co. 49 App. Div. 594, 63 N. Y. Supp. 635, holding subscriber not released from liability upon unpaid subscriptions when corporation insolvent, by assigning agreement to make advances, sums to be repaid upon completion of certain contracts, and assignee to assume obligations; Sinclair v. Fuller, 158 N. Y. 614, 53 N. E. 510, holding that stockholder may make bona fide transfer of stock when not indebted to corporation or its creditors; Sigua Iron Co. v. Brown, 171 N. Y. 501, 64 N. E. 194, holding that transferee's acceptance of stock certificate implies promise to pay calls upon assessable stock.

Cited in footnote to Vermont Marble Co. v. Declez Granite Co. 56 L. R. A. 728, which holds liability for unpaid subscription not defeated by transfer of stock without transferee's consent.

Cited in note (30 L.R.A.(N.S.) 288) on liability of transferee on unpaid stock subscribed.

Equitable lien on bank stock.

Cited in footnote to Buffalo German Ins. Co. v. Third Nat. Bank, 48 L. R. A. 107, which denies equitable lien on national bank stock under by-law in conflict with act of Congress.

Liability upon unpaid stock subscription.

Cited in Harris v. Wells, 57 Misc. 173, 108 N. Y. Supp. 1078, holding trustee in bankruptcy may maintain action against stockholder upon express promise to pay.

Necessity of specific request to go to jury.

Cited in Paltey v. Egan, 200 N. Y. 89, 93 N. E. 267, holding that party is not required to make specific request to go to jury, where motion for nonsuit is granted.

47 L. R. A. 265, SHUTE v. HINMAN, 34 Or. 578, 56 Pac. 412, 58 Pac. 882.

Right to follow trust funds.

Applied in Dunham v. Siglin, 39 Or. 299, 64 Pac. 661, decreeing to *cestui que trust* funds deposited by deceased trustee in separate depository, unmixed with other funds.

Cited in Lincoln v. Morrison (Lincoln Sav. Bank & S. D. Co. v. Morrison), 64 Neb. 828, 57 L. R. A. 888, 90 N. W. 905, holding *cestui que trust* entitled to profits on portion of fund chargeable with trust.

Cited in note (86 Am. St. Rep. 805) on right to recover money deposited with or collected by bank upon its insolvency.

47 L. R. A. 267, BIGHAM v. MADISON, 103 Tenn. 358, 52 S. W. 1074.

Rescission of contract of sale of lands for mistake or deficiency.

Cited in Zunker v. Kuehn, 113 Wis. 425, 88 N. W. 605, rescinding contract to exchange definite lands of good "record title" when one has record title to only portion of tract; Rathke v. Tyler, 136 Iowa, 287, 111 N. W. 435, holding when certain number of acres "more or less" is conveyed equity will allow recovery for amount overpaid, if deficiency is substantial; Allen v. Luckett, 94 Miss. 873, 136 Am. St. Rep. 605, 48 So. 186, rescinding contract for sale of realty and cancelling deed because of mistake as to quantity; Castleman v. Castleman, 181 Mo 445 83 S. W. 757, holding equity will relieve from contract of sale made

under mutual mistake as to extent of interest conveyed, to material degree; Smith v. Detroit & D. Gold Min. Co. 17 S. D. 421, 97 N. W. 17 (dissenting opinion), on right to rescind contract for purchase of realty on ground of misrepresentation as to boundaries.

Cited in note (14 L.R.A.(N.S.) 1212) on right of purchaser of land to rely upon representation of seller as to boundaries.

Distinguished in Rich v. Scales, 116 Tenn. 67, 91 S. W. 50, where vendee examined tract himself, was informed as to boundaries by deed and sale was in gross.

47 L. R. A. 270, GIVAN v. BANK OF ALEXANDRIA (Tenn. Ch.) 52 S. W. 923.

Bank's liability for collections.

Cited in footnotes to Wilson v. Carlinville Nat. Bank, 52 L. R. A. 632, which holds failure to collect check, due to negligence of collecting bank, not preclude recovering amount from depositor to whom forwarding bank had given credit for amount, where due care exercised in selecting collecting bank; Second Nat. Bank v. Merchants' Nat. Bank, 55 L. R. A. 273, which holds bank negligent in sending note for collection to bank whose cashier is treasurer of corporation maker, without hearing from similar note previously sent.

— Collections sent to drawee.

Cited in Pinkney v. Kanawha Valley Bank, 68 W. Va. 265, 32 L.R.A.(N.S.) 993, 69 S. E. 1012, Ann. Cas. 1912B, 115, holding that it is negligence for collecting bank to send checks direct to drawee; Winchester Mill. Co. v. Bank of Winchester, 120 Tenn. 236, 18 L.R.A.(N.S.) 447, 111 S. W. 248, holding bank liable for negligence in sending check deposited for collection direct to drawee bank.

Cited in notes (2 L.R.A.(N.S.) 194) on validity of custom to send paper to drawee for collection; (18 L.R.A.(N.S.) 442, 443) on sending check directly to drawee bank.

47 L. R. A. 273, NANZ v. CUMBERLAND GAP PARK CO. 103 Tenn. 299, 76 Am. St. Rep. 650, 52 S. W. 999.

47 L. R. A. 275, ROBINSON v. BIERCE, 102 Tenn. 428, 52 S. W. 992.

Back tax as affecting warranty.

Cited in Bruington v. Barber, 63 Kan. 29, 64 Pac. 963, holding existence of tax deed seven years old, no breach of warranty.

47 L. R. A. 278, BENNETT v. PULASKI (Tenn. Ch.) 52 S. W. 913.

Regulation of sale of liquor.

Cited in footnotes to Newbern v. McCann, 50 L. R. A. 476, which holds void, ordinance against proprietor or employee entering saloon on Sunday without permit from mayor or recorder; State v. Barge, 53 L. R. A. 428, which sustains ordinance against liquor dealer keeping room for lounging, drinking, or immoral purposes; Campbellsville v. Odewalt, 60 L. R. A. 723, which holds void, ordinance subjecting to fine, possessor of premises on which liquor furnished in violation of law, although without his knowledge or consent; Paul v. Washington, 65 L.R.A. 902, which sustains municipal ordinance forbidding use of any screen of any nature to shut off view from street of interior of place where liquor is sold.

Cited in note (4 L.R.A.(N.S.) 110) on validity of ordinance excluding persons from saloon during hours of closing.

Disapproved in State v. Calloway, 11 Idaho, 729, 4 L.R.A.(N.S.) 113, 114 Am. St. Rep. 285, 84 Pac. 27, holding ordinance making it misdemeanor to allow

person to enter saloon during hours when sales of intoxicants are prohibited reasonable regulation and valid.

Restrictions on department stores.

Cited in note (48 L. R. A. 261) on legal restrictions on department stores.

Right of courts to consider propriety of statutes.

Cited in footnote to Com. *ex rel.* Elkin v. Moir, 53 L. R. A. 837, which holds wisdom, propriety, justice, or motive for passage not considered in determining validity of statute for government of cities.

47 L. R. A. 282, GALVESTON, H. & S. A. R. CO. v. ZANTZINGER, 93 Tex. 64, 77 Am. St. Rep. 829, 53 S. W. 379.

Liability for servant's tortious acts.

Cited in footnotes in Guille v. Campbell, 55 L.R.A. 111, which denies master's liability for injury to bystander by slipping of book from servant's hand while pretending to throw it at boys playing on cotton bales; Evers v. Krouse, 66 L.R.A. 593, which holds servant alone responsible for act by him while engaged in master's work but entirely disconnected therefrom.

— Of railroad company.

Cited in Claiborne v. Missouri, K. & T. R. Co. 21 Tex. Civ. App. 652, 57 S. W. 336, holding company liable for engineer's putting on steam suddenly, causing trespasser whom he saw climbing over tender, to fall off; Houston & T. C. R. Co. v Bulger, 35 Tex. Civ. App. 482, 80 S. W. 557, holding railroad company liable for injury to minor resulting from negligence of its employee in exclusive charge of its pumping station in allowing such minor to come upon and remain on premises which were dangerous to one of minor's age.

Cited in footnotes to Dorsey v. Kansas City, P. & G. R. Co. 52 L. R. A. 92, which holds carrier liable for death of trespasser falling under wheels in escaping from rocks thrown by brakeman; Enright v. Pittsburgh Junction R. Co. 53 L. R. A. 330, which denies right to eject or frighten ten-year-old boy from rapidly moving train; Lynch v. Florida C. & P. R. Co. 54 L. R. A. 810, which denies company's liability for assault by station agent as result of personal quarrel; Alsever v. Minneapolis & St. L. R. Co. 56 L. R. A. 748, which sustains liability for injuries by engineer operating blow-off cock to frighten children; Palmisano v. New Orleans City R. Co. 58 L. R. A. 405, which denies master's liability for injury to boy running blindly against moving car, after release by employee who had caught and lectured him; Southern R. Co. v. James, 63 L. R. A. 257, which holds master liable for injury by night watchman shooting trespasser while running away after having been arrested by him; McNamara v. St. Louis Transit Co. 66 L.R.A. 486, which holds exemplary damages against street car company justified by conductor's intentional and unjustified kicking of boy attempting to board car; Dixon v. Northern P. R. Co. 68 L.R.A. 895, which sustains master's liability for injuries caused by brakeman wantonly and wilfully kicking trespasser from moving car; Bowen v. Illinois Central R. Co. 70 L.R.A. 915, which holds railroad company not liable for wanton act of station agent in killing a person who had come to station to inquire about demurrage on car of coal and whom agent shot as he was about to sign receipt for a package.

Cited in note (13 L.R.A.(N.S.) 367) on liability of railroad for negligence in ejecting trespasser from moving train.

Admissibility of statement of agent against principal.

Cited in Waggoner v. Snody, 36 Tex. Civ. App. 519, 82 S. W. 355, holding statement by ranch boss that defendant was to pay taxes on land as assignee of

lease prior to plaintiff's and that lessor could take possession if defendant did not so pay taxes, admissible in action by plaintiff for loss of horses on question of abandonment.

47 L. R. A. 284, PHILLIPS v. UNIVERSITY OF VIRGINIA, 97 Va. 472, 34 S. E. 66.

Right to sue public corporation.

Cited in Maia v. Eastern State Hospital, 97 Va. 509, 47 L. R. A. 578, 34 S. E. 617, denying public hospital corporation's liability for injury to inmate resulting from manager's negligence.

Enforcement of mechanic's lien.

Cited in footnote to Kirchman v. Standard Oil Co. 52 L. R. A. 318, which holds lienor not estopped to enforce lien by mistaken statement of its payment, without knowledge of other person's intention to buy property.

Mechanic's lien on public buildings.

Cited in note (20 L.R.A.(N.S.) 262) on mechanic's lien on public buildings.

47 L. R. A. 286, PULLMAN'S PALACE CAR CO. v. HUNTER, 107 Ky. 519, 54 S. W. 845.

Liability of sleeping car company for passenger's loss by theft.

Cited in Pullman Palace Car Co. v. Woods, 76 Neb. 697, 107 N. W. 858, holding company liable for theft of jewelry and money from person of occupant of berth, where employees in charge of car did not exercise due care in protecting passengers.

Cited in note (9 L.R.A.(N.S.) 409) on duty of sleeping car company as to baggage or personal effects.

47 L. R. A. 287, STOVALL v. McCUTCHEN & CO. 107 Ky. 577, 92 Am. St. Rep. 373, 54 S. W. 969.

Contracts in restraint of trade.

Cited in Merchants' Ice & Cold Storage Co. v. Rohrman, 138 Ky. 540, 30 L.R.A. (N.S.) 977, 137 Am. St. Rep. 390, 128 S. W. 599, holding that contracts looking to consolidation of ice manufacturing plants in certain city for purpose of controlling market are invalid although no attempt was made to raise prices in that place; Breeding v. Tandy, 148 Ky. 350, 146 S. W. 742, holding that contract prohibiting party from carrying on trade at particular place, or for designated time, or with certain particular persons, is valid.

Cited in footnotes to Tuscaloosa Ice Mfg. Co. v. Williams, 50 L. R. A. 175, which holds void, contract by owner of ice machine to abandon manufacture of ice in certain town for five years, giving other party monopoly of business; Steichen v. Fehleisen, 51 L. R. A. 412, which holds individual partners not bound by firm agreement not to re-engage in certain business for specified period; Pohlman v. Dawson, 54 L. R. A. 913, which holds agreement on sale of business not to engage in barber business in any manner, violated by working as employee in other shop.

Sufficiency of executed act to constitute good consideration for promise.

Cited in Cadiz R. Co. v. Roach, 114 Ky. 938, 72 S. W. 280, holding the partial building of a railroad in reliance on promise to donate right of way sufficient to constitute good consideration for promise.

Equitable interference to prevent multiplicity of actions.

Cited in Vandalia Coal Co. v. Lawson, 43 Ind. App. 243, 87 N. E. 47, holding

equity will not interfere where a defendant is sued by several persons upon separate causes of action, where the injuries are not continuing.

47 L. R. A. 289, TAYLOR v. UNION TRACTION CO. 184 Pa. 465, 40 Atl. 159.

Bicycle law; liability to bicyclist.

Cited in Rowland v. Wanamaker, 20 Pa. Co. Ct. 622, 7 Pa. Dist. R. 249, holding bicyclist negligent by carelessly riding into pole of wagon; Beer v. Clarion Twp. 17 Pa. Super. Ct. 540, denying liability to bicyclist carelessly striking guard log, throwing her into stream, through town's failure to erect guard rails; Richardson v. Danvers, 176 Mass. 414, 50 L. R. A. 127, footnote p. 127, 79 Am. St. Rep. 320, 57 N. E. 688, holding bicycle not within statute for keeping highways reasonably safe for carriages; Des Moines v. Keller, 116 Iowa, 650, 57 L. R. A. 243, footnote p. 243, 93 Am. St. Rep. 268, 88 N. W. 827, sustaining ordinance requiring bicyclists to carry lamps, and referring particularly to annotation in 47 L. R. A. 289; Molway v. Chicago, 239 Ill. 489, 23 L.R.A.(N.S.) 545, 88 N. E. 485, 16 Ann. Cas. 424, holding bicycle a vehicle of such a nature that it may be properly used on the highways, and not on sidewalks, unless otherwise provided by statute.

Cited in footnotes to Foote v. American Product Co. 49 L. R. A. 764, which holds bicyclist entitled to keep to right unless reason for exception shown; Ellis v. Frazier, 53 L. R. A. 454, which holds invalid, imposition of tax of specified amount on all bicycles for construction of bicycle path; Hagerstown v. Klotz, 54 L. R. A. 940, which sustains city's liability for injury by bicycle ridden at immoderate speed in violation of ordinance; Lee v. Port Huron, 55 L. R. A. 308, which holds city liable for injury to bicyclist from defective sidewalk; Belles v. Kellner, 57 L. R. A. 627, which denies presumption of negligence from leaving gentle horse untied in street, with driver only 5 to 8 feet away; Roberts v. Parker, 57 L. R. A. 764, which holds exempt from levy, bicycle used by painter and paper hanger in earning living; Hendry v. North Hampton, 64 L. R. A. 70, which holds town liable to bicyclist for injuries caused by defect making highway unsuitable for ordinary travel; Fox v. Clarke, 65 L.R.A. 234, which holds bicyclist entitled to recover for injuries due to defects in highway rendering it unsafe for ordinary purposes of travel.

Cited in notes (47 L.R.A. 294) on bicycle law; (23 L.R.A.(N.S.) 543) on duty to make streets and highways safe for bicycles.

Validity of municipal regulation of vehicles.

Cited in footnote to People v. Schneider, 69 L.R.A. 346, which upholds power of city council to require registering and numbering of automobiles.

Cited in note (31 L.R.A.(N.S.) 683) on validity of statutes or ordinances regulating horsedrawn vehicles in city streets.

Duty of exercising care in traveling on public highway.

Cited in McCarragher v. Proal, 114 App. Div. 478, 100 N. Y. Supp. 208, holding observation by person in use of street that statute in regard to use of street by another is not being obeyed does not justify him in proceeding so far that collision results.

47 L. R. A. 294, JONES v. WILLIAMSBURG, 97 Va. 722, 34 S. E. 883.

Municipal liability for nuisance and injuries.

Cited in Miller v. Newport News, 101 Va. 436, 44 S. E. 712, denying city's liability for failure to provide sewers to carry off surface water; Addington v. Littleton, 50 Colo. 625, 34 L.R.A.(N.S.) 1012, 115 Pac. 896, Ann. Cas. 1912C, 753, holding that town is not liable for injury to person on street by vicious dog permitted by town to run at large on streets; Hull v. Roxboro, 142 N. C.

456, 12 L.R.A.(N.S.) 640, 55 S. E. 351, holding city not civilly liable for failure to enforce ordinance enacted for suppression of nuisances; Dalton v. Wilson, 118 Ga. 102, 98 Am. St. Rep. 101, 44 S. E. 830, holding municipality not liable for failure to abate nuisance maintained by private individual on private property and not of such a character as to obstruct public street or imperil travelers thereon; Richmond v. Pemberton, 108 Va. 225, 61 S. E. 787, holding city liable for injury from its negligent maintenance of sidewalks; Marth v. Kingfisher, 22 Okla. 614, 18 L.R.A.(N.S.) 1244, 98 Pac. 436, holding city not liable for injury received from collision with horse engaged in horse race on public street during fourth of July celebration; Gagnier v. Fargo, 11 N. D. 76, 95 Am. St. Rep. 705, 88 N. W. 1030, holding where riding bicycle on sidewalk is not prohibited, rider injured while riding thereon can recover if the sidewalk was not reasonably safe for travel thereon by pedestrian.

Cited in footnotes to Hagerstown v. Klotz, 54 L. R. A. 940, which sustains city's liability for injury by bicycle ridden at immoderate speed in violation of ordinance; Prather v. Spokane, 59 L. R. A. 346, which holds city locating turn in bicycle path at street corner within 4 feet of gutter of cross street, into which persons are liable to ride, liable to traveler injured by going over curb after dark; Dudley v. Flemingsburg, 60 L. R. A. 575, which denies city's liability for injuries by failure to prevent coasting in streets.

Cited in notes (10 L.R.A.(N.S.) 786) on municipal liability for injuries from bicycles ridden on walk; (20 L.R.A.(N.S.) 757) on liability of municipality for defects or obstructions in streets; (23 L.R.A.(N.S.) 642) on liability of municipality for failure to prevent improper conduct in or use of streets.

Distinguished in Hewitt v. Seattle, 62 Wash. 382, 32 L.R.A.(N.S.) 634, 113 Pac. 1084, holding that city is liable to pedestrian negligently run down by its superintendent of streets while driving automobile in performance of duty.

Bicyclist's care at railroad crossings.

Cited in footnote to Passman v. West Jersey & S. R. Co. 61 L. R. A. 609, which holds bicyclist required to exercise same care as pedestrian in crossing railroad.

Applicability of statutes of limitation on actions by governmental agencies.

Cited in Eastern State Hospital v. Graves (Eastern State Hospital v. Winston) 105 Va. 154, 3 L.R.A.(N.S.) 748, 52 S. E. 837, 8 Ann. Cas. 701, holding statute of limitations did not run against demand by state insane hospital, created for governmental purposes purely, on charges for taking care of inmate, the recovery being for state's benefit.

47 L. R. A. 303, RICE v. BUTLER, 160 N. Y. 578, 73 Am. St. Rep. 703, 55 N. E. 275.

Infant's rights and liabilities under contract.

Cited in Pierce v. Lee, 36 Misc. 870, 74 N. Y. Supp. 926, holding that infant may rescind executed contract by returning what he received under it; Gillis v. Goodwin, 180 Mass. 140, 91 Am. St. Rep. 265, 61 N. E. 813, sustaining infant's right to recover instalments paid vender of bicycle after forfeit of wheel for breach of contract; Peck v. Cain, 27 Tex. Civ. App. 43, 63 S. W. 177, holding married infant who leased premises for ten years not liable for rent after his abandonment thereof; Mutual Milk & Cream Co. v. Prigge, 112 App. Div. 654, 98 N. Y. Supp. 458, holding where infant of 19 years in consideration of employment contracts that he will not solicit business from customers of employer within stated time after his discharge, he will be enjoined from breaking contract; Stumpf v. Halstead Land & Development Co. 59 Misc. 531, 110 N. Y. Supp. 838,

holding infant who on arriving at majority seeks to rescind purchase of real estate must tender back title before he can recover purchase money.

Bicycle law.

Cited in note (47 L.R.A. 307) on bicycle law.

47 L. R. A. 308, HOLMES v. PHENIX INS. CO. 39 C. C. A. 45, 98 Fed. 240.

Construction of insurance policy.

Cited in Hartford F. Ins. Co. v. Nelson, 64 Kan. 117, 67 Pac. 440, holding policy insuring one against loss by wind storms, exempting damage by hail, not cover loss caused by breaking of windows by hail, although such loss would not have occurred in absence of wind storm; Jordan v. Iowa Mut. Tornado Ins. Co. 151 Iowa, 84, 130 N. W. 177, Ann. Cas. 1913A, 266, holding that if policy of insurance against loss of livestock by wind storm, is so worded as to require interpretation, construction will be adopted if possible which is most favorable to insured.

47 L. R. A. 310, HOUGHTON v. RICE, 174 Mass. 366, 75 Am. St. Rep. 351, 54 N. E. 843.

Right of action for alienation of husband's affection.

Cited in Dixon v. Amerman, 181 Mass. 430, 63 N. E. 1057, holding death of defendant bar to suit by wife for adultery with husband; Wolf v. Frank, 92 Md. 140, 52 L. R. A. 104, footnote p. 102, 48 Atl. 132, sustaining wife's right of action for alienation of husband's affections; Hamilton v. McNeill, 150 Iowa, 482, 129 N. W. 480, Ann. Cas. 1912D, 604, holding that action for alienation of affections based upon acts not in themselves criminal is essentially different action for criminal conversation, although both contain elements in common; Dodge v. Rush, 28 App. D. C. 152, 8 Ann. Cas. 671, holding wife may maintain action where there is loss of consortium; Nolin v. Pearson, 191 Mass. 288, 4 L.R.A. (N.S.) 647, 114 Am. St. Rep. 605, 77 N. E. 890, holding wife has right of action where adultery has been committed; Marri v. Stamford Street R. Co. 84 Conn. 12, 33 L.R.A.(N.S.) 1046, 78 Atl. 582, Ann. Cas. 1912B, 1120, to the point that husband could not recover for diminution of wife's affections but only in case of destruction thereof.

Cited in footnotes to Dietzman v. Mullin, 50 L. R. A. 808, and Betser v. Betser, 52 L. R. A. 630, which sustain wife's right of action for alienating her husband's affections.

Cited in note (4 L.R.A.(N.S.) 645) on wife's right under enabling acts to sue for alienation of affections.

47 L. R. A. 312, NEVINS v. FITCHBURG, 174 Mass. 545, 55 N. E. 321.

Duty and liability of municipality as to drainage.

Cited in Boston Belting Co. v. Boston, 183 Mass. 260, 67 N. E. 428, holding city liable for negligently causing pollution of stream by sewage coming from storm overflows; Whitten v. Haverhill, 204 Mass. 104, 90 N. E. 409, holding city liable for constructing sewer which empties on plaintiff's land.

Cited in note (61 L. R. A. 694) on duty and liability of municipality with respect to drainage.

Distinguished in Smith v. Gloucester, 201 Mass. 334, 87 N. E. 626, holding under statute, city not liable for tort of superintendent of highways in laying pipes across private land to connect catch-basin in street with ditch on plaintiff's land.

47 L. R. A. 314, KNOWLTON v. WILLIAMS, 174 Mass. 476, 55 N. E. 77.

Reaffirmed on final decree in 178 Mass. 330, 59 N. E. 812.

Expense of parks.

Cited in *Re* De Las Casas, 178 Mass. 218, 59 N. E. 664, holding incorporation of new town, separating it from district liable for support of parks, does not relieve it from share of expense.

Building restrictions.

Cited in Parker v. Com. 178 Mass. 203, 59 N. E. 634, holding land owners entitled to compensation for restrictions on right to build above specified height; Eubank v. Richmond, 110 Va. 752, 67 S. E. 376, 19 Ann. Cas. 186, holding that statute authorizing cities to establish building lines on streets, is valid if not unreasonable; Hodgdon v. Haverhill, 193 Mass. 410, 79 N. E. 830, sustaining statute authorizing city to issue bonds for the construction of an armory; Welch v. Swasey, 214 U. S. 106, 53 L. ed. 930, 29 Sup. Ct. Rep. 567, Affirming 193 Mass 373, 23 L.R.A.(N.S.) 1161, 118 Am. St. Rep. 523, 79 N. E. 745, upholding city ordinance regulating height of buildings in different sections of city; Cochran v. Preston, 108 Md. 228, 23 L.R.A.(N.S.) 1165, 129 Am. St. Rep. 432, 70 Atl. 113, 15 Ann. Cas. 1048, holding act providing that no building except a church shall be erected or altered within certain limits of named city, to exceed certain height above surface of street at given point, valid exercise of police power; Com. v. Maletsky, 203 Mass. 247, 24 L.R.A.(N.S.) 473, 89 N. E. 245, declaring invalid ordinance providing that no one shall use any building for picking, sorting or storage of rags without permit from fire chief, and imposing fine greater than allowed by statute.

Cited in notes (23 L.R.A.(N.S.) 1160, on constitutionality of statute or ordinance limiting height of building; (93 Am. St. Rep. 408) on constitutionality of building regulations.

Right of city to effectuate public aesthetics.

Cited in Com. v. Boston Advertising Co. 188 Mass. 351, 69 L.R.A. 819, 108 Am. St. Rep. 494, 74 N. E. 601, holding as an unreasonable interference with and taking of property without compensation a rule of park commissioner, under statute, forbidding erection or display of advertisement within prescribed distance of public park without written permission of commission, where advertisements are not indecent nor immoral and do not endanger public safety; Fifth Ave. Coach Co. v. New York City, 58 Misc. 407, 111 N. Y. Supp. 759, holding court will not enjoin use of advertisements displayed on private stage coach line, though they may be offensive to the eye and to the esthetic sense, but which do not injure or endanger comfort, repose, health or safety; Wheelock v. Lowell, 196 Mass. 227, 124 Am. St. Rep. 543, 81 N. E. 977, 12 Ann. Cas. 1109, holding city may appropriate money to erect public hall for public needs, although destroyed public hall which it replaced was occasionally let for private uses.

Cited in footnotes to Memphis v. Hastings, 69 L.R.A. 750, which sustains right to condemn land for boulevard connecting public parks; Com. v. Boston Advertising Co. 69 L.R.A. 817, which holds forbidding use of land near park or park way for advertising purposes a taking thereof for public use.

Right of attorney general to appear in civil action by special counsel.

Cited in McQuesten v. Atty. Gen. 187 Mass. 188, 72 N. E. 965, declaring right exists.

47 L. R. A. 319, *Re* JANVRIN, 174 Mass. 514, 55 N. E. 381.

Establishment and regulation of water supply.

Cited in Mt. Vernon v. New York Inter Urban Water Co. 115 App. Div. 660,

101 N. Y. Supp. 232, holding city cannot maintain suit to determine reasonableness of rates charged individual consumers.

Cited in note (61 L. R. A. 104) on establishment and regulation of municipal water supply.

Jurisdiction of suit relating to water rates.

Cited in San Diego Land & Town Co. v. Jasper, 189 U. S. 440, 47 L. ed. 894, 23 Sup. Ct. Rep. 571, holding that so long as board of supervisors defends suit to have water rates fixed by them declared void, there is sufficient party respondent to enable court to consider merits of controversy.

Admissibility of evidence as to custom.

Cited in Campbell v. Dearborn, 175 Mass. 185, 55 N. E. 1042, holding evidence as to manner of piling lumber in other yards inadmissible in action for personal injuries from breaking of board on pile; Fay v. Harrington, 176 Mass. 275, 57 N. E. 369, excluding evidence of style of dresses usually worn by dancing women, in action for libel in publishing statement as to indecency of performance.

Power of judiciary to fix rates.

Cited in note (8 L.R.A.(N.S.) 532) on power of judiciary to fix rates of public-service corporations.

Validity of act giving court power to review action of administrative officer.

Cited in New York L. Ins. Co. v. Hardison, 199 Mass. 198, 127 Am. St. Rep. 478, 85 N. E. 410, upholding constitutionality of statute giving court jurisdiction to review action of insurance commissioner in determining compliance with law by insurance company.

Reasonableness of rates for gas and electricity.

Cited in Saratoga Springs v. Saratoga Gas, Electric Light, Heat & P. Co. 191 N. Y. 147, 18 L.R.A.(N.S.) 724, 83 N. E. 693, 14 Ann. Cas. 606, upholding statute creating commission to fix rates for gas and electricity furnished by public service corporations, although no legislative standard is established as to what rates shall be; San Francisco Gas & Electric Co. v. San Francisco, 164 Fed. 888, on right of city to maintain action to question reasonableness of gas rates.

47 L. R. A. 323, SMITH v. POSTAL TELEG. CABLE CO. 174 Mass. 576, 75 Am. St. Rep. 374, 55 N. E. 380.

Fright and mental pain as elements of damage.

Cited in Homans v. Boston Elev. R. Co. 180 Mass. 458, 57 L. R. A. 292, 91 Am. St. Rep. 324, 62 N. E. 737, holding carrier liable for nervous shock to passenger resulting from being thrown against seat of car causing jar to nervous system; Ford v. Schliessman, 107 Wis. 483, 83 N. W. 761, holding that fright unaccompanied by physical injury not element of damage; Cameron v. New England Teleph. & Teleg. Co. 182 Mass. 311, 65 N. E. 385, sustaining right of woman to recover for injuries resulting from fall, where she arose from chair in consequence of fright from explosion; Miller v. Baltimore & O. S. W. R. Co. 78 Ohio St. 324, 18 L.R.A.(N.S.) 953, 125 Am. St. Rep. 699, 85 N. E. 499, holding no liability exists for negligent acts causing mere shock or fright, unaccompanied by contemporaneous physical injury, though subsequent illness results where acts are neither wilful nor malicious.

Cited in footnotes to Gulf, C. & S. F. R. Co. v. Hayter, 47 L. R. A. 325, which authorizes recovery for physical injury resulting from fright; Denver & R. G. R. Co. v. Roller, 49 L. R. A. 77, which holds effects of nervous shock included in damages for injuries in railroad collision; Watson v. Dilts, 57 L. R. A. 559, which

holds one liable for frightening woman, causing nervous prostration, by stealthily entering her home in nighttime; Kline v. Kline, 58 L. R. A. 397, which sustains right to damages for mental suffering for assault by pointing gun with threat to shoot unless house abandoned; Sanderson v. Northern P. R. Co. 60 L. R. A. 403, which denies right to recover for fright resulting in physical injury, but without contemporaneous injury, unless fright proximate result of legal wrong; Watkins v. Kaolin Mfg. Co. 60 L. R. A. 617, which sustains right of action for physical injury or disease from fright or nervous shock from negligent acts; Reed v. Maley, 62 L. R. A. 900, which holds that merely soliciting woman to sexual intercourse gives her no right of action.

Cited in notes (3 L.R.A.(N.S.) 65) on recovery for physical injury from fright; (77 Am. St. Rep. 862) on fright as element of recoverable damages.

Liability for consequential injuries.

Cited in note (53 L. R. A. 634) on extent of trespasser's liability for consequential injuries resulting from trespass.

47 L. R. A. 325, GULF, C. & S. F. R. CO. v. HAYTER, 93 Tex. 239, 77 Am. St. Rep. 856, 54 S. W. 944.

Fright or mental pain as element of damages.

Cited in St. Louis S. W. R. Co. v. Mitchell, 25 Tex. Civ. App. 198, 60 S. W. 891, sustaining right to recover for miscarriage resulting from fright; Cowan v. Western U. Teleg. Co. 122 Iowa, 382, 64 L. R. A. 549, 101 Am. St. Rep. 268, 98 N. W. 281, holding that mental anguish will not support action for nondelivery of telegram; Sanderson v. Northern P. R. Co. 88 Minn. 166, 60 L. R. A. 405, footnote p. 403, 97 Am. St. Rep. 509, 92 N. W. 542, which denies right to recover for fright resulting in physical injury, but without contemporaneous injury, unless fright proximate of legal wrong; St. Louis Southwestern Co. v. Murdock, 54 Tex. Civ. App. 254, 116 S. W. 139, holding that in order to constitute physical injury resulting from fright, it is not essential that mental emotions produced actual rupture or change of substance of some organ or part of body; Alexander v. St. Louis Southwestern R. Co. 57 Tex. Civ. App. 411, 122 S. W. 572, to the point that action will lie for bodily injury resulting from fright caused by wrongful act of another; Kurpgeweit v. Kirby, 88 Neb. 76, 33 L.R.A.(N.S.) 102, 129 N. W. 177, holding that compensatory damages for mental suffering may be awarded where caused by wilful trespass accompanied by humiliation of person; Reed v. Ford, 129 Ky. 476, 19 L.R.A.(N.S.) 227, 112 S. W. 600, holding recovery cannot be had for injuries from mere fright, caused by another's negligence, when no immediate personal injury is received; Hendrix v. Texas & P. R. Co. 40 Tex. Civ. App. 293, 89 S. W. 461, holding recovery may be had for miscarriage caused by fright resulting from running train onto bridge on which plaintiff was after discovery by defendant of her position of danger; Green v. Shoemaker, 111 Md. 82, 23 L.R.A.(N.S.) 673, 73 Atl. 688, holding recovery may be had for injury which is a reasonable and natural consequence of fright naturally resulting from blasting operations near dwelling of plaintiff; Pankopf v. Hinkley, 141 Wis. 149, 24 L.R.A.(N.S.) 1161, 123 N. W. 625, holding recovery may be had for miscarriage and its consequences directly resulting from extreme fright caused by negligence of another in running automobile into team attached to vehicle in which plaintiff was riding; El Paso Electric R. Co. v. Furber, 45 Tex. Civ. App. 350, 100 S. W. 1041, holding where fright is caused by wrongful act of another and physical injury results therefrom, such act being the proximate cause thereof, which ought to have been foreseen under the circumstances, recovery may be had therefor; Lesch v. Great

Northern R. Co. 97 Minn. 508, 7 L.R.A.(N.S.) 95, 106 N. W. 955 (dissenting opinion) on right to recovery for fright unaccompanied by contemporaneous physical injury.

Cited in footnotes to Smith v. Postal Teleg. Cable Co. 47 L. R. A. 323, which denies recovery for sickness due to fright caused by grossly negligent act of one knowing such result would follow; Homans v. Boston Elev. R. Co. 57 L. R. A. 292, which holds carrier liable for nervous shock to passenger from jar to nervous system, accompanying blow; Watson v. Dilts, 57 L. R. A. 559, which holds one liable for frightening woman, causing nervous prostration, by stealthily entering her home in nighttime; Kline v. Kline, 58 L. R. A. 397, which sustains right to damages for mental suffering for assault by pointing gun with threat to shoot unless house abandoned; Watkins v. Kaolin Mfg. Co. 60 L. R. A. 617, which sustains right of action for physical injury or disease from fright or nervous shock from negligent acts; Reed v. Maley, 62 L. R. A. 900, which holds that merely soliciting woman to sexual intercourse gives her no right of action.

Distinguished in Denison, B. & N. O. R. Co. v. Barry, 98 Tex. 251, 83 S. W. 5, holding railroad company which in constructing dump, is negligent in matter of insufficient sluices to allow free passage of water, is not liable for miscarriage of plaintiff's wife from fright from overflow of water on plaintiff's premsies, such result not being one that would be reasonably anticipated.

Actionable negligence.

Cited in International & G. N. R. Co. v. Reiden, 48 Tex. Civ. App. 412, 107 S. W. 661, holding negligence must be the proximate cause of injury which, in light of attending circumstances, ought to have been foreseen as natural and probable consequence of the negligent act.

47 L. R. A. 326, BULLOCK v. SPROWLS, 93 Tex. 188, 77 Am. St. Rep. 849, 54 S. W. 661.

Avoiding conveyance by lunatic.

Cited in Williams v. Sapieha, 94 Tex. 436, 61 S. W. 115, holding lunatic not required to restore consideration before avoiding conveyance, unless money on hand or spent for necessaries.

Right of minor to avoid contract.

Cited in Heffington v. Jackson & Norton, 43 Tex. Civ. App. 562, 96 S. W. 108, holding minor could avoid note given by him for a buggy, the buggy not being a necessary for one in minor's situation.

— Tender back as condition precedent.

Cited in St. Paul Sanitarium v. Crim, 38 Tex. Civ. App. 4, 84 S. W. 1114, holding right of infant to recover land does not depend on his making tender where there is no proof that he received the money paid for land or that it was expended for his benefit; Hatton v. Bodan Lumber Co. 57 Tex. Civ. App. 488, 123 S. W. 163, holding that deed of minor is subject to repudiation after his majority only upon returning consideration if still in his possession.

Presumption as to time of alteration in instrument.

Cited in note (39 L.R.A.(N.S.) 111) on presumption as to time of alteration in instrument and its effect on burden of proof.

47 L. R. A. 329, AUTEN v. MANISTEE NAT. BANK, 67 Ark. 243, 54 S. W. 337.

Notice of dishonor of negotiable paper.

Cited in Sims v. American Nat. Bank, 98 Ark. 9, 135 S. W. 356, holding that notice of dishonor drawer was not required where drawee bank paid check on

forged indorsement and check was returned to payee who at drawer's suggestion again presented check to drawee bank which refused to pay it.

Cited in footnotes to Williams v. Parks, 56 L. R. A. 759, which sustains notary's liability on bond for neglecting to give notice of dishonor; Oakley v. Carr, 60 L. R. A. 431, which holds notice of dishonor sufficient if sent to last indorser, who is agent for collection only, by first mail of day following dishonor; Aebi v. Bank of Evansville, 68 L.R.A. 964, which holds that bank accepting check on deposit with depositor's indorsement discharges indorser from liability by failing to notify him of nonpayment for nearly a month though bank waited in hope that check sent by mail would reach destination.

Cited in note (61 L. R. A. 901) as to whom should notice of protest or nonpayment be given after appointment of receiver, assignee, or other representative of insolvent.

Proper agent for collection of check.

Cited in Bank of Rocky Mount v. Floyd, 142 N. C. 194, 55 S. E. 95, holding drawee of check is not suitable agent.

Cited in note (18 L.R.A.(N.S.) 445) on sending check directly to drawee bank.

47 L. R. A. 334, STANTON v. SINGLETON, 126 Cal. 657, 59 Pac. 146.

Specific performance of contract.

Cited in O'Brien v. Perry, 130 Cal. 530, 62 Pac. 927, holding that contract by father to give house for life and part of estate by will to daughter, in consideration of support and care of father, not specifically enforceable by either; Moore v. Tuohy, 142 Cal. 347, 75 Pac. 896, denying specific performance of contract to convey land, where plaintiff was bound to do many acts before he could demand performance, and such acts have become impossible of performance; Marks v. Gates, 2 Alaska, 530, holding that equity will not compel specific performance of contract if it is automatic, renewing, and perpetual; Jolliffe v. Steele, 9 Cal. App. 214, 98 Pac. 544, holding agreement, and "to do all in his power to dispose of" named property cannot be specifically enforced; Re Hayden, 1 Cal. App. 77, 81 Pac. 668, holding prevention of sale of land until specific remedy is ripe will not be decreed, where contract is for conveyance of land in consideration of personal services extending through future indefinite period, as tender is impossible; Los Angeles & B. Oil & Development Co. v. Occidental Oil Co. 144 Cal. 532, 78 Pac. 25, holding specific performance of contract whose main object was to secure development of oil land where performance by other could not be enforced because it involved performance of personal labor and services: Wadick v. Mace, 191 N. Y. 5, 83 N. E. 571, holding specific performance would not be decreed where contract for sale of land provided that no action should be brought by vendor against purchaser, but imposed no such restriction on purchaser; Pacific Electric R. Co. v. Campbell-Johnson, 153 Cal. 114, 94 Pac. 623, holding performance of contract to convey right of way will not be decreed where court could not decree the building of a railway thereon; Elliott v. Eliott, 3 Alaska, 363; Marks v. Gates, 2 Alaska, 527,—holding specific performance will not be enforced if contract is vague and uncertain; Naylor v. Stene, 96 Minn. 60, 104 N. W. 685, on right to damages by grantee in contract to convey whole by one owning undivided half on sale to another of entire property.

Cited in footnote to Bomer Bros. v. Canady, 55 L. R. A. 328, which denies specific performance of indefinite contract to purchase standing timber on fourteen different tracts in two counties, scattered over 5,000 acres.

Cited in note (3 L.R.A.(N.S.) 829) on specific performance of contract for performance of continuous acts.

47 L. R. A. 338, JOHNSON v. GOODYEAR MIN. CO. 127 Cal. 4, 78 Am. St. Rep. 17, 59 Pac. 304.

Benefits in assessing damages in eminent domain proceedings.

Cited in Beveridge v. Lewis, 137 Cal. 631, 59 L. R. A. 584, 92 Am. St. Rep. 188, 67 Pac. 1040 (dissenting opinion), majority holding that general benefit to land not taken cannot be set off against damages for taking property for railroad right of way.

Validity of statutes affecting corporations as particular class.

Cited in Bedford Quarries Co. v. Bough, 168 Ind. 675, 14 L.R.A.(N.S.) 420, 80 N. E. 529, declaring unconstitutional a law providing that every railroad or other corporation shall be liable for injury to employe from negligence of superior servant, as deprivation of unequal protection of laws.

Distinguished in Thompson v. Wise Boy Min. & Mill. Co. 9 Idaho, 369, 74 Pac. 958, holding law valid which gave right to costs for filing and attorney's fee in collecting lien for mining claims, where the law applied alike to all debtors and does not single out particular debtors.

Validity of statutes giving preference to particular class in public service.

Cited in Shaw v. Marshalltown, 131 Iowa, 151, 10 L.R.A.(N.S.) 836, 104 N. W. 1121, 9 Ann. Cas. 1039 (dissenting opinion), on constitutionality of statute giving preference to veterans of civil war for public office.

Validity of statutes giving benefits to special classes.

Cited in Women's Relief Corps Home Asso. v. Nye, 8 Cal. App. 536, 97 Pac. 208, upholding validity of act making special provision for special maintenance of and support of veteran soldiers and their dependent relatives; Chicago R. I. & P. R. Co. v. Mashore, 21 Okla. 286, 96 Pac. 630, 17 Ann. Cas. 277, declaring invalid law giving attorney's fee where action is bought by any laborer, clerk, servant, nurse, or other person, for compensation for personal services to be recovered as costs.

Validity of statutes relating to wages.

Cited in State v. Potomac Valley Coal Co. 116 Md. 388, 81 Atl. 686, on validity of statute requiring all corporations or individuals engaged in mining coal in Garrett county to pay their employees twice a month; New York C. & H. R. R. Co. v. Williams, 199 N. Y. 126, 35 L.R.A.(N.S.) 561, 139 Am. St. Rep. 850, 92 N. E. 404, holding that statute requiring steam railroads to pay employees wages semi-monthly is constitutional; Lawrence v. Rutland R. Co. 80 Vt. 390, 15 L.R.A.(N.S.) 359, 67 Atl. 1091, 13 Ann. Cas. 475, as annulling statute giving employes of corporations prior lien for wages on grounds other than those of public interest, but upholding validity of law compelling once a week payment to employees of corporations.

Cited in notes (15 L.R.A.(N.S.)350) on validity and effect of statutes regulating time of payment of wages; (139 Am. St. Rep. 865) on constitutionality of statutes relating to wages.

Corporation as person.

Cited in note (85 Am. St. Rep. 907) on corporation as person.

47 L. R. A. 345, HUDSON v. WILBER, 114 Mich. 116, 68 Am. St. Rep. 465, 72 N. W. 162.

Garnishment of receiver.

Cited in Van Bianchi v. Wayne Circuit Judge, 124 Mich. 462, 83 N. W. 26, and Campau v. Detroit Driving Club, 130 Mich. 425, 90 N. W. 49, holding receivers subject to garnishment proceedings by leave of court.

Garnishment of unliquidated claims.

Cited in note (59 L. R. A. 387, 391) on on garnishment of unliquidated claims.

Admissibility of statements by parties suing in representative capacities.

Cited in Thompson v. McCosta, 141 Mich. 182, 104 N. W. 694, holding statements made as to character of bonds by plaintiff suing thereon as trustee of estate inadmissible to bind estate.

Garnishment of executor or administrator.

Cited in note (5 L.R.A.(N.S.) 1073) on right to garnish executor or administrator for sum due from estate to himself.

47 L. R. A. 366, HENDERSON v. HEYWARD, 109 Ga. 373, 77 Am. St. Rep. 384, 34 S. E. 590.

City's power to engage in liquor business.

Cited in Barnesville v. Murphey, 113 Ga. 781, 39 S. E. 413, raising, without deciding, question as to right to enjoin city against paying bills for liquor furnished dispensary.

Ordinance against work on Christmas.

Cited in Watson v. Thomson, 116 Ga. 548, 59 L. R. A. 603, 94 Am. St. Rep. 137, 42 S. E. 747, holding that city cannot, under general welfare clause in charter, prohibit one from running store on Christmas day.

Validity of liquor regulations.

Cited in Cureton v. State, 135 Ga. 661, — L.R.A.(N.S.) —, 70 S. E. 332, holding that statute prohibiting manufacture and sale of alcohol is constitutional: Southern Exp. Co. v. R. M. Rose Co. 124 Ga. 588, 5 L.R.A.(N.S.) 624, 53 S. E. 185, declaring invalid ordinance making it unlawful to deliver in city any intoxicants without a license; Whitley v. State, 134 Ga. 774, 68 S. E. 716, upholding validity of statute prohibiting the manufacture, sale, barter, giving away to induce trade, keeping or furnishing at public places, or keeping on hand at places of business any alcoholic, spirituous malt or intoxicating liquors: Callaway v. Mims, 5 Ga. App. 14, 62 S. E. 654, holding valid ordinance passed under general welfare clause prohibiting maintenance of blind tiger, notwithstanding existence of statute on same general subject; Wright v. Macon, 5 Ga. App. 760, 64 S. E. 807, declaring void an ordinance relating to "locker clubs" inconsistent with general policy of state as expressed in statute on same subject.

Cited in notes (24 L.R.A.(N.S.) 174) on power to prohibit or restrict one's using liquor or having in possession for use; (26 L.R.A.(N.S.) 394, 395) on power to prohibit keeping irrespective of any intention unlawfully to sell liquor.

Release of prisoner on habeas corpus.

Cited in note (87 Am. St. Rep. 175) on release of prisoner on habeas corpus after judgment and sentence under void ordinance.

47 L. R. A. 369, STATE v. HAUN, 61 Kan. 146, 59 Pac. 340.

Statutes violating right of equal privileges.

Cited in State *ex rel.* Zillmer v. Kreutzberg, 114 Wis. 543, 58 L. R. A. 754,

91 Am. St. Rep. 934, 90 N. W. 1098, holding act forbidding discharge of employee for membership in labor organization, void; State v. Garbroski, 111 Iowa, 499, 56 L. R. A. 572, 82 Am. St. Rep. 524, 82 N. W. 959, declaring unconstitutional, statute exempting Union soldiers from payment of peddler's tax; Cotting v. Kansas City Stock Yards Co. (Cotting v. Godard), 183 U. S. 108, 46 L. ed. 108, 22 Sup. Ct. Rep. 30, holding act regulating certain stock yards, void; State v. Mitchell, 97 Me. 73, 94 Am. St. Rep. 481, 53 Atl. 887, holding statute exempting from payment of peddler's license tax, those who own and pay taxes on $25 worth of stock in trade, void as arbitrary discrimination; Rosin v. Lidgerwood Mfg. Co. 89 App. Div. 255, 86 N. Y. Supp. 49, holding statute requiring employee to serve employer's liability notice as condition of bringing common-law action for personal injuries, void as depriving one of equal protection of law; Jordon v. State, 51 Tex. Crim. Rep. 537, 11 L.R.A.(N.S.) 607, 103 S. W. 633, 14 Ann. Cas. 616; declaring void statute making it unlawful to issue to employee for labor performed any check or written obligation redeemable in goods or merchandise, as interfering with freedom of contract and a deprivation of equal privileges; Williams v. Port Chester, 97 App. Div. 93, 89 N. Y. Supp. 671, holding city not deprived of equal privileges by holding it bound by notice of injury from defect in streets which was not served within statutory period after receipt of injury but was within such period after recovery of physical and mental ability to give notice.

Cited in footnotes to Harbison v. Knoxville Iron Co. 56 L. R. A. 316, which sustains requirement of redemption on demand, of store orders, etc., given for wages; Dixon v. Poe, 60 L. R. A. 308, which holds void, act requiring redemption in money of checks issued in payment of wages: State v. Missouri Tie & Timber Co. 65 L.R.A. 588, which holds void statute forbidding persons or corporations carrying on private enterprises from paying employees in store orders not redeemable in cash; Toney v. State, 67 L.R.A. 286, which holds void, statute making it a misdemeanor for one under contract to labor to enter into new contract with third person without former employer's consent and a sufficient excuse.

Cited in note (139 Am. St. Rep. 870) on constitutionality of statutes relating to wages.

Disapproved in New York C. & H. R. R. Co. v. Williams, 199 N. Y. 119, 35 L.R.A.(N.S.) 557, 139 Am. St. Rep. 850, 92 N. E. 404, holding that statute requiring steam railroads to pay employees wages semi-monthly is constitutional.

Laws affecting charters of corporations.

Cited in Bedford Quarries Co. v. Bough, 168 Ind. 688, 14 L.R.A.(N.S.) 425, 80 N. E. 529, holding employer's liability act not an amendment of incorporation laws; Leavenworth v. Leavenworth City & Ft. L. Water Co. 69 Kan. 89, 76 Pac. 451, on right of state to alter charter.

47 L. R. A. 380, *Re* DALTON, 61 Kan. 257, 59 Pac. 336.

Statutory limitations of hours of labor and control of wages.

Followed in Atkin v. Kansas, 191 U. S. 221, 48 L. ed. 157, 24 Sup. Ct. Rep. 124, Affirming 64 Kan. 175, 97 Am. St. Rep. 343, 67 Pac. 519, holding contractor permitting employees to work more than eight hours a day on street paving contract liable to penalty.

Cited in State v. Wilson, 65 Kan. 238, 69 Pac. 172, holding one requiring laborer to work more than eight hours a day in erection of school building liable to penalty; People *ex rel.* Rodgers v. Coler, 166 N. Y. 32, 52 L. R. A. 827, footnote p. 814, 82 Am. St. Rep. 605, 59 N. E. 716 (dissenting opinion), majority

denying power of legislature to fix compensation which city must pay for labor; Curtice v. Schmidt, 202 Mo. 720, 101 S. W. 61, 10 Ann. Cas. 702, holding street paving tax bill not void because contract had inserted therein provision for eight-hour-a-day labor regulation in compliance with ordinance as said ordinance was valid and its incorporation in contract proper; Keefe v. People, 37 Colo. 322, 8 L.R.A.(N.S.) 136, 87 Pac. 791, upholding statute restricting hours of labor on works of public improvement; Byars v. State, 2 Okla. Crim. Rep. 494, 102 Pac. 804, on validity of statute limiting hours of labor in works by state, county or municipality.

Cited in footnotes to Fiske v. People, 52 L. R. A. 291, which holds void, restriction of hours of labor on city contracts to eight hours per day; Cleveland v. Clements Bros. Constr. Co. 59 L. R. A. 775, which holds void, act limiting to eight hours a day work of laborers on public contract; Street v. Varney Electrical Supply Co. 61 L. R. A. 154, which denies power of legislature to compel city to pay more for common labor on public improvements than its worth in market; *Re* Ten-Hour-Law, 61 L. R. A. 612, which sustains limitation to ten hours a day of work of street railway employees.

Cited in notes (65 L.R.A. 43) on legislative limitation of hours of labor; (8 L.R.A.(N.S.) 131, 134) on limitation of hours of labor on public work; (48 L. ed. U. S. 151) on validity of legislation regulating hours of labor.

Liability of political subdivisions of state.

Cited in Jackson County v. Kaul, 77 Kan. 719, 17 L.R.A.(N.S.) 556, 96 Pac. 45, holding county political subdivision of state endowed with quasi corporate powers, and not liable, in action against county officers to recover taxes wrongfully exacted, for interest from time money was paid, it being then due; State v. Lawrence, 79 Kan. 253, 100 Pac. 485, on liability of city in performance of acts as agent of state.

47 L. R. A. 383, FARLEY v. LAVARY, 107 Ky. 523, 54 S. W. 840.

Public carriers.

Cited in Bassett v. Aberdeen Coal & Min. Co. 120 Ky. 736, 88 S. W. 318, holding it for the jury whether company operating line of tow boats had publicly held itself out as common carrier, it claiming that it did all towing by private contract for others when there was no work to do for a certain client, and then only such as it saw fit to take.

Cited in note (21 L.R.A.(N.S.) 189) on cartman, etc., as common carrier.

Liability of connecting carrier for loss beyond own line.

Cited in note (31 L.R.A.(N.S.) 3, 31) on liability of connecting carrier for loss beyond own line.

47 L. R. A. 385, LEWIS v. TAPMAN, 90 Md. 294, 45 Atl. 459.

Statute of frauds.

Disapproved in effect in Barge v. Haslam, 63 Neb. 300, 88 N. W. 516, holding mutual promises to marry to be within inhibition of provisions of statute of frauds.

Declarations by party in action for breach of promise to marry.

Cited in Cooper v. Bower, 78 Kan. 158, 96 Pac. 59, holding declarations of plaintiff of fact of her engagement to defendant competent to show her consent, where defendant had introduced evidence of statement by plaintiff that she would marry no one.

Anticipatory refusal as breach of marriage contract.

Cited in note (66 L.R.A. 798) on anticipatory refusal as breach of marriage contract.

Impeachment of witness.

Cited in note (82 Am. St. Rep. 42) on impeachment of witness by proof of prior contradictory statements.

47 L. R. A. 391, KELLER v. ST. LOUIS, 152 Mo. 596, 54 S. W. 438.

Liability for support of child after divorce.

Cited in Meyers v. Meyers, 91 Mo. App. 155, holding that decree awarding minor children to wife, with no provision for support, gives father right to their earnings and binds him for their support; State v. Seghers, 124 La. 116, 49 So. 998, holding under statute and at common law father not relieved of duty of support by divorce and assignment of custody of child to wife; Viertel v. Viertel, 212 Mo. 576, 111 S. W. 579, holding father liable where decree is silent thereon, though custody granted to mother; Dixon v. Dixon, 107 Mo. App. 696, 82 S. W. 547 (dissenting opinion), on right to recover for maintenance where separation agreement is made and custody granted one parent; Fugate v. Allen, 119 Mo. App. 191, 95 S. W. 980, on liability of father for support of child on awarding of custody to mother.

Cited in note (2 L.R.A.(N.S.) 852) on effect of divorce on liability for support of children.

Child's right to sue when parent living.

Cited in Poor v. Watson, 92 Mo. App. 101, denying minor child's right of action for father's death by negligence, when mother survives.

Right of wife after separation to recover for injury to child.

Cited in note (31 L.R.A.(N.S.) 519) on right of deserted wife to recover for death or injury of child.

47 L. R. A. 393, STATE, *ex rel.* McCAFFERY v. ALOE, 152 Mo. 466, 54 S. W. 494.

Validity of law not admitted by demurrer.

Cited in State *ex rel.* Hawes v. Withrow, 154 Mo. 402, 55 S. W. 460, holding constitutionality of law not admitted by demurrer; Gibson v. Chicago G. W. R. Co. 225 Mo. 483, 125 S. W. 453, holding, in passing upon a demurrer conclusions of law should be eliminated from the petition as they are neither traversable nor demurrable; State ex rel. McNamee v. Stobie, 194 Mo. 100, 92 S. W. 191 (dissenting opinion), on admission of mere conclusions by demurrer.

Prohibition against illegal proceedings.

Cited in School Dist. No. 6 v. Burris, 84 Mo. App. 663, awarding writ of prohibition restraining board of arbitration from determining appeal in proceedings for formation of new school district before annual vote; State *ex rel.* Schonhorst v. Cline, 85 Mo. App. 633, awarding writ prohibiting entry of judgment upon verdict illegally directed by justice of the peace; Arnold v. Henry, 155 Mo. 53, 78 Am. St. Rep. 556, 55 S. W. 1089, granting writ of prohibition to prevent circuit court from issuing injunction to determine election commissioner's title to office; State *ex rel.* Folk v. Talty, 166 Mo. 555, 66 S. W. 361, granting writ against circuit court's enforcing order that circuit attorney exhibit information requiring member of house of delegates to show his right to office; People *ex rel.* Alexander v. District Court, 29 Colo. 189, 68 Pac. 242, granting prohibition against district court proceeding to enjoin assessment for taxation of certain property

by state board of assessors; People *ex rel.* Hinckley v. District Court, 29 Colo. 282, 93 Am. St. Rep. 61, 68 Pac. 224, granting writ against district court proceeding to enjoin board of county commissioners from recognizing and seating new member holding certificate of election; State ex rel. Meador v. Williams, 117 Mo. App. 567, 92 S. W. 151, holding prohibition will not lie to prevent court from placing an accused on trial a second time after having once been put in jeopardy, the court having jurisdiction of the offense, but its action being erroneous; Clark County v. Warner, 116 Ky. 810, 76 S. W. 828, holding circuit court could issue writ of prohibition, where an application for ferry privilege was pending therein, and county court was entertaining application by another for privilege for ferry at same place; State ex rel. Anheuser-Busch Brewing Asso. v. Eby, 170 Mo. 521, 71 S. W. 52, holding prohibition may issue to inferior court to prevent the trial of cases therein although lack of jurisdiction to try such cases has not been raised or pleaded in inferior court; State ex rel. Pulliam v. Fort, 107 Mo. App. 337, 81 S. W. 476, holding court of appeals will not restrain circuit court from prohibiting county from considering application for dramshop license, the sale of intoxicants being prohibited by law, the keeping of dramshop being permissible only and its refusal not working an irreparable injury; State ex rel. Sale v. Nortoni, 201 Mo. 24, 98 S. W. 554, holding prohibition would issue from supreme court to restrain court of appeals from reviewing issue as to constitutionality of statute which court of appeals had no jurisdiction to hear; State ex rel. Fenn v. Riley, 127 Mo. App. 477, 105 S. W. 696, holding prohibition will issue from the court of appeals against the further entertaining of an injunction by one circuit court restraining the prosecution of an action in another circuit court.

Cited in note (51 L. R. A. 46, 60, 107, 109) on superintending control and supervisory jurisdiction of superior over inferior or subordinate tribunal.

Injunction to protect political rights and property.

Followed in State *ex rel.* Hawes v. Withrow, 154 Mo. 403, 55 S. W. 460, denying court of chancery's jurisdiction to test police commissioner's right to office on ground of illegality of law under which appointed; State *ex rel.* McCaffery v. Eggers, 152 Mo. 486, 54 S. W. 498, denying jurisdiction to grant injunction against appointee's taking office, upon mere allegation of unconstitutionality of law under which he was appointed; State *ex rel.* Kenamore v. Wood, 155 Mo. 445, 48 L. R. A. 599, 56 S. W. 474, holding that injunction against enforcement of statute requiring inspection of beer will not be granted on ground of unconstitutionality of such statute; Schubach v. McDonald, 179 Mo. 186, 65 L. R. A. 143, 101 Am. St. Rep. 452, 78 S. W. 1020, sustaining equity jurisdiction to enjoin ticket brokers from disposing of tickets which they have purchased with notice of their nontransferability.

Cited in State ex rel. Buchholz v. Seehorn, 143 Mo. App. 186, 128 S. W. 240, holding that equity court has no jurisdiction over either title to or possession of public office; McDonald v. Lyon, 43 Tex. Civ. App. 488, 95 S. W. 67, holding equity will not undertake to supervise acts of executive committee of Republican party for protection of merely political right involved in calling of state convention at particular time and place; Wimmett v. Adams, 71 Neb. 824, 99 N. W. 681, holding equity will not attempt to supervise acts and management of political party for protection of purely political rights; State ex rel. Buchholz v. Seehorn, 143 Mo. App. 189, 128 S. W. 240, holding prohibition will issue to prevent lower court from entertaining application for injunction by one holding office under color of right to prevent another claimant under color of right from dispossessing him by force.

Cited in footnotes to Weaver v. Toney, 50 L. R. A. 105, which denies right to enforce in equity right to have inspector of certain party at polls; People ex. rel. Corscadden v. Howe, 66 L.R.A. 664, which denies jurisdiction of equity to restrain attempted removal from office of public official by proper authorities in accordance with provisions of invalid statute.

Class legislation.

Cited in State v. Cantwell, 179 Mo. 261, 78 S. W. 569, sustaining statutory prohibition against working of miners more than eight hours a day; *Ex parte* Loving, 178 Mo. 203, 77 S. W. 508, sustaining act to regulate treatment of neglected and delinquent children in certain counties.

Resort to extraordinary without exhausting ordinary remedies.

Followed in State ex rel. Missouri P. R. Co. v. Williams, 221 Mo. 247, 120 S. W. 740, holding it is not a jurisdictional requirement that an applicant has applied in vain to an inferior tribunal for relief for the issuance of prohibition.

Cited in State *ex rel.* Hamilton v. Guinotte, 156 Mo. 528, 50 L. R. A. 795, 57 S. W. 281, holding existence of remedy by appeal not sufficient to bar certiorari to review order revoking letters of administration; State ex rel. Thrash v. Lamb, 237 Mo. 455, 141 S. W. 665, holding that prohibition will issue to stop proceedings to abate public nuisance, should it appear that legal wrong is about to be committed for which there is no other remedy; State ex rel. McEntee v. Bright, 224 Mo. 526, 135 Am. St. Rep. 552, 123 S. W. 1057, holding it not absolutely essential that the jurisdiction of the lower court must first be challenged therein before prohibition can issue from the Supreme court; United States Standard Voting Mach. Co. v. Hobson, 132 Iowa, 43, 7 L.R.A.(N.S.) 515, 119 Am. St. Rep. 539, 109 N. W. 458, 10 Ann. Cas. 972, holding there is not an adequate remedy at law precluding certiorari to annul injunction restraining use of voting machine, where an appeal from such injunction could not be heard until after election; State ex rel. American Lead & Baryta Co. v. Dearing, 184 Mo. 659, 84 S. W. 21, holding judge of the Supreme court has power to issue preliminary rule in prohibition in vacation.

Cited in notes (8 L.R.A.(N.S.) 128) on right to enjoin acts under unconstitutional statute, as affected by other remedies in case such acts are done; (111 Am. St. Rep. 967) on writ of prohibition.

Presumption of validity of statute.

Cited in State v. Parker Distilling Co. 236 Mo. 244, 139 S. W. 453, holding that burden is upon party assailing constitutionality of statute to show that it is so; State ex rel. Missouri & N. A. R. Co. v. Johnston, 234 Mo. 351, 137 S. W. 595, holding that statute will not be declared unconstitutional unless it appears to be so beyond reasonable doubt.

When statute goes into effect.

Cited in State v. Schenk, 238 Mo. 454, 142 S. W. 263, holding that new statute enacted at revising session in 1909, without emergency clause went into effect ninety days after adjournment.

47 L. R. A. 400, NOYES v. ROSS, 23 Mont. 425, 75 Am. St. Rep. 543, 59 Pac. 367.

Chattel mortgage giving mortgagor power of sale.

Cited in note (36 L.R.A.(N.S.) 1187, 1189) on validity of chattel mortgage of merchandise stock as affected by provision or agreement giving mortgagor possession with power of sale.

Distinguished in Stevens v. Curran, 28 Mont. 372, 72 Pac. 753, declaring chat-

tel mortgage void which permits mortgagor to retain possession and sell goods, with no provision for accounting to mortgagee.

Payment of partner's individual debts.

Cited in footnote to Kincaid v. National Wall Paper Co. 54 L. R. A. 412, which sustains right of partners to appropriate with other partners' consent, interest in firm to pay individual, in preference to firm, debts.

47 L. R. A. 409, BROWN v. SOUTHERN P. CO. 36 Or. 128, 78 Am. St. Rep. 761, 58 Pac. 1104.

Covenants running with land.

Cited in Ford v. Oregon Electric R. Co. 60 Or. 283, 36 L.R.A.(N.S.) 360, 117 Pac. 809, holding that covenant in grant of railway right of way to stop trains at residence of grantor runs with land; Sexauer v. Wilson, 136 Iowa, 362, 14 L.R.A.(N.S.) 192, 113 N. W. 941, 15 Ann. Cas. 54, holding intention to create covenant running with land may be inferred from words: "Grantee agrees to perpetually maintain a tight fence."

Cited in notes (14 L.R.A.(N.S.) 186) on necessity of word "assigns" to make covenant as to thing not in esse run with land; (82 Am. St. Rep. 678) on what covenants run with the land.

Contract to convey based on agreement to fence.

Cited in Ready v. Schmith, 52 Or. 201, 95 Pac. 817, holding suit for performance of contract to convey land in consideration of agreement to convey interest in fence between such parties, could be maintained without tendering deed of interest in fence, in absence of agreement to convy such interest by deed.

47 L. R. A. 413, FIRST NAT. BANK v. McGUIRE, 12 S. D. 226, 76 Am. St. Rep. 598, 80 N. W. 1074.

Disqualification of judge.

Followed without discussion in First Nat. Bank v. Keenan, 12 S. D. 241, 80 N. W. 1135.

Cited in *Re* Taber, 13 S. D. 71, 82 N. W. 398, holding acts of judge in administration proceedings in which son is attorney, employed on contingent fee, voidable; First Nat. Bank v. McCarthy, 13 S. D. 365, 83 N. W. 423, holding judge disqualified to try action to foreclose mortgage by bank in which his wife is stockholder; State *ex rel.* Bullion & Exchange Bank v. Mack, 26 Nev. 442, 69 Pac. 862, holding judge who is stockholder in corporation disqualified to pass on claim against insolvent estate; Sovereign Camp, W. W. v. Hale, 56 Tex. Civ. App. 449, 120 S. W. 539, holding that disqualification of trial judge is established if it appears from uncontroverted affidavit, and written statement of judge; State v. Ham, 24 S. D. 640, 124 N. W. 955, Ann. Cas. 1912A, 1070, holding that any disqualification of judge based on public policy and existing only for benefit of party as privilege may be waived.

Cited in footnote to State *ex rel.* Perez v. Wall, 49 L. R. A. 548, which holds judge disqualified in suit by sister of father-in-law.

Cited in note (79 Am. St. Rep. 200) on affinity as disqualification of judge.

Disqualification of stockholder as to personal matter.

Cited in Ritchie v. People's Teleph. Co. 22 S. D. 606, 119 N. W. 990, holding that under sections 1619, 1623 Rev. Code, director of telephone company may not vote on resolution increasing his salary, nor may his wife who is also director.

47 L. R. A. 416, SMITH v. JACKSON, 103 Tenn. 673, 54 S. W. 981.

Who are engaged in interstate commerce.

Cited in footnotes to Williams v. Fears, 50 L. R. A. 685, which sustains license tax on emigrant agent; Racine Iron Co. v. McCommons, 51 L. R. A. 134, which holds traveling agent taking orders and distributing contents of original package among customers not engaged in interstate commerce; Croy v. Epperson, 51 L. R. A. 254, which holds one taking orders in own name for articles manufactured in other state, and delivering separate articles to customers, not engaged in interstate commerce; French v. State, 52 L. R. A. 160, which holds agent of nonresident company selling organ taken with him, or taking orders for others to be delivered by him, engaged in interstate commerce; State v. Willingham, 52 L. R. A. 198, which holds interstate commerce, delivery of portraits and frames by agent previously taking order for nonresident manufacturer.

47 L. R. A. 417, GALUSHA v. SHERMAN, 105 Wis. 263, 81 N. W. 495.

What constitutes duress; law and fact questions.

Cited in Rochester Mach. Tool Works v. Weiss, 108 Wis. 547, 84 N. W. 866, holding court warranted in taking issue of duress from jury, where account stated signed under charge of grand larceny and threat of prosecution; Batavian Bank v. North, 114 Wis. 646, 90 N. W. 1016, holding communication of intention to sue in case of failure to effect settlement, not constitute duress; Price v. Bank of Poynette, 144 Wis. 198, 128 N. W. 895, holding that to constitute duress by threats they must be of such nature and made under such circumstances as to constitute reasonably adequate cause to control will of threatened person; Burgess v. Commercial Nat. Bank, 144 Wis. 65, 128 N. W. 436, holding that payment of amount in excess of that due on note with knowledge of fact, for purpose of getting back collateral securities is not paid under duress so that excess may be recovered back; Atwood v. Jarrett, 81 Conn. 533, 71 Atl. 569, holding determination of duress question of law, but whether it enters into particular transaction, question of fact; Nebraska Mut. Bond Asso. v. Klee, 70 Neb. 387, 97 N. W. 476, holding execution of notes under threat that maker's son-in-law would be prosecuted and imprisoned for alleged embezzlement of funds, if notes were not signed, was under duress; Anderson v. Anderson, 122 Wis. 486, 100 N. W. 829, holding there is no duress where minor son, with intention to have father convey land to mother fraudulently conveys land to father with intent to repudiate conveyance at majority, which is done, and father in reliance on such conveyance conveys his land to wife; Hodge v. Wallace, 129 Wis. 92, 116 Am. St. Rep. 938, 108 N. W. 212, holding proof of inducement to execute note by false and fraudulent representations does not establish duress; Anderson v. Anderson, 17 N. D. 281, 115 N. W. 836, holding conduct of parties coupled with duty to reconvey, negatived contention that reconveyance was under duress; Fred Rueping Leather Co. v. Watke, 135 Wis. 618, 116 N. W. 174, holding there was no duress where note was executed in payment of claim for property belonging to payee which maker's partner had purchased from thief, it being claimed that payee threatened criminal prosecution, but proof showing no prosecution pending or guilt of criminal offense; Callender Sav. Bank v. Loos, 142 Iowa. 7, 120 N. W. 317, holding it for the jury whether threats of criminal prosecution amounted to duress in the execution of a note; Burton v. McMillan, 52 Fla. 480, 8 L.R.A. (N.S.) 995, 120 Am. St. Rep. 220, 42 So. 849, 11 Ann. Cas. 380, holding duress exists where wife who is sick and nervous, and who has no opportunity to consult with disinterested advisers, is induced to sign deed under threat of criminal prosecution of husband for embezzlement; Gray v. Freeman, 37 Tex. Civ. App.

561, 84 S. W. 1105, holding mortgage executed by father under threat of criminal prosecution of son for obtaining money on a loan on father's farm under representation that it was his own, was subject to cancellation for duress.

Cited in footnote to Foote v. De Poy, 68 L.R.A. 302, which holds that surrender of bulk of property by one mentally infirm for benefit of child of divorced wife to secure withdrawal of proceedings by wife to place him under guardianship will be set aside.

Cited in note (20 L.R.A.(N.S.) 486) on contracts procured by threats to prosecute relative.

Recovery of money paid under duress.

Cited in footnote to First Nat. Bank v. Sargent, 59 L. R. A. 296, which sustains right to recover back money paid under duress.

Transfer without consideration.

Cited in First Nat. Bank v. Henry, 156 Ind. 11, 58 N. E. 1057, holding transfer before maturity of note and mortgage to secure advances, without consideration.

Test of duress.

Cited in McCarthy v. Taniska, 84 Conn. 381, 80 Atl. 84, holding that test of existence of duress is not so much means employed to secure execution of contract as state of mind which those means induced upon part of person executing it; Williamson, Halsell, Frazier Co. v. Ackerman, 77 Kan. 505, 20 L.R.A.(N.S.) 488, 94 Pac. 807, holding test is the state of mind induced by the means employed.

Void claim as subject of compromise.

Cited in note (25 L.R.A.(N.S.) 276, 284, 287, 289) on void, invalid, or unfounded claim as subject of valid compromise.

Transferee, without indorsement, as bona fide purchaser.

Cited in note (17 L.R.A.(N.S.) 1110) on transferee, without indorsement, of bill or note payable or indorsed "to order" as bona fide purchaser.

47 L. R. A. 427, HOFFMAN v. MAFFIOLI, 104 Wis. 630, 80 N. W. 1032.

Indefiniteness and lack of mutuality as affecting contracts.

Cited in Teipel v. Meyer, 106 Wis. 43, 81 N. W. 982, holding not enforceable, contract to sell beer of certain brands which party should order; Brittingham & H. Lumber Co. v. Manson, 108 Wis. 230, 84 N. W. 183, holding contract for timber to be cut, logged, and removed from certain tract, estimated of certain quality, sufficiently definite; Woodward v. Smith, 109 Wis. 610, 85 N. W. 424, holding contract with drillers to drill till flowing well obtained or ordered to quit, at fixed price per foot, not void for lack of mutuality; Burgess Sulphite Fibre Co. v. Broomfield, 180 Mass. 287, 62 N. E. 367, holding that agreement to buy all iron one may desire to sell, both cast and wrought, constitutes binding contract; Cold Blast Transp. Co. v. Kansas City Bolt & Nut Co. 57 L. R. A. 699, footnote p. 696, 52 C. C. A. 29, 114 Fed. 81, holding accepted offer to deliver at specified prices during specified period, articles in such quantities as acceptor may desire, void; Excelsior Wrapper Co. v. Messinger, 116 Wis. 555, 93 N. W. 459, holding contract to furnish "what roll rag paper (same as has been furnished during last twelve months)" at certain price, F. O. B. and certain place during specified time, to be taken as ordered, not void for lack of mutuality; Higbie v. Rust, 112 Ill. App. 221, holding contract to buy what jelly pails party may want, void for lack of mutuality, although price fixed; Bartlett Springs Co. v. Standard Box Co. 16 Cal. App. 673, 117 Pac. 934, holding that contract by which defendant agreed to sell and plaintiff agreed to purchase certain kinds of wooden boxes to extent of plaintiff's demand, was not lacking in mutuality; Higbie v. Rust

211 Ill. 337, 103 Am. St. Rep. 204, 71 N. E. 1010, holding contract void for want of mutuality where dealer in pails offered to furnish another all the pails he wanted but latter neither agreed to take nor want such pails, nor any pails whatever, although he sold extensively to the trade; Moran Bolt & Nut Mfg. Co. v. St. Louis Car Co. 210 Mo. 733, 109 S. W. 47, holding contract binding where the quantity of thing sold is specifically stated kind and price of goods sold and time of delivery are stated; Fowler Utilities Co. v. Gray, 168 Ind. 5, 7 L.R.A.(N.S.) 728, 120 Am. St. Rep. 344, 79 N. E. 897, holding injunction will not lie to prohibit breach of contract requiring party to furnish heat so long as other party desired as such contract is void for want of mutuality; Eastern R. Co. v. Tuteur, 127 Wis. 403, 105 N. W. 1067, holding contract binding where one party promises to do all the freight handling at other party's warehouse incident to such party's business at agreed rates, and latter promises to pay therefor at agreed intervals; Abrohams v. Revillon Freres, 129 Wis. 244, 107 N. W. 656, holding an agreement "to take up at his selection" goods from another at stated prices within limited time, ripens into contract on its acceptance by latter within period specified: A. Santaella & Co. v. Otto F. Lang Co. 84 C. C. A. 145, 155 Fed. 722, holding void for want of mutuality contract to sell another as many cigars as he desired for his wants and to continue as long as he cared to sell them; North Chicago Street R. Co. v. Chicago Union Traction Co. 150 Fed. 641, on validity of contract where one party has option to be bound or not as he sees fit.

Cited in footnotes to Hickey v. O'Brien, 49 L. R. A. 594, which sustains contract by sellers of ice to purchase all ice necessary to carry on business for five years; Loudenback Fertilizer Co. v. Tennessee Phosphate Co. 61 L. R. A. 402, which sustains contract for purchase of entire consumption for term of years of phosphate rock in manufacturing fertilizer, estimated at specified amount, with right to demand double of such estimate.

Cited in note (11 L.R.A.(N.S.) 719) on mutuality of accepted proposition to furnish such material as one needs.

Ambiguity requiring construction.

Cited in Corbett v. Joannes, 125 Wis. 388, 104 N. W. 69, holding ambiguity may appear from language clear in itself but leading to absurd result when applied literally to situation with which it deals, as well as by reason of uncertainty on its face.

Intention of legislature in construction of statute.

Cited in Chicago & N. W. R. Co. v. State, 128 Wis. 651, 108 N. W. 557, holding terms of law can be given a literal or a strict construction as best calculated to carry out intention of legislature.

47 L. R. A. 433, FIELD v. SIEGEL, 99 Wis. 605, 75 N. W. 397.

Conspiracy to defraud general creditor.

Cited in Raymond v. Blancgrass, 36 Mont. 462 15 L.R.A.(N.S.) 981, 93 Pac. 648, holding that the wife having obtained a decree of divorce with alimony, cannot maintain an action against third parties for damages for a conspiracy to defeat her recovery formed during the pendency of the suit, and also citing annotation on this point.

Actionable fraud.

Cited in Hubbard v. McLean, 115 Wis. 16, 90 N. W. 1077, holding attorney liable for false representation as to legal effect of execution of notes and mortgage; J. H. Clark Co. v. Rice, 127 Wis. 465, 106 N. W. 231, 7 Ann. Cas. 505, holding that an action for fraud cannot be based upon a failure to perform a promise looking to the future; Urwan v. Northwestern Nat. L. Ins. Co. 125 Wis. 356,

103 N. W. 1102, holding that the fact that the special agent's contract did not contain certain provisions which the agent represented that it would, did not constitute actionable fraud against the insurance company, and also citing annotation on this point.

Distinguished in Re Friedman, 164 Fed. 136, holding that falsifying of inventories, creating of fictitious credit by borrowing money from relatives, and the purchase of large amount of goods without paying for them, shortly before filing a petition in bankruptcy, warranted a finding of fraud in obtaining goods on credit.

Fraud as defense.

Cited in Milwaukee Brick & Cement Co. v. Schoknecht, 108 Wis. 465, 84 N. W. 838, holding statement of corporation's intention to build plants, made to induce subscription to stock, no defense to action on subscription contract; Guthrie & W. R. Co. v. Rhodes, 19 Okla. 31, 21 L.R.A.(N.S.) 495, 91 Pac. 1119, holding that an answer alleging that the defendant could not read and that the subscription note sued on was obtained by the payee's agent misrepresenting the amount of liability, and the conditions of the same, did not state a good defense where the note was unambiguous in its terms.

Remedies of creditor.

Cited in Fernandez v. La Mothe, 147 Mo. App. 649, 127 S. W. 408, holding that creditor at large cannot maintain action against persons who aided debtor in disposing of property to defeat creditors.

Cited in footnote to Bigby v. Warnock, 57 L. R. A. 754, which holds wife personally liable to husband's creditor for amount of loan to her, secured by property fraudulently conveyed to her by her husband.

Cited in note (26 L.R.A.(N.S.) 547) as to whether creditor of fraudulent vendor may maintain action against vendee converting or disposing of property fraudulently transferred.

47 L. R. A. 441, ADAMS v. BELOIT, 105 Wis. 363, 81 N. W. 869.

Adoption of general statute by amendment to charter.

Cited in State *ex rel.* Boycott v. La Crosse, 107 Wis. 658, 84 N. W. 242 (distinguished in dissenting opinion), holding amendment of city charter by adopting portion of general charter law and omitting material portions relating to street improvement, fatal; Oshkosh Waterworks Co. v. Oshkosh, 109 Wis. 227, 95 Am. St. Rep. 870, 85 N. W. 376, holding amendment of city charter providing no claim shall be sued before disallowance by council does not impair contract by changing remedy; Davey v. Janesville, 111 Wis. 635, 87 N. W. 813, holding court bound to notice provision as to amendment of city charter by adoption of general laws by ordinances; Borgman v. Antigo, 120 Wis. 300, 97 N. W. 936, holding that an adoption of a part of the general charter law into a special charter is invalid, where the section adopted was not an integral part of the general law.

Validity of special legislation.

Cited in Wagner v. Milwaukee County, 112 Wis. 607, 88 N. W. 577, holding act authorizing issue of bonds to construct viaducts void because only one county has sufficient assessed valuation to raise necessary sum; Battles v. Doll, 113 Wis. 361, 89 N. W. 187, holding act authorizing taxation by counties to aid towns in building bridges not invalid because exempting municipal corporations maintaining its own bridges; McKnight v. Hodge, 55 Wash. 294, 40 L.R.A.(N.S.) 1211, 104 Pac. 504, holding statute valid which provided for licenses for peddlers, except those dealing in farm and agricultural products, and vendors of newspapers and magazines, was not invalid special legislation; Smith v. Burlington, 129 Wis.

341, 109 N. W. 79, holding that a statute authorizing cities of the fourth class to build and maintain steam plants for the operation of municipal lighting plants, is not void as special legislation based upon an arbitrary classification; State v. Evans, 130 Wis. 385, 110 N. W. 241, holding that a statute which prohibited the dispensing of drugs in towns having over five hundred inhabitants, except by a registered pharmicist, or in towns of less than five hundred, by an assistant or registered pharmacist, was not special legislation.

— Class containing but one member.

Cited in State ex rel. Risch v. Policemen's Pension Fund, 121 Wis. 53, 98 N. W. 954, holding that the statute relative to the creation of a policemen's pension fund in cities of the first class was not rendered special legislation because there is only one city of the first class within the state; Bingham v. Milwaukee County, 127 Wis. 347, 106 N. W. 1071, holding that an act authorizing counties having or which thereafter had 150,000 inhabitants to build and maintain certain viaducts, is not rendered special because there was only one county within the state having that number of inhabitants; State ex rel. Busacker v. Groth, 132 Wis. 297, 112 N. W. 431, holding that a statute providing for the regulation of the affairs of counties having over two hundred and fifty thousand inhabitants, and the appointment of certain boards, was valid under the state constitution requiring laws for county government to be as nearly uniform as possible.

— Uniformity of operation of statute depending upon adoption by municipalities.

Cited in Bryan v. Voss, 143 Ky. 426, 136 S. W. 884, holding that statute providing commission form of government for cities is not void because enacted to take effect upon approval of voters of city; State ex rel. Hunt v. Tausick, 64 Wash. 79, 35 L.R.A.(N.S.) 807, 116 Pac. 651, holding that statute authorizing commission form of city government is not void because enacted to go into effect upon adoption by local board; Eckerson v. Des Moines, 137 Iowa, 478, 115 N. W. 177, holding that a statute which provides that its provisions shall not apply to any city unless adopted by a popular vote of the voters of the city, does not make such statute unconstitutional as not having uniform operation; Holt Lumber Co. v. Oconto, 145 Wis. 507, 130 N. W. 709, holding that option law, must be complete in itself and require nothing to perfect it as law, in order to be valid; Cole v. Dorr, 80 Kan. 256, 22 L.R.A.(N.S.) 538, 101 Pac. 1016, sustaining statute providing for the "commission form" of government in cities which should avail themselves of the provisions of the act; State ex rel. Faber v. Hinkel, 131 Wis. 107, 111 N. W. 217, sustaining the validity of a local option statute providing for a special election to determine the amount of license to be charged for selling intoxicating liquors; State ex rel. Williams v. Sawyer County, 140 Wis. 636, 123 N. W. 248, sustaining the validity of a statute providing for the establishment of municipal courts in such counties as would avail themselves of the provisions of the act; State ex rel. Van Alstine v. Frear, 142 Wis. 325, 125 N. W. 961, holding that the state Primary Election Law was not unconstitutional because by its provisions its adoption was to be submitted to a vote of the people.

Assessment for local improvements.

Cited in Carstens v. Fond du Lac, 137 Wis. 471, 119 N. W. 117, holding that by adopting the provisions of the general law, the provisions of the city's special charter were repealed and thereafter the city could assess the cost of local improvements upon the abutting property.

Cited in footnote to *Re* Orkney Street, 48 L. R. A. 274, which denies right to

assess property abutting on *cul de sac* for extension converting same into open street.

Delegation of legislative powers.

Cited in State ex rel. Milwaukee Medical College v. Chittenden, 127 Wis. 516, 107 N. W. 500, holding that a law conferring upon the state dental board the power to make reasonable rules and regulations to be followed in performing the duties of the board, is not invalid as delegating legislative powers; Minneapolis, St. P. & Ste. M. R. Co. v. Railroad Commission, 136 Wis. 162, 17 L.R.A.(N.S.) 830, 116 N. W. 905, holding that the legislature may delegate to a commission the power to determine the existence of facts necessary to the enforcement of the law delegating the power.

47 L. R. A. 450, UNITED FIREMEN'S INS. CO. v. THOMAS, 27 C. C. A. 42, 34 C. C. A. 240, 53 U. S. App. 517, 82 Fed. 406, 92 Fed. 127.

Parol as merged into written contract of insurance.

Cited in Young v. St. Paul F. & M. Ins. Co. 68 S. C. 390, 47 S. E. 681, holding that where a written policy is signed the presumption is that all of the parol agreement for the insurance is merged into the policy; Connecticut F. Ins. Co. v. Buchanan, 4 L.R.A.(N.S.) 775, 73 C. C. A. 111, 141 Fed. 896, on the same point.

Agent's authority to bind company.

Cited in Modern Woodmen v. Tevis, 54 C. C. A. 297, 117 Fed. 373, holding beneficial association not bound by agent's failure to require delinquent members to furnish warranty of good health, according to by-laws, nor by his extending time for payments; Morris McGraw Wooden Ware Co. v. German F. Ins. Co. 126 La. 37, 38 L.R.A.(N.S.) 624, 52 So. 183, 20 Ann. Cas. 1229, holding that fact that agent of one insurance company has agreement with agent of another company is without effect to constitute each agent of both companies.

Cited in notes (3 L.R.A.(N.S.) 445) on effect of knowledge of insurance agent acting in two capacities; (38 L.R.A.(N.S.) 638) on insurance broker as agent for the insured.

What constitutes waiver.

Cited in Rice v. Fidelity & D. Co. 43 C. C. A. 278, 103 Fed. 435, holding receipt by obligor in bond, of check signed by agent of obligees without countersignature of bookkeeper, insufficient to prove obligor's waiver of right to enforce contract requiring bookkeeper's signature; Burnham v. Interstate Casualty Co. 117 Mich. 153, 75 N. W. 445 (dissenting opinion), majority holding company waived breach of warranty in policy by furnishing blanks for proofs of death, without disclosing defense and permitting beneficiary to incur expense in preparing report; Webster v. State Mut. F. Ins. Co. 81 Vt. 80, 69 Atl. 319, holding that waiver is intentional relinquishment of known right, but does not necessarily imply that one has been misled to his prejudice, as is implied in case of estoppel; Marquette County Sav. Bank v. Koivisto, 162 Mich. 560, 127 N. W. 680, holding that waiver is intentional relinquishment of known right or such conduct as warrants inference of relinquishment of such right; Reed v. Bankers' Union, 121 Mo. App. 426, 99 S. W. 55, holding that a suspension of the member of a beneficial association is waived by retaining the dues which were forwarded late, even though the health certificate had been forwarded and not returned by the member; Luckett-Wake Tobacco Co. v. Globe & R. F. Ins. Co. 171 Fed. 151, holding where the insurance agent urged as an inducement to procure the insurance an excepted cause, and from which the loss actually occurred, such facts did not constitute a waiver of the exception contained in the policy; Hampton Stave

Co. v. Gardner, 83 C. C. A. 521, 154 Fed. 808; Williams v. Neely, 69 L.R.A. 240, 67 C. C. A. 171, 134 Fed. 11,—holding that where there is no estoppel there can be no waiver.

Cited in notes (13 L.R.A.(N.S.) 866) on effect of nonwaiver agreement on conditions existing at inception of policy; (16 L.R.A.(N.S.) 1208) on parol evidence rule as to varying or contracting written contracts, as affected by doctrine of waiver or estoppel as applied to insurance policies; (107 Am. St. Rep. 148) on waiver of provisions of non-waiver or written waiver of conditions and forfeitures in policies; (137 Am. St. Rep. 190) on waiver of vendor's lien.

Proof of waiver.

Cited in Liverpool, L. & G. Ins. Co. v. T. M. Richardson Lumber Co. 11 Okla. 624, 69 Pac. 938, holding that insured must show company's ratification of agent's waiver of clear space clause in policy covering lumber; Northern Assur. Co. v. Grand View Bldg. Asso. 183 U. S. 340, 46 L. ed. 227, 22 Sup. Ct. Rep. 133, Reversing 41 C. C. A. 212, 101 Fed. 82, holding that agent's authority from company to waive forfeiture for other insurance must be shown to recover on policy.

Agent for insurer or insured.

Cited in Mannheim Ins. Co. v. Hollander, 112 Fed. 551, holding insurance brokers agents of company as to collection of premiums, and of assured as to issuance of policy; Fredman v. Consolidated F. & M. Ins. Co. 104 Minn. 81, 124 Am. St. Rep. 608, 116 N. W. 221, holding that under the statute an insurance broker is the agent for the insured and not for the insurer except for the purpose of collecting premiums.

47 L. R. A. 459, ROBERTSON v. BLAINE COUNTY, 32 C. C. A. 512, 61 U. S. App. 242, 90 Fed. 63.

Running of limitations in favor of municipalities.

Cited in Rogers v. Omaha, 82 Neb. 131, 117 N. W. 119, holding that the statute of limitations does not begin to run against municipal warrant to be paid out of a special fund, until such fund has been created and there is a sufficient amount in the fund to pay the warrants: Barnes v. Turner, 14 Okla. 289, 10 L.R.A. (N.S.) 481, 78 Pac. 108, 2 Ann. Cas. 391, holding that the statute of limitations did not begin to run against municipal warrants until a fund had been created with which to pay these warrants.

County's right to plead statute of limitations.

Cited in Greer County v. Clarke & Courts, 12 Okla. 217, 70 206, holding that county cannot plead statute of limitations to action to enforce obligation payable for particular fund, without first showing such fund has been provided; Burleigh County v. Kidder County, 20 N. D. 35, 125 N. W. 1063; Berkey v. Pueblo County, 48 Colo. 117, 110 Pac. 197, 20 Ann. Cas. 1109,—holding that where debt is payable from particular fund, which must be provided by debtor he must show that fund was provided before he can plead statute of limitations.

47 L. R. A. 466, *Re* WARD, 127 Cal. 489, 59 Pac. 894.

Danger to health as ground for release.

Cited in note (31 L.R.A.(N.S.) 919) on danger to health from confinement as ground for removal, or release on bail.

47 L. R. A. 467, GRUNDEL v. UNION IRON WORKS, 127 Cal. 438, 78 Am. St. Rep. 75, 59 Pac. 826.

Bar of judgment against one of several joint tort feasors.

Cited in Cole v. Roebling Constr. Co. 156 Cal. 449, 105 Pac. 255, holding that

a judgment against one of several wrongdoers which remains wholly unsatisfied is not such a satisfaction of the wrongs of the injured party as will bar a recovery against the others.

Cited in note (92 Am. St. Rep. 883, 887) on release of one joint tort feasor as affecting liability of others.

— Vacation of several judgments against two or more.

Cited in Fowden v. Pacific Coast S. S. Co. 149 Cal. 156, 86 Pac. 178, holding that the granting of a new trial as to one of two joint feasors, did not vacate the verdict as to the other.

47 L. R. A. 469, BLAIR v. OSTRANDER, 109 Iowa, 204, 77 Am. St. Rep. 532, 80 N. W. 330.

Curing defect in statute.

Cited in McCollum v. McConaughy, 141 Iowa, 177, 119 N. W. 539, holding that a statute may be made effective by the removal of the supposed defect; State v. Miller, 66 W. Va. 440, 66 S. E. 522, 19 Ann. Cas. 604, to the joint that when ban of Federal statute was removed, prior state statutes, void because of Federal law, as to sale of liquor did not become operative without re-enactment.

— By enactment of another statute.

Cited in Ferry v. Campbell, 110 Iowa, 300, 50 L. R. A. 97, 81 N. W. 604, sustaining retroactive amendment curing defect in collateral inheritance tax law by making provision for notice of proceedings to fix amount; Montgomery v. Gilbertson, 134 Iowa, 295, 10 L.R.A.(N.S.) 988, 111 N. W. 964, holding that a statute amending the collateral inheritance tax, which took effect in April 1898, applied to an estate still subject to the control of the probate court though the testaor had died in 1897.

Retroactive effect of statutes.

Cited in Wooster v. Bateman, 126 Iowa, 557, 102 N. W. 521, holding that a statute as amended could be made to apply to judgment under a former statute and prior to the passage of the statute in question.

State statutes as affecting Federal courts.

Annotation cited in King v. Davis, 137 Fed. 241, holding that the state statute providing for the filing of a notice of lis pendens does not affect the Federal Courts' jurisdiction of actions as to the land.

Territorial extent of lien of federal judgment.

Cited in note (117 Am. St. Rep. 788) on territorial extent of lien of judgment of Federal court.

47 L. R. A. 480, WALROD v. WEBSTER COUNTY, 110 Iowa, 349, 81 N. W. 598.

Proximate cause of injury.

Cited in Harvey v. Clarinda, 111 Iowa, 532, 82 N. W. 994, holding absence of railings upon approach to bridge, not fright of horse, proximate cause of injury; Parmenter v. Marion, 113 Iowa, 304, 85 N. W. 90, holding platform wrongfully maintained in street, from which bale of hay fell upon pedestrian, not proximate cause of injury; Overhouser v. American Cereal Co. 118 Iowa, 422, 92 N. W. 74, holding city liable for death of bicyclist where it would not have occurred but for small stones scattered in street; Pautz v. Plankington Packing Co. 118 Wis. 50, 94 N. W. 654, holding defective condition of wooden wheel by which power applied to iron wheel used in packing house to lift animals, proximate cause of injury resulting from breaking of iron wheel; Louisville v. Hart, 143 Ky. 181, 35 L.R.A.(N.S.) 215, 136 S. W. 212, holding that two agencies acting entirely inde-

pendent of each other may jointly and concurrently be treated as proximate cause of injury when it would not have happened except for concurrence of such acts; Burk v. Creamery Package Mfg. Co. 126 Iowa, 735, 106 Am. St. Rep. 377, 102 N. W. 793, holding that a cause is not the proximate one unless without it the accident would not have happened; Buehner v. Creamery Package Mfg. Co. 124 Iowa, 450, 104 Am. St. Rep. 354, 100 N. W. 345, holding that the failure to guard the cogs of a machine was the proximate cause of the servant's injury thereby where he was thrown in contact therewith by an accident which might have been foreseen.

Cited in footnote to Missouri P. R. Co. v. Columbia, 58 L. R. A. 399, which holds placing on platform of heavy doors, which are blown on track by severe gale, not proximate cause of derailment of engine.

Cited in note (18 L.R.A.(N.S.) 1140) on what injuries may be deemed proximately caused by absence of guard rail in highway.

Liability as affected by third party's negligence.

Cited in footnotes to Griffin v. Jackson Light & P. Co. 55 L. R. A. 318, which denies electric light company's liability for injury to stranger attempting to use defectively insulated movable light which storekeeper has continued to use; Louisville & E. Mail Co. v. Barnes, 64 L. R. A. 574, which holds that negligence of steamer company does not prevent recovery for death of passenger by drowning while attempting to disembark, from other steamboat company whose negligence was also responsible for his death.

Liability for failure to build railings.

Cited in Eginoire v. Union County, 112 Iowa, 561, 84 N. W. 758, holding county liable for failure to protect approach to bridge; Dardanelle Pontoon Bridge & Turnp. Co. v. Croom, 95 Ark. 288, 30 L.R.A.(N.S.) 365, 129 S. W. 280, holding that guard rails on toll bridge should be constructed in such reasonably strong and substantial manner as to withstand ordinary forces that may be expected to be pressed against it.

Instructions to jury.

Cited in Meyer v. Boepple Button Co. 112 Iowa, 52, 83 N. W. 809, holding instructions pointing out entire issue to jury, sufficient; Welch v. Union Cent. L. Ins. Co. 117 Iowa, 399, 90 N. W. 828, holding stating issues to jury by reading pleadings in full, no error.

Objections to admission of written evidence.

Cited in Boyland v. McMillan, 137 Iowa, 144, 114 N. W. 630, holding that an objection to the admission of an instrument as a whole, is not good where parts of the instrument are admissible; Skow v. Locke, 3 Neb. (Unof.) 181, 91 N. W. 204, holding that an objection to the admission of an account book is not good, where the objection is not good as to all the items of account; State v. Dahlquist, 17 N. D. 48, 115 N. W. 81, holding that the objection to the admission of a written record as a whole was not good without specifying the parts objected to, where a part of the record was competent evidence.

Impeachment of witness.

Cited in note (82 Am. St. Rep. 49) on impeachment of witness by previous contradictory testimony, depositions, or writings.

47 L. R. A. 483, NICHOLS v. EATON, 110 Iowa, 509 80 Am. St. Rep. 319, 81 N. W. 792.

Privileged communications.

Cited in Morse v. Times-Republican Printing Co. 124 Iowa, 722, 100 N. W. 867,

holding that a publication as to an insurance agent that he had lived beyond his means, and was owing large sums of money, and had been discharged by the insurance company, and that he had gotten away with a large sum of money, was not a privileged communication.

Cited in notes (3 L.R.A.(N.S.) 697) on privileged occasion; burden of showing good faith and probable cause; (26 L.R.A.(N.S.) 1084) on qualified privilege of communication between members of association or private corporation: (36 L.R.A.(N.S.) 450, 451) on libel and slander: privilege of communications between principal and agent; (104 Am. St. Rep. 112, 117, 119, 148) on what libelous statements are privileged.

Proof of malice in actions for libel.

Cited in Cherry v. Des Moines Leader, 114 Iowa, 300, 54 L. R. A. 857, 89 Am. St. Rep. 365, 86 N. W. 323, sustaining directed verdict in action for publication of exaggerated account of silly entertainment, in absence of proof of malice; Thompson v. Rake, 140 Iowa, 234, 18 L.R.A.(N.S.) 922, 118 N. W. 279, holding that actual malice in making privileged statements may be proved by the publication itself when considered in connection with the facts and circumstances prompting and surrounding the publication; Sunley v. Metropolitan L. Ins. Co. 132 Iowa, 127, 12 L.R.A.(N.S.) 93, 109 N. W. 463, holding that making claim against the plaintiff's surety that he was short $21.81 in his accounts, the superintendent having reported a shortage of only $14.31 and the plaintiff having made an accounting of all moneys in his hands, was sufficient to justify a finding of malice where the defendant had withdrawn its claims; Vial v. Larson, 132 Iowa, 209, 109 N. W. 1007, holding that the burden is on the plaintiff to prove malice in making privileged statements, and this is not done by merely proving the untruth of the statements.

Cited in note (12 L.R.A.(N.S.) 92) on inference, from publication alone, of malice which will preclude qualified privilege.

Justification.

Cited in State v. Keenan, 111 Iowa, 293, 82 N. W. 792, holding justification for publication of defamatory matter concerning candidate for superintendent of schools, for jury to determine.

Privileged communication as question for the jury.

Cited in Prewitt v. Wilson, 128 Iowa, 206, 103 N. W. 365, holding that the question of malice and as to whether the privilege had not been exceeded was for the jury.

47 L. R. A. 486, BAGWELL v. ATLANTA CONSOL. STREET R. CO. 109 Ga. 611, 34 S. E. 1018.

Physical examination of plaintiff in personal injury suit.

Distinguished in Cedartown v. Brooks, 2 Ga. App. 590, 59 S. E. 836, holding that in its discretion a trial court may refuse to compel the plaintiff in a personal injury suit, to submit to a physical examination.

47 L. R. A. 487, VALPARAISO v. BOZARTH, 153 Ind. 536, 55 N. E. 439.

Abatement of nuisances.

Cited in Martin v. Marks, 154 Ind. 555, 57 N. E. 249, granting mandatory injunction to compel removal of fence constructed in highway; Coverdale v. Edwards, 155 Ind. 383, 58 N. E. 495, sustaining city's right to remove electric light poles after termination of license and notice to remove; Rushville Natural Gas Co. v. Morristown, 30 Ind. App. 460, 66 N. E. 179, holding ordinance requiring gas company to fulfil contract to supply gas, and in case of failure directing

marshal to sever connections and exclude pipes from streets, not declaration within statute that pipes were nuisance; Hall v. Breyfogle, 162 Ind. 501, 70 N. E. 883, holding that a material obstruction to a public street is a public nuisance per se, and as against the author may be abated at any time.

Cited in footnote to Western & A. R. Co. v. Atlanta, 54 L. R. A. 294, which holds power to abate nuisance in city in police court only.

Cited in note (27 L.R.A.(N.S.) 165) on necessity of notice to impose liability for continuing nuisance created by predecessor.

Distinguished in Graham v. Chicago, I. & L. R. Co. 39 Ind. App. 298, 77 N. E. 57, holding that the rule that the purchaser of real estate upon which there is an existing nuisance is liable in an action to abate it only after notice to do so, does not apply where the nuisance exists in violation of a mandatory statute; Kelsay v. Chicago, C. & L. R. Co. 41 Ind. App. 133, 81 N. E. 522, on the same point.

Right of action for obstruction in street.

Cited in O'Brien v. Central Iron & Steel Co. 158 Ind. 221, 57 L. R. A. 509, 63 N. E. 302, sustaining abutter's right to damages for cutting off access to property by erection of permanent obstruction in street.

Presumption of grant.

Distinguished in New Castle v. Lake Erie & W. R. Co. 155 Ind. 26, 57 N. E. 516, holding railroad company's occupation of street for thirty years raises presumption of grant.

What are public nuisances.

Cited in note (107 Am. St. Rep. 246) on what are public nuisances.

47 L. R. A. 489, BANK OF COMMERCE v. WILTSIE, 153 Ind. 460, 53 N. E. 950, 55 N. E. 224.

Dismissed for want of jurisdiction in 189 U. S. 506, 47 L. ed. 921, 23 Sup. Ct. Rep. 851.

Statutes extending municipal powers.

Cited in Smith v. Indianapolis Street R. Co. 158 Ind. 435, 63 N. E. 849, sustaining act empowering certain cities to extend franchise and rights of street railway companies.

Distinguished in Longview v. Crawfordsville, 164 Ind. 120, 68 L.R.A. 624, 73 N. E. 78, 3 Ann. Cas. 496, holding that a statute providing for the annexation of unincorporated towns to cities of over six thousand and less than seven thousand inhabitants, was a special law as it did not refer to a power already possessed by an existing city.

Extension of corporate charters.

Cited in Clark v. American Cannel Coal Co. 165 Ind. 215, 112 Am. St. Rep. 217, 73 N. E. 1083, holding that a statute extending the corporate existence of every private corporation created by special act for thirty years is unconstitutional; Marion Trust Co. v. Bennett, 169 Ind. 350, 124 Am. St. Rep. 228, 82 N. E. 782, holding that a statute providing that the capital of an existing corporation might be increased from time to time as the stockholders might determine, was unconstitutional as changing the charter by a special act.

Questions considered on rehearing.

Cited in Armstrong v. Hufty, 156 Ind. 631, 60 N. E. 1080, refusing to consider questions not presented at original hearing; Indianapolis Street R. Co. v. Kane, 169 Ind. 41, 81 N. E. 721, holding that the objection to the unconstitutionality of

the statute under which the action is begun, can not be urged for the first time upon petition for rehearing.

Distinguished in Standard Cement Co. v. Minor, 42 Ind. App. 232, 84 N. E. 353, holding that where the statute under which the action has been brought has been declared unconstitutional pending the appeal from the judgment of the trial court, the appellee may urge such unconstitutionality in a supplemental brief, though it was not urged in the original brief.

Meaning of word "revive."

Cited in Leman v. Cunningham, 12 Idaho, 141, 85 Pac. 212, holding that a revivor of a judgment had the effect of giving new life to an old judgment so as to have the same effect as the original judgment.

De facto corporations.

Cited in Clark v. American Cannel Coal Co. 35 Ind. App. 72, 73 N. E. 727, holding that there can be no de facto corporation under existing statute where there has been no attempt to comply with the statute.

47 L. R. A. 495, ASLANIAN v. DOSTUMIAN, 174 Mass. 328, 75 Am. St. Rep. 348, 54 N. E. 845.

Presumption as to foreign law.

Cited in Cuba R. Co. v. Crosby, 222 U. S. 479, 56 L. ed. 276, 38 L.R.A.(N.S.) 43, 32 Sup. Ct. Rep. 132, Reversing 95 C. C. A. 539, 170 Fed. 376, holding that there is no general presumption that law of Cuba as inherited from Spain and as since modified is same as common law; Parrot v. Mexican C. R. Co. 207 Mass. 193, 34 L.R.A.(N.S.) 275, 93 N. E. 590, to the point that court will not presume that rules of law merchant or of common law prevailed in Turkey.

Cited in notes (67 L.R.A. 40) on jurisdictions with respect to which presumption in favor of common law may be indulged; (34 L.R.A.(N.S.) 270) on presumption that foreign law is same as law of forum; (113 Am. St. Rep. 879) on presumption as to existence of common law in foreign country whose jurisprudence is not based on common law.

47 L. R. A. 497, WYANT v. CENTRAL TELEPH. CO. 123 Mich. 51, 81 Am. St. Rep. 155, 81 N. W. 928.

Right to remove or trim shade trees.

Cited in Stretch v. Cassapolis, 125 Mich. 169, 51 L. R. A. 346, 84 Am. St. Rep. 567, 84 N. W. 51, holding municipality liable for removal of shade trees from highway without notice to abutting owner; Miller v. Detroit, Y. & A. A. R. Co. 125 Mich. 172, 51 L. R. A. 957, footnote p. 955, 84 Am. St. Rep. 569, 84 N. W. 49, sustaining street railway company's right to remove obstructing shade trees without compensation to abutter; Bronson v. Albion Teleph. Co. 67 Neb. 113, 60 L.R.A. 427, footnote p. 426, 93 N. W. 201, 2 Ann. Cas. 639, which holds telephone company liable to abutter for injury to trees along street; Hazlehurst v. Mayes, 84 Miss. 14, 64 L.R.A. 807, footnote p. 805, 36 So. 33, which denies owner's right of action for necessary trimming of trees in highway for installation of electric lighting system for city.

Cited in footnotes to Hazlehurst v. Mayes, 64 L.R.A. 805, which denies owner's rights of action for injury to trees in highway from necessary trimming for installation of electric lighting system for municipality; Brown v. Asheville Electric Co. 69 L.R.A. 631, which holds municipal authority to place electric light poles and wires on designated sidewalk no defense against liability for damage from removal of trees; Donahue v. Keystone Gas Co. 70 L.R.A. 761, which holds gas company negligently permitting gas to escape from pipes in

highway liable for resulting injury to shade trees in front of abutting property though fee of street is in public.

Cited in notes (12 L.R.A.(N.S.) 1127) on liability to abutter for mutilating trees in highway by putting up poles or wires; (101 Am. St. Rep. 113) on rights, obligations and remedies of persons over whose land a highway runs as to trees.

Distinguished in Boland v. Washtenaw Home Teleph. Co. 161 Mich. 318, 126 N. W. 425, holding that under the statute prohibiting telephone companies from injuring any trees, a company maintaining a line along a street is prohibited from trimming the trees though it had done so before the act was passed.

Placing of telephone poles in the streets.

Cited in Bevis v. Vanceburg Teleph. Co. 121 Ky. 185, 89 S. W. 126, on the right of the telephone company to place its poles in the street.

Judicial notice.

Cited in note (124 Am. St. Rep. 25) on facts of which courts will take judicial notice.

47 L. R. A. 499, THOMAS v. FLINT, 123 Mich. 10, 81 N. W. 936.

Constructive notice.

Cited in Bannigan v. Woodbury, 166 Mich. 496, 132 N. W. 77, holding that in order to charge owner of property with liability for injury from defect therein, defect must be shown to have existed for such length of time that he ought to have discovered it; Metcalf v. Mutual F. Ins. Co. 132 Wis. 72, 112 N. W. 22, holding that such notice as would put a person of ordinary prudence upon inquiry is sufficient to charge the person with knowledge of such facts as he would have ascertained by proper inquiry.

Distinguished in Re Sullivan, 165 Mich. 588, 131 N. W. 180, holding that landlord owes duty to persons using his premises to inspect board covering of areaway over which such persons must pass upon entering premises from street.

Constructive notice of defect in highway.

Cited in Nestle v. Flint, 141 Mich. 158, 104 N. W. 406, holding notice of claim for injury from defective sidewalk at point near lot line between two lots on certain street was sufficient; Hunter v. Ithaca, 141 Mich. 542, 105 N. W. 9, holding that where village officials have notice of defective walk, which calls for inspection, examination must be such as prudent man would make under like circumstances; Tracey v. South Haven, 132 Mich. 494, 93 N. W. 1065, holding that the existence of a washout in a road during the whole spring till the first of May, was sufficient to raise the presumption that the town must have known of it; Hunter v. Durand, 137 Mich. 58, 100 N. W. 191, holding a finding that the existence of a hole in a sidewalk was generally known, is warranted by evidence showing that the hole had existed for over two months and was open and visible.

Absence of notice of defect.

Followed in Pearl v. Benton Twp. 123 Mich. 414, 82 N. W. 226, denying town's liability for injury resulting from defective condition of bridge, in absence of knowledge of defect.

Distinguished in Pearl v. Benton Twp. 136 Mich. 698, 100 N. W. 188, holding that where the canting and settling of a bridge was such that it became well known, it was sufficient to give notice that the mud-sills or the bridge had been undermined though such was not open and visible to ordinary observation.

47 L. R. A. 512, STATE *ex rel.* NEW ORLEANS CANAL & BKG. CO. v. HEARD, 47 La. Ann. 1679, 18 So. 746.

Repeal of ordinance as ground for refusal to perform duty.

Cited in State *ex rel.* Crescent City R. Co. v. Bell, 49 La. Ann. 680, 21 So. 724, denying city engineer's right to refuse to furnish lines and levels of contemplated road on ground of repeal of ordinance.

Right to question validity of statute.

Cited in Park v. Candler, 113 Ga. 679, 39 S. E. 89 (dissenting opinion), majority raising, without deciding, question as to treasurer's power to question constitutionality of statute; Threadgill v. Cross, 26 Okla. 409, 138 Am. St. Rep. 964, 109 Pac. 558; State ex rel. Missouri & N. A. R. Co. v. Johnston, 234 Mo. 353, 137 S. W. 595,—holding that secretary of state is bound to obey statute whatever views he may entertain as to its constitutionality; State ex rel. Niles v. Williams, 232 Mo. 67, 34 L.R.A.(N.S.) 1065, 133 S. W. 11, holding that county treasurer has right to interpose defense that statute is unconstitutional when he has been so advised by attorney general; State ex rel. Cruce v. Cease, 28 Okla. 274, 114 Pac. 251, Ann. Cas. 1912D, 151, holding that statutes must be treated and acted upon by subordinate executive officers as legal until courts decide them to be illegal; State ex rel. Fooshe v. Burley, 80 S. C. 131, 16 L.R.A.(N.S.) 271, 61 S. E. 255, holding that when mandamus is brought to compel an officer to perform a duty enjoined by the statute, the court generally will not permit the officer to assert the unconstitutionality of the statute, and approving annotation on this point.

Annotation cited in State ex rel. Hubbard v. Holmes, 53 Fla. 229, 44 So. 179, on the right to assert the unconstitutionality of a law in mandamus proceedings brought to enforce a duty imposed by the law.

Cited in notes (16 L.R.A.(N.S.) 267; 24 L.R.A.(N.S.) 1260; 34 L.R.A.(N.S.) 1060), on unconstitutionality of statute as defense against mandamus to compel enforcement.

Deed of public land to private corporation.

Cited in State *ex rel.* Texarkana, S. & N. R. Co. v. Smith, 104 La. 373, 29 So. 40, denying mandamus to compel board of levee commissioners to obey ordinance and execute deed of public land to railroad company.

Rights of purchaser of stolen bonds.

Cited in Mechanics & T. Ins. Co. v. Hart, 48 La. Ann. 585, 19 So. 569 (dissenting opinion), majority holding purchaser of stolen state bonds entitled to reimbursement for sum paid.

47 L. R. A. 525, DREW v. TIFFT, 79 Minn. 175, 79 Am. St. Rep. 446, 81 N. W. 839.

Constitutionality of inheritance tax.

Followed in State *ex rel.* Frye v. Bazille, 87 Minn. 501, 94 Am. St. Rep. 718, 92 N. W. 415, holding inheritance tax law unconstitutional as taxing collateral and lineal descendants unequally; State *ex rel.* Russell v. Harvey, 90 Minn. 181, 95 N. W. 764, holding inheritance tax void as doubling rate in certain cases.

Cited in Westfeldt's Succession, 122 La. 841, 48 So. 281, to the point that inheritance tax must be equal and uniform in order to be constitutional; Thompson v. Kidder, 74 N. H. 91, 65 Atl. 392, 12 Ann. Cas. 948, holding a statute imposing a tax upon collateral legacies and succession was not unconstitutional; State ex rel. Foot v. Bazille, 97 Minn. 12, 6 L.R.A.(N.S.) 734, 106 N. W. 93, 7 Ann. Cas. 1056, holding a statute imposing a tax on certain devises, bequests, in-

heritances and gifts was constitutional; People v. Koenig, 37 Colo. 291, 85 Pac. 1129, 11 Ann. Cas. 140, on the constitutionality of an act attempting to lay an inheritance tax.

Cited in footnotes to Ferry v. Campbell, 50 L. R. A. 92, which holds succession tax void for want of notice of proceedings to fix amount of tax; Billings v. People, 59 L. R. A. 807, which sustains transfer tax on lineal descendants to whom life estate given with remainder to lineal descendants, but exempting lineal descendants taking fee.

Cited in notes (127 Am. St. Rep. 1044, 1048; 33 L.R.A.(N.S.) 594, 596) on constitutionality of succession taxes; (33 L.R.A.(N.S.) 609) on nature of inheritance tax.

Distinguished in Re Fox, 154 Mich. 12, 117 N. W. 558, holding sections of an inheritance tax law which exempts from taxation transfers of personal property to lineal heirs where the property is less than a specific sum and taxes the entire transfer when more than such sum is not unconstitutional.

Disapproved in Re McKennan, 25 S. D. 376, 33 L.R.A.(N.S.) 613, 126 N. W. 611, holding that inheritance tax law has nothing to do with and is not at all dependent for its validity upon right to regulate succession of property.

Legislative power of taxation.

Cited in Canaan v. Enfield Village Fire Dist. 74 N. H. 541, 70 Atl. 250, on the extent of the power of taxation.

Applicability of mandamus order.

Cited in State ex rel. Jackson County v. McKellar, 92 Minn. 245, 99 N. W. 807, holding an order denying a motion in a mandamus case that the peremptory writ issue is not appealable.

47 L. R. A. 529, MILTON v. JOHNSON, 79 Minn. 170, 81 N. W. 842.

47 L. R. A. 532, GODBOUT v. ST. PAUL UNION DEPOT CO. 79 Minn. 188, 81 N. W. 835.

Carrier's right to grant exclusive privileges.

Cited in Donovan v. Pennsylvania Co. 61 L. R. A. 143, footnote p. 140, 57 C. C. A. 362, 120 Fed. 217, sustaining carrier's power to give to one hackman exclusive right to solicit patrons within station; Hedding v. Gallagher, 72 N. H. 394, 64 L. R. A. 821, footnote p. 811, 57 Atl. 225, which sustains right of railroad company to give to one teamster exclusive right to enter railroad property to solicit privilege of carrying baggage and passengers; Seattle v. Hurst, 50 Wash. 430, 18 L.R.A.(N.S.) 172, 97 Pac. 454, holding an ordinance making a misdemeanor for hack drivers to solicit customers for hire in railroad stations prevents the owner of the depot from permitting such solicitation by contract; Lewis v. Weatherford, M. W. & N. R. Co. 36 Tex. Civ. App. 52, 81 S. W. 111, holding a railroad company has the right to grant the exclusive privilege to one person to go on train and in depot to solicit patronage for his stage line; State ex rel. Sheets v. Union Depot Co. 71 Ohio St. 391, 68 L.R.A. 797, 73 N. E. 633, 2 Ann. Cas. 186, holding a union depot company may grant to a transfer company the exclusive right to use a designated portion of its grounds for the purpose of standing its vehicles.

Cited in footnotes to Norfolk & W. R. Co. v. Old Dominion Baggage Transfer Co. 50 L. R. A. 722, which sustains special privilege to baggage transfer company to another depot to solicit business; Boston & A. R. Co. v. Brown, 52 L. R. A. 418, which holds driver of public carriage entering railroad grounds to get passenger ordering carriage, a trespasser on soliciting other passengers; Pennsylvania Co. v. Chicago, 53 L. R. A. 223, which denies carrier's power to prevent others than

lessee occupying hack stands in street; Hedding v. Gallagher, 64 L.R.A. 811, which which sustains right of railroad company to give exclusive right to one teamster to enter on its grounds, if reasonable requirements of passengers are fully met; State ex rel. Sheets v. Union Depot Co. 68 L.R.A. 793, which sustains right of union depot company to grant transfer company exclusive right to use specified part of depot grounds for hacks and vehicles and soliciting patronage of passengers.

Cited in note (32 L.R.A.(N.S.) 1183) on right of carrier to grant exclusive train privilege to transfer companies.

47 L. R. A. 537, ROGERS v. ST. PAUL, 79 Minn. 5, 81 N. W. 539.

Followed without discussion in Pieper v. MacLaren, 106 Minn. 31, 118 N. W. 60.

Recovery of payment of assessment for local improvement.

Followed in Rogers v. St. Paul, 86 Minn. 100, 90 N. W. 155, holding complaint defective in failing to allege money accruing from assessments not expended on local improvements.

Cited in Germania Bank v. St. Paul, 79 Minn. 33, 81 N. W. 542, holding demurrable, complaint in action to recover money paid for local improvements not finished, it not appearing that money was not honestly expended in general plan of improvement.

Cited in note (94 Am. St. Rep. 436) on recovery back of voluntary payment.

47 L. R. A. 540, PAUL v. CRAGNAS, 25 Nev. 293, 59 Pac. 857, 60 Pac. 983.

Measure of damages.

Cited in Silver Springs, O. & G. R. Co. v. Van Ness, 45 Fla. 580, 34 So. 894, holding that the measure of damages for breach of an agreement to remove its tracks to adjoining lands upon notice, is the value of the phosphate that could not be mined without letting down the tracks, or injury to the surface of defendant's rights of way.

— Profits from mining lease.

Cited in Kjelsberg v. Chilberg, 100 C. C. A. 529, 177 Fed. 113, holding that in an action breach of a contract to lease a mine, evidence of the profits under a like lease of the same property to others during the same period, is admissible in connection with evidence to show that the plaintiff would have worked the mine in the same manner, to show the profits he would have made.

Damages for tort.

Cited in Cain v. Vollmer, 19 Idaho, 168, 32 L.R.A.(N.S.) 41, 112 Pac. 686, holding that master could not recover for loss of probable earnings of race horses caused by wrongful injury of jockey by defendant.

Cited in note (52 L. R. A. 50) on damages for tort as affected by loss of profits.

Sufficiency of exception.

Cited in Schwartz v. Stock, 26 Nev. 150, 65 Pac. 351, refusing to consider action of trial court when exception not particularly stated in record as required by statute.

Objections not made below.

Cited in Ennor v. Raine, 27 Nev. 215, 74 Pac. 1, on the urging of objections not made in the court below.

Sufficiency of notice of appeal.

Cited in State ex rel. Rosenstein v. District Ct. 41 Mont. 104, 108 Pac. 580, 21 Ann. Cas. 1307, holding that notice of appeal from justice's to district court

which did not state nature and amount of judgment and did not give date of judgment was insufficient; Larson v. Larson, 15 Cal. App. 536, 115 Pac. 340, holding that notice of appeal from order of nonsuit which identifies order with reasonable certainty is sufficient under Code.

What constitutes mining lease.

Cited in note (26 L.R.A.(N.S.) 616) as to when instrument creating right in minerals to be regarded as lease.

47 L. R. A. 546, FELT v. FELT, 59 N. J. Eq. 606, 83 Am. St. Rep. 612, 45 Atl. 105.

Domicil as affecting right to divorce.

Cited in Kempson v. Kempson, 58 N. J. Eq. 96, 43 Atl. 97, Later appeals in 61 N. J. Eq. 309, 48 Atl. 244, 63 N. J. Eq. 785, 58 L.R.A. 485, 92 Am. St. Rep. 682, 52 Atl. 360, restraining husband's prosecution of divorce suit in North Dakota, where he had gone for that purpose; Streitwolf v. Streitwold, 58 N. J. Eq. 564, 78 Am. St. Rep. 630, 41 Atl. 876, holding void, foreign decree of divorce obtained upon false allegations of residence; McGean v. McGean, 60 N. J. Eq. 23, 46 Atl. 656, holding residence not established by wife's spending most of her time in another state, after removing here for purpose of obtaining divorce; Wallace v. Wallace, 65 N. J. Eq. 362, 54 Atl. 433, Reversing 62 N. J. Eq. 513, 50 Atl. 788, holding that a decree of divorce may be rendered upon an extraterritorial service, which will have extraterritorial force; McGuinness v. McGuinness, 71 N. J. Eq. 5, 62 Atl. 937, holding that the courts could render a decree of divorce, where the defendant was a nonresident, and the statutes in regard to publication of the summons had been complied with, and he had been served with notice of publication.

Credit due foreign decree of divorce.

Cited in Atherton v. Atherton, 181 U. S. 169, 45 L. ed. 802, 21 Sup. Ct. Rep. 544, holding that decree of divorce, granted in state which was matrimonial residence of parties and from which wife departed, and did not appear after service of notice, should have full credit in state into which wife moved; Joyner v. Joyner, 131 Ga. 221, 18 L.R.A.(N.S.) 654, 127 Am. St. Rep. 220, 62 S. E. 182, holding that a divorce secured in Kansas, where the husband had been a bona fide resident for five years, and upon actual notice to the wife who had remained domiciled in Georgia when her husband left, would be recognized in the latter state; Lake v. Lake, 65 N. J. Eq. 545, 56 Atl. 296, holding that a divorce obtained by the husband in the state to which he had gone, was not entitled to any effect in another state where no notice of the suit was given to the wife, and she had no knowledge of the pendency of the suit, and the cause of action arose in another state; Davenport v. Davenport, 67 N. J. Eq. 341, 58 Atl. 535, holding that a decree of divorce obtained in another state will not be entitled to force in another state if obtained through fraud and the suppression of facts, and where the defendant was not served with notice, though her residence was known; Haddock v. Haddock, 201 U. S. 586, 50 L. ed. 877, 26 Sup. Ct. Rep. 525, 5 Ann. Cas. 1, holding that a decree of divorce rendered in the courts of the state where one of the parties resided, was not entitled to full force and effect where based only on constructive notice.

Cited in footnotes to Arrington v. Arrington, 52 L. R. A. 201, which holds foreign decree for alimony after defendant's appearance entitled to full faith and credit; Trowbridge v. Spinning, 54 L. R. A. 204, which holds judgment for alimony, though subject to alteration, final for enforcement in other state.

Cited in notes (83 Am. St. Rep. 624; 94 Am. St. Rep. 554; 103 Am. St. Rep. 328) on extraterritorial effect of decree of divorce.

Married woman's liability on contract.

Cited in Thompson v. Taylor, 66 N. J. L. 258, 54 L. R. A. 588, 88 Am. St. Rep. 485, 49 Atl. 544, Reversing 65 N. J. L. 109, 46 Atl. 567, holding statute preventing married women from becoming sureties not declaration of public policy, preventing suit on such contract valid where made.

47 L. R. A. 548, YOUNG v. STATE, 36 Or. 417, 59 Pac. 812, 60 Pac. 711.

Declarations as to family relationship.

Cited in Scheidegger v. Terrell, 149 Ala. 341, 43 So. 26, holding that the testimony of a child that his mother had said that "her sister was in the United States" and that "she used to receive letters from her" was not admissible to prove that the person was a member of the family in the absence of a declaration of the mother to that effect.

Cited in note (36 L.R.A.(N.S.) 534) on admissibility of declarations of relatives upon issue of relationship or heirship.

Admissibility of declarations of a decedent.

Cited in Miller's Will, 49 Or. 466, 124 Am. St. Rep. 1051, 90 Pac. 1002, 14 Ann. Cas. 277, holding that the declarations of a testatrix as to her will were admissible to prove such will, where same had been lost, but was being probated as a lost will, the declarations being corroborated by direct evidence.

Nature of escheat proceedings.

Cited in State v. McDonald, 55 Or. 433, 104 Pac. 967, holding that proceedings to escheat property of deceased person for want of heirs, as authorized by act of 1903, is proceeding at law.

47 L. R. A. 551, STATE *ex rel.* CROW v. KRAMER, 150 Mo. 89, 51 S. W. 716.

Power of appointment to office.

Second appeal in 152 Mo. 516, 47 L. R. A. 563, 54 S. W. 221, holding vacancy in office of justice of peace, to be filled by appointment, not created by failure to elect.

Cited in State *ex rel.* Crow v. Towns, 153 Mo. 109, 54 S. W. 552, holding statute directing court to appoint defeated candidate in place of one ousted for corrupt practice in elections, void, giving governor power to make appointment.

47 L. R. A. 560, STATE *ex rel.* CROW v. SMITH, 152 Mo. 512, 54 S. W. 221.

Right of officer to hold over.

Cited in State *ex rel.* Crow v. Lund, 167 Mo. 250, 67 S. W. 572 (dissenting opinion), majority holding that city comptroller holds till term of office expires, not till successor has qualified: State ex rel. Atty. Gen. v. Dabbs, 182 Mo. 368, 81 S. W. 1148, holding that the person appointed as the extra judge under a statute providing therefor and fixing the date for the election of a judge, was entitled to hold over until the next general election, where the judge that had been elected had died before taking his office; Watt v. Glasgow, 106 Va. 119, 55 S. E. 536, holding that where a person had been properly appointed as police judge, his term to expire July 1st, and on June 12th preceding a new law went into effect providing that police judges should be elected at the next regular election to take office January 1st next, the former held over till his successor was elected.

Decision of tie vote.

Cited in note (47 L. R. A. 552, 559) on decision of tie vote at election.

47 L. R. A. 566, *Ex parte* TOD, 12 S. D. 386, 76 Am. St. Rep. 616, 81 N. W. 637.

Signing of blank warrants.

Cited in Hager v. Sidebottom, 130 Ky. 693, 113 S. W. 870, holding that where the governor had signed a blank warrant and his private secretary had filled it out, offering a reward for the capture of a criminal, the warrant and offer is void.

Who are subject to extradition.

Cited in footnotes to People ex rel. Corkran v. Hyatt, 60 L.R.A. 774, which holds one not corporeally present in state when crime committed not fugitive from justice in other state; State ex rel. Munsey v. Clough, 67 L.R.A. 946, which holds finding that an accused is a fugitive from justice not precluded by fact that indictment shows offense to have been committed more than six years before finding of indictment; Farrell v. Hawley, 70 L.R.A. 686, which holds that one cannot be a fugitive from justice unless he was in the state from which the demand comes when the alleged crime was committed.

Cited in notes (112 Am. St. Rep. 121) as to who decides what constitutes sufficient showing that accused is fugitive from justice; (52 L. ed. U. S. 542) on who are fugitives from justice.

Who may grant requisition.

Cited in footnote to State *ex rel.* Nichols v. Justus, 55 L. R. A. 325, which holds requisition for extradition "by the acting governor" made by chief magistrate.

Powers of the court on habeas corpus in extradition proceedings.

Cited in Re Waterman, 29 Nev. 294, 11 L.R.A.(N.S.) 430, 13 Ann. Cas. 926, 89 Pac. 291, holding that in habeas corpus proceedings a court may go behind the executive warrant, and examine into the sufficiency of the papers upon which it is based, and in case the papers are fatally defective and insufficient, may discharge the prisoner.

Cited in note (11 L.R.A.(N.S.) 426) on right of court of asylum state to examine sufficiency of papers charging offense for which extradition demanded.

Delegation of powers.

Cited in State v. Jackson, 21 S. D. 497, 113 N. W. 880, 16 Ann. Cas. 87, holding that reception of verdict is judicial function which cannot be delegated.

Cited in note (112 Am. St. Rep. 110) on delegation of power in extradition proceedings.

Sufficiency of charge of crime in extradition papers.

Cited in note (112 Am. St. Rep. 133) on immateriality of technical defects where papers substantially charge crime.

47 L. R. A. 569, STATE *ex rel.* TOMPKINS v. CHICAGO, ST. P. M. & O. R. CO. 12 S. D. 305, 81 N. W. 503.

What is a railway station.

Cited in McGuire v. St. Louis M. & S. R. Co. 113 Mo. App. 83, 87 S. W. 564, holding that the receipt and discharge of passengers and freight and the maintenance of a platform is sufficient to constitute a station.

— Selection of site for depot by railroad commissioners.

Cited in Louisiana R. & Nav. Co. v. Railroad Commission, 121 La. 855, 46 So. 884, holding that the railroad commission had the power to select the site for a depot where there was a dispute between the railroad company and a large majority of the citizens, and its decision upon the subject would not be disturbed by the courts except if manifestly erroneous or an abuse of power.

Cited in note (17 L.R.A.(N.S.) 823) on power to compel establishment of, or stopping of trains at stations.

47 L. R. A. 572, ST. LAWRENCE v. GROSS, 12 S. D. 350, 76 Am. St. Rep. 612, 81 N. W. 640.

47 L. R. A. 574, NORFOLK v. YOUNG, 97 Va. 728, 34 S. E. 886.

Assessment for local improvements.

Cited in Harrisburg v. McPherran, 14 Pa. Super. Ct. 495, sustaining cost of street improvements assessed on basis of front-foot rule.

Cited in note (28 L.R.A.(N.S.) 1202) on assessments for improvements by front-foot rule.

Party's right to be heard on question of local improvements.

Cited in Adams v. Roanoke, 102 Va. 63, 45 S. E. 881, holding that a statute which authorizes assessments for local improvements, and provides for notice and hearing for contesting the legality, justice, and correctness of the assessment before it is finally determined upon, is valid though notice and hearing is not provided for at every step.

Cited in footnote to Chicago & E. R. Co. v. Keith, 60 L. R. A. 525, which holds void, statute for construction of ditch to drain off water along railroad right of way on petition of adjoining owner, without giving company opportunity to be heard.

47 L. R. A. 577, MAIA v. EASTERN STATE HOSPITAL, 97 Va. 507, 34 S. E. 617.

Liability of a charitable or public institution for its torts.

Cited in Whittaker v. St. Luke's Hospital, 137 Mo. App. 119, 117 S. W. 1189, holding that a charitable institution is not liable for its torts resulting in injury to its employee; Adams v. University Hospital, 122 Mo. App. 686, 99 S. W. 453, holding that a private or quasi-private charity is not liable for negligence of its employees or its negligence in selecting the same; Lyle v. National Home, 170 Fed. 845, holding that a National Home for Soldiers was a charitable institution so that it was not liable for the acts of its officers in polluting the waters of a spring upon the land of the plaintiff; Abston v. Waldon Academy, 118 Tenn. 35, 11 L.R.A.(N.S.) 1182, 102 S. W. 351, on the liability of a governmental agency of the state for its torts.

Cited in note (139 Am. St. Rep. 906) on liability of charitable institution for torts of servants and agents.

State insane asylum as a governmental institution.

Cited in Western State Hospital v. General Bd. 112 Va. 234, 70 S. E. 505, holding that special boards of state hospitals for insane are bodies corporate by necessary implication, and exist as mere agencies of state; Napa State Hospital v. Dasso, 153 Cal. 703, 18 L.R.A.(N.S.) 647, 96 Pac. 355, 15 Ann. Cas. 910, holding that a state insane asylum was a public corporation created solely as an agency of the state for governmental purposes, and could be created by special act; Eastern State Hospital v. Graves (Eastern State Hospital v. Winston) 105 Va. 153, 3 L.R.A.(N.S.) 748, 52 S. E. 837, 8 Ann. Cas. 701, holding that the state hospital was a governmental agency, and in reality a part of the state so that an action maintained in its behalf was maintained in behalf of the state, so that the statute of limitations does not apply.

Public corporation's liability for negligence, nuisance, or failure to pass ordinance.

Cited in Jones v. Williamsburg, 97 Va. 724, 47 L. R. A. 299, 34 S. E. 883,

denying municipal corporation's liability for injury to person struck by bicycle ridden by another on walk, by reason of failure to enact ordinance prohibiting riding on walks; Duncan v. Lynchburg, 2 Va. Dec. 706, 48 L. R. A. 333, 34 S. E. 964, sustaining demurrer to complaint alleging injury as result of city's erection of privy on bank of stream for use of employees in its quarry; Powers v. Massachusetts Homeopathic Hospital, 47 C. C. A. 125, 109 Fed. 296, holding public hospital corporation under private management not liable for negligence of nurse in leaving bag of hot water against patient's side; White v. Alabama Insane Hospital, 138 Ala. 483, 35 So. 454, denying liability of state hospital for injuries to employee due to negligent operation of coal mine operated on premises to supply institution with fuel.

Cited in footnotes to Moody v. State's Prison, 53 L. R. A. 855, which denies liability of state to prison guard for injuries by defective ladder; Overholser v. National Home for Disabled Volunteer Soldiers, 62 L. R. A. 937, which holds national home for disabled soldiers a part of United States government not subject to action sounding in tort.

Cited in note (4 L.R.A.(N.S.) 270) on liability of state or municipal elemosynary institution for personal tort of agent or servant.

Distinguished in Trevett v. Prison Asso. 98 Va. 334, 50 L. R. A. 565, footnote p. 564, 81 Am. St. Rep. 727, 36 S. E. 373, holding prison association not controlled by state, liable for pollution of stream.

Liability of hospital.

Cited in footnote to Hannon v. Siegel-Cooper Co. 52 L. R. A. 429, which holds department store representing itself as carrying on dental business estopped to deny responsibility for malpractice of dentist.

Charitable institution.

Cited in Haggerty v. St. Louis, K. & N. W. R. Co. 100 Mo. App. 443, 74 S. W. 456, holding relief department of railroad corporation maintained by deductions from employees' wages not charitable institution, as employee entitled to benefit only on release of company from liability.

47 L. R. A. 581, SANDERS v. COLEMAN, 97 Va. 690, 34 S. E. 621.

Disease as defense to action for breach of promise to marry.

Cited in Trammell v. Vaughan, 158 Mo. 222, 51 L. R. A. 856, footnote p. 854, 81 Am. St. Rep. 302, 59 S. W. 79, holding breach of marriage contract justified by loathsome disease making it unsafe for man to marry; Smith v. Compton, 67 N. J. L. 552, 58 L. R. A. 482, footnote p. 480, 52 Atl. 386, requiring illness, to excuse breach of promise to marry, to be such as renders marital intercourse impossible; Grover v. Zook, 44 Wash. 496, 7 L.R.A.(N.S.) 589, 87 Pac. 638, 12 Ann. Cas. 192; holding that pulmonary tuberculosis is a good defense in an action for breach of promise to marry, though the party urging it as a defense knew that the other was suffering from it when the promise was made.

Cited in note (7 L.R.A.(N.S.) 585) on ill health as defense to breach of promise action.

Distinguished in Vierling v. Binder, 113 Iowa, 340, 85 N. W. 621, holding that plea of woman's diseased condition pleaded merely to negative existence of contract, cannot be considered on trial as excuse for nonperformance.

Illness as act of God.

Cited in note (4 L.R.A.(N.S.) 899) on insanity or illness as act of God.

47 L. R. A. 583, ADKINS v. RICHMOND, 98 Va. 91, 81 Am. St. Rep. 702, 34 S. E. 967.

Questioning validity of law on demurrer to the pleadings.

Cited in Richmond v. Lynch, 106 Va. 326, 56 S. E. 139, holding that on a motion to quash the summons, the validity of the ordinance under which the prosecution is brought, can be drawn in question.

Right to take orders in interstate business.

Cited in State v. Caldwell, 127 N. C. 525, 37 S. E. 138, holding ordinance taxing peddler engaged in selling portraits not void as applied to agent of foreign firm, to whom pictures sent, which he put together and delivered to fill orders previously taken.

Original packages and interstate commerce.

Cited in footnote to *Re* Wilson, 48 L. R. A. 417, which holds void, as applied to sale of original packages, territorial statute requiring license for sale of coal oil.

Who are engaged in interstate commerce.

Cited in footnotes to Williams v. Fears, 50 L. R. A. 685, which sustains license tax on emigrant agent; Racine Iron Co. v. McCommons, 51 L. R. A. 134, which holds traveling agent taking orders and distributing contents of original package among customers not engaged in interstate commerce; Croy v. Epperson, 51 L. R. A. 254, which holds one taking orders in own name for articles manufactured in other state, and delivering separate articles to customers, not engaged in interstate commerce; French v. State, 52 L. R. A. 160, which holds agent of nonresident company selling organ taken with him, or taking orders for others to be delivered by him, engaged in interstate commerce; State v. Willingham, 52 L. R. A. 198, which holds as interstate commerce, delivery of portraits and frames by agent previously taking orders for nonresident manufacturer.

Cited in note (46 L. ed. U. S. 786) on peddlers and drummers as related to interstate commerce.

Jurisdiction of appellate court.

Cited in Valley Turnp. Co. v. Moore, 100 Va. 706, 42 S. E. 675, holding that one seeking appeal must establish court's jurisdiction to hear it; Ward Lumber Co. v. Henderson-White Mfg. Co. 107 Va. 628, 17 L.R.A.(N.S.) 325, 59 S. E. 476, holding that the jurisdiction of the Court of Appeals appears upon the face of the record, where the court can see that the judgment of the lower court necessarily involved the constitutionality of some statute, ordinance, or right under the constitution.

47 L. R. A. 588, MAY v. POINDEXTER, 98 Va. 143, 34 S. E. 971.

Trespass by animal lawfully running at large.

Cited in Ely v. Rosholt, 11 N. D. 562, 93 N. W. 864, holding that the encroachment upon the land of another, by animals running at large at certain times of the year as provided for by statute, is not such a trespass as will sustain an action for damages: Martin v. Platte Valley Sheep Co. 12 Wyo. 451, 76 Pac. 571, holding that animals lawfully running at large do not make their owner liable for trespass if they enter the unfenced land of another, but he cannot drive them upon such land; Haskins v. Andrews, 12 Wyo. 472, 76 Pac. 588, on the same point.

Cited in notes (81 Am. St. Rep. 449–451) on liability of owners of stock herded or ranging on lands of another without lawful fence; (25 Eng. Rul.

Cas. 113) on liability for injury to trespassing animals by dangerous instrumentalities.

Right to take advantage of one's own wrong.

Cited in footnote to Hahn v. Bettingen, 50 L. R. A. 669, which denies right of one suing for breach of promise, to recover for loss from breaking previous engagement to other man at defendant's request.

47 L. R. A. 593, McGRAW v. MARION, 98 Ky. 673, 34 S. W. 18.

Municipal liability.

Cited in Clayton v. Henderson, 103 Ky. 235, 44 L. R. A. 476, 44 S. W. 667, holding city liable for erection of pesthouse near residence, within half mile of city limits, in violation of statute; Georgetown v. Com. 115 Ky. 387, 61 L. R. A. 678, 73 S. W. 1011, holding city not subject to indictment for failure to compel abatement of nuisance consisting of emptying filth into open drain; Simpson v. Whatcom, 33 Wash. 398, 63 L. R. A. 818, 99 Am. St. Rep. 951, 74 Pac. 577, holding city not liable in damages for acts of officers in prosecuting one, in attempt to enforce void ordinance imposing license fee upon bicyclists using streets.

Annotation cited in Simmons v. Chadron, 93 C. C. A. 384, 167 Fed. 974, on the liability of a city for wrongful arrest by its officers.

Cited in footnotes to Simpson v. Whatcom, 63 L.R.A. 815, which denies liability of municipality for arrest and prosecution in attempt to enforce void ordinance enacted under apparent authority of legislature; Mumford v. Starmont, 69 L.R.A. 350, which holds mayor and chief of police liable for arresting motorman to abate nuisance from operation of cars when trolley wire is in such poor condition as to be liable to fall.

Cited in notes (44 L. R. A. 799) on liability of municipality for false imprisonment and unlawful arrest; (18 L.R.A.(N.S.) 409) on liability of municipality for attempt to enforce void ordinance regulating business or conduct within its limits; (32 L.R.A.(N.S.) 34) on municipal liability for legal proceedings.

Distinguished in Twyman v. Frankfort, 117 Ky. 523, 64 L.R.A. 573, 78 S. W. 446, 4 Ann. Cas. 622, holding municipal corporation not liable for acts of its officers in removing smallpox patient to pesthouse so overcrowded that he dies from exposure.

Disapproved in Park Comrs. v. Prinz, 127 Ky. 470, 105 S. W. 948, holding a municipality was not liable for the negligent acts of its officers in the performance of their official public duties; Hershberg v. Barbourville, 142 Ky. 61, 34 L.R.A.(N.S.) 142, 133 S. W. 985, Ann. Cas. 1912D, 189, holding that person arrested and fined under void ordinance cannot recover damages from city for arrest.

License tax on peddlers.

Cited in footnote to Rosenbloom v. State, 57 L. R. A. 923, which sustains license tax on peddlers, though venders of own products exempt.

Cited in note (40 L.R.A.(N.S.) 286) on discrimination against nonresidents, in imposing license or occupation tax.

47 L. R. A. 597, HANLEY v. CALIFORNIA BRIDGE & CONSTR. CO. 127 Cal. 232, 59 Pac. 577.

Motion for nonsuit.

Approved in Fox v. Myers, 29 Nev. 182, 86 Pac. 793, holding that the evidence is construed in favor of the plaintiff upon a motion for non-suit.

Cited in Allen v. Florence & C. C. R. Co. 15 Colo. App. 214, 61 Pac. 491, holding plaintiff entitled to every legitimate inference deducible from evidence upon

motion for nonsuit; Larson v. Larson, 15 Cal. App. 534, 115 Pac. 340, holding that upon motion for nonsuit court must disregard contradictory evidence and construe all evidence most strongly against defendant; Cooper v. Spring Valley Water Co. 16 Cal. App. 25, 116 Pac. 298, holding that where sufficiency of evidence to sustain verdict is challenged in reply to alleged prejudicial error in charge as to burden of proof, evidence must be tested by same rule applicable to motion for nonsuit; Young v. Aloha Lumber Co. 63 Wash. 606, 116 Pac. 4, holding that upon motion for nonsuit, court must consider all justifiable inferences from evidence that are favorable to plaintiff; Burch v. Southern P. Co. 32 Nev. 134, 104 Pac. 225, Ann. Cas. 1912B, 1166; McCafferty v. Flinn, 32 Nev. 273, 107 Pac. 225,—holding that motion for nonsuit must be denied if, taking every fact which plaintiff's evidence tends to prove and essential to recovery and every inference that can be properly drawn therefrom, jury might find in plaintiffs favor; Re Arnold, 147 Cal. 586, 82 Pac. 252, holding that if there is any substantial evidence tending to prove in favor of the contestant all the facts necessary to make out their case, they are entitled to have their case go to the jury on the merits; Anderson v. Bank of Santa Cruz County, 4 Cal. App. 429, 88 Pac. 379, holding that it was improper to grant a non-suit in an action to recover a bank deposit, where the evidence showed the depositing of a sum of money but which had not been repaid, and which the defendant had promised to repay upon certain conditions; Fish v. Correll, 4 Cal. App. 523, 88 Pac. 489, holding that if there is any evidence which would support findings justifying a judgment for the plaintiff a non-suit should not be granted; Keifer v. Myers, 5 Cal. App. 672, 91 Pac. 163; Doyle v. Eschen, 5 Cal. App. 57, 89 Pac. 836,—holding that on motion for non-suit every fact that plaintiff's evidence tends to prove must be taken by the court to be proved, and it must be taken in the strongest light as against the defendant; Hercules Oil Ref. Co. v. Hocknell, 5 Cal. App. 707, 91 Pac. 341, holding that a non-suit should be denied where the evidence and the presumptions reasonably arising therefrom are legally sufficient to prove the material allegations of the complaint.

Duty to furnish safe place to work and to warn of dangers.

Cited in Tedford v. Los Angeles Electric Co. 134 Cal. 80, 54 L. R. A. 92, 66 Pac. 76, holding it duty of electric company to warn of danger, inexperienced employee hired to dig holes, repair poles, and work among wires; Kinsel v. North Butte Min. Co. 44 Mont. 466, 120 Pac. 797, holding that master is liable to miner injured who was engaged in timbering mine to render it safe for others caused by collapse of timbering, if defective conditions surrounding place were proximate result of negligent plan of work adopted by master; Williams Coal Co. v. Cooper, 138 Ky. 295, 127 S. W. 1000, holding that master is liable to servant for injury caused by fall of mine roof resulting from failure to properly prop roof of mine which had no connection with servant's work; Jackson v. Yak Min. Mill. & Tunnel Co. 51 Colo. 557, 119 Pac. 1058, holding that mine owner is liable in damages for injuries to his employees occasioned by defect in material or insufficiency in construction of structure, which might have been avoided by exercise of ordinary care; Pre v. Standard Portland Cement Co. 9 Cal. App. 608, 100 Pac. 122, holding that if the master does all that is incumbent upon him to do in providing a safe place to work, and the place becomes dangerous by reason of changes incidental to the progress of the work or by reason of conduct of fellow servants, the master is not liable for injuries.

Cited in footnotes to Ellsworth v. Metheney, 51 L. R. A. 389, which holds mine owner required to properly guard electric wire in passageway where miners accustomed to go; Finn v. Cassidy, 53 L. R. A. 877, which holds safe place *per se*

not provided by contractor having employees work in tunnel under foundation of chimney, with knowledge that undisturbed earth saturated with water.

Cited in note (87 Am. St. Rep. 567) on duty of mine owners to prevent injury to employees.

Distinguished in Greeley v. Foster, 32 Colo. 302, 75 Pac. 351, holding that the doctrine of a safe place to work, does not apply to a servant who was sent into a trench to put in cross pieces as braces to prevent caving in, where the danger was unknown to the master.

— Completed tunnel.

Cited in McRae v. Erickson, 1 Cal. App. 329, 82 Pac. 209, holding an instruction to the effect that a completed tunnel meant that substantially all the work of excavation is performed and that thereafter the tunnel became an appliance and means to prosecute the work, so that the master is bound to use reasonable care to make it safe, was correct.

Vice principalship as determined by injury.

Cited in note (54 L. R. A. 151) on vice principalship as determined with reference to character of act which caused injury.

Contributory negligence.

Cited in Swensen v. Bender, 51 C. C. A. 663, 114 Fed. 7, holding inexperienced servant not guilty of contributory negligence, as matter of law, by working in tunnel not properly timbered, where master assured him that place was safe.

Cited in footnote to Neeley v. Southwestern Cotton Seed Oil Co. 64 L. R. A. 146, which holds contributory negligence of employee in using defective ladder to adjust belt after complaining to manager and being told that it was all right, question for jury.

Assumption of risk.

Cited in note (19 L.R.A.(N.S.) 364) on servant's assumption of risk from changing condition of working place during progress of work.

47 L. R. A. 601, ROMEO v. MARTUCCI, 72 Conn. 504, 77 Am. St. Rep. 327, 45 Atl. 199.

Factor's right to sell goods.

Cited in Foerderer v. Tradesmen's Nat. Bank, 46 C. C. A. 245, 107 Fed. 220, denying owner's right of recovery for wool seized in replevin by creditor of factor and acquired from another factor by stipulation to retain wool and pay value.

Cited in footnote to M. M. Walker Co. v. Dubuque Fruit & Produce Co. 53 L. R. A. 775, which sustains factor's power to sell principal's goods on reasonable credit.

Rights of purchaser from one without title.

Cited in Harrison v. Clark, 74 Conn. 23, 49 Atl. 186, holding that one who owns horse and gives it to creditor to put in possession of third party to keep till debt is paid has title superior to vendee from such third person, whom creditor directed to sell, stating horse to be his own.

Cited in footnotes to Oliver Ditson Co. v. Bates, 57 L.R.A. 289, which sustains lessor's right to piano purchased from retail dealer leasing it, two years after sale; Commercial Bank v. J. K. Armsby Co. 65 L.R.A. 443, which denies right of merchant shipping goods to broker for distribution to others, and sending bill of lading indorsed in blank to him, to recover the goods from a bank which has in good faith taken the bill of lading as security.

Conclusiveness of findings.

Cited in Lambert Hoisting Engine Co. v. Carmody, 79 Conn. 424, 65 Atl. 141,

holding that the findings of the superior court as to the good faith of a transaction is conclusive upon appeal.

47 L. R. A. 608, WALLING v. CHRISTIAN & C. GROCERY CO. 41 Fla. 479, 27 So. 46.

Right of married woman to sue or contract.

Cited in Mercantile Exch. Bank v. Taylor, 51 Fla. 487, 41 So. 22, holding that a married woman engaged in the mercantile business could execute a mortgage upon her stock of merchandise and leases of the store, to secure money borrowed for the benefit of the business.

Cited in footnotes to Williams v. Pope Mfg. Co. 50 L. R. A. 816, which sustains nonresident married woman's right to bring in own name, according to law of domicil, action for tort to her person; Thompson v. Taylor, 54 L. R. A. 585, which holds written promise of married woman, valid where made, enforceable in New Jersey, though void if made therein.

Cited in note (57 L. R. A. 514, 524) on conflict of laws as to capacity of married woman to contract.

What laws govern.

Cited in Beauchamp v. Bertig, 90 Ark. 365, 23 L.R.A.(N.S.) 664, 119 S. W. 75, holding that the right of an infant to disaffirm his contract is fixed by the laws of the place where the land is situated.

Cited in footnote to Smith v. Ingram, 61 L. R. A. 878, which holds law of place where land located governs as to privy examination of married woman.

Purchase by creditor from insolvent debtor.

Cited in Jackson v. Citizens' Bank & T. Co. 53 Fla. 285, 44 So. 516, holding that if a creditor purchases from his insolvent debtor, more goods than are necessary to pay his debt, and pays partly in cash and partly by the debt, the sale to him is void if he has knowledge of the debtor's fraudulent intention, or should have knowledge from facts known to him.

47 L. R. A. 614, CAHILL v. MARYLAND L. INS. CO. 90 Md. 333, 45 Atl. 180.

47 L. R. A. 617, COLTON v. MAYER, 90 Md. 711, 78 Am. St. Rep. 456, 45 Atl. 874.

Enforcement of statutory liabilities of stockholders.

Cited in Pittsburg Steel Co. v. Baltimore Equitable Soc. 113 Md. 80, 77 Atl. 255, to the point that right of creditor to recover against stockholders is one founded on contract; Miners' & M. Bank v. Snyder, 100 Md. 67, 68 L.R.A. 315, 108 Am. St. Rep. 390, 59 Atl. 707, on the right of a single creditor to enforce the statutory liability of a stockholder, for his own benefit; Myers v. Knickerbocker Trust Co. 1 L.R.A.(N.S.) 1175, 71 C. C. A. 199, 139 Fed. 114, Affirming 133 Fed. 765, on the same point.

— By receiver.

Cited in Republic Iron & Steel Co. v. Carlton, 189 Fed. 131, holding that liability of stockholder upon unpaid subscription passes to receiver or to trustee in bankruptcy who may sue thereon; Hammond v. Cline, 170 Ind. 452, 84 N. E. 827, holding that in the absence of statutory authority, the statutory liability of the stockholders cannot be enforced by the receiver of an insolvent corporation for the benefit of the creditors of the corporation; Murphy v. Wheatley, 102 Md. 514, 63 Atl. 62, on the double liability of a stockholder as an asset of the corporation, to be recovered by receiver.

Cited in note (31 L.R.A.(N.S.) 365) on right of receiver, assignee, or trustee to recover statutory added liability of corporate shareholder.

Recovery of corporate assets and offsets thereto.

Cited in James Clark Co. v. Colton, 91 Md. 216, 49 L. R. A. 706, 46 Atl. 386, holding that payment by insolvent bank of note on which directors are indorsers may be recovered by receivers as fraudulent preference; Cahill v. Original Big Gun Beneficial & Pleasure Asso. 94 Md. 355, 89 Am. St. Rep. 434, 50 Atl. 1044, holding that stockholders liable to corporate creditors to extent of shares of stock, may set off debt due him by corporation; Strauss v. Denny, 95 Md. 694, 53 Atl. 571, holding stockholder required to pay receiver of bank amount of note declared to be preference, on which he was indorsee, may offset amount against his liability as stockholder; Forte v. Chamberlin, 93 Ark. 118, 124 S. W. 234, holding that receiver of mutual insurance company is not entitled to sue sureties of such company upon indemnity bond given pursuant to statute.

Effect of failure to file receivership bill.

Cited in James Clark Co. v. Colton, 91 Md. 206, 49 L. R. A. 702, 46 Atl. 386, holding that failure to file receivership bill confers no rights upon corporate officers at whose instance court made decree of dissolution.

47 L. R. A. 622, COVINGTON v. BUFFETT, 90 Md. 569, 45 Atl. 204.

47 L. R. A. 624, LAKE STREET ELEV. R. CO. v. CHICAGO, 183 Ill. 75, 55 N. E. 721.

Liability of railway for paving assessment.

Cited in footnotes to Chicago, R. I. & P. R. Co. v. Ottumwa, 51 L. R. A. 763, which denies liability of railroad running along side of street to street-paving assessment; Fielders v. North Jersey Street R. Co. 59 L. R. A. 455, which holds void, ordinance requiring street railway companies to pave and keep in repair, space between tracks.

Cited in note (15 L.R.A.(N.S.) 487) on liability of railway occupying street, to assessment for improvements.

Distinguished in Rochester v. Rochester R. Co. 98 App. Div. 541, 91 N. Y. Supp. 87, on the right of the city to assess railway property for cost of paving streets.

Description of property assessed.

Cited in South Chicago City R. Co. v. Chicago, 196 Ill. 496, 63 N. E. 1046, holding assessment petition describing property as "right of way, franchise, and interest of railway company in and upon certain streets," sufficiently definite

Railroad right of way as "landed property."

Cited in footnote to United R. & Electric Co. v. Baltimore, 52 L. R. A. 772, which holds railroad right of way and tracks not within provision as to increasing taxation on "landed property."

47 L. R. A. 627, STATE v. OHIO OIL CO. 150 Ind. 21, 49 N. E. 809.

Affirmed in 177 U. S. 190, 44 L. ed. 729, 20 Sup. Ct. Rep. 576.

State's right to sue.

Cited in State *ex rel.* Delmar Jockey Club v. Zachritz, 166 Mo. 314, 89 Am. St. Rep. 711, 65 S. W. 999, denying writ of prohibition judge exercising jurisdiction of action by attorney general to cancel license fraudulently obtained: Darnell v. State, 174 Ind. 150, 90 N. E. 769, holding that state is proper plaintiff in suit to collect taxes on omitted property.

Gas as property.

Cited in Chandler v. Pittsburgh Plate Glass Co. 20 Ind. App. 167, 50 N. E. 400, holding grantee of land entitled to rents accruing under gas lease.

Cited in note (44 L. ed. U. S. 730) on property in petroleum oil or gas.

Prohibiting waste of gas or water.

Followed without discussion in Ohio Oil Co. v. State, 150 Ind. 698, 50 N. E. 1124.

Cited in Lippincott Glass Co. v. Ohio Oil Co. 150 Ind. 695, 49 N. E. 1106, holding that glass company may enjoin gas company from wasting natural gas, diminishing fuel supply to injury of business; Huber v. Merkel, 117 Wis. 367, 62 L. R. A. 595, 98 Am. St. Rep. 933, 94 N. W. 354, holding that police power does not justify legislation prohibiting waste of water from artesian wells; Com. v. Trent, 117 Ky. 46, 77 S. W. 390, 4 Ann. Cas. 209, sustaining validity of statutes prohibiting the wasting of natural gas and providing for the plugging of abandoned wells; Kansas Natural Gas Co. v. Haskell, 172 Fed. 563, on the right of the state to prohibit the waste of natural gas by land owner.

Cited in footnote to Louisville Gas Co. v. Kentucky Heating Co. 70 L.R.A. 558, which sustains right to injunction against drawing natural gas from natural reservoir utilized for supplying inhabitants of city merely for purpose of wasting it and injuring those utilizing same.

Cited in notes (23 L.R.A.(N.S.) 436) on constitutionality of statutes, to prevent waste of subterranean water, gas, or oil; (78 Am. St. Rep. 256) on power of legislature to declare waste of natural gas criminal.

Right to use gas or oil pump.

Cited in Manufacturers Gas & Oil Co. v. Indiana Natural Gas & Oil Co. 155 Ind. 474, 50 L. R. A. 774, footnote p. 768, 57 N. E. 912, holding unlawful, pumping of natural gas to injury of others having wells supplied from same reservoir.

Cited in footnote to Jones v. Forest Oil Co. 48 L. R. A. 748, which authorizes use of gas pump to increase production of oil well, though production of adjoining wells diminished.

Regulation of gas rates.

Cited in Muncie Natural Gas Co. v. Muncie, 160 Ind. 106, 60 L. R. A. 828, 66 N. E. 436, sustaining power of municipal corporation to enjoin gas company from violating contract as to gas rate.

Petition to establish pipe line.

Cited in Great Western Natural Gas & Oil Co. v. Hawkins, 30 Ind. App. 568, 66 N. E. 765, holding that petition of gas company to establish pipe line must show that company is furnishing gas to public.

Public nuisances.

Cited in Acme Fertilizer Co. v. State, 34 Ind. App. 348, 107 Am. St. Rep. 190, 72 N. E. 1037, holding that a rendering plant located near dwelling houses, so that the smells from the plant injured the property and health of the nearby residents, constituted a public nuisance; Territory v. Long Bell Lumber Co. 22 Okla. 909, 99 Pac. 911, holding that an allegation that the defendants had formed a pool and were controlling the prices of lumber, coal, etc., sufficiently charged acts constituting a public nuisance under the statute; State ex rel. Lyon v. Columbia Water Power Co. 82 S. C. 192, 22 L.R.A.(N.S.) 440, 129 Am. St. Rep. 876, 63 S. E. 884, 17 Ann. Cas. 343, holding that a court may enjoin the maintenance of an obstruction of a navigable stream, which amounts to a public nuisance.

Cited in note (107 Am. St. Rep. 245) on what are public nuisances.

Recitals in preamble of as limiting its scope.

Cited in McCain v. Des Moines, 128 Iowa, 333, 103 N. W. 979, holding that a mistaken recital in the preamble of an act did not invalidate the act.

47 L. R. A. 637, RUSSELL v. MEYER, 7 N. D. 335, 75 N. W. 262.

Right of equitable title holder to sue for injuries to the freehold.

Cited in Foster Lumber Co. v. Arkansas Valley & W. R. Co. 20 Okla. 588, 30 L.R.A.(N.S.) 235, 95 Pac. 224, holding that one holding the equitable estate in land may maintain an action for injuries to the freehold.

Cited in notes (30 L.R.A.(N.S.) 231, 232, 234,) on equitable title as sustaining action for injury to realty; (30 L.R.A.(N.S.) 243) on necessity and character of title or possession to sustain action of trespass.

What special verdict must contain.

Cited in note (24 L.R.A.(N.S.) 2) on what special verdict must contain.

Effect of redelivery of deed to grantor.

Cited in Barnhart v. Anderson, 22 S. D. 400, 118 N. W. 31, holding that redelivery of deed and payment of repurchase price gives equitable title, and entitles party to sue to cancel conveyance to other party.

Cited in note (18 L.R.A.(N.S.) 1171) on effect of destruction or cancelation, or redelivery to grantor for that purpose, of delivered but unrecorded deed.

47 L. R. A. 641, McCABE v. ÆTNA INS. CO. 9 N. D. 19, 81 N. W. 426.

What constitutes a contract of insurance.

Cited in Wheaton v. Liverpool & L. & G. Ins. Co. 20 S. D. 68, 104 N. W. 850, holding that where the risk had been accepted by the agent, the policy written out, and signed, and the premium received, and the agent represented that the party was insured, there was a binding contract of insurance.

Agent's admissions binding company.

Cited in footnote to Hall v. Union Cent. L. Ins. Co. 51 L. R. A. 288, which holds admissions by insurance agent after death of insured, that all premiums paid, binding on company.

Validity of parol insurance agreements.

Cited in Benner v. Fire Asso. 229 Pa. 82, 140 Am. St. Rep. 706, 78 Atl. 44, holding that insurance company may by preliminary parol agreement bind itself to issue or renew policy in future.

Custom as to insurance.

Cited in footnote to Delaware Ins. Co. v. S. S. White Dental Mfg. Co. 65 L.R.A. 387, which holds marine policy providing that no risk shall attach until amount and description is approved and indorsed thereon, not changed into open and unrestricted policy covering all property assured elects to report, by adopting agreement fixing uniform premium, supplying blanks on which to report risks, and a long continued custom of reporting risks by assured when convenient, and their uniform acceptance by insurer.

47 L. R. A. 646, OWEN v. COOK, 9 N. D. 134, 81 N. W. 285.

Case for jury.

Cited in Carr v. Minneapolis, St. P. & S. Ste. M. R. Co. 16 N. D. 223, 112 N. W. 972, holding that when the facts are such that reasonably fair minded men might fairly draw different conclusions from them, they should be submitted to the jury.

Liability for setting fire spreading to other's property.

Cited in note (36 L.R.A.(N.S.) 196, 198) on liability for setting fire spreading to other's property.

47 L. R. A. 650, WILDEY CASUALTY CO. v. SHEPPARD, 61 Kan. 351, 59 Pac. 651.

Change of occupation of insured.

Cited in Everson v. General Acci. Fire & Life Assur. Corp. 202 Mass. 176, 88 N. E. 658, on the change of occupation of insured as affecting liability upon accident insurance policy; Stevens v. Modern Woodmen, 127 Wis. 612, 107 N. W. 8, 7 Ann. Cas. 566, holding that one engaged as a servant around a restaurant, and who occasionally tends bar in the saloon connected therewith, is not engaged in the sale of liquors within the meaning of an insurance policy.

Cited in note (24 L.R.A.(N.S.) 1175) on temporary pursuit of other activities as change of occupation within meaning of accident policy.

Voluntary exposure to danger.

Cited in footnotes to Smith v. Ætna L. Ins. Co. 56 L. R. A. 272, which holds injury by fall from steps of moving train covered by policy, where assured was not intending to alight; Smith v. Ætna L. Ins. Co. 64 L. R. A. 117, which holds steeple-chase riding by one giving occupation as cotton merchant, voluntary exposure to unnecessary danger; Small v. Travelers' Protective Asso. 63 L. R. A. 510, which holds attempt by experienced traveling man to board train running 8 or 10 miles an hour, voluntary exposure to danger; Small v. Travelers' Protective Asso. 63 L.R.A. 510, which holds experienced travelingman's attempt to board train running from 8 to 10 miles an hour an exposure to obvious risk of injury.

Cited in note (22 L.R.A.(N.S.) 782) on voluntary exposure to unnecessary danger within meaning of insurance policy.

47 L. R. A. 652, CROWLEY v. WEST, 52 La. Ann. 526, 78 Am. St. Rep. 355, 27 So. 53.

Ordinances regulating livery stables.

Cited in Billings v. Cook, 35 Mont. 107, 119 Am. St. Rep. 845, 88 Pac. 656, holding an ordinance prohibiting the building and maintenance of livery stables in certain districts, except upon certain conditions, was void as to one who had completed arrangements for the operation of one before the ordinance was passed.

— Nuisances per se.

Cited in Lewis v. Sandell, 118 La. 858, 43 So. 526, on a livery stable as a nuisance per se.

Cited in note (17 L.R.A.(N.S.) 1029) on stable for horses as nuisance.

Uniform operation of ordinance.

Cited in Mandeville v. Bank, 111 La. 808, 35 So. 915, holding void, ordinance regulating sale of liquors, and which does not operate uniformly; Fulton v. Norteman, 60 W. Va. 572, 9 L.R.A.(N.S.) 1202, 55 S. E. 658, holding an ordinance which prohibited the bringing of the bodies of dead animals into the town for the purpose of manufacturing fertilizers, but not prohibiting the manufacture of fertilizers within the town or of bringing in the dead bodies for other purposes, was void as discriminating against a lawful business; New Orleans v. Smythe, 6 L.R.A.(N.S.) 727, 41 So. 33 (dissenting opinion), on the uniform operation of ordinances.

Cited in note (6 L.R.A.(N.S.) 722) on validity of police regulation discriminating in favor of saloons already established.

Police power.

Cited in State ex rel. Gaffe v. New Orleans, 113 La. 381, 67 L.R.A. 75, 36 So. 999, 2 Ann. Cas. 92, holding that the objection of a minority of property owners in a neighborhood is not grounds for the refusal to grant a saloon license, where there are no other objections than that there are enough barrooms in the vicinity.

Cited in note (39 L.R.A.(N.S.) 268) on power of municipality to prohibit keeping of live stock.

47 L. R. A. 656, PRIETO v. ST. ALPHONSUS CONVENT OF MERCY, 52 La. Ann. 631, 27 So. 153.

Habeas corpus by husband against wife.

Cited in State *ex rel.* Lasserre v. Michel, 105 La. 745, 54 L. R. A. 929, footnote p. 927, 30 So. 122, holding habeas corpus by husband against wife for custody of child not "suit" within statutory prohibition.

Right to custody of child.

Cited in State ex rel. Bush v. Trahan, 125 La. 319, 51 So. 216, holding that child will not be taken from mother and given to father, on his application ten years after divorce; Farr v. Emuy, 121 La. 93, 15 L.R.A.(N.S.) 747, 46 So. 112, holding that the husband having been awarded the custody of the children, by an absolute decree of divorce, can not make other arrangements by agreement with the wife for the custody of the children.

Cited in footnotes to Stapleton v. Poynter, 53 L.R.A. 784, which upholds taking custody of child against its will from wealthy grandparent and giving to parent of moral habits; Jones v. Bowman, 67 L.R.A. 860, which holds that religious belief will not in absence of statutory requirement be considered in determining the proper custodian of an infant.

Review on appeal from habeas corpus proceedings.

Cited in Ex parte Ryan, 124 La. 288, 50 So. 161, holding that the Supreme Court may review upon appeal habeas corpus proceedings relating to the custody of a child.

47 L. R. A. 681, McCOY v. NORTHWESTERN MUT. RELIEF ASSO. 92 Wis. 577, 66 N. W. 697.

Suicide as affecting liability on policy.

Cited in Patterson v. Natural Premium Mut. L. Ins. Co. 100 Wis. 123, 42 L. R. A. 258, 69 Am. St. Rep. 899, 75 N. W. 980, holding policy not violated by intentional suicide while sane, in absence of exception in contract.

Cited in note (84 Am. St. Rep. 553) on self-destruction as defense to life insurance.

Distinguished in Supreme Lodge K. of P. v. Stein, 75 Miss. 119, 37 L. R. A. 778, 65 Am. St. Rep. 589, 21 So. 559, holding antisuicide clause in application for insurance by Knight of Pythias not binding upon applicant when provision adopted by board without power to impose condition.

Waiver of forfeiture of policy.

Cited in Kidder v. Knights Templars & M. Life Indemnity Co. 94 Wis. 548, 69 N. W. 364, holding forfeiture of policy waived by forwarding blanks for proofs of loss and requiring amendment showing insured's place of residence and death, necessitating expense in correcting proofs; Ledebuhr v. Wisconsin Trust Co. 112 Wis. 662, 88 N. W. 607, holding issuance of benefit certificate a waiver of by-law violated by insured designating beneficiary in will; Draper v. Oswego County Fire Relief Asso. 190 N. Y. 18, 82 N. E. 755, holding that where the policy excepted

the insurer from liability for fire from a fire started by the insured within fifty feet of the insured buildings, and the adjusters notified the insured that the loss occurred from the excepted cause, and told him to make his proof of loss to the directors, there had been no waiver of the exception which would create an estoppel.

Cited in note (52 Am. St. Rep. 576) on waiver of forfeiture of policy.

Conflict between by-laws and certificates.

Cited in Laker v. Royal Fraternal Union, 95 Mo. App. 366, holding that when by-laws of benefit association conflict with certificate, they are to be construed in favor of insured.

Cited in notes (14 L.R.A.(N.S.) 541) on estoppel of mutual benefit society by misrepresentations as to its laws; (52 Am. St. Rep. 557) on conflict between by-laws and certificate of mutual or membership life or accident insurance company.

Death covered by policy.

Cited in Northwestern Mut. L. Ins. Co. v. McCue, 223 U. S. 251, 56 L. ed. 425, 38 L.R.A.(N.S.) 61, 32 Sup. Ct. Rep. 220, Reversing 93 C. C. A. 71, 167 Fed. 443, holding that death in execution of sentence for murder is not covered by policy, though not excepted from policy.

47 L. R. A. 685, RICKETSON v. MILWAUKEE, 105 Wis. 591, 81 N. W. 864.

Municipal contract for work.

Cited in Mueller v. Eau Claire County, 108 Wis. 310, 84 N. W. 430, holding that contract for construction of insane asylum must be let to lowest bidder, not to one apparently more favorable to county; State *ex rel.* O'Donnell v. Benzenberg, 108 Wis. 439, 84 N. W. 858, denying mandamus to compel board of public works to enter into contract, accepted by council, when no plan of work on file; Packard v. Hayes, 94 Md. 251, 51 Atl. 32, holding no contract can legally be let under advertisement requiring each bidder to submit specifications; Hart v. New York, 201 N. Y. 53, 94 N. E. 219, holding that contract by city for sewer and sewage plant is invalid where plans and specifications are indefinite and do not comply with law; Hannan v. Board of Education, 25 Okla. 384, 30 L.R.A.(N.S.) 226, 107 Pac. 646, holding that contract for construction of high school building was void because of indefiniteness of plans and specifications; Bluffton v. Miller, 33 Ind. App. 527, 70 N. E. 989, holding that a contract made pursuant to an advertisement for bids which called for bids for pavements stating that bids for several kinds of pavements but not calling for separation of same would be received, was invalid as the call was not in compliance with the statute requiring the kind of improvement to be specified; Baltimore v. Flack, 104 Md. 138, 64 Atl. 702, holding that a municipality was not bound to let the contract for the lowest bid for the lowest priced paving material, but could call for bids specifying different kinds and then select the lowest one for the best suited material; Independence ex rel. Parker-Washington Co. v. Knoepker, 134 Mo. App. 607, 114 S. W. 1129, holding contract for paving invalid where ordinance adopted incomplete specifications on file which in turn referred to a formula on file, and the ordinance adopting the specifications did not definitely provide the work and material for paving embraced in the formula; Chippewa Bridge Co. v. Durand, 122 Wis. 94, 106 Am. St. Rep. 931, 99 N. W. 603, holding that specifications for bids to furnish a public building must be such as will enable the bidders to bid on the same thing upon the same terms, and reasonably calculated to attract the attention of all persons likely to desire to bid, and a failure to conform to the above requirements renders the contract thereafter

made, void; Allen v. Milwaukee, 128 Wis. 683, 5 L.R.A.(N.S.) 685, 116 Am. St. Rep. 54, 106 N. W. 1099, 8 Ann. Cas. 392, holding that a contract for the use of a patented process for street pavings void, where pursuant to the statute the city had made a contract with the patentee for the use of the process, paying him two-thirds of the cost of paving for such use; Stocking v. Warren Bros. Co. 134 Wis. 241, 114 N. W. 789, holding that a call for bids calling for competition between two or more different kinds of paving, is not sufficient competition to render a contract for paving let thereunder, valid.

Cited in notes (30 L.R.A.(N.S.) 216) on sufficiency of specifications for guidance of bidder for public contract; (38 L.R.A.(N.S.) 664) on discretion in choosing between bidders for public contract.

Distinguished in Madison v. American Sanitary Engineering Co. 118 Wis. 511, 95 N. W. 1097, holding that surety on bond for performance of contract to construct sewage purification plant for city, cannot defend upon ground of illegal manner of awarding contract.

47 L. R. A. 691, SELLECK v. JANESVILLE, 104 Wis. 570, 76 Am. St. Rep. 892, 80 N. W. 944.

Stare decisis.

Cited in Cawley v. La Crosse City R. Co. 106 Wis. 240, 82 N. W. 197, holding that conclusions reached in action by wife for personal injuries control husband's action as to same facts; Womach v. St. Joseph, 201 Mo. 489, 10 L.R.A.(N.S.) 148, 100 S. W. 443; Mundell v. Greeley, 76 Kan. 798, 92 Pac. 1117,—holding that a judgment in favor of the wife for personal injuries in no way affects the right of the husband to recover for the loss of services and the society of the wife caused by the same personal injuries.

Right of wife to sue in own name.

Cited in Lonstorf v. Lonstorf, 118 Wis. 163, 95 N. W. 961, denying wife's right to maintain action for alienation of husband's affections under statute giving her right of action for injury to person or character.

Photographs as evidence.

Cited in Hupfer v. National Distilling Co. 114 Wis. 287, 90 N. W. 191, holding photographs of hoops of bursted vat inadmissible, proof not showing them to be same hoops which bursted; Paulson v. State, 118 Wis. 105, 94 N. W. 771, holding photographs of ruins of house burned to conceal murder and robbery admissible in criminal prosecution; State v. Miller, 43 Or. 328, 74 Pac. 658, holding admission of photographs which did not explain anything and which were not true representations, error; State v. Lem Woon, 57 Or. 505, 112 Pac. 427 (dissenting opinion), on admissibility of photographs in evidence in criminal action.

Cited in footnotes to Livermore Foundry & Mach. Co. v. Union Compress & Storage Co. 53 L. R. A. 482, which holds photographs of wrecked machinery, taken immediately after accident, admissible; Geneva v. Burnett, 58 L. R. A. 287, which holds X-ray picture admissible; Maynard v. Oregon R. & Nav. Co. 68 L.R.A. 477, which holds photograph of scene of collision not inadmissible to show force of impact because of slight change of conditions.

Cited in note (75 Am. St. Rep. 474) on photograph as evidence.

Liability for personal injury.

Cited in Green v. Nebagamain, 113 Wis. 515, 89 N. W. 520, reversing judgment including damages for loss of services and expense of sickness, in action by wife for personal injuries; Joliet v. Le Pla, 109 Ill. App. 340, holding city not relieved of liability for personal injuries resulting from hole in street, on ground that one injured did not use care in selecting physician; Texas & P. R. Co. v.

McKenzie, 30 Tex. Civ. App. 296, 70 S. W. 237, holding aggravation of injury by unskilled treatment no defense to railroad company for negligent injury.

Cited in footnotes to Teagar v. Flemingsburg, 53 L. R. A. 792, which holds mere building of step in sidewalk not negligence rendering city liable for injury to pedestrians; Maguire v. Sheehan, 59 L. R. A. 496, which sustains liability for entire injury caused through negligence, though shock brought on delirium tremens, retarding recovery; Texas & P. R. Co. v. White, 62 L. R. A. 90, which denies liability of person causing injury, for aggravation due to injured person's neglect to obtain surgical assistance; Harden v. Jackson, 66 L.R.A. 986, which holds plank sidewalk not so unsafe as to render city liable to one falling thereon because his cane goes through, although the edges of planks have become so decayed as not to withstand pressure of cane; Chicago City R. Co. v. Saxby, 68 L.R.A. 164, which sustains right of injured person to recover for tuberculous condition of knee resulting from injury, notwithstanding fact that tuberculosis was organic and mistakes in treatment.

— Elements of damages.

Cited in Johnson v. St. Paul & W. Coal Co. 131 Wis. 631, 111 N. W. 722, holding that a father suing for damages for injuries to his child may recover the value of the services of his wife in nursing the child, but not to exceed the amount which he would have had to pay others for the same services.

Conclusiveness, in husband's action, of judgment in wife's suit for injuries.

Cited in note (10 L.R.A.(N.S.) 141) on conclusiveness of judgment in wife's suit for personal injuries, in husband's action for loss of services and expenses.

Action by husband for loss of services and society of wife.

Cited in Blair v. Bloomington & N. R. Electric & Heating Co. 130 Ill. App. 403, holding that the husband has a separate right of action for loss of services and consortium of his wife occasioned by her injury; Indianapolis & M. Rapid Transit Co. v. Reeder, 42 Ind. App. 523, 85 N. E. 1042, on the right of the husband to maintain action for loss of services and society of his wife resulting from personal injuries; Brickner v. Kopmeier, 133 Wis. 587, 113 N. W. 414, holding that under the statutes, a cause of action by the wife for personal injuries can not be united with a cause of action by the husband for loss of her services and society and expenses as a result of such injury.

Cited in note (33 L.R.A.(N.S.) 1043, 1046) on right to recover for loss of consortium through personal injury to wife.

Admissibility of evidence of condition before and after accident.

Cited in note (32 L.R.A.(N.S.) 1099) on admissibility of evidence of condition before and after accident of property whose defects alleged to have caused injury.

47 L. R. A. 695, FINLEY v. PRESCOTT, 104 Wis. 614, 80 N. W. 930.

Appeal from orders dismissing appeals.

Cited in Ellis v. Barron County, 120 Wis. 393, 98 N. W. 232, holding that the dismissal of an appeal from a decision of the county board disallowing a claim, was not a judgment but an order from which appeal must be taken within the time limited for appealing from orders and not that as to judgments.

Allowance of costs upon dismissal of appeal.

Cited in Miltimore v. Hoffman, 125 Wis. 563, 104 N. W. 841, holding that costs in favor of the defendant were properly allowed on appeal from a judgment of the justice court in favor of the plaintiff where the appeal was dismissed because of want of jurisdiction of the justice.

Signature by mark.

Cited in Iowa Loan & T. Co. v. Greenman, 63 Neb. 270, 88 N. W. 518, holding judicial appraisement of land signed legally when attested by mark.

Cited in note (7 L.R.A.(N.S.) 1194) on ability to write as invalidating signature made by mark or by aid of another.

Denial of validity of signature by pleading.

Cited in Ellis v. Hof, 123 Wis. 204, 101 N. W. 368, holding that where the answer, duly verified, denies the signatures to a note and mortgage the burden is upon the party claiming them to be valid, to prove the signatures.

47 L. R. A. 696, SAMPLE v. LONDON & L. F. INS. CO. 46 S. C. 491, 57 Am. St. Rep. 701, 24 S. E. 334.

When limitation begins to run against suit on policy.

Cited in Boston Marine Ins. Co. v. Scales, 101 Tenn. 641, 49 S. W. 743, holding that period within which action must be brought on policy begins at expiration of the sixty days reserved for arbitration; Farmer's Co-op. Creamery Co. v. Iowa State Ins. Co. 112 Iowa, 610, 84 N. W. 904, holding statute as to time within which actions may be brought, without effect on rights under policy, vested before enactment; Hogl v. Aachen Ins. Co. 65 W. Va. 438, 131 Am. St. Rep. 972, 64 S. E. 441, holding that where an insurance policy provides that no action shall be brought thereon within sixty days from the proof of loss, and that actions must be brought within twelve months from the fire, the twelve months do not begin to run until sixty days from the proof of loss.

Cited in note (38 L.R.A.(N.S.) 1016) on applicability to existing contracts, of statute avoiding contractual stipulations limiting time for action.

Construction of indemnity insurance policies.

Cited in Edgefield Mfg. Co. v. Maryland Casualty Co. 78 S. C. 77, 58 S. E. 969, holding that a judgment in favor of an employee must be paid within sixty days from the date of the judgment, to fix the liability of the insurer under an indemnity policy, providing that an action must be brought for loss actually sustained and paid in satisfaction of a judgment within sixty days from its date.

47 L. R. A. 709, HARRISON v. HARTFORD F. INS. CO. 102 Iowa, 112, 71 N. W. 220.

Res judicata.

Cited in The Telegraph v. Lee, 125 Iowa, 19, 98 N. W. 364, holding that a judgment of the Supreme Court against the stockholders for want of capacity to sue because no demand had been made upon the directors to bring the suit, was not a bar to a subsequent action for the same relief after the demand had been made and refused; Reeves & Co. v. Lamm Bros. 135 Iowa, 205, 112 N. W. 642, holding a judgment conclusive where it was based upon pleas in abatement and in bar, and failed to state upon which grounds it was rendered.

Revocation of stipulation to arbitrate.

Second appeal in 112 Iowa, 78, 83 N. W. 820, holding commencement of suit on policy, revocation of stipulation to arbitrate.

Commencement of actions.

Cited in Smith v. Callanan, 103 Iowa, 223, 42 L. R. A. 484, 72 N. W. 513, holding delivery of notice to sheriff for service, commencement of action to redeem from tax sale and quiet title; Farmer's Co-op. Creamery Co. v. Iowa State Ins. Co. 112 Iowa, 609, 84 N. W. 904, holding statute as to time within which actions may be brought without effect upon rights under policy, vested before enactment;

Garretson v. Merchants & B. F. Ins. Co. 114 Iowa, 20, 86 N. W. 32, and Wilhelmi v. Des Moines Ins. Co. 103 Iowa, 537, 72 N. W. 685, sustaining limitation as to time within which suit may be brought on policy; Hawley v. Griffin, 121 Iowa, 697, 97 N. W. 86, holding that action by heirs of insane person to redeem from tax sale must be commenced within year from latter's death; Hartzell v. Maryland Casualty Co. 163 Ill. App. 229, holding that bringing action on insurance policy in court not having jurisdiction, is not compliance with terms of policy which provide for bringing suit thereon within certain period.

Cited in notes (47 L.R.A. 711) as to when stipulation limiting time for suit on insurance policy begins to run; (3 L.R.A.(N.S.) 294) on relation of new pleadings to statutes of limitations.

47 L. R. A. 715, SULLIVAN v. DUNHAM, 161 N. Y. 290, 76 Am. St. Rep. 274, 55 N. E. 923.

Liability for consequential injuries; blasting.

Cited in Lersner v. McDonald, 38 Misc. 735, 78 N. Y. Supp. 1125, and Wheeler v. Norton, 92 App. Div. 371, 86 N. Y. Supp. 1095, holding contractors liable for damages resulting from breaking of water main by explosion of blast; Curley v. Electric Vehicle Co. 68 App. Div. 20, 74 N. Y. Supp. 35, holding dismissal of complaint in action for damages resulting from backing electric cab against horse at cab stand, error; Fries v. New York & H. R. Co. 169 N. Y. 284, 62 N. E. 358, denying railroad's company's liability for consequential damages sustained by erection of steel viaduct under legislative direction; Fitz Simons & C. Co. v. Braun, 94 Ill. App. 537, holding contractor liable for injuries to building resulting from underground blasting; Duerr v. Consolidated Gas Co. 86 App. Div. 20, 83 N. Y. Supp. 714, holding both owner and contractor liable for injuries resulting from bursting a water tank through weakened condition of iron plates due to owner's direction that rivet holes be punched instead of drilled; Sadlier v. New York, 185 N. Y. 417, 78 N. E. 272, Affirming 104 App. Div. 84, 93 N. Y. Supp. 579, which reversed 40 Misc. 85, 81 N. Y. Supp. 308, holding that if the acts of the city in the erection or maintenance of a bridge constitute trespass, the city was liable whether negligent or not; Keefer v. State, 174 Ind. 590, 92 N. E. 656, holding that blasting rock in quarries, thereby throwing stone upon surrounding land, constitutes nuisance at common law; Henry Hall Sons' Co. v. Sundstrom & S. Co. 138 App. Div. 549, 123 N. Y. Supp. 390; Viele v. Mack Paving & Constr. Co. 144 App. Div. 696, 129 N. Y. Supp. 604,—holding that in order to recover for injury to adjoining property caused by vibration as result of blasting negligence must be shown; Hieber v. Central Kentucky Traction Co. 145 Ky. 110, 36 L.R.A.(N.S.) 56, 140 S. W. 54, holding that person blasting on his own premises is not liable for injury received from horse frightened in nearby blacksmith shop; Central Iron & Coal Co. v. Vandenheuk, 147 Ala. 548, 6 L.R.A.(N.S.) 571, 119 Am. St. Rep. 102, 41 So. 145, holding that one who causes rock to fall upon the land of another by blasting, is liable therefor as a trespasser, though the blast be lawfully fired; Hoffman v. Walsh, 117 Mo. App. 282, 93 S. W. 853, holding that one who caused injuries to another upon the premises of another, by rocks falling from a blast is liable therefor though the blast was not negligently fired; Forrester v. O'Rourke Engineering Constr. Co. 48 Misc. 391, 95 N. Y. Supp. 600, holding a contractor liable for injuries to a near-by house caused by falling stones after a blast, but not for injuries resulting from concussions; Hickey v. McCabe, 30 R. I. 349, 27 L.R.A.(N.S.) 428, 75 Atl. 404, 19 Ann. Cas. 783, holding that there could be a recovery for injuries

resulting from concussion caused by blasting in the building of a tunnel, without showing negligence.

Cited in footnotes to Osborne v. Van Dyke, 54 L. R. A. 367, which holds one unlawfully beating his horse liable for injury from unintentional blow to bystander; Cleghorn v. Thompson, 54 L. R. A. 402, which denies liability of both master and servant for accidental shooting of man by servant while lawfully shooting at troublesome dogs; Texas & P. R. Co. v. Carlin, 60 L. R. A. 462, which sustains liability for negligence likely to produce injury, though particular injury not anticipated; Cary v. Morrison, 65 L.R.A. 659, which holds it duty of contractor removing rock by blasting to give warning of coming explosions to persons occupying neighboring property.

Cited in notes (34 L.R.A.(N.S.) 163) on constitutionality of statute imposing liability for injury to servant, irrespective of negligence; (123 Am. St. Rep. 566, 579, 580, 582, 584) on liability for damages from blasting on one's premises.

Distinguished in Thurmond v. Ash Grove White Lime Asso. 125 Mo. App. 77, 102 S. W. 617, holding that landowner was not liable for injuries to adjacent premises from concussion unless the blast was negligently fired; Longtin v. Persell, 30 Mont. 308, 65 L.R.A. 663, 104 Am. St. Rep. 723, 76 Pac. 699, 2 Ann. Cas. 198, holding contra under similar circumstances; Gordon v. Ellenville & K. R. Co. 195 N. Y. 142, 88 N. E. 14, Affirming 119 App. Div. 799, 104 N. Y. Supp. 702, holding that a recovery can not be had because of defendant's negligence in building its embankment so that the plaintiff's lands were flooded, where the complaint was framed upon the theory of unlawful trespass; Miller v. Twiname, 129 App. Div. 625, 114 N. Y. Supp. 151, holding that where the plaintiff was merely a licensee upon the highway, the defendant was not liable for injuries to the plaintiff by being struck by a stone from a blast.

Liabilities for injuries to persons upon streets.

Cited in Wells v. Knight, 32 R. I. 438, 80 Atl. 16, holding that negligence need not be shown in order to recover for damage done by matter thrown from defendant's premises by blasting, resulting to injury to person on highway; Hogle v. H. H. Franklin Mfg. Co. 199 N. Y. 396, 32 L.R.A.(N.S.) 1043, 92 N. E. 794, holding that owner of premises is not liable for injury to person caused by employee maliciously throwing piece of iron from building to street; Turner v. Degnon-McLean Contracting Co. 99 App. Div. 136, 90 N. Y. Supp. 948, holding a contractor liable for injuries to a pedestrian upon the street who was injured by a stone thrown by a blast set off by the contractor in building a subway.

Distinguished in McNulty v. Ludwig, 125 App. Div. 292, 109 N. Y. Supp. 703, holding that a distinction must be made between a nuisance and negligence, which results in injuries to a person lawfully upon a street; Sanford v. White, 80 C. C. A. 390, 150 Fed. 729, holding that a person placing an obstruction in a street under permit from the city authorities is not liable for injuries in the absence of negligence in maintaining the obstruction.

Contributory negligence.

Cited in Cary v. Morrison, 65 L. R. A. 663, footnote p. 659, 63 C. C. A. 271, 129 Fed. 181, holding it question for jury whether one guilty of contributory negligence by remaining in dangerous proximity to blast after repeated warnings to leave.

Independent contractors.

Cited in Burke v. City & C. Contract Co. 133 App. Div. 117, 117 N. Y. Supp. 400, holding that one who was to hire men and work upon a railroad at such points as the chief engineer should direct, which men the contractor was to pay

and allow the hirer a certain percentage for his services, was an independent contractor, so far as hiring the men but not in the construction work.

Review of questions not excepted to on trial.

Cited in Wangner v. Grimm, 169 N. Y. 427, 62 N. E. 569, holding that failure to take exceptions on trial to questions of law bars review on appeal.

Injury to property through lawful use of adjoining property.

Cited in McCarty v. Natural Carbonic Gas Co. 189 N. Y. 50, 13 L.R.A.(N.S.) 469, 81 N. E. 549, 12 Ann. Cas. 840, holding that the use of soft coal in a factory situated in a residence district, so that the soot caused injury to the surrounding buildings, it was a nuisance which will be abated where the use of soft coal is not necessary.

Variance.

Cited in Barber v. Ellingwood, 144 App. Div. 514, 129 N. Y. Supp. 414, holding that plaintiff should be permitted to prove such allegations of complaint as he can, and if those he does prove establish cause of action complaint should not be dismissed.

47 L. R. A. 721, *Re* RUTLEDGE, 162 N. Y. 31, 56 N. E. 511.

Right to extra allowance.

Cited in *Re* Bicknell, 31 Misc. 307, 64 N. Y. Supp. 360, denying assignee's right to compensation for services performed by attorney, which he should have done himself; *Re* Welling, 51 App. Div. 358, 64 N. Y. Supp. 1025, denying surrogate's authority to grant unsuccessful legatee's or remaindermen extra allowances.

Withholding commissions from executor.

Cited in Re Gall, 107 App. Div. 311, 95 N. Y. Supp. 124, holding that the surrogate may upon the settlement of the administrator's account, deny him the statutory commissions in case of misconduct.

Distinguished in Re Ingersoll, 95 App. Div. 212, 88 N. Y. Supp. 698, holding that the refusal of the executor to pay the beneficiaries anything under the will, because of his erroneous construction of the will, was not such misconduct as would warrant the withholding of his statutory commissions.

"Must" in a statute as being mandatory.

Cited in State v. Price, 111 Mo. App. 427, 85 S. W. 922, holding that a statute providing that the prosecuting attorney must state the case, is mandatory and prohibits the prosecuting attorney from delegating that duty to another.

47 L. R. A. 725, HOWARTH v. ANGLE, 162 N. Y. 179, 56 N. E. 489.

Followed without discussion in Shipman v. Treadwell, 134 App. Div. 991, 119 N. Y. Supp. 1144.

Enforceability of stockholder's liability.

Cited in Wigton v. Kenney, 51 App. Div. 215, 64 N. Y. Supp. 924, holding that receiver of insolvent foreign corporation may enforce stockholder's individual liability in state; Bank of China v. Morse, 168 N. Y. 481, 56 L. R. A. 148, footnote p. 139, 85 Am. St. Rep. 676, 61 N. E. 774, holding assessment under English statute in proceedings to wind up corporation for benefit of reorganization scheme, not enforceable against resident; Sigua Iron Co. v. Brown, 171 N. Y. 502, 64 N. E. 194, sustaining foreign receiver's right to sue resident for unpaid calls upon assessable capital stock; Straw & E. Mfg. Co. v. L. D. Kilbourne Boot & Shoe Co. 80 Minn. 136, 83 N. W. 36, sustaining assessment upon resident stockholders of foreign insolvent corporation; Commonwealth Mut. F. Ins. Co. v. Hayden Bros. 61 Neb. 457, 85 N. W. 443, denying power of court having jurisdiction over af-

fairs of insolvent corporation, to render personal judgment against stockholder not party; Tompkins v. Blakey, 70 N. H. 588, 49 Atl. 111; Childs v. Cleaves, 95 Me. 516, 50 Atl. 714; Howarth v. Lombard, 175 Mass. 579, 49 L. R. A. 307, footnote p. 301, 56 N. E. 888,—authorizing suit to enforce stockholder's liability to foreign corporation; Pfaff v. Gruen, 92 Mo. App. 572, overruling demurrer to complaint to enforce stockholder's liability to insolvent foreign corporation; Aldrich v. McClaine, 45 C. C. A. 634, 106 Fed. 794, holding stockholder bears contractual relation to national bank, so that action to enforce individual liability is maintainable within three years after accrual of right; Kirtley v. Holmes, 52 L. R. A. 743, footnote p. 738, 46 C. C. A. 107, 107 Fed. 6, sustaining right to enforce stockholder's liability in courts of his domicil; Hutchinson v. Stadler, 85 App. Div. 437, 83 N. Y. Supp. 509, holding director of foreign corporation liable to account for part of dividends declared illegally; Irvine v. Bankard, 181 Fed. 210; Shipman v. Treadwell, 200 N. Y. 476, 93 N. E. 1104; Converse v. Hamilton, 224 U. S. 260, 56 L. ed. 755, 32 Sup. Ct. Rep. 415,—holding that receiver to collect double liability of stockholders of corporation is quasi assignee invested with rights of creditors and may sue in foreign jurisdiction; Shipman v. Treadwell, 73 Misc. 589, 131 N. Y. Supp. 67, holding that statute of limitations does not begin to run against action to enforce stockholder's liability until determination of necessity of such enforcement to pay debts and demand for payment; Cheney v. Scharmann, 145 App. Div. 465, 129 N. Y. Supp. 993, holding that superintendent of banks could only enforce stockholder's liability by suit against all, in equity, so that liability of all might be ratably fixed; Southworth v. Morgan, 71 Misc. 218, 128 N. Y. Supp. 598, holding that stockholder's liability to creditors for unpaid stock does not accrue until making of order in proceedings to wind up corporation calling on stockholders to pay balance of subscription; Southworth v. Morgan, 143 App. Div. 653, 128 N. Y. Supp. 196, holding that recovery may be had by trustee in bankruptcy for balance of price of stock of corporation subscribed for by stockholder; Assets Realization Co. v. Howard, 70 Misc. 661, 127 N. Y. Supp. 798, holding that stock corporation law limiting stockholder's liability does not make judgment against corporation on debts conclusive as to amount thereon in subsequent suit to enforce stockholder's liability; Bernheimer v. Converse, 206 U. S. 534, 51 L. ed. 1176, 27 Sup. Ct. Rep. 755, holding that a receiver may sue in a foreign state to enforce the statutory liability of a stockholder, where the receiver was appointed as provided by the statute imposing the liability; King v. Cochran, 76 Vt. 150, 104 Am. St. Rep. 922, 56 Atl. 667; Converse v. Ayer, 197 Mass. 454, 84 N. E. 98,—holding that the stockholders' liability having been determined, the receiver may sue to enforce the same in the state where the stockholder resides; Swing v. Karges Furniture Co. 123 Mo. App. 380, 100 S. W. 662, on the enforcement of a stockholder's liability in a foreign state.

Cited in footnotes to Finney v. Guy, 49 L. R. A. 486, which holds action to enforce stockholder's liability not maintainable out of state; Fidelity Ins. Trust & S. D. Co. v. Mechanics' Sav. Bank, 56 L. R. A. 228, which holds stockholder's liability enforceable in Federal court, or any court where personal service obtainable; Blair v. Newbegin, 58 L. R. A. 644, which sustains right to enforce stockholder's liability in other state without making corporation a party; Miller v. Smith, 66 L.R.A. 473, which holds that courts of state of stockholder's residence will not take jurisdiction of suit by corporate creditor on behalf of all to enforce his statutory liability to contribute toward payment of corporate debts in advance of judicial determination of his proportionate liability where laws

of state of incorporation contemplate pro rata contribution to be enforced in equitable proceeding against all stockholders.

Cited in notes (4 L.R.A.(N.S.) 826) on power of receiver to sue out of jurisdiction of appointment; (31 L.R.A.(N.S.) 368) on right of receiver, assignee, or trustee to recover statutory added liability of corporate shareholder; (33 L.R.A. (N.S.) 898, 899, 900, 901, 904, 905, 910) on right to enforce stockholders' liability outside of state of incorporation; (103 Am. St. Rep. 326) on effect as to stockholders of judgments of courts of other states against corporations; (47 L. ed. U. S. 380, 381) on right of receiver to enforce liability of corporate stockholders outside state of appointment.

Distinguished in Manufacturers' Commercial Co. v. Heckscher, 144 App. Div. 605, 129 N. Y. Supp. 556, holding that in absence of statute creditor can not sue stockholder to secure payment of debt to extent of stockholder's unpaid balance on his stock; Knickerbocker Trust Co. v. Iselin, 185 N. Y. 59, 113 Am. St. Rep. 863, 77 N. E. 877, Reversing 109 App. Div. 688, 96 N. Y. Supp. 588, holding that under the Maryland statute providing a double liability for stockholders, a creditor in New York could not maintain a single action against a single resident stockholder in the courts of the state of New York.

— Necessity of personal service on stockholders.

Cited in Elson v. Wright, 134 Iowa, 637, 112 N. W. 105, holding that it is not necessary that the stockholder be individually a party to receivership proceedings in which indebtedness of the corporation is determined and the amount of the assessment to be collected is fixed; Nichol v. Murphy, 145 Mich. 429, 108 N. W. 704, holding that an appointment of a receiver, made ex parte, to fill the vacancy caused by the resignation of the former receiver, is a valid act, though made without notice.

Distinguished in Hammond v. Knox, 125 App. Div. 15, 109 N. Y. Supp. 367, holding that where the member of a mutual insurance company was advised that the receiver was about to apply to the court to levy an assessment and when the application was to be made, he having agreed to be bound by the laws of the other state in the matter of assessments, he could not remain quiet and claim want of notice.

Conclusiveness of decree in receivership proceedings.

Cited in Converse v. Ætna Nat. Bank, 79 Conn. 173, — L.R.A.(N.S.) —, 64 Atl. 341, 7 Ann. Cas. 75, holding that a stockholder was not concluded by an order in receivership proceedings, made in another state, to enforce the double liability, where the stockholder was not served with process; Elson v. Wright, 134 Iowa, 640, 112 N. W. 105, on the same point; Converse v. Stewart, 105 App. Div. 485, 94 N. Y. Supp. 310, holding that a receiver of a foreign corporation cannot enforce a decree of the courts of such foreign state fixing the liability of the stockholder, where the latter has never been a resident of the foreign state, and was not a party to, nor appeared in the proceedings to fix the liability; Stone v. Penn Yan, K. P. & B. R. Co. 197 N. Y. 283, 134 Am. St. Rep. 879, 90 N. E. 843, holding that a decree of a foreign court levying an assessment as provided for by the laws organizing a mutual insurance company, could be attacked directly by showing some legal defense, such as payment, release, etc.; Swing v. Mooney, 139 App. Div. 825, 124 N. Y. Supp. 545, holding that foreign decree in action by attorney general to dissolve mutual insurance company fixing liability of defendant who was not served with process and did not appear was not binding on courts here in action by trustee to enforce such liability; Shloss v. Metropolitan Surety Co. 149 Iowa, 387, 128 N. W. 384,

holding that claim of foreign receiver of foreign insurance company to property in this state will not be recognized as against claim of resident attaching creditors.

Law of comity as to perjury statute.

Cited in People v. Martin, 175 N. Y. 322, 96 Am. St. Rep. 628, 67 N. E. 589, holding that section of penal Code relating to false swearing applies to oaths taken in compliance with laws of another state.

Actions to enforce liabilities imposed by statute.

Cited in Cohen v. Small, 120 App. Div. 216, 105 N. Y. Supp. 287, holding that an action to recover money paid as a preferred payment to a creditor of an insolvent debtor, is an action on implied contract over which the Municipal court had jurisdiction.

47 L. R. A. 731, GRAHAM v. PEOPLE, 181 Ill. 477, 55 N. E. 179.

What constitutes obtaining money by means of a confidence game.

Cited in Juretich v. People, 223 Ill. 486, 79 N. E. 181, holding that by drawing a check signed with a fictitious name, and payable to a fictitious person, and indorsed by him, which he induced a third person to present to another and to be credited upon an account of still another person, the party was guilty of obtaining money by means of a confidence game.

Cited in note (134 Am. St. Rep. 365) on the confidence game.

Sufficiency of indictment.

Cited in Gilmore v. People, 87 Ill. App. 129, holding indictment for conspiracy to obtain money by false pretenses, charging crime in language of statute, sufficient; Bolen v. People, 184 Ill. 339, 56 N. E. 408, sustaining indictment charging incest in language of statute; People v. Weil, 244 Ill. 181, 91 N. E. 112, holding that indictment for obtaining money by confidence game need not set out various means resorted to, to obtain money; People v. Weil, 243 Ill. 212, 134 Am. St. Rep. 357, 90 N. E. 731, holding an indictment for obtaining money by the confidence game, which charged the offence in the words of the statute was sufficient; People v. Goodhart, 248 Ill. 375, 94 N. E. 148, holding that indictment for obtaining money from corporation by confidence game need not allege persons connected with corporation whose minds were inspired with confidence by defendant's scheme; State v. Cruikshank, 13 N. D. 342, 100 N. W. 697, holding that an indictment which charged that the defendant having the present ability to commit murder made an assault upon a certain named person by pointing and aiming a pistol at said person, with the intent to kill said person, sufficiently charged an attempt to shoot with an intent to kill.

Cited in footnote to Blum v. State, 56 L. R. A. 322, which sustains indictment for conspiring to obtain money by false pretenses, which states offense in generic terms without setting out particulars.

Jurisdiction of crime committed in different counties.

Cited in Bates v. State, 124 Wis. 619, 103 N. W. 251, 4 Ann. Cas. 365, holding that the crime of obtaining money under false pretenses must be prosecuted in the place where the property or money was obtained; State v. Gibson, 132 Iowa, 56, 106 N. W. 270, holding where an insurance agent by means of pretended applications obtained from the insurance company a check upon a bank in the county to which the applications had been sent, and was cashed where the applications had been made, the county where the applications were sent had jurisdiction of the offense under the statute.

Cited in footnotes to Coleman v. State, 64 L.R.A. 807, which holds commencement of prosecution, in either county, for death in one county from fatal blow

struck in another, bar to subsequent prosecution in the other county: Hargis v. Parker, 69 L.R.A. 270, which sustains right to try in either county crime begun in one and consummated in another.

What constitutes attempt to commit crime.

Cited in State v. Thompson, 31 Nev. 216, 101 Pac. 557, holding that attempt to commit crime contains three elements,—intent, performance of some act towards its commission, and failure of consummation; Com. v. Houssell, 20 Pa. Dist. R. 433, holding that conviction of attempt to administer poison is improper where proof shows that poison was actually administered.

47 L. R. A. 737, MERCHANTS' & M. NAT. BANK v. BARNES, 18 Mont. 335, 56 Am. St. Rep. 586, 45 Pac. 218.

Assignment of money due or to become due.

Cited in State *ex rel.* Harmon v. Conrow, 19 Mont. 109, 47 Pac. 640, holding cashier's notice to tenant to pay rent to bank, to which he executed bill of sale, sufficient to give bank interest in fund as against subsequent attaching creditor; Oppenheimer v. First Nat. Bank, 20 Mont. 196, 50 Pac. 419, holding consent of bank unnecessary to make valid debtor's assignment of deposit; Gillette v. Murphy, 7 Okla. 103, 54 Pac. 413, holding that creditors have equitable interest in judgment for sheriff's salary by virtue of assignments of portions of salary executed prior to action; Mack Mfg. Co. v. Smoot, 102 Va. 730, 47 S. E. 859, holding that an order from the creditor to the debtor to pay to the payee, the money due constitutes an equitable assignment of the debt and cannot be garnished by creditors of the assignor.

Right to maintain suit upon erroneous theory as to damages.

Cited in Wolf v. New Orleans Tailor-Made Pants Co. 52 La. Ann. 1368, 27 So. 893, raising, without deciding, question as to right to maintain action upon wrong theory as to measure of damages.

Action of assumpsit on implied promises.

Cited in Devries v. Hawkins, 70 Neb. 660, 97 N. W. 792, holding that whenever one person has money in his possession which in good conscience ought to be paid to another, the law creates a promise to pay, which may be enforced in an action of assumpsit; Yank v. Bordeaux, 29 Mont. 76, 74 Pac. 77, on the nature of the action to recover money from a constable received from levies and sale of property.

Payment to sheriff as discharging liability of garnishee.

Distinguished in Michener v. Franksham, 33 Mont. 112, 81 Pac. 953, holding that a payment to the sheriff discharged the debt due from the garnishee as to a defendant, where the action had been dismissed as to such defendant.

Rights in fund as between assignee and garnishor.

Cited in What Cheer Sav. Bank v. Mowery, 149 Iowa, 120, 128 N. W. 7, holding that where shipper turned over to bank bill of lading with draft attached to secure bank for money advanced to purchase stock, subsequent garnishment of consignees by creditor of shipper did not create right to proceeds of shipment as against bank; Whipps v. Lowney, 42 Mont. 550, 113 Pac. 750, holding that constable who garnisheed and was paid money claimed by plaintiff to have been previously assigned to him, of which fact constable had knowledge which funds constable applied to creditor's judgment, was not liable for money paid over by garnishee.

47 L. R. A. 742, FIRST NAT. BANK v. ELLIOTT, 125 Ala. 646, 82 Am. St. Rep. 268, 27 So. 7.

Redemption from mortgage foreclosure sale by judgment creditor.

Cited in Ford v. Lewis, 146 Ala. 192, 41 So. 144, holding that the judgment creditor having complied with the statute in regard to redeeming the land from a mortgage sale, he is entitled to bring an action of unlawful detainer to recover possession of the land.

Payment of deficiency judgment as condition to right to redeem.

Followed in Williams v. Rouse, 124 Ala. 161, 27 So. 16, holding redeeming judgment creditor of mortgagor not required to pay mortgage debt remaining after foreclosure.

47 L. R. A. 750, TIRRELL v. TIRRELL, 72 Conn. 567, 45 Atl. 153.

Desertion as ground of divorce.

Cited in Todd v. Todd, 84 Conn. 593, 80 Atl. 717, holding that desertion, as ground of divorce, is unjustifiable cessation of cohabitation coupled with intention upon part of offender not to renew it in spite of wish of other spouse.

47 L. R. A. 752, LYNN v. HOOPER, 93 Me. 46, 44 Atl. 127.

Liability for fright of horse.

Cited in Barber v. Manchester, 72 Conn. 682, 45 Atl. 1014, holding it not negligence *per se* to operate ensilage cutter and carrier within 15 feet of highway, so as to render operator liable for fright of horse; Horr v. New York, N. H. & H. R. Co. 193 Mass. 102, 78 N. E. 776, holding that whether dumping mail sacks from the defendant's trains constituted negligence on the part of the defendant in scaring plaintiff's horse, was a question for the jury, and also citing annotation on this point; Davis v. Thompson, 134 Mo. App. 19, 114 S. W. 550, holding the defendant not liable for frightening a horse by leaving wire from a fence which was being repaired, alongside the highway during the noon-hour while the men were at dinner.

Use of highway for private purposes.

Cited in note (101 Am. St. Rep. 108) on right of abutter to use highway for private purposes.

47 L. R. A. 755, AUSTIN v. AUGUSTA TERMINAL R. CO. 108 Ga. 671, 34 S. E. 852.

Abutter's right to damages.

Cited in Long v. Elberton, 109 Ga. 30, 46 L. R. A. 430, 77 Am. St. Rep. 363, 34 S. E. 333, denying municipal corporation's liability for erection of prison, causing depreciation in value of abutting property; Macon v. Wing, 113 Ga. 91, 38 S. E. 392, affirming abutter's right to damages for injuries sustained by change of grade and narrowing of street; Marietta Chair Co. v. Henderson, 121 Ga. 406, 104 Am. St. Rep. 156, 49 S. E. 312, on the right of the abutter to damages where the obstruction in the street increases the value of his land to an extent equal to the damages sustained.

Cited in footnote to Louisville R. Co. v. Foster, 50 L. R. A. 813, which denies abutter's right to recover for noises, smells, and disturbances, from operation of street railway and turntable in street.

Cited in note (36 L.R.A.(N.S.) 742, 743) on abutter's right to compensation for railroads in streets.

Distinguished in Atlantic & B. R. Co. v. McKnight, 125 Ga. 334, 54 S. E. 148, holding that where the railroad company changed the grade of a street for the

purpose of building their road, they were liable for damages to the abutting owners.

Right to injunction against noises.

Cited in Georgia R. & Bkg. Co. v. Maddox, 116 Ga. 77, 42 S. E. 315, sustaining right to injunction against noises from operation of trains near park on Sundays, but not on other days.

Cited in footnotes to Froelicher v. Oswald Iron Works, 64 L. R. A. 228, which sustains right to injunction against construction of boilers and tanks and hammering of sheet iron in open air; Hill v. McBurney Oil & F. Co. 52 L. R. A. 399, which authorizes injunction against blowing of factory whistle at unreasonable hours in populous community; Sullivan v. Jones & L. Steel Co. 66 L.R.A. 712, which holds that manufacturer of pigiron will be enjoined from changing manner of operating furnaces if result is to cast ore dust on neighboring residential property in such quantity as to destroy homes or other property there situated; Redd v. Edna Cotton Mills, 67 L.R.A. 983, which holds that blowing of factory whistle will not be enjoined until fact of nuisance has been established; Wade v. Miller, 69 L.R.A. 820, which holds characteristic noises and odors from chicken house and yard maintained in cleanly manner not a nuisance.

Disapproved in Holst v. Savannah Electric Co. 131 Fed. 943, holding that where the city council by a void ordinance granted the street railway company the right to build a track upon a street, to be used for shunting cars to and from the car-barns at night, so that the noise would interfere with the sleep of the residents on that street, an injunction would be granted.

Lawful and unlawful use of railroad property.

Approved in Thomason v. Seaboard Air Line R. Co. 142 N. C. 328, 55 S. E. 205, holding that an adjacent owner cannot recover damages for annoyance and injury resulting from the keeping of engines upon a side track, where it was done in a reasonable manner and was necessary to the operation of the road; Smith v. St. Paul, M. & M. R. Co. 39 Wash. 368, 70 L.R.A. 1024, 109 Am. St. Rep. 889, 81 Pac. 840, holding that an adjacent property owner could recover damages for actual injuries resulting from the jarring of the earth caused by the operation of a railroad, but could not for injuries caused solely by smoke and noise.

Cited in Atlantic & B. R. Co. v. Montezuma, 122 Ga. 3, 49 S. E. 738, holding that where a railroad company was authorized to operate a railroad through the streets of a city, they were not authorized to use the streets for switching or transfer purposes; Taylor v. Seaboard Air Line R. Co. 145 N. C. 403, 122 Am. St. Rep. 455, 59 S. E. 129, holding that injuries resulting from a reasonable operation of trains and the transfer of freight and passengers, is not an actionable nuisance; Church of Jesus Christ L. D. S. v. Oregon Short Line R. Co. 36 Utah, 246, 23 L.R.A.(N.S.) 864, 103 Pac. 243, holding that the interference with religious services by the rightful operation of a railroad and yards, does not give the religious society a cause of action for damages for a taking of property under damage clause of the constitution, where there is not physical interference; Butler v. Tifton, T. & G. R. Co. 121 Ga. 820, 49 S. E. 763, holding that the public has no interest in a contract between a railroad company and a mill company in regard to a spur track, so that such a contract will be valid.

Cited in note (1 L.R.A.(N.S.) 76) on effect of legislative authority upon liability for use of railroad yards and terminals as private nuisance.

Disapproved in Rainey v. Red River, T. & S. R. Co. 99 Tex. 285, 3 L.R.A.(N.S.) 594, 122 Am. St. Rep. 622, 89 S. W. 768, 13 Ann. Cas. 580, holding that the maintenance of railroad machine and repair shops amounts to an actionable

nuisance though legalized by the legislature, and compensation must be made therefor.

Invasion of property rights, amounting to a taking of property.

Cited in Howard v. Bibb County, 127 Ga. 293, 56 S. E. 418, holding county not liable for public improvements not resulting in actual damage to the land itself.

Cited in note (109 Am. St. Rep. 909, 914, 916) on what constitutes "damage" to property within provision that property shall not be taken or damaged for public use without compensation.

— Without physical trespass.

Cited in Church of Jesus Christ L. D. S. v. Oregon Short Line R. Co. 36 Utah, 246, 23 L.R.A.(N.S.) 864, 140 Am. St. Rep. 819, 103 Pac. 243, holding that noise made by operation of trains and switching near church effect of which is to annoy people at church services is not damaging of property within meaning of Constitution.

Cited in note (17 L.R.A.(N.S.) 1054) on smoke, noise, etc., incident to ordinary operation of railroad as a "damaging" of property within constitutional provision for compensation.

Distinguished in Ponder v. Quitman Ginnery, 122 Ga. 32, 49 S. E. 746, holding that the operation of a cotton-ginning plant whereby large quantities of sand and dirt were separated from the cotton and discharged into the air so that large amounts fell upon the adjacent premises, to the injury of the same, was an invasion of the property rights of the owner, calling for payment of damages; Savannah, A. & N. R. Co. v. Williams, 133 Ga. 680, 66 S. E. 942, holding that in estimating the damages in eminent domain proceedings, damages by smoke, cinders, and noise may be considered; Jones v. Royster Guano Co. 6 Ga. App. 517, 65 S. E. 361, holding an instruction taken word for word from the leading case to the effect that a factory properly managed though situated in a residence district was not a nuisance, was erroneous where under the facts of the case it implied that if it were properly managed it would not be a nuisance though it caused actual damage to the adjacent premises.

47 L. R. A. 782, RUDOLPH v. PENNSYLVANIA S. VALLEY R. CO. 186 Pa. 541, 40 Atl. 1083.

Reaffirmed on second appeal in 186 Pa. 555, 40 Atl. 1134.

Damages for diversion of water.

Cited in Irving v. Media, 10 Pa. Super. Ct. 145, 7 Del. Co. Rep. 381, 44 W. N. C. 134, holding that village cannot deprive riparian mill owner of right to natural flow of stream without compensation; Aberdeen v. Bradford, 94 Md. 680, 51 Atl. 614, holding lower riparian owner entitled to damages for municipal corporation's diversion of water by intake wells intercepting underground channel; Re Octoraro Water Co. 23 Lanc. L. Rev. 198, 15 Pa. Dist. R. 769, holding that a water company in Pennsylvania could condemn riparian rights in Maryland under the laws of the former state.

Land taken by eminent domain.

Cited in Kossler v. Pittsburg, C. C. & St. L. R. Co. 208 Pa. 57, 57 Atl. 66, denying right to consider second lot in assessing damages to one for right of way, where they are separated by stream and unconnected by bridge; Griffiths v. Monongahela R. Co. 20 Pa. Dist. R. 538, 58 Pittsb. L. J. 10, to the point that power of railroad to appropriate water rights is not exercised when land is condemned for roadbed.

Cited in note (57 L. R. A. 947) on what lands are to be deemed part of tract damaged by taking portion thereof under eminent domain.

Distinguished in Pettit v. Jamestown & F. R. Co. 222 Pa. 499, 21 L.R.A. (N.S.) 324, 71 Atl. 1048, holding railroad company liable for injuries occurring because of a removal of the lateral support where the same occurred in the building of the railroad and there was no release of damages in the deed conveying the land.

Damages for pollution of stream.

Cited in footnote to Weston Paper Co. v. Pope, 56 L. R. A. 899, which sustains liability for pollution of stream by discharge from strawboard works, though business skilfully conducted.

Right to take sand from stream.

Cited in Hunt v. Graham, 15 Pa. Super. Ct. 47, denying liability for death of boy drowned while bathing, by falling into hole made by dredge in removing sand.

47 L. R. A. 788, McANALLY v. PENNSYLVANIA R. CO. 194 Pa. 464, 45 Atl. 326.

Injury sustained while boarding car.

Cited in Shuart v. Consolidated Traction Co. 15 Pa. Super. Ct. 28, affirming recovery for injury due to premature starting of street car while passenger attempting to board.

Distinguished in Artherholt v. Erie Electric Motor Co. 27 Pa. Super. Ct. 147, holding that carrier was liable for the misconduct of its servants to whom it has intrusted the safe carriage of passengers.

Contributory negligence in emergency.

Cited in Sieb v. Central Pennsylvania Traction Co. 47 Pa. Super. Ct. 232, holding that one who without fault is unexpectedly placed in peril, he is to be dealt with in light of circumstances and is not necessarily negligent although judgment has been wrongly exercised.

47 L. R. A. 790, McKENNA v. BRIDGEWATER GAS CO. 193 Pa. 633, 45 Atl. 52.

Liability for explosion.

Cited in footnote to Purdy v. Westinghouse Electric & Mfg. Co. 51 L. R. A. 881, which holds use of barrels, formerly containing explosive substance, for shipping iron, not render one liable for injury to employee by explosion.

Cited in note (32 L.R.A.(N.S.) 810, 811, 817, 821) on liability of gas company for negligence in escape or explosion.

47 L. R. A. 792, STRONG v. BRENNAN, 183 Ill. 97, 55 N. E. 675.

47 L. R. A. 795, PEOPLE *ex rel.* TRADERS' F. INS. CO. v. VAN CLEAVE, 183 Ill. 330, 55 N. E. 698.

Validity of statute determined by mandamus.

Cited in People *ex rel.* Hilldel Lodge No. 72, I. O. B. B. v. Rose, 207 Ill. 376, 69 N. E. 762, dissenting opinion by Magruder, J., who holds that constitutionality of act requiring annual report from corporations may be determined on petition for mandamus for cancelation of charter.

Mandamus to public official.

Cited in Bromwell v. Flowers, 217 Ill. 179, 75 N. E. 466, holding that mandamus will not lie to compel drainage commissioners to petition for an assessment for funds to clean out a drain, where all the funds of the commission

have been exhausted, unless it be made to appear that the refusal of the commissioners is arbitrary; People ex rel. Raster v. Healy, 230 Ill. 291, 15 L.R.A. (N.S.) 609, 82 N. E. 599, holding that mandamus is the proper remedy to compel a public prosecutor to sign and file a petition for leave to file an information in the nature of quo warranto to question title to a public office.

Cited in notes (98 Am. St. Rep. 878) on mandamus as proper remedy against public officers; (125 Am. St. Rep. 499, 506) on duties, performance of which may be compelled by mandamus.

Powers of insurance commissioner.

Cited in Mutual L. Ins. Co. v. Prewitt Ins. Comr. 127 Ky. 407, 105 S. W. 463, holding that it is the province of the courts to construe the statute and determine the scope of the authority of the insurance commissioner, and he has no powers except those conferred by the statute.

47 L. R. A. 798, CHICAGO TITLE & T. CO. v. BROWN, 183 Ill. 42, 55 N. E. 632.

Conclusiveness of probate.

Cited in Palmer v. Bradley, 142 Fed. 197, holding that an order of the court admitting the will to probate is an adjudication as to its validity and the order is binding until appealed from, as to all persons before the court, as to all material allegations including the domicile of the testatrix; Palmer v. Bradley, 83 C. C. A. 231, 154 Fed. 313, holding same as to the conclusiveness of the order admitting the will to probate.

Explained in Davis v. Upson, 209 Ill. 211, 70 N. E. 602, holding that order admitting will to probate cannot be attacked by proceedings to contest will.

Collateral attack on probate of will.

Cited in Slick v. Brooks, 253 Ill. 60, 97 N. E. 250, holding that probate of will cannot be attacked in collateral proceeding brought for purpose of obtaining construction of will.

Jurisdiction.

Cited in Ex parte Wade, 2 Okla. Crim. Rep. 106, 100 Pac. 35, on what is jurisdiction.

Jurisdiction of equity to set aside probate.

Cited in O'Brien v. Bonfield, 220 Ill. 222, 77 N. E. 167; Selden v. Illinois Trust & Sav. Bank, 239 Ill. 75, 130 Am. St. Rep. 180, 87 N. E. 860; Sharp v. Sharp, 213 Ill. 334, 72 N. E. 1058,—holding that a bill in chancery to contest a will and set aside the probate thereof can be maintained only by virtue of the statute, which must be complied with; Staunton Coal Co. v. Fischer, 119 Ill. App. 287, on the same point.

Competency of subscribing witness.

Cited in Sloan v. Sloan, 184 Ill. 582, 56 N. E. 952, holding wife of legatee not competent subscribing witness.

Statute of wills as statute of limitations.

Cited in Storm v. Cleveland, C. C. & St. L. R. Co. 156 Ill. App. 92, to the point that statute of wills is not statute of limitations nor does it create in parties interested vested right for full term fixed, regardless of legislative changes.

47 L. R. A. 802, LASHER v. PEOPLE, 183 Ill. 226, 75 Am. St. Rep. 103, 55 N. E. 663.

Regulation of businesses affected by public uses.

Cited in People v. Commercial L. Ins. Co. 247 Ill. 99, 93 N. E. 90, holding that statute to prevent unjust discrimination of rates between insurants of same class

and with equal expectations of life, does not deprive insurance companies of property without due process of law; People v. Steele, 231 Ill. 347, 14 L.R.A. (N.S.) 366, 121 Am. St. Rep. 321, 83 N. E. 236, holding that the legislature may require a license upon the business of conducting a theatre it being devoted to a public use.

Class legislation.

Cited in People *ex rel.* Akin v. Butler Street Foundry & Iron Co. 201 Ill. 256, 66 N. E. 349, sustaining act exempting building and loan associations from provisions for making affidavit as to connection with illegal combinations; State v. Sherman, 18 Wyo. 193, 27 L.R.A.(N.S.) 907, 105 Pac. 299, Ann. Cas. 1912C, 819, holding that where custom of taking extortionate interest on loans of less than $200 is general, while loans over that amount are rarely taken, legislature may make sums below that amount proper basis for classification for usury law; Claffy v. Chicago Dock Canal Co. 249 Ill. 217, 94 N. E. 551, holding statute designed for protection of persons in construction of buildings, is valid police regulation; People v. Richards & K. Mfg. Co. 1 Ill. C. C. 182, holding that a statute exempting building and loan associations from making annual reports which were required of other corporations to show that they did not belong to any trust or combine was valid; State v. Swagerty, 203 Mo. 526, 10 L.R.A. (N.S.) 603, 120 Am. St. Rep. 671, 102 S. W. 483, 11 Ann. Cas. 755; Christy v. Elliott, 216 Ill. 42, 1 L.R.A.(N.S.) 228, 108 Am. St. Rep. 196, 74 N. E. 1035, 3 Ann. Cas. 487,—sustaining statute limiting the speed of automobiles and motor vehicles, as not being class legislation; Re Watson, 17 S. D. 499, 97 N. W. 463, 2 Ann. Cas. 321, holding that a statute imposing a license tax upon peddlers dealing in goods, wares, and merchandise, except nursery stock and agricultural products, and traveling salesmen for wholesale houses, is not unconstitutional as class legislation; McKnight v. Hodge, 55 Wash. 293, 40 L.R.A. (N.S.) 1211, 104 Pac. 504, holding same as to statute imposing license upon peddlers, except those dealing in agricultural products books, etc.; State v. Sherman, 18 Wyo. 193, 27 L.R.A.(N.S.) 907, 105 Pac. 299, Ann. Cas. 1912C, 819, holding that a statute prohibiting the taking of more than twenty-five per cent interest on loans of less than $200 was not unconstitutional as being special or class legislation.

Cited in footnote to Com. use of Titusville v. Clark, 57 L. R. A. 348, which holds void, exemption from license tax of contractors and real-estate dealers, but not others, whose business less than $1,000.

Distinguished in Starne v. People, 222 Ill. 194, 113 Am. St. Rep. 389, 78 N. E. 61, holding that a statute which required operators of coal mines to maintain a wash room at the top of each mine for the use of miners in drying their clothes, was unconstitutional as being special legislation.

Grant of franchise or license.

Cited in Cain v. Wyoming, 104 Ill. App. 541, holding that ordinance granting right to use streets for water system confers license, not franchise; Oklahoma City v. Shields, 22 Okla. 294, 100 Pac. 559, holding that whenever a privilege granted to a corporation comes under revision in the courts, the grant is to be strictly construed against the corporation and in favor of the public, and nothing passes but what is expressly granted in clear unequivocal terms.

Distinguished in Morrison v. People, 196 Ill. 454, 63 N. E. 989, holding that act authorizing president of county board to appoint civil service commission does not confer franchise upon him.

Separation of departments of government.

Cited in State ex rel. Thompson v. Neble, 82 Neb. 279, 19 L.R.A.(N.S.) 587,

117 N. W. 723, holding that the statute placing the appointment of the park board with the district court is unconstitutional as the board is not a judicial body, and the appointing power is in the mayor.

Presumption as to validity of laws.

Cited in Chicago v. Gunning System, 114 Ill. App. 388, holding that if an ordinance is capable of two constructions one of which is valid and the other not, the former will be adopted.

47 L. R. A. 806, HOPE v. FLENTGE, 140 Mo. 390, 41 S. W. 1002.

Followed without discussion in Morgan v. Brase, 140 Mo. 415, 41 S. W. 1101; Howard v. Caldwell, 140 Mo. 416, 41 S. W. 1101; Drum v. Ude, 140 Mo. 417, 41 S. W. 1100; Frissell v. Cotner, 140 Mo. 418, 41 S. W. 1101.

Intention as fixing voting residence.

Cited in Welsh v. Shumway, 232 Ill. 85, 83 N. E. 549, holding the testimony of a party as to his residence is presumptively true in an election contest; Hale v. Stimson, 198 Mo. 156, 95 S. W. 885, holding that intention as to residence for voting purposes may be proved by competent overt acts.

Cited in note (23 L.R.A.(N.S.) 397) on right of one to testify as to his intent with reference to domicil.

What is residence.

Cited in State ex rel. Kelly v. Shepherd, 218 Mo. 666, 131 Am. St. Rep. 568, 117 S. W. 1169, as to the meaning of the word, residence.

Marking official ballots.

Cited in McKay v. Minner, 154 Mo. 617, 55 S. W. 866, holding void, ballots containing initials of only one judge; Duvall v. Miller, 94 Md. 715, 51 Atl. 570, holding that cross not wholly within square vitiates ballots; Morris v. Board of Canvassers, 49 W. Va. 256, 38 S. E. 500, holding ballots containing names voted on, void because not all in same column; Coulehan v. White, 95 Md. 716, 53 Atl. 786, holding ballot not vitiated by election judge's marking "A. Schr." instead of initials; Bartlett v. McIntire, 108 Me. 172, 79 Atl. 525, holding that what constitutes distinguishing mark on ballot is to be determined by tribunal whose duty it is to count ballots; Carwile v. Jones, 38 Mont. 599, 101 Pac. 153, holding that where the voter placed an "x" before the name of every candidate of two parties, the fact that one of the parties did not have a candidate for the office in question does not warrant the court in counting the vote for the candidate of the other party, where the voter's intention is not plain.

Cited in footnote to Parker v. Hughes, 56 L. R. A. 275, which sustains ballot with cross marks opposite name of candidate at each place it appears on ballot.

Cited in note (32 L.R.A.(N.S.) 730) on effect of officers supplying means of identifying ballots.

Presence of election judges.

Distinguished in Sanders v. Lacks, 142 Mo. 262, 43 S. W. 653, holding vote not void because four judges present instead of six, as required by law.

Review of findings of lower court.

Cited in Harding v. Harding, 140 Cal. 692, 74 Pac. 284, holding that findings, in action for divorce, as to fact of desertion and bona fides of residence, will not be disturbed on appeal.

Mandatory provisions of election statutes.

Cited in Horsefall v. School Dist. 143 Mo. App. 546, 128 S. W. 33, holding that if the statute expressly provides that any particular act is essential to the validity of the election the statute is mandatory, but if it simply provides

some acts to be done, without providing for the results if not done, it is only directory.

Annotation cited in Arnold v. Anderson, 41 Tex. Civ. App. 517, 93 S. W. 692, holding that the statute requiring a judge of election to write his signature upon the ballots, is mandatory.

Assisting voter.

Cited in note (40 L.R.A.(N.S.) 536, 539) on assisting voter.

47 L. R. A. 830, McMAHON v. POLK, 10 S. D. 296, 73 N. W. 77.

Identifying marks on ballots.

Cited in Church v. Walker, 10 S. D. 452, 74 N. W. 198, holding cross outside circle on ballot, identifying mark, but ink blots presumed unintentional; Moody v. Davis, 13 S. D. 92, 82 N. W. 410, holding ballot vitiated by voters placing crosses in two circles; Treat v. Morris, 25 S. D. 622, 127 N. W. 554, holding that where voter marks his ballot in some other way than provided by law, though his intention may be gathered therefrom, how he intended to vote, yet such ballot should not be counted; Carwile v. Jones, 38 Mont. 599, 101 Pac. 153, holding that where the voter placed an "x" mark in every square before the candidates' names, the fact that one of the political parties did not have a candidate for the office in question, does not warrant the counting of the vote for the other, where the intention of the voter can not be ascertained.

Residence of inmates of federal institutions.

Cited in State ex rel. Lyle v. Willett, 117 Tenn. 346, 97 S. W. 299, holding that an inmate of a national Soldiers' home is not a resident of the state wherein the home is located.

47 L. R. A. 842, SLAYMAKER v. PHILLIPS, 5 Wyo. 453, 40 Pac. 971, 42 Pac. 1049.

Marking official ballots.

Cited in Cole v. Tucker, 164 Mass. 488, 29 L. R. A. 669, 41 N. E. 681; Miller v. Schallern, 8 N. D. 400, 79 N. W. 865; Orr v. Bailey, 59 Neb. 140, 80 N. W. 495,—sustaining statute requiring official stamp on back of ballots; Coulehan v. White, 95 Md. 716, 53 Atl. 786, holding ballot not vitiated by election judge's marking "A. Schr." instead of initials.

Cited in footnote to State *ex rel.* McCarthy v. Moore, 59 L. R. A. 447, which sustains prohibition against placing on official ballot, name of unsuccessful candidate for party nomination at primary election.

Validity of requirement of signature of election official upon ballots.

Cited in Arnold v. Anderson, 41 Tex. Civ. App. 515, 93 S. W. 692, holding that a statute requiring the presiding judge of election to sign the ballots, and prohibiting the counting of any ballots not signed, is a valid regulation of elections under the state constitution, and also citing annotation on this point; Kirkpatrick v. Deegans, 53 W. Va. 287, 44 S. E. 465, holding that the requirement that the poll-clerks of an election sign the ballots, and to reject those not signed, is a reasonable and valid regulation; Newhouse v. Alexander, 27 Okla. 62, 30 L.R.A.(N.S.) 614, 110 Pac. 1121, Ann. Cas. 1912B, 674, holding that legislative will upon question of policy of method of voting when clearly expressed is ordinarily binding upon court.

Effect of absence of signature of official.

Distinguished in Pratley v. State, 17 Wyo. 408, 99 Pac. 1116, holding that under the change in statutes, a ballot which is not signed by the judge of election was not void if deposited in the ballot box.

47 L. R. A. 859, SULLIVAN v. STRAHORN-HUTTON-EVANS COMMISSION CO. 152 Mo. 268, 53 S. W. 912.

What is libellous per se.

Cited in Ukman v. Daily Record Co. 189 Mo. 392, 88 S. W. 60, holding that a publication that a certain trader has disposed of his business for a nominal consideration is not libelous per se; Winsor v. Ottofy, 140 Mo. App. 570, 120 S. W. 693, holding that a letter from one corporate stock holder to another asking the aid of the latter in procuring receivership proceedings, and that it was his opinion that in no other way would the stockholders ever realize anything and that he had been refused inspection of the books, was not libelous per se; Vanloon v. Vanloon, 159 Mo. App. 271, 140 S. W. 631, holding that where words alleged to have been spoken are slanderous per se, it is unnecessary to prove express malice.

Privileged communications.

Cited in Jones v. Brownlee, 161 Mo. 266, 53 L. R. A. 448, 61 S. W. 795, holding designation of person with whom plaintiff committed adultery in cross-bill in divorce proceedings, privileged; Burch v. Bernard, 107 Minn. 212, 120 N. W. 33, holding that privileged communications must be made in good faith in the discharge of some public or private duty, legal or moral, and with that end in view must be relevant to the matter in hand; Holmes v. Royal Fraternal Union, 222 Mo. 574, 26 L.R.A.(N.S.) 1091, 121 S. W. 100, holding that a notice to the members of a fraternal insurance society that a certain agent of the society had failed to remit moneys collected by him and that he was dishonest and that they should not pay their dues to him, was a privileged communication when made by the society.

Cited in note (104 Am. St. Rep. 117) on what libelous statements are privileged.

— Matter for jury.

Cited in Wagner v. Scott, 164 Mo. 301, 63 S. W. 1107, holding that evidence of abuse of privilege makes prima facie case for jury; Cook v. Globe Printing Co. 227 Mo. 540, 127 S. W. 332, holding that in libel cases, the jury is the judge of both the law and the facts on the question of libel or no libel, but in other respects the court has the same powers as in other cases.

L. R. A. CASES AS AUTHORITIES.

CASES IN 48 L. R. A.

48 L. R. A. 33, LOUGHIN v. McCAULLEY, 186 Pa. 517, 65 Am. St. Rep. 872, 40 Atl. 1020.

Administration of limitation of liability of ship owners.

Cited in The Eureka No. 32, 108 Fed. 674, and The S. A. McCaulley, 99 Fed. 303, sustaining competency of state court to apply Federal limitation of liability of ship owners; Amos v. Delaware River Ferry Co. 228 Pa. 370, 77 Atl. 12, on same point.

Federal Laws in state courts.

Cited in Mobile, J. & K. C. R. Co. v. Bromberg, 141 Ala. 279, 37 So. 395, holding that action for death by wrongful act will lie under state statute, for death caused by noncompliance with Federal safety appliance act.

48 L. R. A. 41, UNION TRUST CO. v. RICHMOND CITY R. CO. 154 Ind. 291, 55 N. E. 745.

Rehearing denied in 154 Ind. 308, 56 N. E. 665.

Preference of claims.

Cited in Reynolds & R. Co. v. Eacock, 27 Ind. App. 465, 61 N. E. 732, sustaining preferential payment of creditors furnishing supplies to mortgagor in reliance upon mortgage provision allowing mortgagor to continue business and pay expenses from income.

Cited in footnotes to United States Invest. Corp. v. Portland Hospital, 56 L. R. A. 627, which denies right to priority of debts incurred by receiver of hospital in suit to foreclose prior mortgage; Illinois Trust & Sav. Bank v. Doud, 52 L. R. A. 481, which holds claim for money loaned to pay interest on mortgage debt inferior to lien of prior mortgage.

Liability for paving between tracks.

Cited in footnote to Fielders v. North Jersey Street R. Co. 59 L. R. A. 455, which holds void, ordinance requiring street railway companies to pave and keep in repair space between tracks.

Construction of contract granting franchise.

Cited in Valparaiso City Water Co. v. Valparaiso, 33 Ind. App. 198, 69 N.

E. 1018, holding that doubts as to construction of contract between city and the grantee of a franchise, must be resolved in favor of the city.

Railroad right of way as "landed property."

Cited in footnote to United R. & Electric Co. v. Baltimore, 52 L. R. A. 772, which holds railroad right of way and tracks not within provision as to increasing taxation on "landed property."

Covenants running with right of way.

Cited in Chicago & S. E. R. Co. v. McEwen, 35 Ind. App. 258, 71 N. E. 926, holding that covenant by which grantee agrees to build fences and crossings, runs with the land and is binding upon successors of the grantee.

Regulation of gas rate.

Cited in Muncie Natural Gas Co. v. Muncie, 160 Ind. 101, 60 L. R. A. 827, 66 N. E. 436, holding that city has power to regulate gas rate under statute giving it exclusive control of streets.

Right to intervene.

Cited in Karr v. Putnam County, 170 Ind. 583, 85 N. E. 1, on right of party affected by local improvement proceeding to file petition to be made a party thereto.

Cited in note (123 Am. St. Rep. 282, 285, 301) on intervention.

Superiority of lien of local assessment over prior lien.

Cited in note (30 L.R.A.(N.S.) 764) on superiority of lien of local assessment over prior lien.

48 L. R. A. 49, HENDERSON TRUST CO. v. STUART, 108 Ky. 167, 55 S. W. 1082.

Directed verdict.

Cited in Sinclair v. Illinois C. R. Co. 129 Ky. 834, 112 S. W. 910, holding that where evidence is such that the jury is bound to find for one party the court may properly direct a verdict in favor of such party.

48 L. R. A. 50, JOHNSON v. EVELETH, 93 Me. 306, 45 Atl. 35.

Right of stoppage in transitu.

Cited in note (23 Eng. Rul. Cas. 409) on right of stoppage in transitu.

— Termination.

Cited in note (23 Eng. Rul. Cas. 430, 431, 432, 433) on termination of right of stoppage in transitu.

48 L. R. A. 54, SUMMERS v. BEELER, 90 Md. 475, 78 Am. St. Rep. 446, 45 Atl. 19.

Restrictive condition in deed; rights of grantees.

Cited in Safe Deposit & T. Co. v. Flaherty, 91 Md. 499, 46 Atl. 1009, denying that restrictions in deed are enforceable by other than grantor; Doerr v. Cobbs, 146 Mo. App. 351, 123 S. W. 547, holding that senior grantee cannot restrain violation of restrictive covenant by junior grantee of common grantor; Foreman v. Sadler, 114 Md. 577, 80 Atl. 298; Baltimore v. Garrett, 108 Md. 34, 68 Atl. 426,—holding restriction in deed discharged by failure of grantor to insert similar restrictions in all other deeds of property of which this was a part and for whose general benefit the restriction was intended; James v. Irvine, 141 Mich. 381, 104 N. W. 631, holding valid restriction in deed providing that only residence costing at least a specified sum could be built and that it must be a certain distance back from street line; Dawson v. Western Maryland R.

Co. 107 Md. 89, 14 L.R.A.(N.S.) 813, 126 Am. St. Rep. 337, 68 Atl. 301, 15 Ann. Cas. 678, on purchaser of land as taking it subject to a restriction of which he has notice; Ross v. McGee, 98 Md. 394, 56 Atl. 1128, holding that where deed of land reserves to grantor right to use a spring, such right is personal and does not pass to his heirs or assigns.

Cited in note (37 L.R.A.(N.S.) 33, 35) as to who may enforce restrictive covenant or agreement.

Distinguished in Boyden v. Roberts, 131 Wis. 669, 111 N. W. 701, holding agreement restricting use of property enforceable by subsequent grantees of portions thereof against other grantees with notice though restriction not in each deed.

48 L. R. A. 58, ELLICOTT v. ELLICOTT, 90 Md. 321, 45 Atl. 183.

Effect on gift of impossibility of performance of condition subsequent.

Cited in notes (27 L.R.A.(N.S.) 688; 25 Eng. Rul. Cas. 627) on effect on conditional gift of impossibility of performance of condition subsequent.

Remainders.

Cited in Roberts v. Roberts, 102 Md. 146, 1 L.R.A.(N.S.) 785, 111 Am. St. Rep. 344, 62 Atl. 161, 5 Ann. Cas. 805, holding that devise to wife "for term of her natural life in trust for the use and benefit of herself and our children" with power to sell, and remainder to the children, created vested remainder in the latter.

48 L. R. A. 63, ECONOMY SAV. BANK v. GORDON, 90 Md. 486, 45 Atl. 176.

48 L. R. A. 68, NARRAMORE v. CLEVELAND, C. C. & ST. L. R. CO. 37 C. C. A. 499, 96 Fed. 298.

Actionable breach of statutory duty.

Cited in Toledo, St. L. & W. R. Co. v. Kountz, 94 C. C. A. 250, 168 Fed. 838, holding that violation of statute for protection of employees is negligence; Cooper v. Baltimore & O. R. Co. 16 L.R.A.(N.S.) 722, 86 C. C. A. 276, 159 Fed. 86, 14 Ann. Cas. 693, holding that statute requiring railroads to block frogs applies in case of employee dragged into such frog by an engine; Kilpatrick v. Choctaw, O. & G. R. Co. 57 C. C. A. 258, 121 Fed. 14 (dissenting opinion), on maintaining unblocked frogs as negligence; Stehle v. Jaeger Automatic Mach. Co. 220 Pa. 620, 69 Atl. 1116, 14 Ann. Cas. 122, holding that penal character of act prohibiting employment of minors, does not supersede right to civil action for damages for injuries caused by its violation; Wright v. Michigan C. R. Co. 161 Mich. 232, 126 N. W. 414 (dissenting opinion), on violation of statute as to use of coupling device, as negligence; Southern R. Co. v. Moore, 133 Ga. 810, 26 L.R.A.(N.S.) 853, 67 S. E. 85, holding that statute fixing rules for furnishing cars to shippers, does not debar shipper from bringing common law action for damages for failure to furnish cars within reasonable time.

— Contributory negligence.

Cited in Norfolk & W. R. Co. v. Hazelrigg, 95 C. C. A. 640, 170 Fed. 554; Mammoth Vein Coal Co. v. Bubliss, 83 Ark. 574, 104 S. W. 210; Klotz v. Power & Min. Machinery Co. 136 Wis. 109, 17 L.R.A.(N.S.) 906, 116 N. W. 770,— holding contributory negligence to be defense in action for injury caused by noncompliance with statute for protection of employees; Hall v. West & S. Mill Co. 39 Wash. 451, 81 Pac. 915, 4 Ann. Cas. 587, holding that continuing work with knowledge that statute is being violated does not of itself constitute contributory negligence as a matter of law; Klotz v. Power & Min. Machinery

Co. 136 Wis. 110, 17 L.R.A.(N.S.) 906, 116 N. W. 770, holding question of contributory negligence to be for jury where workman was injured by unguarded machinery.

Cited in note (13 L.R.A.(N.S.) 1155) on contributory negligence as defense to servant's action for injuries from violation of master's statutory duty, where statute excludes defense of assumption of risk.

Assumption of risk.

Approved in Chesapeake & O. R. Co. v. Hennessey, 38 C. C. A. 311, 96 Fed. 717, holding that switchman daily handling defective cars taken out for repairs assumes incidental risk; Kenney v. Meddaugh, 55 C. C. A. 122, 118 Fed. 216, holding that locomotive fireman assumed risk from proximity of mail crane to track; Dempsey v. Sawyer, 95 Me. 302, 49 Atl. 1035, sustaining assumption of risk by one entering employment with knowledge of risk; Martin v. Chicago, R. I. & P. R. Co. 118 Iowa, 151, 59 L. R. A. 700, 96 Am. St. Rep. 380, 91 N. W. 1034, sustaining brakeman's assumption of risk from unlawful excess of speed, by voluntarily working with knowledge thereof and without objection.

Cited in Philadelphia, B. & W. R. Co. v. Tucker, 35 App. D. C. 148, holding that defense of assumption of risks cannot be set up in action against railroad under employers' liability act; Riley v. Louisville & N. R. Co. 66 C. C. A. 600, 133 Fed. 907, holding that switchman assumes risk of injury from necessary excavation under frogs which are easily observable; Bauer v. American Car & Foundry Co. 132 Mich. 540, 94 N. W. 9, holding that servant by contract of employment assumes all risks from dangers which are apparent in the employment; Britton v. Central U. Teleph. Co. 65 C. C. A. 601, 131 Fed. 847; Lynch v. Saginaw Valley Traction Co. 153 Mich. 177, 21 L.R.A.(N.S.) 779, 116 N. W. 983,—holding that electric lineman, with knowledge of employers custom of making no other inspection of poles than incidentally made by the linemen, assumes risk of injury from such want of inspection; St. Louis, I. M. & S. R. Co. v. Mangan, 86 Ark. 515, 112 S. W. 168; St. Louis, I. M. & S. R. Co. v. Holman, 90 Ark. 566, 120 S. W. 146,—holding that servant does not assume risk from a defect which the master has promised to remedy for a reasonable time after such promise; Atchison, T. & S. F. R. Co. v. Bancord, 66 Kan. 89, 71 Pac. 253, holding that employee does not assume the risk unless he has knowledge of the defect in question and of the danger resulting therefrom; St. Louis, I. M. & S. R. Co. v. Birch, 89 Ark. 428, 28 L.R.A.(N.S.) 1254, 117 S. W. 243; Christanelli v. Saginaw Min. Co. 154 Mich. 430, 117 N. W. 910,—holding that servant does not assume an unusual risk resulting from the master's failure to exercise ordinary care; Kanola v. Oliver Iron Min. Co. 159 Mich. 702, 124 N. W. 591, holding that employee does not assume risk of injury from a defect which is not apparent upon ordinary careful observation; Blanchard-Hamilton Furniture Co. v. Colvin, 32 Ind. App. 406, 69 N. E. 1032, on dangers incident to the use of a machine being assumed and servant required to exercise care commensurate therewith; Choctaw, O. & G. R. Co. v. Jones, 77 Ark. 373, 4 L.R.A.(N.S.) 841, 92 S. W. 244, 7 Ann. Cas. 430, on assumption of risk as defense.

Cited in notes (28 L.R.A.(N.S.) 1229, 1230) as to whether servant may assume risk of dangers created by master's negligence; (28 L.R.A.(N.S.) 1254) on assumption of risk of dangers created by master's negligence discoverable by servant's exercise of ordinary care; (97 Am. St. Rep. 891) on right of recovery by employees accepting extra hazardous duties.

Distinguished in Tobler v. Union Stock Yards Co. 85 Neb. 418, 123 N. W. 461, holding that switchman does not as a matter of law assume the risk of injury from contact with structure negligently placed too close to track; Starck v.

Washington Union Coal Co. 61 Wash. 218, 112 Pac. 235, holding that experienced miner does not assume risk of insufficiency of props under overhanging coal after assurance by foreman that place was safe.

— Dangers due to omission of statutory duty.

Approved in Monteith v. Kokomo Wood Enameling Co. 159 Ind. 160, 58 L. R. A. 948, 64 N. E. 610, holding employee's recovery for injuries from employer's breach of statutory duty not defeated by obviousness of defect; Welsh v. Barber Asphalt Paving Co. 93 C. C. A. 103, 167 Fed. 467, holding assumption of risk not available as defense in action for injury resulting from violation of statute.

Cited in Streeter v. Western Wheeled Scraper Co. 254 Ill. 250, 41 L.R.A. (N.S.) 631, 98 N. E. 541, holding that servant by continuing to operate machine does not assume risk from violation of statute requiring guards; Norman v. Virginia-Pocahontas Coal Co. 68 W. Va. 410, 31 L.R.A.(N.S.) 507, 69 S. E. 857, holding that boy cannot be held to have assumed risks incident to unlawful employment; Johnson v. Mammoth Vein Coal Co. 88 Ark. 247, 19 L.R.A. (N.S.) 650, 114 S. W. 722; Davis Coal Co. v. Polland, 158 Ind. 618, 92 Am. St. Rep. 319, 62 N. E. 492; Western Furniture & Mfg. Co. v. Bloom, 76 Kan. 130, 11 L.R.A.(N.S.) 226, 123 Am. St. Rep. 123, 90 Pac. 821; Swick v. Ætna Portland Cement Co. 147 Mich. 467, 111 N. W. 110; Hill v. Saugested, 53 Or. 186, 22 L.R.A.(N.S.) 637, 98 Pac. 524,—holding that assumption of risk cannot be set up as defense in action for injury caused by failure to comply with statute for protection of employees; Sipes v. Michigan Starch Co. 137 Mich. 262, 100 N. W. 447, holding same, though such noncompliance was known to the servant; Kilpatrick v. Grand Trunk R. Co. 74 Vt. 300, 93 Am. St. Rep. 887, 52 Atl. 531, holding that switchman does not assume risk of injury by using side ladder on car though such ladders are prohibited by statute; The Fullerton, 92 C. C. A. 472, 167 Fed. 10, holding assumption of risk not available as defense to injury caused by sending unseaworthy vessel to sea, contrary to statute; Sans Bois Coal Co. v. Janeway, 22 Okla. 432, 99 Pac. 153; Green v. Western American Co. 30 Wash. 106, 70 Pac. 310,—holding that doctrine of assumption of risk does not apply though servant continues work with knowledge that statute for his protection has not been complied with; Miller v. Union Mill Co. 45 Wash. 204, 88 Pac. 130, holding that repeal of statute will not restore to employer the right to set up assumption of risk as defense to action for an injury occurring prior to its repeal.

Cited in note (6 L.R.A.(N.S.) 981, 988) on assumption of risk of master's breach of statutory duty.

Distinguished in Smith v. George Brown's Sons, 27 Lanc. L. Rev. 174, holding that bright boy of fourteen who has worked for year near obviously dangerous machine assumes risks from unguarded lickerin.

Disapproved in Nottage v. Sawmill Phœnix, 133 Fed. 981; Denver & R. G. R. Co. v. Norgate, 6 L.R.A.(N.S.) 991, 72 C. C. A. 371, 141 Fed. 253, 5 Ann. Cas. 448; Denver & R. G. R. Co. v. Gannon, 40 Colo. 206, 11 L.R.A.(N.S.) 221, 90 Pac. 853,—holding assumption of risk available as defense though injury resulted from breach of duty imposed by statute; Rase v. Minneapolis, St. P. & S. Ste. M. R. Co. 107 Minn. 269, 21 L.R.A.(N.S.) 137, 120 N. W. 360; Osterholm v. Boston & M. Consol. Copper & S. Min. Co. 40 Mont. 524, 107 Pac. 499,—holding that assumption of risk does not rest upon contract and may be set up as defense in action for injury though caused by failure to comply with statute.

— Distinction from contributory negligence.

Cited in Carlson v. Adix, 144 Iowa, 653, 123 N. W. 321, Ann. Cas. 1912 A,

1204; Armstrong v. A. C. Tuxbury Lumber Co. 86 S. C. 126, 68 S. E. 245; Chicago & E. R. Co. v. Ponn, 112 C. C. A. 228, 191 Fed. 687; St. Louis Cordage Co. v. Miller, 63 L.R.A. 558, 61 C. C. A. 486, 126 Fed. 504,—holding that assumption of risk and contributory negligence are separate and distinct defenses; Schlemmer v. Buffalo, R. & P. R. Co. 205 U. S. 19, 51 L. ed. 689, 27 Sup. Ct. Rep. 407 (dissenting opinion); Schlemmer v. Buffalo, R. & P. R. Co. 220 U. S. 596, 55 L. ed. 600, 31 Sup. Ct. Rep. 561; Crookston Lumber Co. v. Boutin, 79 C. C. A. 372, 149 Fed. 684; Leonard Martin Constr. Co. v. Highbarger, 99 C. C. A. 133, 175 Fed. 345; St. Louis, I. M. & S. R. Co. v. York, 92 Ark. 561, 123 S. W. 376, Miller v. White Bronze Monument Co. 141 Iowa, 712, 118 N. W. 518, 18 Ann. Cas. 957; Southern P. R. Co. v. Allen, 48 Tex. Civ. App. 74, 106 Pac. 441,—on distinction between assumption of risk and contributory negligence.

Cited in note (21 L.R.A.(N.S.) 141) on distinction between assumption of risk and contributory negligence.

Interpretation of syllabus opinion in reported cases.

Approved in Erie R. Co. v. Kane, 55 C. C. A. 134, 118 Fed. 228, holding syllabus opinion is to be restrained to facts in case.

Employers' liability as to unblocked frogs and rails.

Cited in footnote to O'Neill v. Chicago, R. I. & P. R. Co. 60 L. R. A. 443, which holds employer not liable for mere error in judgment in furnishing structures and appliances for servants.

Cited in note (16 L.R.A.(N.S.) 715) on liability of railroad for injuries to servant owing to want of blocking at switches.

48 L. R. A. 77, MEUNIER'S SUCCESSION, 52 La. Ann. 79, 26 So. 776.

Validity of bequests.

Followed in McCloskey's Succession, 52 La. Ann. 1125, 27 So. 705, denying validity of discretionary bequests for memorial church window to another and for such charitable purposes in Ireland as trustees might think proper; Hutchinson's Succession, 112 La. 703, 36 So. 639, sustaining bequest to university for benefit of its medical department.

Validity of will.

Cited in May's Succession, 109 La. 996, 34 So. 52, sustaining validity of will reading: "Should my wife die, her portion to go to my daughter; should my daughter die, her share to go to my wife."

Municipality as trustee of charity.

Cited in footnote to Clayton v. Hallett, 59 L. R. A. 407, which sustains city's power to take property in trust for education of poor white male orphans.

Conflict of laws as to capacity of legatee.

Cited in note (2 L.R.A.(N.S.) 456) on conflict of laws as to capacity of legatee.

48 L. R. A. 84, RICE v. DETROIT, Y. & A. A. R. CO. 122 Mich. 677, 81 N. W. 927.

Regulation of fares and rates and benefit thereof.

Cited in Coy v. Detroit, Y. & A. A. R. Co. 125 Mich. 621, 85 N. W. 6, holding that public may claim benefit of carrier's agreement with municipality not to charge over stipulated rate on route; Charles Simons Sons Co. v. Maryland Teleph. & Teleg. Co. 99 Md. 178, 63 L.R.A. 737, 57 Atl. 193, sustaining right of residents of city to enforce for own benefit, conditions as to rates to be charged by telephone company and imposed by ordinance granting use of street;

Ross Twp. v. Michigan United R. Co. 165 Mich. 39, 130 N. W. 358, Ann. Cas. 1912 C, 885, holding that township has right to contract, in franchise to electric railway, for uniform rate over entire line, though only small portion of line is in township; Vining v. Detroit, Y. A. A. & J. R. Co. 133 Mich. 541, 95 N. W. 542, holding street railway operating road under franchise from village bound by the provisions of such franchise as to rates though applicable to points outside the village.

Cited in footnotes to Chicago Union Traction Co. v. Chicago, 59 L. R. A. 631, which sustains city's power to prescribe compensation of horse car companies; Muncie Natural Gas Co. v. Muncie, 60 L. R. A. 822, which sustains city's power to stipulate as to maximum rates for gas.

Cited in note (16 L.R.A.(N.S.) 652) on right of municipality to contract for free transportation or special rates on street cars.

48 L. R. A. 86, FULLER v. LOCOMOTIVE ENGINEERS' MUT. LIFE & ACCI. INS. ASSO. 122 Mich. 548, 80 Am. St. Rep. 598, 81 N. W. 326.

Injuries covered by accident policy.

Cited in footnote to Peterson v. Modern Brotherhood of America, 67 L.R.A. 631, which holds a Pott's fracture not covered by policy providing indemnity in case of breaking of shafts of both bones between knee and ankle joints.

— Loss of member.

Cited in Beber v. Brotherhood of Railroad Trainmen, 75 Neb. 187, 121 Am. St. Rep. 782, 106 N. W. 168, holding it to be for jury to determine whether loss of three fingers and injury to the other and to the thumb constitutes total loss of the hand.

48 L. R. A. 88, STATE v. ZENO, 79 Minn. 80, 79 Am. St. Rep. 422, 81 N. W. 748.

Exercise of police power.

Cited in *Ex parte* Lucas, 160 Mo. 232, 61 S. W. 218, and State v. Sharpless, 31 Wash. 196, 96 Am. St. Rep. 893, 71 Pac. 737, sustaining act requiring barbers to procure license and to register before engaging in business; Templar v. State Examiners, 131 Mich. 257, 100 Am. St. Rep. 610, 90 N. W. 1058, 9 Det. L. N. 300, holding statute denying alien's right to barber's license, void; State *ex rel.* Chapel v. Justus, 90 Minn. 475, 97 N. W. 124, declaring void, act requiring journeyman plumbers to submit to examination and obtain certificate of competency; State ex rel. Young v. Standard Oil Co. 111 Minn. 98, 126 N. W. 527, holding valid, act forbidding discriminations in prices for petroleum or by-products; State v. Creamery Package Mfg. Co. 110 Minn. 432, 136 Am. St. Rep. 514, 126 N. W. 126, holding that state may forfeit license of foreign corporation for violation of subsequent law against combinations in restraint of trade; Com. v. Ward, 136 Ky. 154, 123 S. W. 673, holding valid, act requiring persons subsequently engaging in business of barbering in cities of first, second and third class to obtain certificate of registration; Jackson v. State, 55 Tex. Crim. Rep. 562, 117 S. W. 818 (dissenting opinion), on validity of act levying tax on occupation of barbering.

Cited in footnote to State v. Hyman, 64 L. R. A. 637, which holds prohibition against use of room in tenement or dwelling house for manufacture of clothing, except by immediate member of family, within police power.

Cited in note (40 L.R.A.(N.S.) 629) on restrictions on right to practise trade of barber.

48 L. R. A. 90, ERTZ v. PRODUCE EXCHANGE, 79 Minn. 140, 79 Am. St. Rep. 433, 81 N. W. 737.

Later appeal in 82 Minn. 177, 54 L.R.A. 827, 83 Am. St. Rep. 419, 84 N. W. 743.

Boycott for conspiracy to injure business.

Cited in State ex rel. Durner v. Huegin, 110 Wis. 259, 62 L.R.A. 745, 85 N. W. 1046, 15 Am. Crim. Rep. 332, holding actionable, agreement between publishers to compel another to reduce advertising rates or lose customers; Gray v. Building Trades Council, 91 Minn. 180, 63 L.R.A. 758, 103 Am. St. Rep. 477, 97 N. W. 663, 1 Ann. Cas. 172, authorizing injunction against striker's acts, amounting to boycott of electrical manufacturers; State v. H. C. Akeley Lumber Co. 107 Minn. 545, 23 L.R.A.(N.S.) 1260, 121 N. W. 395, holding that board of trade is not conspiracy, or illegal combination; Baldwin v. Escanaba Liquor Dealers' Asso. 165 Mich. 111, 130 N. W. 214, holding that action of liquor dealers association in inducing customers of newspaper to withdraw their patronage constitutes actionable conspiracy; Lohse Patent Door Co. v. Fuelle, 215 Mo. 448, 22 L.R.A.(N.S.) 617, 128 Am. St. Rep. 492, 114 S. W. 997, holding a boycott carried on by a carpenters' and joiners' union for the purpose of intimidating contractors from purchasing from plaintiff's mill by prohibiting its members from working on buildings using plaintiff's materials is an unlawful combination to injure plaintiff; Barnes v. Chicago Typographical Union No. 16, 232 Ill. 437, 14 L.R.A.(N.S.) 1024, 83 N. E. 940, 13 Ann. Cas. 54, holding a combination between a labor union and its members to persuade and intimidate and threaten employees of plaintiff in order to compel plaintiff to accede to the demands of the union is unlawful; Evenson v. Spaulding, 9 L.R.A.(N.S.) 909, 82 C. C. A. 263, 150 Fed. 522, holding an organization existing for the purpose of competing with peddlers, where the methods was to interfere and prevent sales by plaintiff's agents by means of interruptions and false statements and intimidation of plaintiff's agents was an unlawful combination; Gray v. Building Trades Council, 91 Minn. 181, 63 L.R.A. 758, 103 Am. St. Rep. 477, 97 N. W. 663, 1 Ann. Cas. 172, considering what is necessary to constitute a boycott.

Cited in footnote to Brown v. Jacobs Pharmacy Co. 57 L. R. A. 548, which sustains right to injunction against combination of merchants to prevent sales to other dealer unless he sells at fixed prices.

Cited in notes (22 L.R.A.(N.S.) 1224) on liability, in absence of element of conspiracy, for driving away another's customers; (33 L.R.A.(N.S.) 1037) on lawfulness of boycott for other than labor union.

Distinguished in Gladish v. Kansas City Live Stock Exch. 113 Mo. App. 737, 89 S. W. 77, holding a rule of a stock exchange providing that on the expulsion of a member guilty of commercial dishonesty, the members are forbidden to have dealings with him does not constitute an actionable boycott.

Liability of members dealing with nonmembers.

Cited in footnotes to Martell v. White, 64 L. R. A. 260, which holds action maintainable on behalf of quarry owner against members of association to which he does not belong, enforcing by-law imposing fine on members dealing with nonmembers; Downs v. Bennett, 55 L. R. A. 560, which denies right of one only remotely affected, to injunction against fining or expelling member for violation of by-law prohibiting members dealing with nonmembers, or with those dealing with such nonmembers.

Effect of bad motive.

Cited in Huskie v. Griffin, 75 N. H. 348, 27 L.R.A.(N.S.) 969, 74 Atl. 595.

holding that one protesting against employment of another for sole purpose of injuring him is liable for damages; Tuttle v. Buck, 107 Minn. 148, 22 L.R.A. (N.S.) 599, 131 Am. St. Rep. 446, 119 N. W. 946, holding that complaint that banker maliciously established barber shop for sole purpose of injuring plaintiff states cause of action.

Cited in note (62 L.R.A. 678, 703) on effect of bad motive to make actionable what would otherwise not be.

48 L. R. A. 92, STATE v. COWDERY, 79 Minn. 94, 81 N. W. 750.

Effect of storage receipts.

Cited in Dolliff v. Robbins, 83 Minn. 501, 85 Am. St. Rep. 466, 86 N. W. 772, holding cause of action for conversion of wheat placed in warehouse, transferred with warehouseman's tickets; Dolliff v. Robbins, 83 Minn. 501, 85 Am. St. Rep. 466, 86 N. W. 772, holding the sale indorsement and transfer of storage tickets issued by a public warehouseman operated as a transfer and assignment of all title to the grain.

Cited in footnote to Anderson v. Portland Flouring Mills Co. 50 L. R. A. 235, which holds parol evidence of contract under which grain delivered admissible, though negotiable warehouse receipts given therefor.

Definition of grain.

Cited in Coen v. Denver Twp. Mut. F. Ins. Co. 155 Ill. App. 336, holding that question whether red-top seed is grain is question for jury.

What constitutes embezzlement.

Cited in note (87 Am. St. Rep. 40) on refusal to pay money or surrender property as conversion amounting to embezzlement.

48 L. R. A. 95, HODGES v. CAUSEY, 77 Miss. 353, 78 Am. St. Rep. 525, 26 So. 945.

Right to kill dogs.

Cited in Miller v. State, 5 Ga. App. 465, 63 S. E. 571, holding person killing a dog which habitually kills or injures sheep not guilty of cruelty to animals.

Cited in footnote to Fox v. Mohawk & H. River Humane Soc. 51 L. R. A. 681, which sustains summary killing or appropriation of dog by humane society without notice to owner.

Cited in note (19 L.R.A.(N.S.) 836) on right to kill dogs.

Liability for injury to trespasser.

Cited in note (25 Eng. Rul. Cas. 114) on liability for injury to trespasser by dangerous instrumentalities.

48 L. R. A. 96, FORD v. MT. TOM SULPHITE PULP CO. 172 Mass. 544, 52 N. E. 1065.

Employer's liability for dangerous conditions or revolving machinery.

Followed in Demers v. Marshall, 172 Mass. 553, 178 Mass. 12, 52 N. E. 1066, denying employer's liability for injury to eighteen-year-old apprentice caught by projecting set screw while oiling revolving shaft; Archibald v. Cygolf Shoe Co. 186 Mass. 213, 71 N. E. 315, holding employer not liable for injury to experienced employee caused by set screw, even though the use of set screws has been generally discontinued.

Cited in Hoard v. Blackstone Mfg. Co. 177 Mass. 72, 58 N. E. 180, denying employer's liability for injury from visible depression in floor, of which warning not given; Lemoine v. Aldrich, 177 Mass. 91, 58 N. E. 178, denying employer's lia-

bility for injury from catching employee's appliance invisible revolving shafting over doorway; Robinska v. Mills, 174 Mass. 433, 75 Am. St. Rep. 364, 54 N. E. 873, denying employer's liability for injury from attempt to clean dangerous machine with fingers after being told to clean with brush; Muenchow v. Theo. Zschetzsche & Son Co. 113 Wis. 14, 88 N. W. 909, denying master's liability to workman of mature years and experience, who continues working near rapidly revolving, unguarded shaft; St. Louis Cordage Co. v. Miller, 63 L. R. A. 559, 61 C. C. A. 488, 126 Fed. 506, denying right to recover for injury caused by slipping of fingers into mashing cogs of gearing, where defect of exposed gearing is obvious and danger apparent; Goulding v. Eastern Bridge & Structural Co. 210 Mass. 54, 96 N. E. 71, holding that oiler cannot recover for injury from his clothing catching on revolving shaft, where danger is obvious; Mutter v. Lawrence Mfg. Co. 195 Mass. 519, 81 N. E. 263, denying employer's liability for injury to experienced employee caused by set screw of which he had knowledge; Perkins v. Oxford Paper Co. 104 Me. 120, 71 Atl. 476, denying employer's liability for injury to engineer caused by his being struck by hooks in belt under which he attempted to pass; Podvin v. Bepperell Mfg. Co. 104 Me. 565, 129 Am. St. Rep. 411, 72 Atl. 618, denying employer's liability for injury to experienced spinning machine operator caused by her hair catching in set screw on machine shaft: Dillon v. National Coal Tar Co. 181 N. Y. 221, 73 N. E. 978, holding employer not liable to experienced steamfitter injured by contact with revolving shaft, though he did not warn him of the danger.

Cited in footnote to McLaine v. Head & D. Company, 58 L. R. A. 462, which denies master's duty to warn workman in trench before dumping dirt in.

Cited in note (57 L. R. A. 834) on statutory liability of employers for defects in condition of their plant.

Use of set-screws as negligence.

Cited in Aurora Boiler Works v. Colligan, 115 Ill. App. 530, holding use of set screws not negligence per se; Columbia Box & Lumber Co. v. Drown, 84 C. C. A. 272, 156 Fed. 462, holding question whether maintaining unguarded set screw is negligence to be for jury.

Evidence as to use of machinery.

Cited in Shaw v. Woodland Shingle Co. 61 Wash. 60, 111 Pac. 1070, holding admissible evidence that similar mills had found guard on similar saws impracticable; Dolan v. Boott Cotton Mills, 185 Mass. 579, 70 N. E. 1025, holding it to be within discretion of trial judge to exclude evidence as to use of similar machinery in other places.

48 L. R. A. 99, STATE v. WELLS, 69 N. H. 424, 45 Atl. 143.

Who is required to procure peddler's license.

Cited in Wausau v. Heideman, 119 Wis. 247, 96 N. W. 549, holding traveling agent for foreign dealer, who merely solicits orders by sample, to be filled by mail or express, not within provisions of statute requiring license; Eaton v. People, 46 Colo. 363, 104 Pac. 407, holding that person soliciting orders for resident merchant is not a peddler.

Cited in note (129 Am. St. Rep. 277) on constitutional limitations on power to impose license or occupation taxes on peddler.

48 L. R. A. 100, WEBSTER v. SUGHROW, 69 N. H. 380, 45 Atl. 139.

Charitable gifts.

Cited in Haynes v. Carr, 70 N. H. 483, 49 Atl. 638, sustaining gift for benefit of destitute of state, and for charitable educational uses; Rollins v. Merrill,

70 N. H. 437, 48 Atl. 1088, holding legacy for care of cemetery lot, for charitable use; Haynes v. Carr, 70 N. H. 479, 49 Atl. 638, holding charitable gift not invalidated because of several parts to be administered together, income to be divided in trustee's discretion; Carter v. Whitcomb, 74 N. H. 487, 17 L.R.A.(N.S.) 738, 69 Atl. 779, holding legacies to church societies, to home for aged women, and to day nursery to be for charitable uses; Kavanaugh's Will, 143 Wis. 97, 28 L.R.A. (N.S.) 472, 126 N. W. 672, holding bequest for masses valid.

Cited in note (1 Brit. Rul. Cas. 940) on testamentary provision for monument or care of tomb, etc.

48 L. R. A. 102, STATE v. KEAN, 69 N. H. 122, 45 Atl. 256.

Nuisance and its abatement.

Cited in Nutter v. Pearl, 71 N. H. 248, 51 Atl. 897, holding highway obstruction constituting statutory nuisance not necessarily actual nuisance; First Nat. Bank v. Tyson, 144 Ala. 466, 39 So. 560, holding that columns in front of building extending two feet into the street constitute a nuisance; Perry v. Castner, 124 Iowa, 390, 66 L.R.A. 162, 100 N. W. 84, 2 Ann. Cas. 363, on encroachment upon street as being a nuisance.

Cited in footnote to First Nat. Bank v. Tyson, 59 L. R. A. 399, which sustains right of injunction against pillars in street in front of adjoining lot, obstructing light and air from street.

48 L. R. A. 106, DETTMERING v. ENGLISH, 64 N. J. L. 16, 44 Atl. 855.

Liability for fall of walls.

Cited in footnotes to Lauer v. Palms, 58 L. R. A. 67, which holds owner liable for injury by fall of walls left standing by fire; Ainsworth v. Lakin, 57 L. R. A. 132, which denies obligation of owner to remove or protect walls left standing after fire until reasonable time to investigate.

Duty of owner as to safety of premises.

Cited in Sommer v. Public Service Corp. 79 N. J. L. 351, 75 Atl. 892, holding that owner owes workman duty to exercise ordinary care to render premises reasonably safe for work.

48 L. R. A. 107, BUFFALO GERMAN INS. CO. v. THIRD NAT. BANK, 162 N. Y. 163, 56 N. E. 521.

Followed without discussion on later appeal in 171 N. Y. 670, 64 N. E. 1119.

Ownership of pledged stock.

Cited in Pray v. Todd, 71 App. Div. 394, 75 N. Y. Supp. 947, holding pledgees of stock holding legal title for purpose of sale on default not absolute owners upon surrender of stock after default, until new stock reissued in their name.

Lien of corporation on stock.

Cited in Lyman v. State Bank, 81 App. Div. 372, 80 N. Y. Supp. 901, holding bank's lien on stock for indebtedness not enforceable against innocent purchaser; Bridges v. National Bank, 185 N. Y. 150, 77 N. E. 1005, 7 Ann. Cas. 285, holding that national bank has no equitable lien upon its shares of stock for debt due it from a stockholder.

— Validity of by-law as to.

Cited in Corydon Deposit Bank v. McClure, 141 Ky. 483, 133 S. W. 201, holding bank by-law as to lien on stock inconsistent with statute prohibiting banks from taking their own stock as security.

Setting aside pledged property as delivery.

Cited in note (25 L.R.A.(N.S.) 527) on setting aside property retained on

premises, or under control of pledgor or mortgager os a delivery or change of possession.

48 L. R. A. 113, PEOPLE *ex rel.* CISCO v. QUEENS, 161 N. Y. 598, 56 N. E. 81.

Separate schools.

Cited in Reynolds v. Topeka Bd. of Edu. 66 Kan. 683, 72 Pac. 274, upholding validity of statute providing separate schools for white and for colored children respectively; Wong Him v. Callahan, 119 Fed. 382, upholding validity of statute providing separate schools for children of Mongolian descent, where such schools as good as others; Berea College v. Com. 123 Ky. 220, 124 Am. St. Rep. 344, 94 S. W. 623, 13 Ann. Cas. 337, holding valid act prohibiting white and colored children from attending the same school.

Cited in footnote to People *ex rel.* Bibb v. Alton, 56 L. R. A. 95, which denies right of city to send colored children out of district to separate school established for them.

Civil rights.

Cited in Hammer v. State, 173 Ind. 203, 24 L.R.A.(N.S.) 798, 140 Am. St. Rep. 248, 89 N. E. 850, 21 Ann. Cas. 1034, holding valid act prohibiting the wearing of badges of secret societies by others than members thereof.

48 L. R. A. 115, TRIMBLE v. NEW YORK C. & H. R. R. CO. 162 N. Y. 84, 56 N. E. 532.

Waiver of right to go to jury.

Cited in Sweetland v. Buell, 164 N. Y. 548, 79 Am. St. Rep. 676, 58 N. E. 663, holding that party waives right to go to jury by standing on motion for direction of verdict and exceptions for its denial, without requesting submission of any facts; Cody v. New York, 71 App. Div. 60, 75 N. Y. Supp. 648, and Deeley v. Heintz, 169 N. Y. 133, 62 N. E. 158, holding that motion to dismiss, without more, submits every question involved for determination by court; Kinner v. Whipple, 128 App. Div. 739, 103 N. Y. Supp. 337, holding right to jury waived where both parties ask for directed verdict without requesting that any issue be submitted to the jury; Hamrah v. N. N. Maloof & Co. 127 App. Div. 333, 111 N. Y. Supp. 509, holding same where one party asked for directed verdict and the other for a nonsuit; German-American Bank v. Cunningham, 97 App. Div. 250, 89 N. Y. Supp. 836, holding jury not waived where party whose motion for directed verdict is denied asks to go to the jury upon certain issues.

Matters reviewable on appeal.

Cited in Farnum v. Carr, 69 App. Div. 495, 74 N. Y. Supp. 1111, denying right, for first time on appeal, to object to failure to submit certain question to jury, when both parties move for judgment and plaintiff objects to dismissal of complaint, but makes no request for submission; Smith v. Coe, 170 N. Y. 168, 63 N. E. 57, holding it doubtful whether any question of law was presented for review when defendant's exceptions were to refusal to dismiss complaint and to dismissal of counterclaims, without request to go to jury.

Agent's apparent authority.

Cited in Lowenstein v. Lombard, 164 N. Y. 330, 58 N. E. 44, holding that agent's authority to quote freight rates includes customary provision as to insurance against loss.

Carrier's liability for loss of goods.

Cited in Nathan v. Woolverton, 69 Misc. 428, 127 N. Y. Supp. 442, holding that passenger cannot recover for loss of valuable merchandise in trunk, where

he checked it without notice to carrier that it contained anything but personal baggage; Bergstrom v. Chicago, R. I. & P. R. Co. 134 Iowa, 226, 10 L.R.A.(N.S.) 1122, 111 N. W. 818, 13 Ann. Cas. 239, holding carrier liable for articles checked as baggage where baggageman had notice of their character.

Cited in footnote to Illinois C. R. Co. v. Matthews, 60 L. R. A. 846, which holds carrier liable for loss of or damage to samples in possession of traveling salesman, checked as baggage.

Cited in notes (4 L.R.A.(N.S.) 1036) on liability of carrier for loss of drummer's baggage; (10 L.R.A.(N.S.) 1120) on act of baggageman in receiving articles as baggage as binding on carrier; (99 Am. St. Rep. 355, 356) on liability for loss of baggage.

— Sample cases.

Cited in Saleeby v. Central R. Co. 99 App. Div. 166, 90 N. Y. Supp. 1042, holding carrier liable for loss of sample case checked as baggage where baggage man had notice of its contents at time it was checked; McKibbin v. Wisconsin C. R. Co. 100 Minn. 272, 8 L.R.A.(N.S.) 490, 117 Am. St. Rep. 689, 110 N. W. 964, holding same and that such notice may be inferred from circumstances; Fleischman v. Southern R. Co. 76 S. C. 240, 9 L.R.A.(N.S.) 520, 56 S. E. 974, holding carrier receiving sample trunks with notice of their contents liable therefor the same as for other baggage.

Practice as to direction of verdict.

Cited in Strodl v. Farish-Stafford Co. 67 Misc. 404, 122 N. Y. Supp. 609, holding that proper practice, on dismissal of complaint, on merits, in action at law before jury, is direction of verdict for defendant.

48 L. R. A. 122, O'BRIEN v. EAST RIVER BRIDGE CO. 161 N. Y. 539, 56 N. E. 74.

Order for reversal.

Cited in Buffalo & L. Land Co. v. Bellevue Land & Improv. Co. 165 N. Y. 253, 51 L. R. A. 954, 59 N. E. 5, holding omission of statement by appellate division that order for reversal is upon facts, immaterial where facts undisputed; People *ex rel.* Manhattan R. Co. v. Barker, 165 N. Y. 320, 59 N. E. 151, holding form of order of reversal not material where facts appear from findings in record, without dispute; Yeoman v. McClenahan, 190 N. Y. 123, 82 N. E. 1086, holding that statement in order that it was made upon the facts, raises no question of fact, unless such question appears upon the record.

Question of law upon uncontradicted facts.

Cited in Jerome v. Queen City Cycle Co. 163 N. Y. 357, 57 N. E. 485, holding that uncontradicted facts, with logical deductions all pointing same way, present question of law for court.

Preference of creditors.

Followed in Creteau v. Foote & T. Glass Co. 54 App. Div. 171, 66 N. Y. Supp. 370, holding general assignment for creditors not within statute against preferences by insolvent.

Cited in James Clark Co. v. Colton, 91 Md. 236, 49 L. R. A. 713, footnote p. 698, 46 Atl. 386 (dissenting opinion), majority holding void, payment by insolvent bank of check of company in which bank president chief stockholder, and payment of note on which directors are indorsers; Joseph v. Raff, 82 App. Div. 50, 81 N. Y. Supp. 546, sustaining validity of corporate agreement to purchase president's stock and secure arrears of salary, in order to induce him to resign; Davenport v. National Bank, 127 App. Div. 394, 112 N. Y. Supp. 291, on validity

of payment of checks through clearing house, by insolvent bank, by which preference is given.

Cited in note (13 L.R.A.(N.S.) 187) on liability of one to whom insolvent bank has paid check.

48 L. R. A. 126, *Re* HOYT, 160 N. Y. 607, 55 N. E. 282.

Deductions from income of life tenant.

Followed in *Re* Johnson, 57 App. Div. 502, 67 N. Y. Supp. 1004, denying trustee's power to reserve income from fund to compensate for diminution of premium paid for bonds; *Re* Chapman, 32 Misc. 192, 66 N. Y. Supp. 235, holding income of widow not to be decreased by sinking fund for depreciation of property, in which fund is invested under testator's authorization; Re Hoyt, 116 App. Div. 220, 101 N. Y. Supp. 557, holding that accumulations of income, intended wholly for benefit of daughter which are in hands of trustees at time of her death, passes to her heirs.

Cited in Lynde v. Lynde, 113 App. Div. 414, 99 N. Y. Supp. 283; Re Fisk, 45 Misc. 306, 92 N. Y. Supp. 394,—holding that premiums on securities in which trust funds are invested must be paid out of the principal where the entire income is intended for the beneficiary; American Secur. & Trust Co. v. Payne, 33 App. D. C. 187, holding that intent of testator governs question whether entire income from trust under will shall be paid to beneficiary.

Cited in note (25 Eng. Rul. Cas. 51) on relative rights of life tenant and remaindermen to chattel which will be consumed in the use.

Distinguished in New York Life Ins. & T. Co. v. Baker, 165 N. Y. 487, 53 L. R. A. 545, footnote p. 544, 59 N. E. 257, requiring reservation from life tenant's income of sinking fund to offset premium on bonds purchased; Re Stevens, 187 N. Y. 475, 12 L.R.A.(N.S.) 816, 80 N. E. 358, 10 Ann. Cas. 511, (Modifying 111 App. Div. 773, 98 N. Y. Supp. 28, which affirmed 46 Misc. 623, 95 N. Y. Supp. 297, holding that where trust funds are invested in securities at a premium, such amount should be deducted from interest as will at maturity of the bonds make good the premium paid.

Res judicata.

Cited in Rudd v. Cornell, 171 N. Y. 130, 63 N. E. 823, holding decree in accounting designating beneficiary under testamentary trust, conclusive in action to determine disposition subsequent to his death; *Re* Haight, 51 App. Div. 317, 64 N. Y. Supp. 1029, holding surrogate's adjudication of validity of condition attached to bequest upon accounting of executors, not binding upon subsequent accounting, where question was not necessarily involved on former accounting; *Re* Hunt, 41 Misc. 75, 83 N. Y. Supp. 652, holding surrogate's decree as to matters not litigated on accounting not *res judicata* in subsequent proceedings; *Re* Marshall, 43 Misc. 245, 88 N. Y. Supp. 550, holding decree of former accounting charging to principal of fund expense of maintaining foreclosed property does not estop beneficiaries from insisting that part of proceeds from sale of such property belong to income; *Re* Elting, 93 App. Div. 518, 87 N. Y. Supp. 833, holding decree on intermediate accounting final on question whether certain dividends should be credited to income or principal; Re Bannin, 142 App. Div. 442, 127 N. Y. Supp. 92, holding that decree approving testamentary trustees' accounts is not res judicata so as to preclude court from disapproving continuance of investments; Kirk v. McCann, 117 App. Div. 59, 101 N. Y. Supp. 1093; Re Hurlbut, 51 Misc. 266, 100 N. Y. Supp. 1098,—holding decree of surrogate not conclusive as fixing the law controlling future administration of the estate; Re O'Reilly, 59 Misc. 143, 112 N. Y. Supp. 208, holding that construction of will is conclusive

as to transaction for which made, but is not a bar to construction for purpose of disposition of funds subsequently coming into hands of trustee.

48 L. R. A. 130, MARTIN v. STOVALL, 103 Tenn. 1, 52 S. W. 296.

Probate of will.

Annotation cited in Dibble v. Winter, 247 Ill. 252, 93 N. E. 145, holding that probate of will in foreign jurisdiction is conclusive as to capacity of testator and validity of will, but, if will affects realty, probate is conclusive only as to validity of will where probated.

Cited in footnotes to Newcomb v. Newcomb, 51 L. R. A. 419, which holds probate of will in one country on estate located therein of citizen dying in another country, binding on courts of latter country; Wahl v. Franz, 49 L. R. A. 62, which holds proceeding to probate will not removable to Federal court.

Cited in notes (113 Am. St. Rep. 215) on probate of foreign wills; (115 Am. St. Rep. 518) on conclusiveness of foreign probate of will.

Conflict of laws as to wills.

Cited in note (2 L.R.A.(N.S.) 413) on conflict of laws as to character of property as personal or real.

48 L. R. A. 153, *Re* YOUNG, 36 Or. 247, 78 Am. St. Rep. 772, 59 Pac. 707.

Inducing seamen to desert as offense.

Cited in footnote to Handel v. Chaplin, 51 L. R. A. 720, which upholds state's power to make inducing or aiding of seamen to desert from foreign vessel an offense.

Cited in note (78 Am. St. Rep. 259) on power of legislature to declare it criminal to persuade seamen to desert.

48 L. R. A. 155, ECKER v. LINDSKOG, 12 S. D. 428, 81 N. W. 905.

Who is "head of family."

Cited in Ness v. Jones, 10 N. D. 594, 88 Am. St. Rep. 755, 88 N. W. 706, denying that wife tending farm and supporting family thereby can claim exemption as head of family upon husband's insolvency in outside business.

48 L. R. A. 157, WATERHOUSE v. JOSEPH SCHLITZ BREWING CO. 12 S. D. 397, 81 N. W. 725.

Reaffirmed on second appeal, 16 S. D. 597, 94 N. W. 587.

Liability for falling walls.

Cited in Chenall v. Palmer Brick Co. 117 Ga. 110, 43 S. E. 443, holding it error to direct verdict in favor of master where servant was injured by fall of brick arch, and there was insufficient evidence to rebut presumption of negligence in its construction.

Cited in footnotes to Lauer v. Palms, 58 L. R. A. 67, which holds owner liable for injury by fall of walls left standing by fire; Ainsworth v. Lakin, 57 L. R. A. 132, which denies obligation of owner to remove or protect walls left standing after fire until reasonable time to investigate.

Liability of landlord for injury to third person.

Cited in footnotes to Barrett v. Lake Ontario Beach Improv. Co. 61 L. R. A. 829, which sustains owner's liability for insufficiency of railing of leased toboggan slide; Gardner v. Rhodes, 57 L. R. A. 749, which denies landlord's liability for injury to person from fall on ice, which tenant had permitted to accumulate on sidewalk; Langenbaugh v. Anderson, 62 L. R. A. 948, which denies liability of

lessor of lot for production of oil or gas therefrom, for injury to adjoining owner's property through escape of oil by lessee's negligence.

Cited in note (92 Am. St. Rep. 527, 530, 537) on liability to third persons of lessors of real or personal property.

General allegations of negligence.

Cited in note (59 L. R. A. 271) on sufficiency of general allegations of negligence as to unsafe premises or structures.

Presumption of negligence.

Cited in note (113 Am. St. Rep. 1001) on presumption of negligence from happening of accident causing personal injuries.

48 L. R. A. 160, DOTY v. CHATTANOOGA UNION R. CO. 103 Tenn. 564, 53 S. W. 944.

What agreements run with land.

Cited in Cicalla v. Miller, 105 Tenn. 264, 58 S. W. 210, holding that executor's agreement to pay for improvements remaining at termination of lease upon devisee's marriage or majority, does not run with the land; Smith v. Ingram, 130 N. C. 114, 61 L. R. A. 884, 40 S. E. 984 (dissenting opinion), majority denying that assignee of grantee of realty can rely on covenant of warranty not including assigns.

Cited in notes (14 L.R.A.(N.S.) 187) on necessity of word "assigns" to make covenant as to thing not in esse run with land; (82 Am. St. Rep. 690) on what covenants run with the land.

48 L. R. A. 167, LEEPER v. STATE, 103 Tenn. 500, 53 S. W. 962.

Contract for text books.

Cited in Rand, M. & Co. v. Hartranft, 29 Wash. 598, 70 Pac. 77, sustaining statute empowering boards of education to contract with publishers for certain text books during specified period; Dickinson v. Cunningham, 140 Ala. 540, 37 So. 345, holding valid act providing for uniform text books, and contract entered into pursuant thereto; American Book Co. v. Shelton, 117 Tenn. 752, 100 S. W. 725, on power of state to contract for books to be used in its schools.

Police powers.

Cited in Knoxville v. Knoxville Water Co. 107 Tenn. 686, 61 L. R. A. 898, 64 S. W. 1075, holding regulation of water works within police power of city; State v. Struble, 19 S. D. 650, 104 N. W. 465, holding valid act creating office of bank examiner and giving him authority to supervise banking business.

Power of legislature.

Cited in Grainger County v. State, 111 Tenn. 286, 80 S. W. 750, on legislative power being supreme except as limited by the constitution.

Delegation of power.

Cited in State ex rel. Davis v. Evans, 122 Tenn. 192, 122 S. W. 81, holding valid, school law requiring superintendent to obtain certificate of qualification from board of education as condition to eligibility; Arnett v. State, 168 Ind. 185, 8 L.R.A.(N.S.) 1195, 80 N. E. 153, holding that the legislature may confer upon the governor the power to fix the salaries of certain officers; Elwell v. Comstock, 99 Minn. 269, 7 L.R.A.(N.S.) 626, 109 N. W. 698, 9 Ann. Cas. 270, holding valid act giving voting machine commission power to pass upon efficiency of voting machine.

Priority of claims of public.

Cited in United States Fidelity & G. Co. v. Rainey, 120 Tenn. 405, 113 S.

W. 397, holding that county has no priority over other creditors of defaulting public officer in collecting claims on his official bond.

Monopoly.

Cited in Dreyfus v. Boone, 88 Ark. 359, 114 S. W. 718, holding valid, ordinance granting exclusive privilege of removing deposits from unserved privies; State v. Duluth Bd. of Trade, 107 Minn. 527, 23 L.R.A.(N.S.) 1272, 121 N. W. 395, holding that the defendant board of trade was not a monopoly under the state statute, nor a conspiracy in restraint of trade, where it provided for the charging of uniform commissions by its members.

48 L. R. A. 175, ILLINOIS C. R. CO. v. HARRIS, 184 Ill. 57, 56 N. E. 316.

Duty to furnish safe cars.

Cited in footnotes to Chicago, B. & Q. R. Co. v. Williams, 55 L. R. A. 289, which holds carrier liable for failure properly to provide for live stock knowingly taken without caretaker; Lake Erie & W. R. Co. v. Holland, 63 L. R. A. 948, which denies carrier's power to relieve itself from duty to furnish safe cars by exacting contract requiring shipper to inspect and select car.

Cited in note (130 Am. St. Rep. 448) on duty of carrier to furnish safe and suitable cars for live stock.

Directed verdicts.

Cited in Illinois C. R. Co. v. Heisner, 192 Ill. 573, 61 N. E. 656; Ackerstadt v. Chicago City R. Co. 194 Ill. 618, 62 N. E. 884; Kinnare v. Klein, 88 Ill. App. 309,—holding that appeal from directed verdict for defendant raises question whether the evidence, with proper inferences, fairly tends to support cause in declaration; Central Mut. L. Ins. Asso. v. Anderson, 195 Ill. 137, 62 N. E. 838, and Salem v. Webster, 95 Ill. App. 122, denying right to directed verdict for defendant, where competent evidence fairly supports case; Treyer v. Aurora, E. & C. R. Co. 123 Ill. App. 426; Yunkes v. Latrobe Steel & Coupler Co. 131 Ill. App. 294,—holding that upon appeal from directed verdict for defendant question is whether the evidence, with all proper inferences therefrom, fairly tends to support plaintiff's claim.

Liability of carrier for damage to live stock by disease.

Cited in notes (26 L.R.A.(N.S.) 713; 130 Am. St. Rep. 452) on liability of carrier for damage to live stock by contagious disease contracted during transit.

48 L. R. A. 177, SEATTLE NAT. BANK v. JONES, 13 Wash. 281, 43 Pac. 331.

Inconsistent defenses.

Cited in Allen v. Olmpia Light & P. Co. 13 Wash. 310, 43 Pac. 55, holding party not put upon proof by plea of want of consideration in answer and admission of consideration in affirmative defense; Lamberton v. Shannon, 13 Wash. 406, 43 Pac. 336, holding effect of general denial of promise as principal destroyed by affirmative defense of indorsement as surety only; Pugh v. Oregon Improv. Co. 14 Wash. 32, 44 Pac. 547, denying inconsistency of denial of negligence and further allegation that, if any existed, there was also contributory negligence; Davis v. Seattle Nat. Bank, 19 Wash. 72, 52 Pac. 526, holding that defendant may both deny liability and plead set-off; Irwin v. Holbrook, 32 Wash. 352, 73 Pac. 360, holding plea of statute of limitations and denial of action growing out of trust relation and receipt of money not inconsistent defenses; Johnson v. Butte & S. Copper Co. 41 Mont. 166, — L.R.A.(N.S.) —, 108 Pac. 1057, holding that defendant may plead inconsistent defenses, provided one does not render other false; Hart-Parr Co. v. Keeth, 62 Wash. 467, 114 Pac. 169, Ann. Cas. 1912D, 243, holding that defense that notes for price of engine were conditionally delivered and

counterclaim for insufficiency of power of engine are inconsistent; Gibson v. Feeney, 66 Wash. 534, 120 Pac. 97, holding that denial of execution of note and defense of fraud in securing signature are not inconsistent; Gerber v. Gerber, 52 Wash. 254, 100 Pac. 735, holding that denial that there was a stated account, and allegation that if there was it was obtained by fraud are inconsistent; Bergman v. London & L. F. Ins. Co. 34 Wash. 401, 75 Pac. 989, holding general denial of settlement under insurance policy not inconsistent with defense that that amount was not received in settlement but on account; Loveland v. Jenkins-Boys Co. 49 Wash. 373, 95 Pac. 490, holding denial of execution of contract and allegation that signature thereto if any was obtained by fraud not inconsistent; Irwin v. Buffalo Pitts Co. 39 Wash. 351, 81 Pac. 849, holding, in action to recover commission for sales under contract, partial defense under provisions of contract not inconsistent with defense of settlement and that sale was under another contract; Fetzer v. Williams, 80 Kan. 557, 103 Pac. 77, on inconsistent defenses and citing specially annotation on this point.

Distinguished in Corbitt v. Harrington, 14 Wash. 199, 44 Pac. 132, holding denial of sufficient knowledge to form belief, and affirmative defense that, if true, no cause is established, not inconsistent; Spencer v. Terrel, 17 Wash. 524, 50 Pac. 468, denying inconsistency of defenses where same property alleged to be both community and separate, where pleading of community property intended throughout; Helmer v. Title Guaranty & Surety Co. 50 Wash. 413, 97 Pac. 451, holding plaintiff not entitled to judgment on pleadings, in action on bond of building contractor where answer was general denial and also an affirmative defense which admitted the execution of the bond.

48 L. R. A. 210, HINDMAN v. FIRST NAT. BANK, 98 Fed. 562.

Bank's liability for fraud.

Followed upon later appeal in 57 L. R. A. 116, footnote p. 108, 50 C. C. A. 631, 112 Fed. 939, holding bank falsely certifying that all of authorized capital of insurance company is on deposit, liable to one purchasing stock in reliance on same.

Cited in footnotes to Tecumseh Nat. Bank v. Chamberlain Bkg. House, 57 L. R. A. 811, which holds false representations by defaulting president as to liability to bank and value of securities already furnished, not binding on bank; Taylor v. Commercial Bank, 62 L. R. A. 783, which denies bank's liability for cashier's fraud in inducing third person to give credit to customer legally indebted to bank by false representations as to his responsibility.

Action by one to whom misrepresentations were not made.

Cited in Chesbrough v. Woodworth, 116 C. C. A. 465, 195 Fed. 880, holding that purchaser of bank stock has right of action under statute making officer authorizing known false report to comptroller liable for damages; Puffer v. Welch, 144 Wis. 513, 129 N. W. 525, Ann. Cas. 1912 A, 1120, holding that assignee of option cannot maintain action for misrepresentations of owner of property to assignor of option.

48 L. R. A. 217, CORBETT v. MATZ, 72 Conn. 610, 45 Atl. 494.

Judgment files.

Cited in Cox v. McClure, 73 Conn. 492, 47 Atl. 757, denying that there should ordinarily be more than one judgment file in a case; Barber v. International Co. 73 Conn. 597, 48 Atl. 758, holding special limited finding not presumed to express all contained in general finding contained in judgment file; Bulkeley's Appeal, 76 Conn. 456, 57 Atl. 112; Sisk v. Meagher, 82 Conn. 377, 73 Atl. 785,—

holding that judgment file is conclusive record of facts stated therein; Nichols v. Wentz, 78 Conn. 438, 62 Atl. 610, holding that recitals of findings made only for purpose of appeal are not binding upon the parties as adjudicated facts.

Limitation of assignments of error to matters of record.

Cited in Cary v. Phœnix Ins. Co. 83 Conn. 697, 78 Atl. 426, holding that only errors which appear on record can properly be assigned.

Object of requirement that facts appear on record.

Cited in Nowsky v. Siedlecki, 83 Conn. 116, 75 Atl. 135, holding that object of requirement that facts appear on record is to present question whether judgment is true voice of law on facts.

48 L. R. A. 220, STOUTENBURGH v. FRAZIER, 16 App. D. C. 229.

Police powers in District of Columbia.

Cited in Moses v. United States, 16 App. D. C. 433, 50 L. R. A. 535, holding congressional police power as to District of Columbia, same as that of state legislatures; Lappin v. District of Columbia, 22 App. D. C. 77, holding act of Congress imposing license taxes of different amounts upon brokers, void.

Use of habeas corpus.

Cited in Ex parte Hollman, 79 S. C. 28, 21 L.R.A.(N.S.) 251, 60 S. E. 19, 14 Ann. Cas. 1105 (dissenting opinion), on testing constitutionality of a law in habeas corpus proceeding.

Cited in footnote to *Ex parte* Miskimins, 49 L. R. A. 831, which authorizes release by habeas corpus of witness punished for refusal to answer incriminating questions.

Cruel and unusual punishments.

Cited in footnote to Territory v. Ketchum, 55 L. R. A. 90, which sustains death penalty for assault on train with intent to commit felony.

Description of offense in statute.

Followed in Czarra v. Medical Supervisors, 25 App. D. C. 451, holding statute providing for revocation of physician's license for "unprofessional or dishonorable conduct" void for uncertainty.

48 L. R. A. 225, ALLAIRE v. ST. LUKE'S HOSPITAL, 184 Ill. 359, 75 Am. St. Rep. 176, 56 N. E. 638.

Liability for injury attending birth of children.

Approved in Gorman v. Budlong, 23 R. I. 175, 55 L. R. A. 121, footnote p. 118, 91 Am. St. Rep. 629, 49 Atl. 704, denying right of action to child for injuries to mother causing its premature birth.

Cited in Kirk v. Middlebrook, 201 Mo. 286, 100 S. W. 450, on right of action for injury to child before birth.

Cited in footnote to Lathrope v. Flood, 57 L. R. A. 215, which denies physician's liability for death of child in action for abandoning mother during confinement.

Cited in note (119 Am. St. Rep. 953) on actions by children en ventre sa mere for injuries.

Distinguished in State ex rel. Niece v. Soale, 36 Ind. App. 77, 74 N. E. 1111, holding saloon keeper causing a person's death by unlawful sale of liquor, liable for loss of support to child born after the death of its father, so caused: Prescott v. Robinson, 74 N. H. 463, 17 L.R.A.(N.S.) 596, 124 Am. St. Rep. 987, 69 Atl. 522, holding that woman negligently injured during pregnancy, may recover for mental distress arising from apprehension that child born to her will be deformed.

48 L. R. A. 230, GUNDLING v. CHICAGO, 176 Ill. 340, 52 N. E. 44.

Affirmed in 177 U. S. 183, 44 L. ed. 725, 20 Sup. Ct. Rep. 633.

Followed without discussion in Breitung v. Chicago, 92 Ill. App. 119.

Scope of general terms in statutes.

Approved in White v. Wagar, 185 Ill. 205, 50 L. R. A. 63, 57 N. E. 56, holding trademarks, labels, caps, corks, cases, bottles, or boxes, not within provision authorizing search warrants for forged bank notes or other forged instruments.

Cited in Salt Lake City v. Howe, 37 Utah, 173, 106 Pac. 705, Ann. Cas. 1912C, 189, holding valid, ordinance to require license for sale of milk; French Silver Dragee Co. v. United States, 103 C. C. A. 316, 179 Fed. 827, holding harmless silver coating not included in "other mineral substances" in pure food act with reference to adulteration of candy; Parker, W. & Co. v. Austin, 156 Mich. 579, 23 L.R.A.(N.S.) 269, 121 N. W. 322, holding that city sealer has no authority to pass upon computing devices on scales, under charter authorizing regulation of weights and measures.

Authority for ordinance.

Cited in Chicago v. Wilkie, 88 Ill. App. 320, holding that ordinance may derive validity from several different grants of authority; Glucose Ref. Co. v. Chicago, 138 Fed. 213, holding that city may pass ordinances declaring what constitutes a nuisance where statute authorizes cities to determine what shall constitute a nuisance; Goodrich v. Busse, 247 Ill. 369, 139 Am. St. Rep. 335, 93 N. E. 292, 20 Ann. Cas. 589; Spiegler v. Chicago, 216 Ill. 126, 74 N. E. 718,—on ordinance as being valid though based on several distinct grants of power in charter.

Right to set up invalidity of ordinance.

Cited in Johnson Exp. Co. v. Chicago, 136 Ill. App. 375, holding that person before the court for violation of ordinance, can not question validity of part of ordinance not involved in the case.

Void delegation of authority.

Cited in footnote to Harmon v. State, 58 L. R. A. 618, which holds void, act making various district examiners exclusive judges as to competency of applicants for license as steam engineers.

Police power.

Cited in Re Jones, 4 Okla. Crim. Rep. 81, 31 L.R.A.(N.S.) 552, 140 Am. St. Rep. 655, 109 Pac. 570, holding that municipality may declare billiard rooms nuisances and forbid them; State ex rel. Stalding v. Aberdeen, 58 Wash. 564, 109 Pac. 379, holding that city may fill in swamps; Chicago v. Dunham Towing & Wrecking Co. 61 Ill. App. 309, holding smoke ordinance valid; Chicago v. Gunning System, 214 Ill. 635, 70 L.R.A. 235, 73 N. E. 1035, 2 Ann. Cas. 892, holding that city has power to regulate bill boards whether upon public or private property; Ringelstein v. Chicago, 128 Ill. App. 485, holding valid ordinance regulating the keeping and feeding of cows within city; Harrison v. People, 124 Ill. App. 525, holding that city may exercise its power, to issue or revoke license for sale of intoxicants, through its mayor.

Cited in note (78 Am. St. Rep. 271) on police power of municipality.

Special or class legislation.

Cited in Withey v. Bloem, 163 Mich. 432, 35 L.R.A.(N.S.) 635, 128 N. W. 913, holding valid, law limiting women's hours of labor, though excepting canning establishments; Chicago v. Schmidinger, 243 Ill. 172, — L.R.A.(N.S.) —, 90 N. E. 369, 17 Ann. Cas. 614, holding ordinance regulating the sale of bread not special legislation; Block v. Chicago, 239 Ill. 262, 130 Am. St. Rep. 219, 87

N. E. 1011, holding same as to ordinance regulating moving picture shows; Chicago v. Bowman Dairy Co. 234 Ill. 300, 17 L.R.A.(N.S.) 687, 123 Am. St. Rep. 100, 84 N. E. 913, 14 Ann. Cas. 700, holding same as to ordinance regulating sale of milk or cream in bottles or glass jars; W. C. Ritchie & Co. v. Wayman, 244 Ill. 522, 27 L.R.A.(N.S.) 999, 91 N. E. 695, holding valid act limiting hours of labor of women in mechanical establishments, factories and laundries.

Cited in note (129 Am. St. Rep. 275) on constitutional limitations on power to impose license or occupation taxes on dealers in tobacco.

Anti-cigarette law.

Cited in Kappes v. Chicago, 119 Ill. App. 440, historically as sustaining the anti-cigarette ordinance.

48 L. R. A. 234, SIMONS v. BOLLINGER, 154 Ind. 83, 56 N. E. 23.

Creation of estates.

Cited in Dodds v. Winslow, 26 Ind. App. 654, 60 N. E. 458, holding tenancy in common created by devise to husband and wife, share and share alike, and, if either should not survive testator, to survivor.

Cited in footnote to Johnston v. Johnston, 61 L. R. A. 166, which holds estate by entirety not created by giving note secured by deed of trust to husband and wife for loan, part of which advanced by each.

48 L. R. A. 236, REDGATE v. ROUSH, 61 Kan. 480, 59 Pac. 1050.

Liability for defamatory words.

Approved in Reynolds v. Plumbers' Material Protective Asso. 30 Misc. 714, 63 N. Y. Supp. 303, holding privileged, notification under by-law for notification to other members of one's default in payment of bill.

Cited in Graham v. State, 7 Ga. App. 407, 66 S. E. 1038, holding privileged charges, made without malice by one member against another member of a lodge for purpose of having investigation, in accordance with rules of order; Coleman v. MacLennan, 78 Kan. 727, 20 L.R.A.(N.S.) 371, 130 Am. St. Rep. 390, 98 Pac. 281, holding privileged newspaper criticism of public officer who is candidate for re-election made without malice, though statements are in fact untrue and paper incidentally reaches beyond election district; Mueller v. Radenbaugh, 79 Kan. 307, 99 Pac. 612, holding communciation to officer relative to a crime and charging a person therewith privileged in absence of malice; Kersting v. White, 107 Mo. App. 280, 80 S. W. 730, holding privileged communication between members of society for moral teaching charging one member with immoral conduct and incidentally including a person not a member; Mertens v. Bee Pub. Co. 5 Neb. (Unof.) 603, 99 N. W. 847, on privilege as not being lost though matter is incidentally brought to others than those for whom intended.

Cited in footnotes to Finley v. Steele, 52 L. R. A. 852, which holds members of school board not guilty of libel in sending request to school commissioner to revoke teacher's certificate; Klos v. Zahorik, 53 L. R. A. 235, which denies liability for properly commenting on action of priest in conducting public functions of calling; Buisson v. Huard, 56 L. R. A. 296, which holds privileged, answers to inquiries by interested persons as to defamatory remarks by others; Mauk v. Brundage, 62 L. R. A. 477, which denies privilege to statements made in preamble to order of board of health regulating conduct of physicians, as to carelessness of physician in treating obstetrical cases.

Cited in notes (3 L.R.A.(N.S.) 697) on privileged occasion; burden of showing good faith and probable cause; (20 L.R.A.(N.S.) 363) on libel and slander;

privilege as affected by extent of publications; (104 Am. St. Rep. 142) on what libelous statements are privileged.

48 L. R. A. 238, HAMILTON v. WILSON, 61 Kan. 511, 59 Pac. 1069.

Uniformity of taxation.

Cited in Teagan Transp. Co. v. Board of Assessors, 139 Mich. 9, 69 L.R.A. 442, 111 Am. St. Rep. 391, 102 N. W. 273, holding that legislature has no power to partially exempt from taxation certain property, nor to tax it at a rate different from other like property; Adams v. Kuykendall, 83 Miss. 586, 35 So. 830, holding unconstitutional attempted exemption of purchase money notes from taxation where other notes were taxed.

Taxation of nonresidents.

Cited in footnote to Allen v. National State Bank, 52 L. R. A. 760, which sustains right of state to tax nonresident mortgagee's interest in land within state.

— Of corporations.

Cited in note (60 L. R. A. 340, 350) on constitutional equality in United States in relation to corporate taxation.

Validity of tax on judgments.

Cited in note (32 L.R.A.(N.S.) 179) on constitutionaality of specific tax upon judgments.

48 L. R. A. 241, ST. LOUIS, K. & S. W. R. CO. v. NYCE, 61 Kan. 394, 59 Pac. 1040.

Railroad's right of way.

Cited in Buckwalter v. Atchison, T. & S. F. R. Co. 64 Kan. 409, 67 Pac. 831, denying ejectment to recover right of way appropriated and improved without objection, although without exercise of eminent domain.

Cited in note (66 L.R.A. 43) on nature of railroad as realty or personalty.

What are trade fixtures.

Cited in Dodge City Water & Light Co. v. Alfalfa Land & Irrig. Co. 64 Kan. 253, 67 Pac. 462, holding mains constituting essential parts of water works system, trade fixtures.

Cited in note (84 Am. St. Rep. 895) on fixtures retaining by agreement the character of personal property.

What passes by deed.

Cited in Van Husen v. Omaha Bridge & Terminal R. Co. 118 Iowa, 381, 92 N. W. 47, holding that roadbed and embankment pass under deed of railroad right of way, where no reservation of them is made and no steps taken within reasonable time to remove them: Omaha Bridge & Terminal R. Co. v. Whitney, 68 Neb. 396, 94 N. W. 513, on roadbed, embankment and riprapping as passing with the land under deed without reservations.

Title to structures placed on land in expectation of title by eminent domain.

Cited in McClarren v. Jefferson School Twp. 169 Ind. 144, 13 L.R.A.(N.S.) 419, 82 N. E. 73, 13 Ann. Cas. 978, holding that value of school house built on land in reliance on defective condemnation should not be included in damage awarded in condemnation proceedings.

48 L. R. A. 251, ATCHISON, T. & S. F. R. CO. v. CAMPBELL, 61 Kan. 439, 78 Am. St. Rep. 328, 59 Pac. 1051.

What constitutes property.

Cited in State *ex rel.* Godard v. Topeka Water Co. 61 Kan. 561, 60 Pac. 337,

holding that rights under ordinance accepted by water company constitute property.

Equal protection of laws.

Cited in McCully v. Chicago Burlington & Q. R. Co. 212 Mo. 10, 110 S. W. 711, holding that where state has fixed maximum rate for stock shipments it cannot subsequently compel carrier to furnish free transportation to shipper; First State Bank v. Shallenberger, 172 Fed. 1003, holding invalid bank deposit guaranty law.

Cited in note (11 L.R.A.(N.S.) 974) on power to require carriers to reduce rates to classes of persons.

48 L. R. A. 254, STATE v. HAGER, 61 Kan. 504, 59 Pac. 1080.

What constitutes jeopardy.

Approved in State v. Ellsworth, 131 N. C. 775, 92 Am. St. Rep. 790, 42 S. E. 699, denying jeopardy by inquiry and verdict upon interlocutory inquiry as to former acquittal.

Cited in United States v. Lee, 123 Fed. 743, holding discharge of jury in criminal case because of disagreement, no bar to second trial; State v. Larimore, 173 Ind. 454, 90 N. E. 898, holding that discharge of jury after ample time spent in consultation and after it is apparent that they cannot agree leaves accused subject to another trial.

Cited in footnotes to State v. Rook, 49 L. R. A. 186, which holds accused not arraigned or pleading guilty, not in jeopardy; *Re* Ascher, 57 L. R. A. 806, which holds accused not put in jeopardy by discharge of jury after trial commenced, because jurors prejudiced in his favor; Dreyer v. People, 58 L. R. A. 869, which holds discharge of jury without consent of accused, because jurors unable to agree, not former jeopardy.

Distinguished in State v. Klaner, 70 Kan. 390, 78 Pac. 802, holding that discharge of jury upon disagreement operated as an acquittal where no judicial determination of necessity for such discharge was made or entered of record.

Prisoner's peremptory challenges.

Cited in footnote to People v. Zeigler, 56 L. R. A. 882, which requires restoration to prisoner of peremptory challenges used on discharge of juror for illness, occurring while jury being impaneled.

48 L. R. A. 257, LOVE v. BLAUW, 61 Kan. 496, 78 Am. St. Rep. 334, 59 Pac. 1059.

What constitutes a will.

Cited in footnote to Ferris v. Neville, 54 L. R. A. 464, which holds sufficient, paper executed as will, and stating that it is good to specified person for specified amount from writer's estate.

Cited in note (89 Am. St. Rep. 496, 497) on what constitutes a testamentary writing.

Construction of instruments conveying title.

Cited in Cross v. Benson, 68 Kan. 508, 64 L. R. A. 566, 75 Pac. 558, holding instrument purporting to convey title in fee with covenants of warranty, with simple reservation of life estate to wife, a deed, and not testamentary in character; Durand v. Higgins, 67 Kan. 122, 72 Pac. 567, holding execution of warranty deed with full covenants, grantee giving back contract allowing grantor full control with power of sale as though deed not executed, not testamentary disposition; Nolan v. Otney, 75 Kan. 314, 9 L.R.A.(N.S.) 319, 89 Pac. 690, holding that warranty deed delivered to custodian to be delivered to grantee

only upon grantor's death vests title at once with enjoyment postponed; Brady v. Fuller, 78 Kan. 452, 96 Pac. 854, holding that reservation of a life estate in deed conveying in fee does not render it testamentary; Lewis v. Curnutt, 130 Iowa, 434, 106 N. W. 914, holding valid deed to take effect upon death of grantor and coupled with another instrument creating a trust in the property.

Cited in footnote to Hunt v. Hunt, 68 L.R.A. 180, which holds present estate vesting at delivery of deed but taking effect in possession on death of grantor and wife conveyed by grant to child in instrument authenticated as a deed and containing words of present grant and covenants of warranty though it provides against taking effect until death of grantors.

Right to partition.

Cited in note (113 Am. St. Rep. 56) on partition of estates in reversion or remainder.

Distinguished in Johnson v. Brown, 74 Kan. 349, 86 Pac. 503, holding that owner in fee of undivided one half of an estate may maintain partition proceedings against two life tenants of the other undivided half; McCullough v. Finley, 69 Kan. 707, 77 Pac. 696, as not applicable to case of partition between owners of the fee.

Collateral attack on judgment.

Distinguished in Clevenger v. Figley, 68 Kan. 708, 75 Pac. 1001, holding judgment of court within its jurisdiction not subject to collateral attack.

48 L. R. A. 261, CHICAGO v. NETCHER, 183 Ill. 104, 75 Am. St. Rep. 93, 55 N. E. 707.

Scope of police powers.

Cited in Noel v. People, 187 Ill. 593, 52 L. R. A. 289, 79 Am. St. Rep. 238, 58 N. E. 616, denying validity of statutes discriminating between pharmacists, as to who shall sell usual domestic remedies, and investing board with arbitrary discretion; Bailey v. People, 190 Ill. 36, 54 L. R. A. 842, footnote p. 839, 83 Am. St. Rep. 116, 60 N. E. 98, holding void, restriction on number which lodging-house keepers may permit to occupy one room; State v. Dalton, 22 R. I. 88, 48 L. R. A. 781, 84 Am. St. Rep. 818, 46 Atl. 234, denying validity of statute prohibiting seller giving purchaser, as part of same transaction, coupon or ticket entitling him to order defined article from third person; Com. v. Sisson, 178 Mass. 581, 60 N. E. 385, sustaining validity of use of trading stamps entitling purchaser to select and receive articles from store of independent corporation saving stamps; Horwich v. Walker-Gordon Laboratory Co. 205 Ill. 505, 98 Am. St. Rep. 254, 68 N. E. 938, holding statute making it a crime to traffic in cans, boxes, bottles, or vessels bearing registered trademark, without owner's consent, void; Speilberger Bros. v. Brandes, 3 Ala. App. 598, 58 So. 75, on validity of act regulating assignment of unearned wages; Marymont v. Nevada State Bkg. Bd. 33 Nev. 333, 32 L.R.A.(N.S.) 479, 111 Pac. 295, holding that state cannot limit transaction of banking business to corporations; Chicago v. Weber, 246 Ill. 310, 34 L.R.A.(N.S.) 308, 92 N. E. 859, 20 Ann. Cas. 359, holding void, ordinance requiring theaters to employ and pay city firemen; People use of State Bd. of Health v. Wilson, 249 Ill. 199, 35 L.R.A.(N.S.) 1077, 94 N. E. 141, holding invalid act requiring itinerant venders of patent medicines to secure license; Landberg v. Chicago, 237 Ill. 116, 21 L.R.A.(N.S.) 834, 127 Am. St. Rep. 319, 86 N. E. 638, holding occupation of collecting and selling manure subject to regulation by city; Toney v. State, 141 Ala. 124, 67 L.R.A. 287, 109 Am. St. Rep. 23, 37 So. 232, 3 Ann. Cas. 319, holding invalid act making violation of labor contract, a misdemeanor; People v. Steele, 231 Ill. 346, 14 L.R.A.

(N.S.) 366, 121 Am. St. Rep. 321, 83 N. E. 236, holding invalid act prohibiting "scalping" in sale of theatre tickets; Massie v. Cessna, 239 Ill. 358, 28 L.R.A. (N.S.) 1111, 130 Am. St. Rep. 234, 88 N. E. 152, holding invalid act regulating the assignment of wages and salaries; First State Bank v. Shallenberger, 172 Fed. 1001, holding invalid bank depositors guaranty fund act.

Cited in footnotes to Bessette v. People, 56 L. R. A. 558, which holds void, requirement that horseshoers practise business for four years, submit to examination, and pay license fee; State *ex rel.* Wyatt v. Ashbrook, 48 L. R. A. 265, which holds void, statute against selling goods of more than one class without separate licenses; Campbellsville v. Odewalt, 60 L. R. A. 723, which holds void, ordinance subjecting to fine, possessor of premises on which liquor furnished in violation of law although without his knowledge or consent; State v. Layton, 62 L. R. A. 164, which sustains statute prohibiting manufacture or sale of baking powder containing alum; Arbuckle v. Blackburn, 65 L.R.A. 864, which upholds statute prohibiting the coloring, coating, or polishing of article intended for food, whereby damage or inferiority is concealed.

Cited in note (78 Am. St. Rep. 238, 271,) on police power.

— Intoxicating liquors.

Cited in Barrett v. Rickard, 85 Neb. 775, 124 N. W. 153, holding valid statute governing the delivery of intoxicating liquors to consignees; Guyer v. Auers, 132 Ill. App. 528, holding that restriction in deed against sale of intoxicating liquors on the premises granted is valid and enforceable; South Shore Country Club v. People, 228 Ill. 86, 12 L.R.A.(N.S.) 526, 119 Am. St. Rep. 417, 81 N. E. 805, 10 Ann. Cas. 383, on sale of intoxicating liquors being subject to regulation though not carried on for profit; Tolliver v. Blizzard, 143 Ky. 776, 34 L.R.A.(N.S.) 894, 137 S. W. 509, holding void, ordinance prohibiting sale of soft drinks.

Cited in note (78 Am. St. Rep. 255) on police power over intoxicating liquors.

— Trading stamps.

Cited in State v. Ramseyer, 73 N. H. 40, 58 Atl. 958, 6 Ann. Cas. 445; Young v. Com. 101 Va. 865, 45 S. E. 327,—holding unconstitutional statute prohibiting the giving of trading stamps; Montgomery v. Kelly, 142 Ala. 558, 70 L.R.A. 211, 110 Am. St. Rep. 43, 38 So. 67, holding invalid ordinance placing special license fee upon merchants giving trading stamps.

Department store's liability for malpractice.

Cited in footnote to Hannon v. Siegel-Cooper Co. 52 L. R. A. 429, which holds department store holding itself out as conducting dental department, estopped to deny responsibility for malpractice of dentist.

Jurisdiction of direct appeal.

Distinguished in Wood v. Chicago, 205 Ill. 72, 68 N. E. 712, holding that supreme court cannot entertain direct appeal in proceedings to enjoin enforcement of ordinance requiring frontage consents for establishment of hospital.

48 L. R. A. 265, STATE *ex rel.* WYATT v. ASHBROOK, 154 Mo. 375, 77 Am. St. Rep. 765, 55 S. W. 627.

Followed without discussion in State v. Thayer, 158 Mo. 37, 58 S. W. 12.

Mandamus.

Cited in State ex rel. Sheffel v. McCammon, 111 Mo. App. 633, 86 S. W. 510; State ex rel. Smith v. Berryman, 142 Mo. App. 388, 127 S. W. 129,—holding mandamus proper to compel issuance of saloon license where statute makes it mandatory upon proper petition; Butler v. Moberly, 131 Mo. App. 178, 110 S. W. 682, on mandamus to compel issuance of peddler's license.

Equal protection of laws.

Cited in Phipps v. Wisconsin C. R. Co. 133 Wis. 160, 113 N. W. 456, holding invalid act providing for examination of former employee of corporation in certain cases, which fails to make same provision as to former employees of individuals; Carr v. State, 175 Ind. 266, 32 L.R.A.(N.S.) 1200, 93 N. E. 1071 (dissenting opinion), on validity of Sunday law excepting professional baseball.

License tax acts and ordinances.

Cited in Rosenbloom v. State, 64 Neb. 363, 57 L. R. A. 930, 89 N. W. 1053 (dissenting opinion), majority sustaining validity of statute imposing license tax on peddlers; State v. Parker Distilling Co. 236 Mo. 246, 139 S. W. 453, holding that act requiring manufacturers and dealers in liquors to pay license tax according to gallons sold is license act; Montgomery v. Kelley, 142 Ala. 558, 70 L.R.A. 211, 110 Am. St. Rep. 43, 38 So. 67, holding invalid act requiring special license fee from merchants giving trading stamps; Smith v. Farr, 46 Colo. 380, 104 Pac. 401, holding unconstitutional act which imposes license on itinerant vendors selling to consumers, but excepting such as sell to merchants; State ex rel. Carleton Dry Goods Co. v. Alt, 224 Mo. 507, 123 S. W. 882, on license tax upon merchants and manufacturers as being in fact a property tax; Territory ex rel. Livestock Sanitary Board v. Kenney, 11 Ariz. 358, 95 Pac. 93, holding that statute requiring license for slaughtering business is an exercise of police power; Hays v. C. C. & H. Min. & Mill. Co. 227 Mo. 294, 126 S. W. 1051, holding act requiring filing fee for every case in circuit court such fee to go into general revenue fund was equivalent to a tax measure and void.

Cited in footnotes to Price v. People, 55 L. R. A. 588, which sustains license fee on employment agencies; Harrodsburg v. Renfro, 51 L. R. A. 897, which holds void, ordinance imposing greater license fee for sale of liquors on main street of town than elsewhere; Knisely v. Cotterel, 50 L. R. A. 87, which sustains statute fixing different rates of license for retailers, wholesalers, and sellers on board of trade; State v. Garbroski, 56 L. R. A. 570, which holds void, statute exempting veterans from requirement for peddling license; Com. use of Titusville v. Clark, 57 L. R. A. 348, which holds void, exemption from license tax of contractors and real estate dealers, but not others, whose business less than $1,000; State *ex rel.* Auburn School District v. Boyd, 58 L. R. A. 108, which holds ordinance imposing license tax for revenue only, a tax ordinance, though right to engage in business depends on having license; Bessette v. People, 56 L. R. A. 558, which holds void, requirement that horseshoers practise business for four years, submit to examination, and pay license fee.

Cited in notes (15 L.R.A.(N.S.) 196) on discrimination in occupation tax based on classification of municipalities; (129 Am. St. Rep. 254, 255) on constitutional limitations on power to impose license or occupation taxes.

Regulation of business.

Approved in State v. Dalton, 22 R. I. 89, 48 L. R. A. 781, 84 Am. St. Rep. 818, 46 Atl. 234, denying validity of prohibition upon sellers from giving purchasers stamp or device entitling them to receive from third person some other well-defined article; Republic Iron & Steel Co. v. State, 160 Ind. 386, 62 L. R. A. 142, 66 N. E. 1005, holding statute requiring weekly payment of wages, void.

Cited in footnote to Bailey v. People, 54 L. R. A. 839, which holds void, restriction on number which lodging-house keepers may permit to occupy one room.

Cited in note (48 L. R. A. 261) on legal restrictions on department stores.

Nugatory statutes.

Cited in Albert v. Gibson, 141 Mich. 704, 105 N. W. 19, holding invalid drain-

age statute which by its own terms makes it impossible of performance; State ex rel. Hughes v. Reusswig, 110 Minn. 475, 126 N. W. 279, on invalidity of statute which fails to provide means for its enforcement and for the protection of parties under it.

Delegation of legislative power.

Cited in State ex rel. Rusk v. Budge, 14 N. D. 538, 105 N. W. 724, holding invalid act delegating to a commission authority to determine amount to be expended for state capitol and governor's residence.

Cited in note (15 L.R.A.(N.S.) 62) on boards or bodies to which power of taxation delegable.

48 L. R. A. 272, NORTHPORT WESLEYAN GROVE CAMP-MEETING ASSO. v. PERKINS, 93 Me. 235, 74 Am. St. Rep. 342, 44 Atl. 893.

Regulations by camp-meeting associations.

Cited in footnote to Thousand Island Park Asso. v. Tucker, 60 L. R. A. 786, which denies power of camp-meeting association to require lessees of lots to purchase all supplies from association.

48 L. R. A. 274, *Re* ORKNEY STREET, 194 Pa. 425, 45 Atl. 314.

Liability for street improvements.

Cited in *Re* Thirteenth Street, 16 Pa. Super. Ct. 130, and *Re* Fifty-fifth Street, 9 Pa. Dist. R. 454, 24 Pa. Co. Ct. 262, holding that landowner's voluntary dedication of land for street does not relieve him from liability for assessment for benefits from opening; *Re* Letitia Street, 18 Pa. Super. Ct. 536, denying liability for assessment for benefits from widening street, where property lies 200 feet from portion widened; *Re* Grant Street, 17 Pa. Super. Ct. 461, holding entire cost of lateral sewer properly assessed upon property benefited and whose owners petitioned for same, although part extends through another street to reach outlet; *Re* Atlantic Ave. 14 Pa. Super. Ct. 124, denying liability of former abutters upon street for extension of street terminating in alley.

Charge for use of sewer.

Cited in footnote to Carson v. Sewerage Comrs. 48 L. R. A. 277, which denies right to make annual charge for use of sewer.

Effect of old age of statute on its validity.

Cited in Kucker v. Sunlight Oil & Gasoline Co. 230 Pa. 533, 79 Atl. 747, Ann. Cas. 1912A, 503, holding that act will be declared void, though it has remained unquestioned on statute books for over thirty-five years.

48 L. R. A. 277, CARSON v. SEWERAGE COMRS. 175 Mass. 242, 56 N. E. 1.
Affirmed in 182 U. S. 398, 45 L. ed. 1151, 21 Sup. Ct. Rep. 860.

Improvement assessments.

Cited in Smith v. Worcester, 182 Mass. 234, 59 L. R. A. 730, 65 N. E. 40, sustaining act placing on sewerage district cost of sewerage system therefor; Hall v. Street Comrs. 177 Mass. 438, 59 N. E. 68, raising, without deciding, question as to power of legislature to authorize assessment for reconstructing old sewer or new part of old system.

Cited in footnote to *Re* Orkney Street, 48 L. R. A. 274, which denies right to assess property abutting on *cul de sac* for extension converting same into open street.

— Annual or gross assessment.

Cited in O'Connell v. First Parish, 204 Mass. 120, 90 N. E. 580, holding assess-

ment for sewerage based upon street frontage is valid if conformable to benefit received.

Notice on subject of assessment.

Cited in footnote to Chicago & E. R. Co. v. Keith, 60 L. R. A. 525, which holds void, statute for construction of ditch to drain off water along railroad right of way on petition of adjoining owner, without giving company opportunity to be heard.

Right to connect property with sewer.

Cited in note (70 L.R.A. 239) on right and duty to connect property with drain or sewer.

48 L. R. A. 278, FITZPATRICK v. WELCH, 174 Mass. 486, 55 N. E. 178.

Owner's liability for injury from falling walls or ice.

Cited in Ainsworth v. Lakin, 180 Mass. 399, 57 L. R. A. 134, 91 Am. St. Rep. 314, 62 N. E. 746, holding owner of useless walls left standing after fire, after reasonable time for investigation, liable for injury which he might have prevented by proper care.

Cited in footnote to Davis v. Niagara Falls Tower Co. 57 L.R.A. 545, which sustains right to injunction against maintaining tower so that ice forming on it falls upon adjoining property.

Liability for diverting waters.

Cited in Nye v. Swift, 190 Mass. 147, 76 N. E. 652, holding discharge of water upon another's land in manner other than provided by deeds between the parties from artificial pond is actionable; Hynes v. Brewer, 194 Mass. 439, 9 L.R.A. (N.S.) 600, 80 N. E. 503, holding owner of land adjoining sidewalk liable for injuries caused by accumulation of ice on sidewalk formed by erection of wall on land that destroyed natural drainage.

Cited in note (36 L.R.A.(N.S.) 1174) on liability for injuries from water and ice precipitated upon adjoining property.

— Eave drip.

Cited in Huber v. Stark, 124 Wis. 366, 109 Am. St. Rep. 937, 102 N. W. 12, 4 Ann. Cas. 340, holding right of owner to have his building undamaged by water from roof of adjoining building is absolute; Davis v. Smith, 144 N. C. 298, 56 S. E. 940, holding where defendant permitted water to fall from his roof to the damage of another's building he cannot show that damages would have been less had plaintiff's building been properly constructed.

Cited in note (123 Am. St. Rep. 571) on liability of land owners for damages from roof casting snow and water on adjoining land.

48 L. R. A. 279, SEABOARD NAT. BANK v. WOESTEN, 147 Mo. 467, 48 S. W. 939.

Report of second appeal in 176 Mo. 53, 75 S. W. 464.

Contracts to maintain pavement in repair.

Followed in St. Louis Quarry & Constr. Co. v. Frost, 90 Mo. App. 688, and Barber Asphalt Paving Co. v. Hezel, 155 Mo. 405, 48 L. R. A. 290, footnote p. 285, 56 S. W. 449, sustaining undertaking to maintain new pavement for series of years; People *ex rel.* North v. Featherstonhaugh, 172 N. Y. 121, 60 L. R. A. 768, footnote p. 768, 64 N. E. 802; Shank v. Smith, 157 Ind. 409, 55 L. R. A. 568, footnote p. 564, 61 N. E. 932; Williamsport v. Hughes, 21 Pa. Super. Ct. 454, — sustaining provision in street paving contract for keeping in good condition for term of years; Barber Asphalt Paving Co. v. French, 158 Mo. 556, 54 L. R. A.

501, footnote p. 492, 58 S. W. 934, sustaining requirement of five years' guaranty of street paving; Barber Asphalt Paving Co. v. Munn, 185 Mo. 563, 83 S. W. 1062, holding contract calling for the keeping of the pavement in good condition for five years is valid.

Cited in Allen v. Labsap, 188 Mo. 704, 87 S. W. 926, 3 Ann. Cas. 306, holding that a contract for paving which required the contractor to keep the paving in repair for a period of one year as a mere guaranty of good faith is valid; Green River Asphalt Co. v. St. Louis, 188 Mo. 579, 87 S. W. 985, holding that a contract which required the contractor to keep the pavement in repair for five years was valid as it amounted merely to a guarantee that the pavement would last with ordinary use for five years.

Cited in footnotes to People *ex rel.* North v. Featherstonhaugh, 60 L. R. A. 768, which sustains provision requiring street paving contractor to maintain work during period which it ought to wear; Alameda Macadamizing Co. v. Pringle, 52 L. R. A. 264, which holds street improvement contract invalidated by guaranty for year.

Cited in note (44 L. R. A. 538, 541) on power of city to bind contractor to repair pavements which he makes.

Abutter's liability for street assessments.

Cited in footnote to Blochman v. Spreckels, 57 L. R. A. 213, which denies power to assess cost of street improvement on abutters, where contractor required to sustain all loss from nature of work.

Presumption as to validity of acts of municipal authorities.

Cited in Quinn v. Schneider, 118 Mo. App. 44, 94 S. W. 742, holding petition that person was unlawfully on premises in pursuance of an order of the city is not sufficient to overcome presumption of validity of city's order.

48 L. R. A. 285, BARBER ASPHALT PAVING CO. v. HEZEL, 155 Mo. 391, 56 S. W. 449.

Effect of provision for maintenance in paving contract.

Followed in St. Louis Quarry & Constr. Co. v. Frost, 90 Mo. App. 688, sustaining validity of contractor's agreement to maintain street for one year; Barber Asphalt Paving Co. v. Munn, 185 Mo. 563, 83 S. W. 1062, holding contract requiring contractor to keep pavement in repair for five years is valid.

Approved in People *ex rel.* North v. Featherstonhaugh, 172 N. Y. 121, 60 L. R. A. 771, footnote p. 768, 64 N. E. 802, and Shank v. Smith, 157 Ind. 409, 55 L. R. A. 568, footnote p. 564, 61 N. E. 932, sustaining provision in street paving contract for keeping in good condition for term of years; Seaboard Nat. Bank v. Woesten, 176 Mo. 59, 75 S. W. 464, holding undertaking to maintain new pavement for series of years, required as guaranty of good work, not contract for repairs.

Cited in Allen v. Labsap, 188 Mo. 704, 87 S. W. 926, 3 Ann. Cas. 306, holding that a contract which required the contractor to keep paving in repair for a period of one year is merely a guaranty that it will last that long, and is valid; Green River Asphalt Co. v. St. Louis, 188 Mo. 579, 87 S. W. 985, holding that a contract which required the contractor to keep the pavement in repair for five years was valid as it amounts merely to a guarantee that with ordinary care the pavement would last for five years.

Cited in footnotes to Barber Asphalt Paving Co. v. French, 54 L. R. A. 492, which sustains requirement of five years' guaranty of street paving; Alameda Macadamizing Co. v. Pringle, 52 L. R. A. 264, which holds street improvement contract invalidated by guaranty for year; Seaboard Nat. Bank v. Woesten, 48 L. R.

A. 279, which holds agreement to maintain new pavement for series of years not contract for repairs, necessitating letting to lowest bidder.

Abutters' liability for street improvement.

Cited in footnote to Blochman v. Spreckels, 57 L. R. A. 213, which denies power to assess cost of street improvement on abutters, where contractor required to sustain all loss from nature of work.

Meaning of "maintain."

Cited in Mercersburg College v. Poffenberger, 36 Pa. Super. Ct. 116, on meaning of "to maintain."

48 L. R. A. 291, ARNOLD v. ST. LOUIS, 152 Mo. 173, 75 Am. St. Rep. 447, 53 S. W. 900.

Liability for injuries to children.

Cited in Straub v. St. Louis, 175 Mo. 417, 75 S. W. 100, holding city not liable to child injured while playing on old counter placed in street and marked "for sale;" Houck v. Chicago & A. R. Co. 116 Mo. App. 570, 92 S. W. 738, holding "place attractive to children" rule not applicable to machinery of railroad pump-station situated in a place not easily accessible to public; Kelly v. Benas, 217 Mo. 12, 20 L.R.A.(N.S.) 906, 116 S. W. 557, holding owner of lumber yard not liable for injuries to trespassing child by reason of insecurely piled lumber falling upon him; Sullivan v. Huidekoper, 27 App. D. C. 163, 5 L.R.A.(N.S.) 273, 7 Ann. Cas. 196, denying liability of city lot owner for death of child drowned, while trespassing, in large unprotected pond, on defendant's lot; Wheeling & L. E. R. Co. v. Harvey, 77 Ohio St. 245, 19 L.R.A.(N.S.) 1145, 122 Am. St. Rep. 503, 83 N. E. 66, 11 Ann. Cas. 981, holding railroad not liable for injury to child hurt while trespassing on turntable.

Cited in footnotes to Kramer v. Southern R. Co. 52 L. R. A. 359, which denies railroad company's liability for death of child by fall of pile of cross-ties in unused portion of street; Rome v. Cheney, 55 L. R. A. 221, which denies city's liability for drowning of child in necessary sewer, 4 feet wide and 2 feet deep; Kopplekom v. Colorado Cement Pipe Co. 54 L. R. A. 284, which holds owner of uninclosed city lot liable for injury to young child by toppling over of large cement pipe used by children as plaything; Savannah, F. & W. R. Co. v. Beavers, 54 L. R. A. 314, which denies duty of one making excavation on own land to guard trespassing children from injury; Heimann v. Kinnare, 52 L. R. A. 652, which holds thirteen-year-old boy negligent *per se* in jumping over strip of water onto rotten ice on pond, and sliding to point where water was over his head; Rachmel v. Clark, 62 L. R. A. 959, which holds manufacturer storing stone slabs on sidewalk in front of building liable to child injured by slab falling upon him: Carey v. Kansas City, 70 L.R.A. 65, which holds fence 4½ feet high around water supply reservoir in public park so constructed that children must remove shoes to climb it sufficient to relieve city from liability for death by drowning of child who scaled fence for his own purposes after being warned not to go inside.

Cited in notes (3 L.R.A.(N.S.) 151) on doctrine of "attractive nuisance" as applied to injury from hot water or ashes; (19 L.R.A.(N.S.) 1146) on attractive nuisance.

Liability of municipality for injuries from nuisance on private property.

Cited in footnote to Temby v. Ishpeming, 69 L.R.A. 618, which denies liability of city for injuries to traveler by fall of billboard insecurely fastened by abutting owner.

Cited in note (32 L.R.A.(N.S.) 894) on liability of municipality for injuries from nuisance on private property from its failure to abate it.

48 L. R. A. 294, RICHARDSON v. SCOTTS BLUFF COUNTY, 59 Neb. 400, 80 Am. St. Rep. 682, 81 N. W. 309.

Contracts affecting action of public officials.

Approved in Owens v. Wilkinson, 20 App. D. C. 71, denying validity of contract to procure legislation, involving personal solicitation.

Cited in Flynn v. Bank of Mineral Wells, 53 Tex. Civ. App. 484, 118 S. W. 848, holding void, contract to pay attorney to obtain bridge contract from commissioners' court, though he was to use only legal means; Shevalier v. Doyle, 88 Neb. 564, 130 N. W. 417, on validity of contract to pay attorney to become surety for appearance of his client to answer charge of felony; Stroemer v. Van Orsdel, 74 Neb. 138, 4 L.R.A.(N.S.) 212, 121 Am. St. Rep. 713, 103 N. W. 1053, holding contract to collect facts and submit merits of claim against government where plaintiff in executing it appeared before the two houses of Congress is unenforceable.

Cited in footnotes to William Deering & Co. v. Cunningham, 54 L. R. A. 410, which holds void, contract to withdraw opposition to granting of pardon; Veazey v. Allen, 62 L. R. A. 362, which holds contract to share profits of "short" sale of stock of corporation with one about to bring its affairs before the legislature for investigation, void.

Cited in notes (4 L.R.A.(N.S.) 213) on validity of contract to procure legislative action; (217 Am. St. Rep. 518; 121 Am. St. Rep. 733, 734) on validity of lobbying contracts.

Right to take advantage of own wrong.

Cited in Brock v. Jones County, 145 Iowa, 406, 124 N. W. 209, holding that member of medical society is estopped to claim that its contract to furnish medical attendance to poor was void, in action to recover for medical services under personal contract with town.

Cited in footnote to Clinton County v. Davis, 64 L. R. A. 780, which holds that vote buyer cannot claim reward offered by statute to one furnishing information as to sales of votes.

48 L. R. A. 299, DARROW v. CALKINS, 154 N. Y. 503, 61 Am. St. Rep. 637, 49 N. E. 61.

Limitations against infant.

Cited in Muller v. Manhattan R. Co. 124 App. Div. 301, 108 N. Y. Supp. 852, holding right of action against railroad for injuries to property adjoining it that accrued in 1878 to infant owner who reached majority in 1881 is brought in time by action commenced in 1899 under twenty-year limitation; Muller v. Manhattan R. Co. 53 Misc. 139, 102 N. Y. Supp. 454, holding infant entitled to twenty years from majority to maintain suit for trespass exclusive of any period of disability not greater than ten years.

— Adverse possession.

Cited in Sanders v. Riedinger, 30 App. Div. 283, 51 N. Y. Supp. 937, denying right by possession adverse to infant.

Partnership realty.

Cited in Smith v. Cowles, 81 App. Div. 330, 81 N. Y. Supp. 524, holding that partner's share in real estate purchased with partnership funds descends to heirs; Willis v. McKinnon, 37 Misc. 388, 75 N. Y. Supp. 770, holding that trustee and devisee of partner take no interest in firm real estate until accounting and settlement of partnership affairs; Adams v. Church, 42 Or. 273, 59 L. R. A. 784, 95 Am. St. Rep. 740, 70 Pac. 1037, denying that nature of realty is lost by mere

fact of conveyance to partnership; Simpson v. Simpson, 41 App. Div. 451, 58 N. Y. Supp. 882, denying that action by executors of deceased partner for accounting and distribution of assets, and to procure adjudication of leasehold where business conducted, not for determination of title to, or interest in, realty; Dexter v. Dexter, 43 App. Div. 283, 60 N. Y. Supp. 371 (dissenting opinion), majority denying realty to be partnership property where occupied by partnership business and subject to conveyances between the partners; Adams v. Church, 42 Or. 273, 59 L. R. A. 784, 95 Am. St. Rep. 740, 70 Pac. 1037, holding that partnership holds firm land in trust for creditors; Levine v. Goldsmith, 83 App. Div. 403, 82 N. Y. Supp. 299, holding that partners who buy real estate with partnership funds, taking title in individual names, are tenants in common; Hauptmann v. Hauptmann, 91 App. Div. 199, 86 N. Y. Supp. 427, holding that no right of dower exists in partnership realty before dissolution of firm and payment of debts; Huber v. Case, 93 App. Div. 483, 87 N. Y. Supp. 663, holding partnership realty deemed in equity as changed into personalty only to extent necessary to meet firm obligations; Barney v. Pike, 94 App. Div. 207, 87 N. Y. Supp. 1038, holding land treated as personalty under partnership agreement to buy marsh lands, reclaim them, "and divide proceeds of sales;" Starr v. Starr, 67 Misc. 315, 122 N. Y. Supp. 414, holding lands of firm are not converted unless by agreement of partners or by equitable necessity; Walcoff v. Bittker, 67 Misc. 416, 122 N. Y. Supp. 680, holding rents accruing after death of partner belong to heirs; Buckley v. Doig, 188 N. Y. 245, 80 N. E. 913, 11 Ann. Cas. 263, Affirming 115 App. Div. 415, 100 N. Y. Supp. 869, holding evidence sustained finding that partners intended a conversion where agreement was to "sell everything and divide" proceeds; Schleissner v. Goldsticker, 135 App. Div. 437, 120 N. Y. Supp. 333, holding in absence of express or implied agreement between partners, partnership realty is not converted into personalty upon death of one partner; Rosenbaum v. New York City, 59 Misc. 33, 109 N. Y. Supp. 775, holding purchase by partnership of real estate for purpose of building houses thereon to sell implies a conversion into personalty although conveyed to them in individual interests.

Cited in notes (37 L.R.A.(N.S.) 892, 900, 901) as to when real estate considered partnership property; (19 Eng. Rul. Cas. 485) on partnership real estate.

Action against surviving partner.

Cited in Poppleton v. Jones, 42 Or. 28, 69 Pac. 919, holding right of surviving partner to administer estate of deceased partner, no bar to creditor's common-law right of action against surviving partner; Re Canal Place, 65 Misc. 636, 122 N. Y. Supp. 357, where necessity of heirs of deceased partner as parties to suit by administrator for accounting by surviving partner is questioned but not decided.

Jurisdiction to appoint guardian ad litem.

Cited in Gruner v. Ruffner, 134 App. Div. 840, 119 N. Y. Supp. 942, holding failure to summon infant in appointment of guardian ad litem sufficient to set aside foreclosure sale of land of which infant owned the equity of redemption.

48 L. R. A. 305, KNOX v. ROSSI, 25 Nev. 96, 83 Am. St. Rep. 566, 57 Pac. 179.

Effect of omission to stamp documents.

Approved in Griffin Lumber Co. v. Myer, 80 Miss. 437, 31 So. 787, referring particularly to annotation in 48 L. R. A. 305; Wade v. Foss, 96 Me. 232, 52 Atl. 640; Richardson v. Roberts, 195 Ill. 30, 62 N. E. 840; Kennedy v. Roundtree, 59 S. C. 329, 82 Am. St. Rep. 841, 37 S. E. 942; Small v. Slocumb, 112 Ga. 287,

53 L. R. A. 133, footnote p. 130, 81 Am. St. Rep. 50, 37 S. E. 481; Watson v. Mirike, 25 Tex. Civ. App. 532, 61 S. W. 538; Southern Ins. Co. v. Estes, 106 Tenn. 488, 52 L. R. A. 919, footnote p. 915, 82 Am. St. Rep. 892, 62 S. W. 149, upholding unstamped instrument as muniment of title, and its competency as evidence in state court.

Cited in Plunkett v. Hanschka, 14 S. D. 457, 85 N. W. 1004, holding chattel mortgage binding in state court, notwithstanding omission of United States revenue stamp; Stirneman v. Smith, 40 C. C. A. 584, 100 Fed. 603, holding certificate of notary to deposition does not require stamp; Dillingham v. Parks, 30 Ind. App. 72, 65 N. E. 300, and Davis v. Evans, 133 N. C. 321, 45 S. E. 643, holding that unstamped note may be used in evidence.

Cited in footnote to Wingert v. Zeigler, 51 L. R. A. 316, which holds assignment of mortgage not avoided by inadvertent omission of revenue stamp.

Cited in notes (46 L.R.A. 454) on want of internal revenue stamp on instrument requiring stamp as affecting criminal prosecution; (84 Am St. Rep. 186) on failure to comply with statute requiring stamping of writings; (137 Am. St. Rep. 478) on effect of failure to affix revenue stamps to chattel mortgage as prescribed by statute.

Annotation in 48 L. R. A. 305, referred to particularly in Farmers & T. Bank v. Johnson, 118 Iowa, 287, 91 N. W. 1074, — holding act of Congress against receiving unstamped instruments in evidence inapplicable to state courts; Harvey v. Wieland, 115 Iowa, 565, 88 N. W. 1077, holding that document requiring stamp may be stamped at any time before offered in evidence; State v. Glucose Sugar Ref. Co. 117 Iowa, 531, 91 N. W. 794, holding copy of unstamped certificate of incorporation admissible in evidence; Britenbaker v. Hatler, 24 Pa. Co. Ct. 586, and Hooper v. Whitaker, 130 Ala. 330, 30 So. 355, discussing, without deciding, whether Federal statute for exclusion of unstamped document from evidence is applicable to state court.

Federal law in state courts.

Cited in note (48 L. R. A. 38) on administration of Federal laws in state courts.

48 L. R. A. 320, HUGGINS v. DALEY, 40 C. C. A. 12, 99 Fed. 606.

Forfeiture of mineral lease.

Cited in Sharp v. Behr, 117 Fed. 872, holding that mining lease in consideration of royalty must be exercised with reasonable diligence; Parish Fork Oil Co. v. Bridgewater Gas Co. 51 W. Va. 596, 59 L. R. A. 570, footnote p. 566, 42 S. E. 655, holding oil and gas lease for production and marketing of product invalidated by abandonment of operations; Gadbury v. Ohio & I. Consol. Natural & Illuminating Gas Co. 162 Ind. 13, 62 L. R. A. 899, footnote p. 895, 67 N. E. 259, which holds forfeiture of gas lease for breach of condition subsequent sufficiently shown to give equity jurisdiction by failure for long time, without apparent excuse, to develop the property; Monfort v. Lanyon Zinc Co. 67 Kan. 314, 72 Pac. 784, holding that payment of annual rental for ten years prevents forfeiture of ten-year lease providing, among other things, that lease shall be void in five years if no gas well sunk, unless certain rental paid annually; Emery v. League, 31 Tex. Civ. App. 479, 72 S. W. 603, holding that lessee's delay for six months to secure partition of land described in contract and leased on condition that partition be secured within reasonable time, works forfeiture of lease; Federal Oil Co. v. Western Oil Co. 57 C. C. A. 432, 121 Fed. 678, holding oil and gas lease forfeited by delay in commencing operations, where lease provided that drilling should begin at once, and that lessor receive certain sum per month during any delay, said monthly payments not being part performance; Berl v. Kehoe, 130

La. 1026, 58 So. 864, holding that cause of action is stated in petition to avoid lease in which lessee stipulates to commence drilling within six months, but does not obligate himself to prosecute work or to complete well; Loveland v. Longhenry, 145 Wis. 67, 140 Am. St. Rep. 1068, 129 N. W. 650, holding that mining lease may be forfeited for delay of fourteen months in prospecting land; Mansfield Gas Co. v. Alexander, 97 Ark. 172, 133 S. W. 837, holding that gas and mineral lease may be forfeited for lessee's failure to develop lands for eight years; Howerton v. Kansas Natural Gas Co. 81 Kan. 560, 34 L.R.A.(N.S.) 44, 106 Pac. 47, holding that oil and gas lease is forfeited by four years' delay in drilling and operating wells; Tennessee Oil, Gas & Mineral Co. v. Brown, 65 C. C. A. 524, 131 Fed. 700, holding mining agreement though containing words of conveyance was not an instrument of title and was forfeited by failure to explore and develop as agreed; Starn v. Huffman, 62 W. Va. 426, 59 S. E. 179, holding failure for two years and over to operate mine held under royalty lease for fixed time providing for thirty-day royalty payments amounts to a forfeiture; Price v. Black, 126 Iowa, 306, 101 N. W. 1056, holding lease on royalty basis not abandoned by failure to work mine for two years where it had been successfully worked for six years prior thereto and royalties paid regularly and failure was due to difficulties in working; Mills v. Hartz, 77 Kan. 220, 94 Pac. 142, holding failure to begin operations under lease of oil lands on a royalty basis for seven years amounts to a forfeiture; Howerton v. Kansas Natural Gas Co. 81 Kan. 560, 34 L. R.A.(N.S.) 44, 106 Pac. 47, holding under lease providing for annual payment to lessor of a specified amount for each year oil or gas was marketed, the lease was forfeited by failure to market gas from successful well for four successive years; Florence Oil & Ref. Co. v. Orman, 19 Colo. App. 88, 73 Pac. 628, holding contract giving exclusive right to drill for oil on percentage basis implies diligent efforts, and failure for four successive years after drilling three dry wells, amounts to a forfeiture of the lease; Berry v. Frisbie, 120 Ky. 344, 86 S. W. 558, holding diligent operation prerequisite to right to demand a deed to oil land under contract to convey title in consideration of royalties where contract was unilateral and executory; Welmore Coal Co. v. Brown, 147 Fed. 942, holding covenant to mine diligently is implied though no precise quantity is required but that mere failure to mine does not alone work forfeiture where an estate in the minerals was created.

Cited in footnote to Gadbury v. Ohio & I. Consol. Natural & I. Gas. Co. 62 L.R.A. 895, which upholds right of equity to enforce forfeiture of contract for right to explore for oil or gas, when permitting lessee longer to assert title would be against equity.

Cited in note (11 L.R.A.(N.S.) 418) on effect of provision for minimum royalties or annual rental upon right to forfeit mining lease for failure to prosecute work.

Distinguished in Monarch Oil, Gas & Coal Co. v. Richardson, 124 Ky. 607, 99 S. W. 668, holding mineral lease providing for annual rental cannot be forfeited for lack of diligent operation although rental is small and part payment is in royalties where rent is not first refused; Doddridge County Oil & Gas Co. v. Smith, 154 Fed. 978, holding equity will not forfeit oil lease where lessor by act of bad faith caused lessee, who had expended large sums and been diligent, to abandon wells.

Damages for failure to work mine.

Cited in Sharp v. Behr, 8 Del. Co. Rep. 474, holding grantor of mining lands entitled to such damages as he may sustain from grantee's failure to work mine,

under agreement giving grantor royalty, without stating minimum annual quantity to be mined.

Distinguished in Sharp v. Behr, 9 Del. Co. Rep. 445, 136 Fed. 803, holding lessor who is employed under contract with lessee providing that he receive royalties for twenty years and may demand a reconveyance if they fail to pay royalty cannot recover damages for breach of employment contract where after discharge he demands reconveyance.

Lessee's title or rights in mineral lease.

Cited in Superior Oil & Gas Co. v. Mehlin, 25 Okla. 817, 138 Am. St. Rep. 942, 108 Pac. 545, holding specific performance properly denied, where oil lease allowed lessee 15 years to begin operations and for unspecified consideration, to extend such term indefinitely: Kolachny v. Galbreath, 26 Okla. 775, 38 L.R.A. (N.S.) 456, 110 Pac. 902, holding that lessee's option to terminate lease deprives him of right of specific performance until he has performed contract; Brookshire Oil Co. v. Casmalia Ranch Oil & Development Co. 156 Cal. 215, 103 Pac. 927, holding lease of lands for oil does not give lessee right prior to production to prevent laying of pipe line by another under contract with lessor which pipe line does not interfere with operations of lessee; Toothman v. Courtney, 62 W. Va. 173, 58 S. E. 915, holding deed to "all oil and gas" under land presumably conveys no fee to the oil or gas but is merely a lease where it provided for exclusive right to drill and only consideration was royalties; Backer v. Penn Lubricating Co. 89 C. C. A. 419, 162 Fed. 629, holding lessee of oil rights on royalty acquires no title to the oil in place; Ulrey v. Poe, 134 Ill. App. 304, holding one who leases oil lands for purpose of exploitation only obtains merely an inchoate interest therein; Minnetonka Oil Co. v. Absalom Boyd, 143 Ill. App. 484, holding equity will not enforce an oil lease lacking mutuality; Gillespie v. Fulton Oil & Gas Co. 140 Ill. App. 154, holding equity will not enforce oil lease where lessee never intended to fulfill conditions thereof but took it merely for speculative purposes; Jennings-Heywood Oil Syndicate v. Houssiere-Latreille Oil Co. 119 La. 844, 44 So. 481, holding unilateral contract for sole purpose of exploiting land for oil is void where there is no obligation on lessee's part to develop production.

Mutuality of obligation as condition of specific performance.

Cited in note (38 L.R.A.(N.S.) 454) on mutuality of obligation as a condition of right to specific performance of a continuing contract.

48 L. R. A. 326, PONTIAC v. TALBOT PAVING CO. 36 C. C. A. 88, 37 C. C. A. 556, 94 Fed. 65, 96 Fed. 679.

Municipal liability for deficiency of special assessment.

Cited in Farrell v. Chicago, 198 Ill. 562, 65 N. E. 103, and Alton v. Foster, 207 Ill. 163, 69 N. E. 783, denying liability of city for deficit under paving contract providing for payment from special assessments when the assessment made has been held invalid; Park Ridge v. Robinson, 198 Ill. 585, 92 Am. St. Rep. 276, 65 N. E. 104, denying assumpsit against village under contract for sidewalks, whereby contractor was to be paid from assessment under ordinance, risk of invalidity of which he assumed; Turner v. Guthrie, 13 Okla. 34, 73 Pac. 283, holding mere delay of city to make special assessment for local improvements not authorize general judgment for value of warrants to be paid by such assessment; Broad v. Moscow, 15 Idaho. 622, 99 Pac. 101, holding contractor with city who was to look solely to special assessment for his pay cannot obtain a general judgment against city for its failure to collect assessment.

Cited in footnote to Iowa Pipe & Tile Co. v. Callanan, 67 L.R.A. 408, which

holds city not relieved from liability for making unenforceable assessment by provision in improvement contract that contractors shall receive assessment certificates against abutting property in full compensation.

Cited in note (32 L.R.A.(N.S.) 177) on liability of municipality failing to enforce assessments for improvements.

48 L. R. A. 331, DUNCAN v. LYNCHBURG, 2 Va. S. C. Rep. 109, 34 S. E. 964.

Liability for pollution of stream.

Cited in footnote to Weston Paper Co. v. Pope, 56 L. R. A. 899, which sustains liability for pollution of stream by discharge from strawboard works, though business skilfully conducted.

Operation of municipal quarry outside limits.

Cited in Donable v. Harrisonburg (Switzer v. Harrisonburg) 104 Va. 534, 2 L.R.A.(N.S.) 911, 113 Am. St. Rep. 1056, 52 S. E. 174, 7 Ann. Cas. 519, holding that charter authority to repair streets does not empower town to operate quarry outside limits to procure material therefor.

Cited in note (31 L.R.A.(N.S.) 123) on right of municipality to operate quarry.

Distinguished in Schneider v. Menasha, 118 Wis. 302, 99 Am. St. Rep. 996, 95 N. W. 94, holding under charter providing that city may purchase land outside her limits for city purposes a purchase of stone quarry for street rock is valid.

Judicial notice of charter.

Cited in Satterfield v. Com. 105 Va. 871, 52 S. E. 979, holding that court will take judicial notice of city charter.

48 L. R. A. 334, DOSTER v. MANISTEE NAT. BANK, 67 Ark. 325, 77 Am. St. Rep. 116, 55 S. W. 137.

Judgment liens on land.

Cited in Brasie v. Minneapolis Brewing Co. 87 Minn. 469, 94 Am. St. Rep. 709, 92 N. W. 340 (dissenting opinion), majority holding judgment creditor's sale of property alleged to have been transferred in fraud of creditors not devest grantee's title until fraud actually proved; Longino v. Ball-Warren Commission Co. 84 Ark. 525, 106 S. W. 582, holding judgment lien makes creditor necessary party in action to foreclose mortgage on debtor's real estate although mortgage is given by one to whom debtor had already conveyed where creditor began suit to set aside that conveyance before foreclosure proceedings were commenced.

Cited in footnotes to Foley v. Ruley, 55 L. R. A. 916, which holds judgment lien on land previously conveyed in fraud of creditors superior to that of creditor subsequently assailing deed; French Lumbering Co. v. Theriault, 51 L. R. A. 910, which holds judgment against grantor in deed fraudulent as to creditors not a lien on property conveyed.

Cited in note (117 Am. St. Rep. 786) on estates and interests to which judgment liens attach.

Distinguished in Ward v. Sturdivant, 81 Ark. 78, 98 S. W. 690, holding ejectment will lie in favor of creditor who has recovered judgment, levied upon and sold land fraudulently conveyed by debtor previously to judgment to recover such land.

Effect on legal title of conveyance in fraud of creditors.

Cited in Parrott v. Crawford, 5 Ind. Terr. 111, 82 S. W. 688, holding conveyance of debtor of his own realty conveys a good title as between himself and his grantee although intended to defraud creditors.

Cited in note (67 L.R.A. 880, 891, 897) on effect on legal title of conveyance of land in fraud of creditors.

48 L. R. A. 340, DAVIDSON v. JENNINGS, 27 Colo. 187, 83 Am. St. Rep. 49, 60 Pac. 354.

Statutes allowing attorney's fees.

Followed in *Re* Barker, 28 Colo. 257, 64 Pac. 188, and Antlers Park Regent Min. Co. v. Cunningham, 29 Colo. 285, 68 Pac. 226, holding invalid, provision for taxing attorney's fee in successful suits for foreclosure of mechanic's lien; Williamson v. Liverpool, L. & G. Ins. Co. 105 Fed. 33, denying validity of statute for allowance of attorney's fee in action upon insurance policy, if payment of loss thereunder vexatiously refused.

Approved in Builders' Supply Depot v. O'Connor, 150 Cal. 269, 17 L.R.A. (N.S.) 915, 119 Am. St. Rep. 193, 88 Pac. 982, holding statute providing for payment of attorney's fees where mechanic's lien has to be enforced is unconstitutional.

Cited in Mills v. Olsen, 43 Mont. 140, 115 Pac. 33, holding void, statute giving lien claimants an attorney's fee; Pacific Mut. L. Ins. Co. v. Van Fleet, 47 Colo. 415, 107 Pac. 1087, holding statute imposing attorney's fees on foreign insurance corporation in case of unsuccessful contest is unconstitutional; Toledo, St. L. & W. R. Co. v. Long, 169 Ind. 317, 124 Am. St. Rep. 226, 82 N. E. 757, holding statute providing that corporations, companies and organizations shall pay attorney's fees in successful suit against them for failure to pay manual help every thirty days which did not include individuals is class legislation.

Cited in footnotes to Atkinson v. Woodmansee, 64 L.R.A. 325, which holds void, provision for recovery of attorney's fee by successful plaintiff in action to enforce laborer's or artisan's lien; L'Engle v. Scottish Union & N. Ins. Co. 67 L.R.A. 581; Hartford Fire Ins. Co. v. Redding, 67 L.R.A. 518,—which upholds provision for recovery of attorneys' fees in certain cases against insurance companies.

Cited in notes (17 L.R.A.(N.S.) 913; 79 Am. St. Rep. 180) on constitutionality of statutes allowing attorney's fee; (47 L. ed. U. S. 824) on unconstitutional inequality or discrimination in statutes allowing attorney's fees.

Distinguished in Thompson v. Wise Boy Min. & Mill. Co. 9 Idaho, 368, 74 Pac. 958, sustaining validity of statute allowing reasonable attorney's fees in recording and suing on a claim as part of costs, where its purpose is to impose a penalty for failure to pay just debt; Pyramid Lane & Stock Co. v. Pierce, 30 Nev. 247, 95 Pac. 210, sustaining validity of statute allowing attorney's fees in successful suit for damages from unlawful herding of cattle on plaintiff's land as a police regulation; Cascaden v. Wimbish, 88 C. C. A. 277, 161 Fed. 244, holding Alaska statute giving only to plaintiff in foreclosure of mechanic or labor lien attorney's fees is valid.

Necessity of pleading estoppel.

Cited in Chicago, R. I. & P. R. Co. v. Hayes, 49 Colo. 343, 113 Pac. 315, holding that estoppel in pais must be specially pleaded.

Class legislation.

Cited in Hecker v. Illinois C. R. Co. 231 Ill. 579, 83 N. E. 456, holding statute allowing appeal to supreme court only on questions of law and not on questions of fact except by appellee is unconstitutional.

48 L. R. A. 345, McMILLAN v. HARRIS, 110 Ga. 72, 78 Am. St. Rep. 93, 35 S. E. 334.

Fictitious bids as affecting auction sales.

Cited in Rowley v. D'Arcy, 184 Mass. 554, 64 L. R. A. 192, footnote p. 190, 69 N. E. 325, holding auction sale by assignee for creditors not invalidated by combination between creditors to enhance price by fictitious bids, which was not known to assignee.

Cited in footnote to Rowley v. D'Arcy, 64 L.R.A. 190, which holds auction sale by assignee of insolvent not void because of combination between creditors who enhance the price by fictitious bids.

Cited in note (131 Am. St. Rep. 480, 485, 489) on law of auction sales.

48 L. R. A. 351, STATE v. CENTRAL R. CO. 109 Ga. 716, 35 S. E. 37.

Validity of contracts affecting trade.

Cited in Jefferson v. Markert, 112 Ga. 503, 37 S. E. 758, sustaining validity of agreement not to engage in same business in specified place.

Cited in note (64 L.R.A. 694) on illegal trusts under modern anti-trust laws.

Distinguished in Brown v. Jacobs Pharmacy Co. 115 Ga. 448, 57 L. R. A. 557, 90 Am. St. Rep. 126, 41 S. E. 553, denying validity of combination of retail dealers to compel another to sell at same prices, by influence upon wholesalers.

Right to injunction.

Followed in Trust Co. v. State, 109 Ga. 751, 48 L. R. A. 527, 35 S. E. 323, sustaining right of state to injunction to prevent combination of competing railways in violation of constitutional provision.

Railroad combinations.

Cited in Mannington v. Hocking Valley R. Co. 183 Fed. 152, holding that statute authorizing private corporations to purchase stock of other kindred but not competing corporations applies to railroads.

Construction of constitution.

Cited in Strickland v. State, 137 Ga. 19, 36 L.R.A.(N.S.) 123, 72 S. E. 260, on examination of proceedings of constitutional convention as aid in construction of constitution.

48 L. R. A. 359, FIDELITY & C. CO. v. SITTIG, 181 Ill. 111, 54 N. E. 903.

Voluntary unnecessary exposure to danger.

Cited in Matthes v. Imperial Acci. Asso. 110 Iowa, 225, 81 N. W. 484, holding injury to steeple painter while using his apparatus to get pigeons from cupola of barn for food, not unnecessary exposure; Fidelity & C. Co. v. Morrison, 129 Ill. App. 374, holding that a person who attempted to board a moving train and had grasped a hand rail and had one foot upon a step was on the train within the meaning of an accident insurance policy covering injuries received in or on a public conveyance; Hunt v. United States Acci. Asso. 146 Mich. 523, 7 L.R.A.(N.S.) 940, 117 Am. St. Rep. 655, 109 N. W. 1042, 10 Ann. Cas. 449, holding intent to injure self necessary to prevent recovery on accident policy which provides against "unnecessary voluntary exposure to danger;" Dillon v. Continental Casualty Co. 130 Mo. App. 508, 109 S. W. 89, holding knowledge of danger necessary to sustain defense under clause in accident policy providing against unnecessary voluntary exposure to danger; Johnston v. Dominion of Canada Guarantee & Acci. Ins. Co. 17 Ont. L. Rep. 474, on voluntary exposure to danger that is unnecessary.

Cited in footnotes to Smith v. Ætna L. Ins. Co. 56 L. R. A. 272, which holds

injury by fall from steps of moving train, covered by policy; Smith v. Ætna L. Ins. Co. 64 L. R. A. 117, which holds steeplechase riding by one giving occupation as cotton merchant, voluntary exposure to unnecessary danger; Small v. Travelers' Protective Asso. 63 L. R. A. 510, which holds attempt by experienced traveling man to board train running at 8 or 10 miles an hour, voluntary exposure to danger.

Cited in notes (10 L.R.A.(N.S.) 958) on boarding or alighting from moving train as within provision of accident policy as to exposure to danger; (139 Am. St. Rep. 700, 706; 22 L.R.A.(N.S.) 779) on voluntary exposure to unnecessary danger within meaning of insurance policy.

Distinguished in Garcelon v. Commercial Travelers' Eastern Acci. Asso. 195 Mass. 537, 10 L.R.A.(N.S.) 963, 81 N. E. 201, holding under policy stipulating against contributory negligence of injured person no recovery can be had where insured forgot his baggage and was injured by leaping onto moving train in an attempt to get it.

— Emergencies.

Cited in Da Rin v. Casualty Co. 41 Mont. 188, 27 L.R.A.(N.S.) 1168, 137 Am. St. Rep. 709, 108 Pac. 649, holding it not "unnecessary voluntary exposure to danger" for miner who knew his companion was only six feet inside drift to go into drift thinking he could do so safely in an attempt to save his fellow-worker's life.

Duty of insured to negative death from excepted cause.

Cited in note (4 L.R.A.(N.S.) 637) on duty of insured to negative death or accident from excepted cause.

48 L. R. A. 362, GIBSON v. MEGREW, 154 Ind. 273, 56 N. E. 674.

Rights and liabilities of member of mutual benefit society.

Cited in Cochran v. Boleman, 162 Ind. 663, 65 L.R.A. 519, 71 N. E. 47, 1 Ann. Cas. 388, holding members of mutual benefit association cannot be sued personally on a certificate of membership by the beneficiary thereunder; Farmers' Mut. F. Ins. Co. v. Jackman, 35 Ind. App. 11, 73 N. E. 730, holding member of mutual benefit association bound by only such authority as is granted by the creating statute and subsequent by-laws of company.

Payment of insurance premiums.

Cited in Stockley v. Benedict, 92 Md. 333, 48 Atl. 59, holding forfeiture for nonpayment of premiums not waived by payment, where reinstatement not obtained as prescribed; Johnson v. Anderson, 23 Pa. Super. Ct. 157, holding unincorporated mutual benefit society cannot maintain action for past due assessments against a member who for failure to pay has forfeited his membership; Faurot v. Swan, 155 Mich. 291, 118 N. W. 955, on nature of liability of member of mutual benefit society for premium payments.

48 L. R. A. 368, SMITH v. ST. LOUIS & S. F. R. CO. 151 Mo. 391, 52 S. W. 378.

Actions against receivers.

Approved in Haag v. Ward, 89 Mo. App. 190, holding that jurisdictional leave by appointing court to sue receiver must be alleged in action against receiver.

Cited in Colburn v. Yantis, 176 Mo. 684, 75 S. W. 653, holding that all creditors having claims against land in hands of receiver cannot separately bring action against receiver but must submit claims to court; Mishawaka Woolen Mfg. Co. v. Powell, 98 Mo. App. 539, 72 S. W. 723, holding that bankrupt's property in hands of receiver and trustee cannot be taken from his custody under writ of

replevin issuing out of state court; Mishawaka Woolen Mfg. Co. v. Powell, 98 Mo. App. 539, 72 S. W. 723, holding property in hands of trustee in bankruptcy cannot be taken from his custody by replevin issuing out of a state court; Phelps v. Conqueror Zinc Co. 220 Mo. 573, 117 S. W. 705, holding it error to order judgment in action of assumpsit against receiver to be levied out of assets in receiver's hands such judgment holder being a creditor.

Cited in notes (13 L.R.A.(N.S.) 710) on jurisdiction of equity to try claims against its receiver involving purely legal questions; (74 Am. St. Rep. 295, 298, 299) on action without leave of court against receiver or person for whom he is appointed.

Distinguished in Kirk v. Kane, 87 Mo. App. 279, sustaining right of action against receiver for conversion of plaintiff's chattels.

Master's liability for acts of servants.

Cited in footnotes to Lamb v. Littman, 53 L. R. A. 852, which holds employer liable for assault by cruel overseer on minor employee; Hill v. Big Creek Lumber Co. 58 L. R. A. 346, which holds master liable for injury from operating mill with insufficient force of workmen.

Cited in note (25 Eng. Rul. Cas. 143) on master's liability for tort committed by servant.

Fellow servants and vice principals.

Cited in Weeks v. Scharer, 49 C. C. A. 375, 111 Fed. 333, holding shift boss empowered only to direct and supervise work, fellow servant with members of shift gang.

Cited in footnote to Sroufe v. Moran Bros. Co. 58 L. R. A. 313, which holds ship carpenter designated by foreman to transmit signals for raising cants not fellow servant of carpenters fastening cants in place.

Cited in notes (54 L.R.A. 84) on vice principalship as determined with reference to character of act which caused injury; (75 Am. St. Rep. 630) on who is a vice principal.

Annotation in 48 L. R. A. 368, referred to particularly in Bell v. Globe Lumber Co. 107 La. 732, 31 So. 994, holding engineer and brakeman on log train, fellow servants.

Duty of master to employ competent servants.

Cited in footnote to Hilton v. Fitchburg R. Co. 68 L.R.A. 428, which holds retention of employee who could only strike right-handed blows not evidence of negligence although persons able to strike left-handed blows were also needed.

Cited in note (29 L.R.A.(N.S.) 483) on duty of master to furnish superintendence for complicated and dangerous work.

Evidence of reputation to show incompetency of servant.

Annotation cited in Sloss-Sheffield Steel & I. Co. v. Bibb, 164 Ala. 72, 51 So. 345, on admissibility of evidence of general reputation of servant to show his incompetency.

Cited in notes (14 L.R.A.(N.S.) 757) on evidence of specific instance to prove character of fellow-servant; (33 L.R.A.(N.S.) 751) on evidence of reputation to show incompetency of servant or master's knowledge thereof.

48 L. R. A. 393, COM. v. MURPHY, 174 Mass. 369, 75 Am. St. Rep. 353, 54 N. E. 860.

Affirmed in 177 U. S. 155, 44 L. ed. 711, 20 Sup. Ct. Rep. 639.

Former jeopardy.

Cited in Re Somers, 31 Nev. 539, 24 L.R.A.(N.S.) 507, 135 Am. St. Rep. 700, 103 Pac. 1073, holding retrial on charge of murder is properly allowed where

prisoner was found guilty of involuntary manslaughter under an indictment charging murder and secured a new trial on account of error; Schultz v. State, 135 Wis. 662, 116 N. W. 259, (dissenting opinion), as defining jeopardy to exclude reversed convictions.

48 L. R. A. 396, HOLMES v. McALLISTER, 123 Mich. 493, 82 N. W. 220.

Master's liability for medical attendance for employee.

Cited in King v. Forbes Lithograph Mfg. Co. 183 Mass. 302, 67 N. E. 330, denying authority of superintendent of cartoon department of lithographing concern, with power to hire and discharge, to bind company for medical services rendered employee; Salter v. Nebraska Teleph. Co. 79 Neb. 379, 13 L.R.A.(N.S.) 548, 112 N. W. 600, holding implied liability of employer for medical attendance furnished employee in emergency lasts only through such emergency; Cushman v. Cloverland Coal & Min. Co. 170 Ind. 408, 16 L.R.A.(N.S.) 1081, 127 Am. St. Rep. 391, 84 N. E. 759, sustaining demurrer to complaint against mining company for medical services rendered an employee at request of superintendent where no duty to injured person was alleged although it alleged ratification by president.

Cited in footnotes to Godshaw v. J. N. Struck & Bro. 51 L. R. A. 668, which denies foreman's implied authority to engage medical attendance for injured employee; Spelman v. Gold Coin Min. & Mill. Co. 55 L. R. A. 640, which denies presumption of general manager's implied authority to bind mining company for medical aid to injured employees.

Cited in note (4 L.R.A.(N.S.) 58, 64) on duty to provide medical assistance for servant.

Ratification of agent's acts.

Cited in footnote to Thompson v. New South Coal Co. 62 L. R. A. 551, which holds principal not estopped to assert invalidity of unauthorized contract by agent for sale of land by accepting part of the purchase money.

48 L. R. A. 399, GRATTIS v. KANSAS CITY, P. & G. R. CO. 153 Mo. 380, 77 Am. St. Rep. 721, 55 S. W. 108.

Fellow servants and vice principals.

Cited in Steube v. Christopher & S. Architectural Iron & Foundry Co. 85 Mo. App. 647, holding foreman and workman erecting smoke-stack not fellow servants; Zellars v. Missouri Water & Light Co. 92 Mo. App. 126, holding members of two shifts of workmen not fellow servants so as to preclude master's liability for injury to workman in second shift from unsafe condition of hot water, which earlier shift had been engaged in repairing; Fox v. Jacob Dold Packing Co. 96 Mo. App. 182, 70 S. W. 164, holding one directing and looking after master's business, vice principal irrespective of right to employ and discharge employee; Richardson v. Mesker, 171 Mo. 674, 72 S. W. 506, holding employees doing same work with same machine, fellow servants; Oglesby v. Missouri P. R. Co. 177 Mo. 311, 76 S. W. 623 (dissenting opinion), majority holding car inspector and brakeman fellow servants; Henson v. Pascola State Co. 151 Mo. App. 241, 131 S. W. 931, holding that servant unloading car and servant cutting side stakes for car were fellow-servants; Oker v. Hill-O'Meara Constr. Co. 158 Mo. App. 219, 138 S. W. 84, holding hodcarrier and carpenter, fellow-servants; Padgett v. Scullin-Gallagher Iron & Steel Co. 160 Mo. App. 553, 140 S. W. 943, holding that electrician and operator of electric crane cage are fellow servants; Fogarty v. St. Louis Transfer Co. 180 Mo. 504, 79 S. W. 664, 1 Ann. Cas. 136, holding foreman does not lose his identity as a vice principal by taking command and

actually doing the work of a laborer in an emergency; Bien v. St. Louis Transit Co. 108 Mo. App. 409, 83 S. W. 986, as rejecting departmental test for determining fellow servants and holding man in charge of car barn whose duty was to manage running of cars a vice principal as to the car crews; Hunt v. Deslodge Consol. Lead Co. 104 Mo. App. 388, 79 S. W. 710, holding one fellow servant placed in command of several others for a certain piece of work is to that extent a vice-principal; Jackson v. Lincoln Min. Co. 106 Mo. App. 449, 80 S. W. 727, holding miner who fixed tubes when filled onto cable and men who hauled cable up shaft are fellow workers although under separate foremen; Haas v. St. Louis & Suburban R. Co. 111 Mo. App. 712, 90 S. W. 1155, as rejecting departmental test and holding track worker not a fellow workman of motorman.

Cited in footnote to Alabama G. S. R. Co. v. Baldwin, 67 L.R.A. 340, which holds railroad conductor signaling engineer to back engine to effect a coupling not a fellow servant of brakeman attempting to prepare cars for coupling.

Cited in notes (51 L. R. A. 523, 526, 550, 570, 615) on vice principalship considered with reference to superior rank of negligent servant; (54 L. R. A. 125) on vice principalship as determined with reference to character of act which caused injury; (75 Am. St. Rep. 610, 625) on who is a vice principal.

Distinguished in Koerner v. St. Louis Car Co. 209 Mo. 156, 17 L.R.A.(N.S.) 297, 107 S. W. 481, holding one employed to paint cars not a fellow servant of switchman and approving departmental test as a means of reasoning to reach conclusion as to who is fellow servant.

Duty of master to furnish safe place and appliances.

Cited in Minnier v. Sedalia, W. & S. W. R. Co. 167 Mo. 112, 66 S. W. 1072, and Holmes v. Brandenbaugh, 172 Mo. 64, 72 S. W. 550, holding that master must furnish reasonably safe place and appliances for servants' work; Livengood v. Joplin-Galena Consol. Lead & Zinc Co. 179 Mo. 238, 77 S. W. 1077, holding master not liable for injury to assistant drillman from explosion of charge by contact with drill, which would not have happened if drillman had made examination as required by master; Haviland v. Kansas City, P. & G. R. Co. 172 Mo. 112, 72 S. W. 515, holding that master's duty to furnish safe place requires him to provide sufficient help so as to prevent section hand's straining back lifting rails; International & G. N. R. Co. v. Johnson, 23 Tex. Civ. App. 195, 55 S. W. 772, holding railroad company liable for killing of employee in wreck caused by defective switch; Van Verth v. Loosewiles Cracker & Candy Co. 155 Mo. App. 304, 136 S. W. 724, holding master liable for injury to servant from stumbling over obstruction in passageway while carrying kettle of hot melted sugar; Beebe v. St. Louis Transit Co. 206 Mo. 436, 12 L.R.A.(N.S.) 765, 103 S. W. 1019, holding explosion of controller not a failure to furnish safe place of employment where it was shown to have been the best obtainable; Wilcox v. Hebert, 90 Ark. 149, 118 S. W. 402, holding instruction that defendant was liable if he permitted work on unguarded mangle without letting him show that it was a safe machine unguarded was error.

Cited in footnotes to Duntley v. Inman, P. & Co. 59 L. R. A. 785, which denies liability for failure to furnish better belt shifter if one furnished is suitable when properly used; Murray v. Boston & M. R. Co. 61 L. R. A. 495, which holds risk of accident from jigger stand near track not assumed by brakeman ignorant of same; Bertha Zinc Co. v. Martin's Administrator, 70 L.R.A. 999, which holds master required to use only ordinary care to provide safe, sound, and suitable appliances for use of servant.

Assumed risk.

Cited in Blumdell v. Wm. A. Miller Elevator Mfg. Co. 189 Mo. 558, 88 S.

W. 103, holding employee who asked for a helper and was told no helper could be furnished until the afternoon and then went ahead on the work alone assumes any injury occurring because he had no helper; Root v. Kansas City S. R. Co. 195 Mo. 372, 6 L.R.A.(N.S.) 222, 92 S. W. 621, holding leaping of brakeman from train as it approached trestle which was burning and who had only been employed a few days is not within rule of assumption of risk where it is shown that railroad allowed combustibles to accumulate there but his knowledge thereof is not proved: Mathis v. Kansas City Stock Yards Co. 185 Mo. 461, 84 S. W. 66 (dissenting opinion) on assumption of risk; Butz v. Murch Bros. Constr. Co. 199 Mo. 286, 97 S. W. 895, holding non suit improper where servant in obedience to employers order attempted to go across unsafe floor in building under process of construction and was injured; Harrington v. Wabash R. Co. 104 Mo. App. 670, 78 S. W. 662, holding use of dangerous tools knowingly precludes recovery for injury thereby; Stafford v. Adams, 113 Mo. App. 724, 88 S. W. 1130, holding assumption of risk excluded by finding of master's negligence.

Contributory negligence by violating rules.

Distinguished in George v. St. Louis & S. F. R. Co. 225 Mo. 402, 125 S. W. 196, holding in absence of rule to the contrary going on side of tender while in motion in attempt to fix something out of order was not contributory negligence in law.

Negligence of railway as to switches.

Distinguished in Asmus v. United R. Co. 152 Mo. App. 533, 134 S. W. 92, holding that negligence of railway in using switch projecting above level of street was for jury.

Obiter.

Cited in Sykes v. Citizens' Nat. Bank, 78 Kan. 693, 19 L.R.A.(N.S.) 674, 98 Pac. 206, on non-conclusiveness of judicial tendencies when applied to matters not actually adjudicated.

48 L. R. A. 409, HANSCOM v. MEYER, 60 Neb. 68, 83 Am. St. Rep. 507, 82 N. W. 114.

What constitutes a newspaper.

Followed in Turney v. Blomstrom, 62 Neb. 617, 87 N. W. 339, holding paper devoted mostly to legal matters, but containing some general matters, proper medium for publication of legal notices; Hall v. Milwaukee, 115 Wis. 485, 91 N. W. 998, holding paper 12 by 18 inches, published twice a day, devoted principally to market, court, and building news, advertisements, and some general news, a newspaper.

Cited in Tylee v. Hyde, 60 Fla. 394, 52 So. 968, holding that statute as to publication of election notices requires publication only in newspapers publishing current news in general for circulation among all classes of people; Merrill v. Conroy, 77 Neb. 229, 109 N. W. 175, holding the "Omaha Daily Record" constitutes a newspaper it appearing to have varied news, advertising and business matters as well as legal items; Times Printing Co. v. Star Pub. Co. 51 Wash. 669, 99 Pac. 1040, 16 Ann. Cas. 414, holding paper of eight pages of eight regular columns each published daily containing telegraphic, theatrical, sporting and political, news is a newspaper.

— Effect of affidavit in proof of publication.

Cited in Bourke v. Sommers, 3 Neb. (Unof.) 763, 92 N. W. 990, holding in

absence of sufficient showing to contrary the publishers affidavit is proof that publication is a newspaper.

Effect of repeal of statute.

Followed in Rushton v. Dierks Lumber Co. 2 Neb. (Unof.) 567, 89 N. W. 616, holding pending actions not affected by repeal of statutes permitting recovery of deficiency judgments.

48 L. R. A. 412, OLIVER v. JERSEY CITY, 63 N. J. L. 634, 76 Am. St. Rep. 228, 44 Atl. 709.

Right to certiorari.

Followed in Currie v. Atlantic City, 66 N. J. L. 141, 48 Atl. 615, sustaining right of abutter to attack by certiorari, ordinance authorizing construction and operation of street railway without requisite consents.

Cited in Beecher v. Street & Water Comrs. 64 N. J. L. 476, 46 Atl. 166, holding owners of adjacent blocks entitled to certiorari to set aside ordinance allowing owner of two sides of street to construct bridge over such street; Fogg v. Ocean City, 74 N. J. L. 364, 65 Atl. 885, holding patron of sewer company may by certiorari question ordinance whereby old company is taken over by new although not an abutting property owner; Eggers v. Newark, 77 N. J. L. 201, 71 Atl. 665, sustaining taxpayer's right to question by certiorari an ordinance granting street railway rights although no special injury is suffered by prosecutor.

Distinguished in Kyte v. Kyte, 73 N. J. L. 221, 67 Atl. 933, holding taxpayer may prosecute certiorari to review ultra vires act of city resulting in unlawful expenditure of public funds even though no greater injury is inflicted on prosecutors property than on general public.

Officers de jure and de facto.

Cited in Brinkerhoff v. Jersey City, 64 N. J. L. 230, 46 Atl. 170, holding one inducted into and filling office of corporation counsel, officer *de facto* although officer *de jure* existed; Powers v. Com. 110 Ky. 402, 53 L. R. A. 247, 61 S. W. 735, denying validity of pardon by one whose title to office adjudged invalid in duly inaugurated contest; State ex rel. Lofland v. Hilton, 80 N. J. L. 529, 78 Atl. 16, holding that supervisor of roads upon acceptance of office of member of board of freeholders will be ousted from former office; Barendt v. McCarthy, 160 Cal. 688, 118 Pac. 228 (dissenting opinion), on right of officer de jure to injunction against de facto officer; Methodist Episcopal Church v. Hammell, 73 N. J. L. 294, 67 Atl. 941, holding acts of officer de facto not subject to collateral attack.

Cited in note (140 Am. St. Rep. 178, 181, 201) on de facto officers.

Distinguished in Dienstag v. Fagan, 74 N. J. L. 420, 65 Atl. 1011, holding board of commissioners acting under unconstitutional appointment do not become de facto officers where a de jure board was acting at same time.

Board of street and water commissioners as the governing body in municipalities.

Cited in Kearny v. Jersey City, 78 N. J. L. 82, 73 Atl. 110, holding that board of street and water commissioners is governing board of Jersey City and its contracts do not require consent of board of aldermen; United Electric Co. v. Newark, 77 N. J. L. 107, 71 Atl. 237, holding that under the statute giving the board of street and water commissioners the exclusive control of the city streets, the city council did not have authority to pass an ordinance giving an electric company the right to lay its wires in the streets.

48 L. R. A. 417, *Re* WILSON, 10 N. M. 32, 60 Pac. 73.

Jurisdiction of courts of New Mexico to pass upon territorial statutes.

Cited in Torrez v. Socorro County, 10 N. M. 691, 65 Pac. 181, holding that courts of New Mexico have jurisdiction to pass upon validity of acts of territorial legislature.

48 L. R. A. 421, HUFFMIRE v. BROOKLYN, 162 N. Y. 584, 57 N. E. 176.

Municipal liability for damage and in respect to drainage.

Cited in Hentz v. Mt. Vernon, 78 App. Div. 518, 79 N. Y. Supp. 774, holding city liable for collecting surface drainage and discharging same into water course overtaxed thereby; Sadlier v. New York, 40 Misc. 83, 81 N. Y. Supp. 308, holding city liable for damages due to ice and dirty water falling from bridge upon roof of building; Sadlier v. New York, 185 N. Y. 417, 78 N. E. 272, Affirming 104 App. Div. 84, 93 N. Y. Supp. 579, holding city not liable for consequential damages resulting from the maintenance of a bridge over the complainant's premises, where the same did not amount to a taking for public use.

Cited in note (61 L. R. A. 694) on duty and liability of municipality in respect to drainage.

Right to injunction.

Cited in Sammons v. Gloversville, 34 Misc. 460, 70 N. Y. Supp. 284, sustaining right to enjoin use of public sewer adjudged to be a trespass.

Abutter's right to damages.

Cited in Fries v. New York & H. R. Co. 169 N. Y. 284, 62 N. E. 358 (concurring opinion), denying liability to abutter for damages resulting from placing track in street upon viaduct as directed by statute; Gordon v. Ellenville & K. R. Co. 119 App. Div. 799, 104 N. Y. Supp. 702, holding damages to adjoining land caused by washing away of properly constructed embankment by freshet are consequential; Gordon v. Ellenville & K. R. Co. 195 N. Y. 142, 47 L.R.A.(N.S.) 470, 88 N. E. 14, holding railroad not liable for overflow of plaintiff's land caused by freshet although its tracks narrowed the outlet where they were authorized and constructed with due care.

Party defendant on merger of municipalities.

Cited in Birmingham v. Darden, 1 Ala. App. 481, 55 So. 1014, holding that where one municipality after beginning of action for damages is merged in another municipality, latter may be substituted as defendant.

Injury to fishing right as damages from pollution.

Cited in note (33 L.R.A.(N.S.) 76) on injury to fishing right as damages from pollution.

48 L. R. A. 424, HICKS v. BRITISH AMERICA ASSUR. CO. 162 N. Y. 284, 56 N. E. 743.

Oral contract to insure.

Cited in Squier v. Hanover F. Ins. Co. 162 N. Y. 555, 76 Am. St. Rep. 349, 57 N. E. 93, holding insurer bound by agent's oral agreement to continue existing insurance and issue renewal; Loomis v. Jefferson County Patrons' Fire Relief Asso. 92 App. Div. 605, 87 N. Y. Supp. 5, holding co-operative insurance company bound by director's oral agreement to issue new policy after expiration of old one; Floars v. Ætna L. Ins. Co. 144 N. C. 235, 11 L.R.A.(N.S.) 359, 56 S. E. 915, holding enactment of statutory standard form policy did not invalidate oral policies.

Distinguished in Northam v. Dutchess County Mut. Ins. Co. 177 N. Y. 74, 69 N. E. 222, sustaining right of assignee for creditors to enforce agent's oral agreement to insure assignee's interest in property covered by policy issued to assignor: Summers v. Mutual L. Ins. Co. 12 Wyo. 389, 66 L.R.A. 818, 109 Am. St. Rep. 992, 75 Pac. 937, where the oral contract was in respect to insurance for which there was no standard policy.

Waiver of provision as to proof of loss; agency.

Cited in Legnard v. Standard Life & Acci. Ins. Co. 81 App. Div. 324, 81 N. Y. Supp. 516, holding insurance agent, though with power to countersign, without authority to waive conditions in policy.

Cited in footnotes to Hoffman v. Michigan Home & Hospital Asso. 54 L.R.A. 746, which holds failure to comply with requirements as to proofs of loss not fatal when liability denied for other reason; Phenix Ins. Co. v. Kerr, 66 L.R.A. 569, which holds proofs of loss waived by distinct denial of liability under policy within time prescribed for proofs on ground that there was no contract of insurance.

Distinguished in Smaldone v. Insurance Co. of N. A. 162 N. Y. 583, 57 N. E. 168, sustaining validity of general agent's unindorsed waiver of service of proofs of loss.

Construction of policy.

Cited in Nelson v. Traders' Ins. Co. 86 App. Div. 69, 83 N. Y. Supp. 220, holding store injured by fall of another portion of same building within terms of clause "that, if building fall, policy shall be void," although damage resulted from fire caused by such fall; Heilbrunn v. German Alliance Ins. Co. 140 App. Div. 559, 125 N. Y. Supp. 374, holding that court will assume that policy is in standard form; Scharles v. N. Hubbard & Co. 74 Misc. 80, 131 N. Y. Supp. 848 (dissenting opinion), on right to affix riders on standard form of policy.

Completion of contract of insurance.

Cited in footnote to Summers v. Mutual Life Ins. Co. 66 L.R.A. 812, which holds contract for present insurance not made by applicant giving note for first premium in consideration that a policy shall be issued where his examination is to be made in future and he expressly stipulates that note shall not be negotiated until policy has been delivered and accepted.

Cited in note (138 Am. St. Rep. 48) on delivery and acceptance of insurance policies.

Affirmance of judgment upon cause of action different from that urged at trial.

Cited in Polhemus v. Polhemus, 114 App. Div. 784, 100 N. Y. Supp. 263, holding judgment for one cause of action cannot be supported upon appeal as if for another cause of action.

48 L. R. A. 432, OBSORNE v. STEPHENSON, 36 Or. 328, 78 Am. St. Rep. 778, 58 Pac. 1103.

48 L. R. A. 441, CANSLER v. PENLAND, 125 N. C. 578, 34 S. E. 683.

Rehearing denied in 126 N. C. 793, 36 S. E. 285.

Acts in violation of trust.

Approved in White v. Cook, 51 W. Va. 208, 57 L. R. A. 421, footnote p. 417, 90 Am. St. Rep. 775, 41 S. E. 410, holding void, sale by sheriff to deputy of all work of office in one district and compensation for same.

Cited in Wittkowsky v. Baruch, 127 N. C. 318, 37 S. E. 449, denying validity of compromise by assignee for creditors.

48 L. R. A. 442, SLAUGHTER v. O'BERRY, 126 N. C. 181, 35 S. E. 241.

Construction of statutes.

Followed in State v. Higgs, 126 N. C. 1024, 48 L. R. A. 450, 35 S. E. 473, holding that doubts in construction of statute invading private property rights must be resolved against state.

Validity of ordinance.

Cited in Carpenter v. Reliance Realty Co. 103 Mo. App. 496, 77 S. W. 1004, holding an ordinance providing the legal depth for excavations and providing that if any excavations go deeper the person owning the property shall at his own expense protect the adjoining property from injury, is invalid where there is no statute giving the power to pass such ordinance.

Duty and liability as to drainage.

Cited in note (61 L. R. A. 701) on duty and liability of municipality with respect to drainage.

48 L. R. A. 444, EDGERTON v. GOLDSBORO WATER CO. 126 N. C. 93, 35 S. E. 243.

Doubt as to validity of ordinance.

Cited in Slaughter v. O'Berry, 126 N. C. 185, 48 L. R. A. 444, 35 S. E. 241, resolving doubt as to validity of ordinance invading individual rights, in favor of latter; Carpenter v. Reliance Realty Co. 103 Mo. App. 497, 77 Mo. App. 1004, on the same point.

What is a "necessary expense."

Cited in Wadsworth v. Concord, 133 N. C. 593, 45 S. E. 948, holding furnishing lights for city a "necessary expense."

Cited in footnote to Fawcett v. Mt. Airy, 63 L. R. A. 870, which sustains municipality's power to incur expense of owning and operating water and electric light plants without submitting proposition to voters.

Cited as overruled in Henderson Water Co. v. Henderson Graded Schools, 151 N. C. 175, 65 S. E. 927, holding supplying city with water a necessary expense.

Municipal water supply.

Cited in note (61 L. R. A. 34, 63) on establishment and regulation of municipal water supply.

Power of municipality to levy taxes.

Cited in note (25 Eng. Rul. Cas. 296) on power of municipality to levy taxes.

48 L. R. A. 446, STATE v. HIGGS, 126 N. C. 1014, 35 S. E. 473.

Reasonableness or validity of ordinance.

Cited in State v. Hill, 126 N. C. 1142, 50 L. R. A. 473, 36 S. E. 326, denying reasonableness of ordinance requiring license for doing scavenger work; Iler v. Ross, 64 Neb. 723, 57 L. R. A. 900, 97 Am. St. Rep. 676, 90 N. W. 869, denying power of city to create monopoly for collection of garbage at expense of residents served; State v. Staples, 157 N. C. 638, 37 L.R.A.(N.S.) 697, 73 S. E. 112, holding that municipality may forbid construction of bill-boards nearer than 24 inches to ground.

Distinguished in Ivins v. Trenton, 68 N. J. L. 506, 53 Atl. 202, upholding as valid ordinance prohibiting erection of stationary or swinging signs or awnings over sidewalk.

Overruled in Small v. Edenton, 146 N. C. 530, 20 L.R.A.(N.S.) 148, 60 S. E. 413, sustaining ordinance prohibiting erection of stationary awning over sidewalk.

Control of cities over its streets.

Cited in notes in (20 L.R.A.(N.S.) 147) on power of municipality to compel removal of awnings or signs encroaching on streets; (21 L.R.A.(N.S.) 736) on municipal power as to regulation of signs and billboards on or over highways.

Cited as overruled in Rosenthal v. Goldsboro, 149 N. C. 134, 20 L.R.A.(N.S.) 813, 62 S. E. 905, 16 Ann. Cas. 639, holding that the city authorities could order the removal of shade trees from the street where necessary to preserve the sewers laid in the street.

Criminal prosecution under ordinance.

Cited in State v. Caldwell, 127 N. C. 522, 37 S. E. 138, holding that one may be prosecuted for violating ordinance taxing one engaged in selling or delivering picture frames; Board of Education v. Henderson, 126 N. C. 691, 36 S. E. 158, holding that while city has no power to make criminal law, legislature may make violation of ordinances a criminal offense and give mayor jurisdiction to try.

Removal of obstructions from street.

Cited in State v. Godwin, 145 N. C. 464, 122 Am. St. Rep. 467, 59 S. E. 132, holding fence erected so as to obstruct public highway properly removed by municipal authorities or by the one annoyed by the obstruction.

Sidewalk as a part of the street.

Cited in Hester v. Durham Traction Co. 138 N. C. 293, 1 L.R.A.(N.S.) 985, 50 S. E. 711, holding that the sidewalk was a part of the street and the abutting owner has the same rights in it that he has in the street.

48 L. R. A. 452, STRAUSE BROS. v. ÆTNA INS. CO. 126 N. C. 223, 35 S. E. 471.

Situs of debt in garnishment.

Cited in Sexton v. Phœnix Ins. Co. 132 N. C. 2, 43 S. E. 479, holding that place where debtor or creditor resides is situs of debt for purpose of garnishment.

Cited in footnotes to Tootle v. Coleman, 57 L.R.A. 120, which holds right to garnish debtor not limited to situs of chose in action; National Broadway Bank v. Sampson, 66 L.R.A. 606, which holds liability of nonresident to nonresident corporation not subject to attachment within state when debtor is temporarily within jurisdiction as situs of debt is a place of residence either of debtor or of creditor.

Cited in note (3 L.R.A.(N.S.) 611) on place of payment as affecting jurisdiction to garnish debt.

Foreign corporations and service of process.

Cited in Biggs v. Mutual Reserve Fund Life Asso. 128 N. C. 7, 37 S. E. 955, holding irrevocable, foreign insurance company's stipulation as condition of right to do business, for appointment of commissioner to receive service of process while liabilities outstanding.

Distinguished in Goodwin v. Clayton, 137 N. C. 235, 67 L.R.A. 226, 107 Am. St. Rep. 479, 49 S. E. 173, holding foreign corporation may be sued in garnishment in other than its state of origin where subject of action is situated and cause of action accrued in state where suit is brought.

Protection of nonresident garnishee or creditor.

Cited in footnotes to Hawley v. Hurd, 52 L. R. A. 195, which sustains discrimination in favor of banks within state as to attachment of negotiable paper; Pennsylvania R. Co. v. Rogers, 62 L. R. A. 178, which holds nonresident sum-

moned as garnishee while temporarily within state not subject to further proceedings unless he has property within state.

Abatement of action on policy by pendency of action in foreign jurisdiction.

Cited in note (29 L.R.A.(N.S.) 406) on abatement of action of insurance policy by pendency of action thereon in foreign jurisdiction.

48 L. R. A. 455, HARDIN COUNTY v. COFFMAN, 60 Ohio St. 527, 54 N. E. 1054.

Followed without discussion in Canton v. Shull, 61 Ohio St. 664, 57 N. E. 1131.

County liability as to unsafe bridge.

Cited in Kovarik v. Saline Co. 86 Neb. 447, 27 L.R.A.(N.S.) 832, 136 Am. St. Rep. 704, 125 N. W. 1082, holding county bound to keep bridge safe for such vehicles as it might have known would cross over it.

Cited in note (27 L.R.A.(N.S.) 832, 833, 834) on municipal duty to construct and maintain bridges in condition to sustain unusual weight.

— Pleading.

Cited in Johnson Co. v. Carmen, 71 Neb. 683, 99 N. W. 502, holding in an action for death caused by the defective condition of a bridge, that a motion for a more specific statement should have been maintained where the petition alleged that the bridge was "out of repair and unsafe."

Liability of county commissioners for failure to repair bridge.

Followed in Rahe v. Cuyahoga County, 5 Ohio C. C. N. S. 100, 26 Ohio C. C. 494, holding action for death by wrongful act caused by negligence of county commissioners in failing to keep bridge in proper repair was maintainable by administrator against commissioners in their official capacity.

— Road.

Distinguished in Smith v. Williams County, 10 Ohio C. C. N. S. 117, 29 Ohio C. C. 611, holding county commissioners were under no duty to keep ordinary unimproved county road in repair and action was not maintainable against them for injury resulting from their failure to do so.

— Liability individually or on bond.

Cited in State v. Collins, 8 Ohio N. P. N. S. 66, 19 Ohio S. & C. P. Dec. 328, holding county commissioner not individually liable nor upon his bond for failure of board to keep road and bridge in repair.

Liability of municipality for negligence in performance of governmental function.

Cited in note (38 L.R.A.(N.S.) 154) on liability of municipality for death caused by negligence in the performance of a governmental function.

48 L. R. A. 459, STATE v. THOMAS, 61 Ohio St. 444, 56 N. E. 276.

Holidays as affecting business transactions.

Cited in State v. Duncan, — La. —, 10 L.R.A.(N.S.) 791, 43 So. 283, 11 Ann. Cas. 557 (dissenting opinion), on the effect of a statutory legal holiday.

Cited in footnotes to Page v. Shainwald, 57 L.R.A. 173, which denies right to exercise option on day succeeding holiday on which it matures; Ocumpaugh v. Norton, 68 L.R.A. 272, which holds that aggregate of half holidays shall be added in computing time for taking appeals under statute excluding holidays from number of days specified.

Cited in notes (57 L.R.A. 173) as to how far law of holidays extends to mat-

ters other than negotiable paper; (10 L.R.A.(N.S. 792) on court business on legal holiday.

Service of process on Sunday.

Cited in Shilling v. Seigle, 207 Pa. 387, 56 Atl. 957, holding service of process on Sunday in state where such service valid, no defense to action upon foreign judgment.

Statute changing mode of selecting jurors.

Cited in State v. Barlow, 70 Ohio St. 378, 71 N. E. 726, holding that statute changing manner of drawing jurors does not affect accused's rights on merits.

Objections to manner of empaneling grand jury.

Cited in State v. Laning, 7 Ohio N. P. N. S. 285, 18 Ohio S. & C. P. Dec. 676, holding that objections to the manner of empaneling the grand jury should be made by challenge and not after presentment of the indictment.

48 L. R. A. 465, STATE *ex rel.* BULKELEY v. WILLIAMS, 68 Conn. 131, 35 Atl. 24, 421.

Legislative powers and limitations.

Cited in Matthews v. Kimball, 70 Ark. 463, 66 S. W. 651, holding that land need not actually touch to be within authorization of assessments based upon consent of majority of owners of adjoining property; Crane v. Siloam Springs, 67 Ark. 36, 55 S. W. 955, holding creation of improvement district embracing entire city or town to be within authorization of assessment in towns and cities under regulations prescribed by law; McSurely v. McGrew, 140 Iowa, 169, 132 Am. St. Rep. 248, 118 N. W. 415, holding that a statute legalizing the acts of the county commissioners in absolving the county treasurer from liability for moneys deposited in an approved bank, is valid though retroactive in its effect.

Cited in note (27 L.R.A.(N.S.) 724) on constitutionality of statute regulating appointment to office with reference to party affiliation.

— To burden municipalities and control their government and property.

Cited in State v. Atkin, 64 Kan. 177, 97 Am. St. Rep. 343, 67 Pac. 519, sustaining power of legislature to prohibit employment more than eight hours a day upon local improvements, and referring particularly to annotation in 48 L. R. A. 465; McDonald v. Louisville, 113 Ky. 435, 68 S. W. 413, holding statute requiring council to levy special tax to establish fund for support of crippled members of fire department and their families, void, and referring with approval to annotation in 48 L. R. A. 465; Ionia County v. Ionia Circuit Judge, 134 Mich. 414, 96 N. W. 497, holding valid a limitation by legislature on annual tax of county; Horton v. Newport, 27 R. I. 288, 1 L.R.A.(N.S.) 517, 61 Atl. 759, 8 Ann. Cas. 1097, holding appointment by state legislature of board of police commissioners for city is valid; McDonald v. Louisville, 113 Ky. 438, 68 S. W. 413, holding legislature cannot compel city to create by local tax a fund for pensioning disabled members of local fire department where constitution restricts legislative control over cities; Keefe v. Union, 76 Conn. 167, 56 Atl. 571, holding city liable for reasonable value of services rendered in smallpox epidemic although ordered by state officer; Potter v. Calumet Electric Street R. Co. 158 Fed. 528, holding city authority over streets a governmental function within legislative control; Ex parte Corliss, 16 N. D. 478, 114 N. W. 962, on absolute control of legislature over cities in absence of constitutional restriction.

Annotation approved in State v. Lawrence, 79 Kan. 253, 100 Pac. 485, holding state may compel city to issue bonds in support of state university situated therein; Peet v. East Grand Forks, 101 Minn. 528, 112 N. W. 1005, as collecting cases on opposing views as to power of legislature over city.

Annotation cited in State ex rel. Hendricks v. Marion County, 170 Ind. 603, 85 N. E. 513, holding in absence of constitutional restriction legislature has plenary control over counties: Hunter v. Pittsburgh, 207 U. S. 179, 52 L. ed. 159, 28 Sup. Ct. Rep. 40, holding legislative control is limited to property held by city in its governmental capacity.

Cited in footnotes to State *ex rel.* White v. Barker, 57 L. R. A. 244, which denies power of legislature to take management of water supply system from appointees of city; Bailey v. Raleigh, 58 L. R. A. 178, which denies legislative power to require city to refund license taxes for selling liquor outside city limits; Street v. Varney Electrical Supply Co. 61 L. R. A. 154, which denies power of legislature to compel city to pay more for common labor on public improvements than its worth in market; People *ex rel.* Rodgers v. Coler, 52 L. R. A. 814, which denies power of legislature to fix compensation city must pay for labor or other services; Lexington v. Thompson, 57 L. R. A. 775, which denies power of legislature to fix salaries of city firemen; O'Connor v. Fond du Lac, 53 L. R. A. 831, which holds void, statute for establishing police board in cities of certain class to appoint all police officers; Redell v. Moores, 55 L. R. A. 740, which sustains statute creating board of fire and police commissioners for certain cities, to be appointed by governor; State *ex rel.* Geake v. Fox, 56 L. R. A. 893, which holds void, statute authorizing governor to appoint board to control city fire department, fire alarms, etc.; Americus v. Perry, 57 L. R. A. 230, which sustains act creating board of police commissioners, naming first members of board and setting forth their powers and mode of choosing successors; Com. *ex rel.* Elkin v. Moir, 53 L. R. A. 837, which sustains statute providing system of government for cities; People ex rel. Metropolitan Street R. Co. v. State Bd. of Tax Comrs. 63 L.R.A. 884, which holds right of local self-government not violated by recognition for tax purposes of distinct property in special corporate franchises and imposing duty of assessing tax upon state officers.

Cited in notes (50 L.R.A. 330) on local self-government in Rhode Island, (15 L.R.A.(N.S.) 577) on state control of municipal fire department; (34 L.R.A.(N.S.) 608) on legislative power to require municipality to pension employees.

Statutes relating to past acts.

Cited in note (52 L. R. A. 940) on constitutionality of retroactive statute creating right of action or of set-off on account of past acts or transactions.

Judicial questions.

Cited in Norwalk Street R. Co.'s Appeal, 69 Conn. 591, 39 L. R. A. 799, 37 Atl. 1080, sustaining right to "appeal" to courts in matters as to location and construction of street railways, after refusal or neglect of municipal authorities to act for sixty days.

Mandamus.

Cited in State v. Towers, 71 Conn. 663, 42 Atl. 1083, holding that power of person to be coerced to perform act commanded must appear from record in mandamus.

Distinguished in Williams v. New Haven, 68 Conn. 273, 36 Atl. 61, holding mandamus to be directed to municipality in corporate capacity where no officer is specially charged with performance of the duty.

48 L. R. A. 503, WALTERS v. CHARLESTON MILLS, 40 C. C. A. 108, 99 Fed. 825.

Relief from mistake.

Cited in Grieve v. Grieve, 15 Wyo. 366, 9 L.R.A.(N.S.) 1213, 89 Pac. 569, 11

Ann. Cas. 1162, denying reformation of a written contract because of mistake in reducing to writing when party claiming mistake was negligent in failing to read contract and where no fraud was practised; Vallentyne v. Immigration Land Co. 95 Minn. 198, 103 N. W. 1028, 5 Ann. Cas. 212, denying right of rescission of contract by vendor who erased clause exempting timber rights under the impression that timber had been removed when inquiry would have informed him of mistake.

— Voluntary payment of tax.

Cited in Jones v. Black, 18 Okla. 358, 90 Pac. 422, 11 Ann. Cas. 753 (dissenting opinion), on payment of taxes by volunteer.

Right of subrogation.

Cited in notes (16 L.R.A.(N.S.) 233) on subrogation of one paying stranger's debt; (99 Am. St. Rep. 498) on right of subrogation.

48 L. R. A. 510, ARKANSAS F. INS. CO. v. WILSON, 67 Ark. 553, 77 Am. St. Rep. 584, 55 S. W. 933.

Forfeitures under terms of contract.

Cited in Singer Mfg. Co. v. Brewer, 78 Ark. 205, 93 S. W. 755, holding termination of employment did not work forfeiture of commissions earned under an agreement that commissions stipulated were full payment of claims and that all claims therefore should cease upon termination of agreement.

Forfeiture of insurance by alienation or change of interest.

Cited in House v. Security F. Ins. Co. 145 Iowa, 465, 121 N. W. 509, holding that giving of option is not change in title; Moseley v. Northwestern Nat. Ins. Co. 109 Mo. App. 469, 84 S. W. 1000, holding a contract for sale of land, void under statute of frauds, does not work a forfeiture of fire insurance where policy by its terms, is made void by change of "interest, title, or possession," of property insured; Garner v. Milwaukee Mechanics' Ins. Co. 73 Kan. 132, 4 L.R.A.(N.S.) 656, 117 Am. St. Rep. 460, 84 Pac. 717, 9 Ann. Cas. 459, holding an executory contract to sell real estate does not work a forfeiture of insurance thereon where policy by its terms is void if any change take place in "interest, title, or possession" of insured property; Swank v. Farmers' Ins. Co. 126 Iowa, 551, 102 N. W. 429, holding fire policy clause against valid contract "of sale or to sell" did not work a forfeiture where contract of sale of property only became effective upon a contingency; Widincamp v. Phenix Ins. Co. 4 Ga. App. 760, 62 S. E. 478 holding policy of fire insurance is rendered void by execution of bond for title by insured to a third party, a receipt of part of purchase price, and delivery of possession where policy declared a change of interest without consent of company would render policy void.

Cited in note (3 L.R.A.(N.S.) 108) on contract to convey as breach of condition in insurance policy against change in title or interest.

Distinguished in Excelsior Foundry Co. v. Western Assur Co. 135 Mich. 472, 98 N. W. 9, 1 Ann. Cas. 707, holding reassignment of land contract, receipt of one half of consideration, and delivery of bill of sale of plant in escrow by insured worked a forfeiture of insurance where policy of agreement therein was to be void upon change of "interest, title or possession" of property.

Construction of contracts as law question.

Cited in Dugan v. Kelly, 75 Ark. 58, 86 S. W. 831, holding construction of unambiguous contract, for work performed, is a question of law for court.

48 L. R. A. 514, LIEBERMAN v. FIRST NAT. BANK, 2 Penn. (Del.) 416, 82 Am. St. Rep. 414, 45 Atl. 901.

Liability of sureties.

Cited in State *ex rel.* Barringer v. Hawkins, 103 Mo. App. 257, 77 S. W. 98, holding that liability of sureties on notary's bond continues during period of latter's fraudulent concealment.

Cited in footnote to Fidelity Mut. Life Asso. v. Dewey, 54 L. R. A. 945, which holds sureties on bond of employee released by continuing him in employ without weekly reports as required by contract.

Liability of bank for false statement.

Cited in footnotes to Tecumseh Nat. Bank v. Chamberlain Bkg. House, 57 L. R. A. 811, which holds false representations by defaulting president as to liability to bank and value of securities already furnished not binding on bank; Taylor v. Commercial Bank, 62 L. R. A. 783, which denies bank's liability for cashier's fraud in inducing third person to give credit to customer legally indebted to bank, by false representations as to his responsibility.

Effect of fraud upon running of statute of limitations.

Cited in McMullen v. Winfield Bldg. & L. Asso. 64 Kan. 306, 56 L. R. A. 928, footnote p. 924, 91 Am. St. Rep. 236, 67 Pac. 892, which denies innocent surety's right to invoke aid of limitation where principal fraudulently conceals defalcations; Wolkins v. Knight, 134 Mich. 349, 96 N. W. 445, holding that where administratrix was fraudulently informed by debtor that he had paid account, statute of limitations began to run from time she ascertained truth; Wellner v. Eckstein, 105 Minn. 460, 117 N. W. 830, (dissenting opinion), on effects of fraudulent concealment on running of statute of limitations.

Cited in footnotes to Smith v. Blachley, 53 L. R. A. 849, which holds running of limitation against action to recover back money not prevented by fraud unless investigation prevented by affirmative efforts; Mereness v. First Nat. Bank, 51 L. R. A. 410, which holds running of limitations on demand certificate of deposit not interrupted by bank's misrepresentations in denial of liability; Pietsch v. Milbrath, 68 L.R.A. 945, which holds that the fraudulent concealment of a cause of action at law will not prevent running of limitations where the statute expressly states that it shall not run under such circumstances in equity cases.

48 L. R. A. 520, TRUST CO. v. STATE, 109 Ga. 736, 35 S. E. 323.

Corporate power to purchase stock in another corporation.

Cited in MacGinness v. Boston & M. Consol. Copper & S. Min. Co. 29 Mont. 462, 75 Pac. 89, holding an action by minority stockholders to enjoin holding corporation from controlling smaller corporation will not lie where such business is being conducted in accordance with charter and for benefit of all stockholders.

Cited in footnote to Joseph Bancroft & Sons Co. v. Bloede, 52 L. R. A. 734, which sustains power of cotton manufacturing company to purchase stock in company manufacturing dyes used by former.

Right of corporations to consolidate.

Cited in notes (52 L. R. A. 387) on right of corporations to consolidate; (64 L. R. A. 695) on illegal trusts under modern anti-trust laws.

Suits by public to prevent public wrongs.

Cited in State v. Pacific Exp. Co. 80 Neb. 832, 18 L.R.A.(N.S.) 669, 115 N. W. 619, holding a state can appeal to its own courts to enjoin express company

from putting into effect rates contrary to law; Woodward v. Westmoreland, 124 Ga. 532, 52 S. E. 810, 4 Ann. Cas. 472, holding that the Attorney General has power to institute suits necessary for the protection of the public health and safety.

— Injunction.

Cited in State v. Boston & M. R. Co. 75 N. H. 337, 74 Atl. 542, enjoining railroad from demanding rates in excess of those established by law; Hart v. Atlanta Terminal Co. 128 Ga. 773, 58 S. E. 452, holding injunction is the proper remedy in an action by state in behalf of public to prevent railroad corporation entering upon contract in violation of constitution.

Statutes declarative of common law.

Cited in Knight & J. Co. v. Miller, 172 Ind. 36, 87 N. E. 823, 18 Ann. Cas. 1146, holding that statutes or constitutional provisions declarative of common law are self active.

48 L. R. A. 531, TERRE HAUTE & I. R. CO. v. FOWLER, 154 Ind. 682, 56 N. E. 228.

Contributory negligence as question for jury.

Cited in footnote to Neeley v. Southwestern Cotton Seed Oil Co. 64 L. R. A. 146, which holds contributory negligence of employee in using defective ladder to adjust belt after complaining to manager and being told that it was all right, question for jury.

Emergency work within scope of employment.

Cited in Blackburn v. Cherokee Lumber Co. 152 N. C. 365, 67 S. E. 915, holding railroad company is liable for death of engineer through failure to use automatic couplers where such engineer, dissatisfied with brakeman's work assumed his duties; Mehan v. Lowell Electric Light Corp. 192 Mass. 60, 78 N. E. 385, holding that where servant employed as oiler by electric light company was killed while attempting to put out fire in electric apparatus, it was question for jury whether the emergency required his assistance.

Cited in footnote to Kinzel v. Atlanta, K. & N. R. Co. 69 L.R.A. 757, which holds risk of land slides assumed by engineer reluctantly obeying order to take train through mountainous region on regular trip at time of heavy rains.

Duty of railroad as to safety of bridge.

Cited in McCabe & S. Constr. Co. v. Wilson, 17 Okla. 367, 87 Pac. 320, holding railroad company is liable for injuries received by fireman because of defective construction of bridge.

48 L. R. A. 535, HIBBS v. ADAMS TWP. 110 Iowa, 306, 81 N. W. 584.

Rescission of voted tax.

Cited in Kirchner v. Board of Directors, 141 Iowa, 51, 118 N. W. 51, on the right of electors in school district to rescind vote for tax.

48 L. R. A. 537, FT. JEFFERSON IMPROV. CO. v. DUPOYSTER, 108 Ky. 792, 51 S. W. 810.

Later appeal in 112 Ky. 797, 66 S. W. 1048, 24 Ky. L. Rep. 1782, 72 S. W. 268, and 118 Ky. 199, 80 S. W. 800, for history of litigation.

Champertous conveyances.

Cited in Meade v. Ratliff, 133 Ky. 415, 134 Am. St. Rep. 467, 118 S. W. 271, holding, under champerty statute, a deed conveying lands held adversely is void-

able only at instance of parties in adverse possession and not by grantee under subsequent deed.

Cited in note (35 L.R.A.(N.S.) 740, 762) on effect of conveyance of land held adversely.

Life estates and remainders.

Cited in Bryan v. Dupoyster, 64 C. C. A. 417, 130 Fed. 90, holding a deed, whereby grantee is to hold during life and is to deed or will to bodily heirs of another, grants an estate for life with remainder which vests in first born child and opens up to after born children.

Cited in footnote to Allison v. Allison, 63 L.R.A. 920, which holds that devise of remainder at death of life tenant to be divided among testator's heirs at law refers to heirs living at testator's death.

Cited in note (84 Am. St. Rep. 240) on conveyances to persons not in being.

48 L. R. A. 542, McKEE v. TOURTELLOTTE, 167 Mass. 69, 44 N. E. 1071.

Employer's liability.

Cited in Ft. Wayne v. Patterson, 25 Ind. App. 556, 58 N. E. 747, sustaining action for injuries from fall of insecure walls of trench into which workman sent; Inland Steel Co. v. Kiessling, 174 Ind. 634, 91 N. E. 1084, holding that general verdict for plaintiff is in conflict with finding of jury that plaintiff did not rely on defendant's assurance of safety.

Cited in notes (48 L.R.A. 804) on liability for injuries received by servant in performance of duties outside of scope of original contract; (97 Am. St. Rep. 894, 899) on right of recovery by employees accepting extra hazardous duties.

Annotation in 48 L. R. A. 542, referred to particularly in McLaine v. Head & D. Co. 71 N. H. 309, 58 L. R. A. 470, 93 Am. St. Rep. 522, 52 Atl. 545, holding master not liable for foreman's failure to warn workman in trench when dirt is dumped in by other workmen.

Distinguished in Allard v. Hildreth, 173 Mass. 27, 52 N. E. 1061, denying employer's liability for injury from act known by employee to be dangerous; Tanner v. New York, N. H. & H. R. Co. 180 Mass. 576, 62 N. E. 993, holding that lineman assumed risk from rottenness by accepting employment of dismantling old poles.

— Injuries received in obeying direct command.

Approved in Stephens v. Southern R. Co. 82 S. C. 549, 64 S. E. 601, holding that if there is ground for a reasonable difference of opinion as to the danger, the servant is not bound to set up his judgment against that of his superior whose orders he is required to obey, but he may rely upon the judgment of his superior.

Cited in Millard v. West End Street R. Co. 173 Mass. 514, 53 N. E. 900, sustaining employer's liability for injury to workmen in obeying superintendent's order to go upon lumber piled carelessly without workman's knowledge; Stewart v. Pittsburg & M. Copper Co. 42 Mont. 207, 111 Pac. 723, holding that smelter employee may state that he did not appreciate danger into which he was ordered by shift-boss; Caciatore v. Transit Constr. Co. 147 App. Div. 678, holding erroneous, instruction that in determining question of contributory negligence that plaintiff was entitled to rely on defendant's assurance of safety; Birmingham Min. & Constr. Co. v. Skelton, 149 Ala. 472, 43 So. 110, holding an inexperienced mine worker was not guilty of contributory negligence where he undertook to prop an apparently dangerous roof upon assurance from experienced mine boss that it was safe; Bush v. West Yellow Pine Co. 2 Ga. App. 299, 58 S.

E. 529, holding an inexperienced lumber hand is not guilty of contributory negligence where, after noticing the danger, he is informed by defendant's superintendent that appliances for loading were safe; and also citing annotation on this point; Jensen v. Kyer, 101 Me. 112, 63 Atl. 389, holding that the servant may rely upon the judgment of the master in making the order unless the danger is so obvious that a reasonably prudent man would not incur it; Lord v. Wakefield, 185 Mass. 218, 70 N. E. 123, holding that while the servant was apprehensive of the danger if the pole upon which he was working, was not guyed, yet it was not such a case of apparent danger so he might yield his judgment to that of his superior and obey the command to remain on the pole; Carrier v. Merrick Lumber Co. 203 Mass. 327, 89 N. E. 544, holding that the assurance of safety by the master or his superintendent makes the due care of the servant relying upon it, a question of fact for the jury, and the fact that he did not instantly act upon it is to be considered with the other evidence; Griffin v. Joseph Ross Corp. 204 Mass. 481, 90 N. E. 926, holding that the due care and the assumption of risk by a servant in working with a broken guard on a machine, is a question for the jury; Mistrom v. Shenango Furnace Co. 105 Minn. 143, 117 N. W. 480, holding that the fact that the servant was using the defective fuse according to the instructions of the foreman is to be considered by the jury in passing upon the due care of the servant.

Cited in notes (48 L.R.A. 758, 760) on servant's right of action for injuries received in obeying direct command; (4 L.R.A.(N.S.) 971) on effect of master's assurance as to obvious dangers of employment; (23 L.R.A.(N.S.) 1014) on assurance of safety by master or vice-principal; (30 L.R.A.(N.S.) 453, 454) on servant's right of action for injuries received in obeying command accompanied by assurance of safety.

Vice principalship.

Cited in note (51 L. R. A. 592) on vice principalship considered with reference to superior rank of negligent servant.

Questions for jury.

Cited in Van Duzen Gas & Gasoline Engine Co. v. Schelies, 61 Ohio St. 309, 55 N. E. 998, holding for jury, question whether workman negligent in obeying order to perform apparently hazardous duty; Collins v. Greenfield, 172 Mass. 80, 51 N. E. 454, holding that jury may find against assumption of risk by employee set to work under overhanging rock, having crack behind; Kansas & T. Coal Co. v. Chandler, 71 Ark. 527, 77 S. W. 912, holding it question for jury whether employee assumed risk of injuries from falling of roof of mine; Delbusso v. American Cement Plaster Co. 165 Mich. 326, 130 N. W. 702, holding it question for jury whether employee appreciated danger from operation of elevator by ringing bell in engine room; McBrayer v. Virginia-Carolina Chemical Co. 89 S. C. 390, 71 S. E. 980, holding nonsuit improper, where laborer obeyed instructions of foreman after saying that work was dangerous; Jellow v. Fore River Ship Bldg. Co. 201 Mass. 468, 87 N. E. 906, holding that the question whether the representation that the danger would be removed coupled with the fact that there had been an improvement, had affected the plaintiff's appreciation of the risk, was one of fact for the jury.

Cited in footnote to Neeley v. Southwestern Cotton Seed Oil Co. 64 L. R. A. 146, which holds contributory negligence of employee in using defective ladder to adjust belt after complaining to manager and being told that it was all right, question for jury.

What constitutes negligence.

Approved in Burnside v. Novelty Mfg. Co. 121 Mich. 130, 79 N. W. 1108, hold-

ing deference to opinion of those supposed and bound to know of dangers or possible dangers not negligence.

Exception to broad or narrow instructions.

Cited in Tepper v. Boston Elev. R. Co. 192 Mass. 51, 78 N. E. 384, where it was held that plaintiff has no right of exception where he is apprehensive of failure of judge's instruction to consider certain evidence and makes no objection or request; Hayes v. Moulton, 194 Mass. 165, 80 N. E. 215, holding that if the party fears that the language used by the judge might be taken in a broader sense than they deemed consistent with the law, they should call his attention to it.

48 L. R. A. 547, HARVARD COLLEGE v. ASSESSORS, 175 Mass. 145, 55 N. E. 844.

Exemptions from taxation.

Cited in Phi Beta Epsilon Corp. v. Boston, 182 Mass. 459, 65 N. E. 824, holding real estate used by college fraternity not exempt, as property used for educational purpose; Cathedral of St. John v. Arapahoe County, 29 Colo. 146, 68 Pac. 272, holding property donated for theological school on condition that certain bishop act as head, and live in building, exempt; Emerson v. Milton Academy, 185 Mass. 415, 70 N. E. 442, holding as exempt from taxation, under statute, dwelling houses of teachers furnished as part compensation, athletic field, and unimproved land used for recreation ground, where dominant purpose of such realty was within the statute; Amherst College v. Amherst, 193 Mass. 178, 79 N. E. 248, holding college realty used as residences for professors, recreation grounds, athletic fields, are exempt from taxation under statute; Chicago v. University of Chicago, 228 Ill. 608, 81 N. E. 1138, 10 Ann. Cas. 669, holding that a club for the benefit of the faculty, alumni, and students of the university, who were not charged sufficient dues, and room rent to defray the expenses of the club, was within the meaning of an ordinance exempting educational institutions from water taxes; Curtis v. Androscoggin Lodge No. 24, I. O. O. F. 99 Me. 360, 59 Atl. 518, on exemption of realty of benevolent and charitable institutions from taxation.

Cited in footnotes to *Re* McCullough, 50 L. R. A. 517, which denies exemption of land used for free school, title to which is held by Catholic bishop for congregation of parish; Phillips Academy v. Andover, 48 L. R. A. 550, which authorizes exemption from taxation of premises occupied by professors of academy and their families; German Gymnastic Asso. v. Louisville, 65 L.R.A. 121, which holds institution for teaching physical culture exempt from taxation.

Cited in note (47 L. ed. U. S. 642, 643, 644) on exemption of property of educational institutions from taxation, as affected by use for other than educational purposes.

Qualified in All Saints Parish v. Brookline, 178 Mass. 415, 52 L. R. A. 781, 59 N. E. 1003, denying that exemption of house of worship includes vacant lot procured for permanent structure.

48 L. R. A. 550, PHILLIPS ACADEMY v. ANDOVER, 175 Mass. 118, 55 N. E. 841.

Exemption from taxation.

Followed in Harvard College v. Assessors, 175 Mass. 146, 48 L. R. A. 549, footnote p. 547, 55 N. E. 844, holding exempt from taxation, houses occupied by college presidents and professors, and dormitories and dining halls for students.

Cited in Phi Beta Epsilon Corp. v. Boston, 182 Mass. 460, 65 N. E. 824, hold-

ing real estate used by college fraternity not exempt, as property used for educational purpose; Cathedral of St. John v. Arapahoe County, 29 Colo. 145, 68 Pac. 272, holding property donated for theological school on condition that certain bishop act as head, and live in building, exempt; Chicago v. University of Chicago, 228 Ill. 608, 81 N. E. 1138, 10 Ann. Cas. 669, Affirming 131 Ill. App. 378, holding dormitories, dining hall, and club house of university which were not run for profit were within the scope of ordinance granting remission of water rates to buildings used "in the immediate conduct and carrying on" of educational purposes; Amherst College v. Amherst, 193 Mass. 178, 79 N. E. 248; Emerson v. Milton Academy, 185 Mass. 415, 70 N. E. 442,—holding realty of academy used for dwellings of teachers, baseball field, and land used for recreation of pupils are within the statutory exemption of realty used for educational purposes; Curtis v. Androscoggin Lodge No. 24, I. O. O. F. 99 Me. 359, 59 Atl. 518, holding building of beneficiary association used for the purposes of the association is not removed from benefit of statutory exemption from taxation by incidental renting of space to other tenants.

Cited in footnote to German Gymnastic Asso. v. Louisville, 65 L.R.A. 121, which holds institution for teaching physical culture exempt from taxation.

Cited in note (47 L. ed. U. S. 643) on exemption of property of educational institutions from taxation, as affected by use for other than educational purposes.

Purpose for which taxes may be levied.

Cited in footnote to Maydwell v. Louisville, 63 L. R. A. 655, which holds street sprinkling a public purpose for which taxes may be levied.

Cited in note (18 L.R.A.(N.S.) 182) on special assessment for street sprinkling.

Disapproved in Stevens v. Port Huron, 149 Mich. 540, 113 N. W. 291, 12 Ann. Cas. 603, denying the validity of an ordinance of city levying a special assessment for sprinkling upon abutting property.

48 L. R. A. 554, CHICAGO, W. & V. COAL CO. v. PEOPLE, 181 Ill. 270, 54 N. E. 961.

Exercise of police powers.

Cited in St. Louis Consol. Coal Co. v. Illinois, 185 U. S. 206, 46 L. ed. 875, 22 Sup. Ct. Rep. 616, Affirming 186 Ill. 135, 56 L. R. A. 267, footnote p. 266, 57 N. E. 880, sustaining statute for inspection of coal mines as often as inspector deems necessary, at owner's expense; New Orleans v. Kee, 107 La. 764, 31 So. 1014, sustaining imposition upon laundries of inspection fees; Com. v. Plymouth Coal Co. 232 Pa. 147, 81 Atl. 148, Affirming 15 Luzerne Leg. Reg. 96, on validity of anthracite mining act requiring pillar of coal to be left along line of adjoining property; Chicago v. Weber, 246 Ill. 312, 34 L.R.A.(N.S.) 309, 92 N. E. 859, 20 Ann. Cas. 359, holding void, ordinance requiring theaters to employ and pay city firemen.

Cited in footnote to Indianapolis Union R. Co. v. Houlihan, 54 L. R. A. 787, which sustains statute making railroad company liable to employees for injuries by negligence of specified servants.

Cited in note (87 Am. St. Rep. 585) on validity of mining regulations.

48 L. R. A. 557, HUDNALL v. HAM, 183 Ill. 486, 75 Am. St. Rep. 124, 56 N. E. 172.

Revoking of will.

Cited in Donaldson v. Hall, 106 Minn. 505, 20 L.R.A.(N.S.) 1075, 130 Am. St. Rep. 621, 119 N. W. 219, 16 Ann. Cas. 541, holding provisions of a will in wife's favor were revoked by implication of law where husband, in anticipation

of subsequent divorce, made over to her, by way of settlement, the amount of property bequeathed by the will.

Cited in footnotes to *Re* Kelly, 56 L. R. A. 754, which holds woman's will not revoked by subsequent marriage; Glascott v. Bragg, 56 L. R. A. 258, which holds will in favor of third person revoked by marriage and adoption of child; Re Teopfer, 67 L.R.A. 315, which holds antenuptial will revoked by testator's marriage.

Ante-nuptial settlements and releases.

Cited in Robbins v. Robbins, 225 Ill. 335, 9 L.R.A.(N.S.) 955, 80 N. E. 326, upholding validity of antenuptial agreement where husband and wife were ignorant of fact that marriage revoked husband's will; Murdock v. Murdock, 219 Ill. 129, 76 N. E. 57, setting aside an ante-nuptial agreement where the amount allowed wife was disproportionate to his means and where no evidence was produced to show her knowledge of husband's real wealth.

Cited in note (9 L.R.A.(N.S.) 954) on validity of contract relinquishing rights in intended husband's estate, signed in ignorance of legal rights.

Assignment of contingent interest.

Cited in Jarvis v. Binkley, 206 Ill. 547, 69 N. E. 582, sustaining right to enforce contingent interest in benefit certificate assigned by beneficiary; Cummings v. Lohr, 246 Ill. 581, 92 N. E. 970, holding that contingent interests and expectancies are proper subjects of contracts.

Contract to will property.

Cited in Evans v. Moore, 247 Ill. 69, 139 Am. St. Rep. 302, 93 N. E. 118, holding that equity will enforce agreement by uncle to devise property to nephew on consideration that latter leave his parents and country and become citizen of this country; Oswald v. Nehls, 233 Ill. 443, 84 N. E. 619, decreeing specific performance of a contract to will property to a person in consideration of personal services rendered; Klussman v. Wessling, 238 Ill. 572, 87 N. E. 544, on specific performance of contract to dispose by will; Jones v. Abbott, 228 Ill. 41, 119 Am. St. Rep. 412, 81 N. E. 791, holding a court of equity will enforce a contract whereby an owner of property bound himself to dispose of property according to the laws of intestacy; Jones v. Bean, 136 Ill. App. 554, holding an agreement to will property to an adopted child in consideration of services rendered, constitutes an equitable assignment vesting at death of promisor.

48 L. R. A. 565, WYMAN v. FT. DEARBORN NAT. BANK, 181 Ill. 279, 72 Am. St. Rep. 259, 54 N. E. 946.

Check as equitable assignment of fund.

Cited in Farson v. Fogg, 105 Ill. App. 578, holding that check operated as equitable assignment of fund; Brown v. Schintz, 202 Ill. 517, 67 N. E. 172, holding that owner's indorsement of third person's check to building contractor, who indorses it to a subcontractor, operates as assignment of fund, and latter's failure to present in reasonable time, releases owner.

Cited in note (2 L.R.A.(N.S.) 84) on bank draft or check as assignment of funds drawn upon.

Distinguished in Livingstain v. Columbian Bkg. & T. Co. 77 S. C. 310, 22 L.R.A.(N.S.) 444, 122 Am. St. Rep. 568, 57 S. E. 182, holding depositor accepting from insolvent bank check on another bank is not subrogated, as against general creditor, to rights of drawee bank in collateral previously deposited with such bank as security on note made by insolvent bank.

What constitutes payment.

Cited in Nineteenth Ward Bank v. First Nat. Bank, 184 Mass. 51, 67 N E.

670, holding that where bank receiving depositor's note for collection, draws check on his deposit, marks note paid, and files it with paid checks, the note is paid as against maker's assignee for creditors.

Right of subrogation.

Cited in note (99 Am. St. Rep. 502) on right of subrogation.

Banker's lien as against holder of check.

Cited in note (111 Am. St. Rep. 422) on banker's lien not founded on contract as against holder of check.

48 L. R. A. 568, INTER-OCEAN PUB. CO. v. ASSOCIATED PRESS, 184 Ill. 438, 75 Am. St. Rep. 184, 56 N. E. 822.

Discrimination by public service corporation.

Approved in Indiana Natural & Illuminating Gas Co. v. State, 158 Ind. 519, 57 L. R. A. 762, 63 N. E. 220, denying right of gas company with authority to lay main in streets, to discriminate between customers.

Cited in Chicago Teleph. Co. v. Illinois Mfrs. Asso. 106 Ill. App. 66, authorizing injunction against telephone company's charging higher rate than allowed by ordinance; Beggs v. Postal Teleg.-Cable Co. 159 Ill. App. 253, holding void, contract by telegraph company to give preference to certain messages; Louisville & N. R. Co. v. Central Stock Yards Co. 133 Ky. 177, 97 S. W. 778, granting mandatory injunction to compel railroad company to switch and deliver to connecting road freight consigned to it where refusal was a discrimination in favor of another road; Western U. Teleg. Co. v. State, 165 Ind. 501, 3 L.R.A.(N.S.) 158, 76 N. E. 100, 6 Ann. Cas. 880, holding that it is duty of telegraph company which is in business of supplying stock quotations to furnish same to all applicants without favor; Kerz v. Galena Water Co. 139 Ill. App. 604, enjoining private water company operating under city franchise from charging customer a discriminatory rate; News Pub. Co. v. Associated Press, 114 Ill. App. 251, holding an action in tort will lie against public news agency for refusal to furnish news to publisher except on charges in excess of those required of others; Vanderberg v. Kansas City Missouri Gas Co. 126 Mo. App. 607, 105 S. W. 17, holding that a gas company is a public service corporation and must serve the public without discrimination.

Disapproved in State *ex rel.* Star Pub. Co. v. Associated Press, 159 Mo. 464, 51 L. R. A. 169, footnote p. 151, 81 Am. St. Rep. 368, 60 S. W. 91, denying power of court to compel press association to furnish news to newspaper.

Illegal combinations.

Cited in Brown v. Jacobs' Pharmacy Co. 115 Ga. 439, 57 L. R. A. 553, footnote p. 548, 90 Am. St. Rep. 126, 41 S. E. 553, sustaining right to injunction against combination of merchants to prevent sales to other dealer unless he sells at fixed prices; Martell v. White, 185 Mass. 263, 64 L. R. A. 264, footnote p. 260, 69 N. E. 1085, holding association of granite manufacturers, enforcing by-law imposing fine on members dealing with nonmembers, illegal.

Cited in footnotes to Ertz v. Produce Exchange, 51 L. R. A. 825, which holds produce exchange discriminating against nonmembers and controlling delivery of goods an illegal combination; Downs v. Bennett, 55 L. R. A. 560, which denies right of one only remotely affected, to injunction against fining or expelling member for violation of by-law prohibiting members dealing with nonmembers, or with those dealing with such nonmembers; Martell v. White, 64 L.R.A. 260, which sustains right of action by quarry owner against members of voluntary association to which he does not belong for enforcement of by-law imposing fine on members dealing with nonmembers.

Cited in notes (26 L.R.A.(N.S.) 149) on right of injured person not party to agreement to assail validity as tending to monopoly; (74 Am. St. Rep. 263, 269) on combinations constituting unlawful trusts: (93 Am. St. Rep. 910) on contracts with newspapers void as against public policy.

Mandamus to compel public service.

Cited in Marshall Field & Co. v. Becklenberg, 1 Ill. C. C. 67, holding that the possibility that a strike might occur if defendant accepted the goods tendered them for shipment was no excuse for refusing to accept the same, which would be compelled by a mandatory injunction.

Control of public business or service.

Cited in People v. Steele, 231 Ill. 347, 14 L.R.A.(N.S.) 366, 121 Am. St. Rep. 321, 83 N. E. 236, on public control of business affected with a public interest.

48 L. R. A. 575, BOEHM v. HERTZ, 182 Ill. 154, 54 N. E. 973.

Titles and subjects of legislative acts.

Cited in People v. Huff, 249 Ill. 167, 94 N. E. 61, holding valid, sections of reformatory act as to class of offenders and their government and discharge; People v. Commercial L. Ins. Co. 247 Ill. 98, 93 N. E. 90, holding that prohibition against giving of any advantage to insured is within act to prevent discrimination in rates; American Badge Co. v. Lena Park Improv. Asso. 246 Ill. 590, 92 N. E. 972, holding valid, act for interchange of judges of municipal and county courts under title, "act in relation to municipal court;" Rouse v. Thompson, 228 Ill. 534, 81 N. E. 1109, holding that selection of party candidates not germane to act entitled "An act to provide for the holding . . . of primary elections of delegates to nominating conventions;" Christy v. Elliott, 216 Ill. 45, 1 L.R.A.(N.S.) 230, 108 Am. St. Rep. 96, 74 N. E. 1035, 3 Ann. Cas. 487, holding an act entitled "An act to regulate the speed of automobiles" could legally include a provision declaring that automobiles should come to a stop to prevent frightening horses.

Practical construction of constitution.

Cited in People ex rel. Sadler v. Olson, 245 Ill. 296, 92 N. E. 157; Nye v. Foreman, 215 Ill. 288, 74 N. E. 140,—holding the contemporaneous, long and uniform construction of a doubtful clause in a state constitution by the executive and legislative department will control in the interpretation of such clause by the court; Chicago v. Reeves, 220 Ill. 295, 77 N. E. 237, holding that the construction of an ambiguous provision of a state constitution by the legislature raises a strong presumption that such construction is correct, where such construction has been uniform, continued and contemporaneous.

State aid to universities.

Cited in Bullock v. Billheimer, 175 Ind. 440, 94 N. E. 763, holding valid, appropriations to university for agricultural experiments.

48 L. R. A. 580, MARKHAM v. HUFFORD, 123 Mich. 505, 81 Am. St. Rep. 222, 82 N. W. 222.

Conditional trust.

Cited in French v. Northern Trust Co. 197 Ill. 41, 64 N. E. 105, holding that bill by *cestui que trust* to compel transfer of property to him must allege competency to care for it, where his competency is condition precedent to right to hold.

Conditions precedent on titles.

Cited in note (102 Am. St. Rep. 367, 368, 369) on conditions precedent in deeds and wills.

Distinguished in De Conick v. De Conick, 154 Mich. 190, 22 L.R.A.(N.S.) 419, 117 N. W. 570, holding that the support of a person for life as a consideration for a deed will be construed as a condition subsequent where possible rather than as a condition precedent.

Control by court of discretion as to fitness of legatee.

Cited in note (25 L.R.A.(N.S.) 423) on right to control discretion vested in one person to determine whether or when another is fit to receive legacy or devise.

48 L. R. A. 583, FIRST NAT. BANK v. CITIZENS' SAV. BANK, 123 Mich. 336, 82 N. W. 66.

Negligence of bank in collecting.

Cited in Bank of Whittier v. First Nat. Bank, 124 Ill. App. 106; Winchester Mill. Co. v. Bank of Winchester, 120 Tenn. 235, 18 L.R.A.(N.S.) 446, 111 S. W. 248; Pinkney v. Kanawha Valley Bank, 68 W. Va. 264, 32 L.R.A.(N.S.) 993, 69 S. E. 1012, Ann. Cas. 1912B, 115; Farley Nat. Bank v. Pollock & Bernheimer, 145 Ala. 327, 2 L.R.A.(N.S.) 197, 117 Am. St. Rep. 44, 39 So. 612, 8 Ann. Cas. 370,—holding a bank intrusted with a check for collection which sends such check to the bank upon which it is drawn is liable to the payee for loss so sustained notwithstanding custom; First Nat. Bank v. Bank of Whittier, 221 Ill. 326, 77 N. E. 563, 5 Ann. Cas. 653, holding a bank intrusted with a certificate of deposit for collection which sends such certificate to payor bank is liable for loss so sustained; R. H. Herron Co. v. Mawby, 5 Cal. App. 43, 89 Pac. 872, holding that sending of check by mail directly to drawee bank does not constitute proper presentment for payment, in absence of proof of custom.

Cited in footnote to Second Nat. Bank v. Merchants' Nat. Bank, 55 L. R. A. 273, which holds bank negligent in sending note for collection to bank whose cashier is treasurer of corporation maker, without hearing from similar note previously sent.

Cited in notes (2 L.R.A.(N.S.) 194, 196) on validity of custom to send paper to drawee for collection; (18 L.R.A.(N.S.) 442) on sending check directly to drawee bank; (77 Am. St. Rep. 624) on duties of banks acting as collecting agents.

48 L. R. A. 587, *Re* CLARK, 195 Pa. 520, 46 Atl. 127.

Interpretation of Constitution.

Cited in Com. v. Rentschler, 26 Pa. Co. Ct. 42, holding provisions of Constitution to be read in broad and reasonably untechnical way; Com. ex rel. Atty. Gen. v. Mathus, 210 Pa. 393, 59 Atl. 961, 13 Pa. Dist. R. 242, 29 Pa. Co. Ct. 564.

Costs of surety bond.

Followed in Phillips's Estate, 15 Pa. Super. Ct. 227, upholding constitutionality of act giving assignee for benefit of creditors right to include payment to surety company for becoming his surety, as part of his lawful expense in executing trust.

Approved in The Bencliff, 158 Fed. 378, holding a libelant may tax cost of obtaining bond from surety company for entering stipulation of costs where such charge is reasonable.

Cited in Bradley's Estate, 24 Montg. Co. L. Rep. 184, holding surety premiums properly allowed as credit to trustee of widow's thirds: Groff v. City Saving Fund & T. Co. 23 Lanc. L. Rev. 288, holding sum paid for bond of necessary clerk, proper receivership expense.

Special legislation.

Cited in Com. v. Clark, 14 Pa. Super. Ct. 441, holding act prohibiting discharge of employees of corporations because of labor union membership, within inhibition of special legislation; Com. v. Hanley, 15 Pa. Super. Ct. 280, holding regulation of undertaking business not invalid as special legislation; Com. *ex rel.* Elkin v. Moir, 199 Pa. 553, 53 L. R. A. 845, 85 Am. St. Rep. 801, 49 Atl. 351, sustaining statute providing for government of cities of "second class," although only three cities within such description; King v. Pony Gold Min. Co. 24 Mont. 476, 62 Pac. 783, sustaining statute authorizing guaranty or surety corporations to become sole surety without affidavit of qualifications; Garrett v. Turner, 47 Pa. Super. Ct. 136, holding valid, automobile law allowing service of process outside county of accident; McGinnis v. Shannon, 15 Luzerne Leg. Reg. 236, holding valid, act granting to proprietors of hotels, etc., right to attach wages; Com. v. Emmers, 221 Pa. 313, 70 Atl. 762, 33 Pa. Super. Ct. 167, holding an act prohibiting the discharge of sewerage into waters of the state, which excepts municipalities, is not special legislation, and does not violate the fourteenth amendment of the federal constitution; Com. v. Shafer, 32 Pa. Super. Ct. 502, holding that a statute which provided for the registration of plumbers in cities and boroughs having sewerage systems, is not unconstitutional as class legislation; Pittsburg's Petition, 32 Pa. Super. Ct. 218, holding that a statute providing for the union of cities or boroughs contiguous or in close proximity to each other, is not invalid as class legislation.

Power to act as administrator.

Cited in footnote to Union Bank & T. Co. v. Wright, 52 L. R. A. 469, which sustains power of corporation to act as administrator under charter.

Powers of surety companies.

Cited in footnote to First Nat. Bank v. Guardian Trust Co. 70 L.R.A. 79, which holds that surety company with charter power to finance other companies which is actively undertaken to do so as to particular one in whose success it is largely interested cannot plead ultra vires as defense to liability as surety on note executed to obtain necessary funds for it.

48 L. R. A. 596, STATE *ex rel.* KENAMORE v. WOOD, 155 Mo. 425, 56 S. W. 484.

Validity of beer inspection act.

Followed in Pabst Brewing Co. v. Crenshaw, 120 Fed. 147, sustaining validity of beer inspection act.

Sufficiency of inspection.

Cited in State v. Broeder, 90 Mo. App. 164, and State v. Bixman, 162 Mo. 33, 62 S. W. 828, holding requirement to inspect beer, satisfied by inspected samples taken at random.

Injunction against enforcement of law.

Cited in Norton v. Alexander, 28 Tex. Civ. App. 468, 67 S. W. 787, raising, without deciding, question as to liquor dealer's right to restrain enforcement of local option law; State ex rel. Terminal R. Asso. v. Tracy, 237 Mo. 121, 37 L.R.A. (N.S.) 452, 140 S. W. 888, denying writ of prohibition against prosecutions against railroad for violation of ordinance in running cars across streets; Red Diamond Clothing Co. v. Steidemann, 120 Mo. App. 525, 97 S. W. 220, denying injunction to restrain landlord from claiming title to and preventing removal of fixtures; State ex rel. Meador v. Williams, 117 Mo. App. 567, 92 S. W. 151, denying injunction to restrain court and prosecuting attorney from trying defend-

ants a second time, where defendants had remedy of pleading former jeopardy as a bar; Merchants' Exch. v. Knott, 212 Mo. 646, 111 S. W. 565, denying injunction to restrain state officers from enforcing grain inspection laws where statutes provide for criminal prosecutions only; Carter v. Bolster, 122 Mo. App. 444, 98 S. W. 105; State ex rel. McNamee v. Stobie, 194 Mo. 100, 92 S. W. 191,— on the use of injunction to prevent court taking jurisdiction.

Cited in footnote to Arbuckle v. Blackburn, 65 L.R.A. 864, which denies jurisdiction of federal court to enjoin state food commissioner from proceeding to enforce pure food statute by criminal prosecution.

Cited in note (2 L.R.A.(N.S.) 632) on injunction against prosecution of criminal or quasi criminal nature.

Distinguished in Pratt Food Co. v. Bird, 148 Mich. 633, 118 Am. St. Rep. 601, 112 N. W. 701, granting an injunction to restrain Dairy and Food Commissioner from sending out circulars warning dealers against selling an unlicensed stock food; State ex rel. Larew v. Sale, 188 Mo. 496, 87 S. W. 967, granting writ of injunction to restrain court from proceeding in a disbarment action against an attorney while criminal action, which is the basis of disbarment, is pending.

Legal remedy as bar to injunction.

Cited in Kansas City Gunning Advertising Co. v. Kansas City, 240 Mo. 676, 144 S. W. 1099, refusing mandatory injunction to enforce bill board ordinance, when it is enforcible by fine.

Grounds for issuance of writ of prohibition.

Cited in note (111 Am. St. Rep. 950) on acts in excess of jurisdiction as ground for issuance of writ of prohibition.

When statutes go into effect.

Cited in State v. Schenk, 238 Mo. 453, 142 S. W. 263, as to when statutes go into effect.

48 L. R. A. 613, CATE v. MARTIN, 70 N. H. 135, 46 Atl. 54.

Election contests.

Cited in Atty. Gen. ex rel. Mousette v. Cross, 75 N. H. 542, 78 Atl. 281, holding that mayor cannot vote for overseer of poor, but his assent to aldermen's choice is necessary; Wagner v. State, 173 Ind. 608, 91 N. E. 1, holding that statutory requirement of entry of ayes and noes is inapplicable to election by city council of councilmen to fill vacancy; Sheehan v. Manchester, 74 N. H. 446, 68 Atl. 872, holding, under statute, the determination of an election for alderman is a question of fact for the city council and can only be corrected by the court for errors of law apparent upon the record.

48 L. R. A. 616, ALBRIGHT v. CORTRIGHT, 64 N. J. L. 330, 81 Am. St. Rep. 504, 45 Atl. 634.

Conveyance of property.

Approved in Mitchell v. D'Olier, 68 N. J. L. 380, 59 L. R. A. 951, 53 Atl. 467, holding that grantee of upland, "together with" certain right and privileges in fresh water lake, takes latter as appurtenant, and not in gross.

Right to fish.

Cited in Albright v. Sussex County Lake & Park Commission, 68 N. J. L. 527, 53 Atl. 612, holding that soil under waters of fresh water lakes and right to take fish therefrom is private property; Hume v. Rogue River Packing Co. 51 Or. 244, 31 L.R.A.(N.S.) 400, 131 Am. St. Rep. 732, 92 Pac. 1065, holding a right to fish on another's land cannot be acquired by easement; Albright v. Sussex County

Lake & Park Commission, 71 N. J. L. 305, 69 L.R.A. 769, 108 Am. St. Rep. 749, 57 Atl. 398, 2 Ann. Cas. 48, declaring unconstitutional a statute providing for the condemnation of the right to fish in fresh water lakes of over 100 acres surface; Hartman v. Tresise, 36 Colo. 151, 4 L.R.A.(N.S.) 880, 84 Pac. 685, declaring unconstitutional a statute giving the public a right to fish in any stream stocked at public expense, subject to actions in trespass for damage done property on banks.

Cited in notes (60 L.R.A. 498, 512) on right to fish; (40 L.R.A.(N.S.) 303) on right created by private grant of hunting or fishing; (131 Am. St. Rep. 753, 761, 764) on law of fishing.

Damages for technical trespass.

Cited in Schaaf v. Pennsylvania R. Co. 77 N. J. L. 116, 71 Atl. 114, setting aside a verdict of $400 as excessive in an action for trespass where damages were merely technical.

48 L. R. A. 620, WALLACE v. NORMAN, 9 Okla. 339, 60 Pac. 108.

Ultra vires acts of municipal officers.

Cited in Marth v. Kingfisher, 22 Okla. 611, 18 L.R.A.(N.S.) 1243, 98 Pac. 436, denying the liability of city for injuries received in a street horse race held under authority of ordinances which city officers had no authority to pass.

Cited in footnote to Wilson v. Mitchell, 65 L.R.A. 158, which holds that municipality cannot ratify act of waterworks superintendent in wrongfully connecting well with city water mains so as to become liable for water taken from the well.

48 L. R. A. 625, BRUNSWICK TERMINAL CO. v. NATIONAL BANK, 40 C. C. A. 22, 99 Fed. 635.

Federal court; state court's construction of local law.

Later hearing on merits, on remand of cause to district court, in 112 Fed. 813, denying that state construction must be followed where transaction on which claim is based arose prior to state decision, the correctness of which is questioned by court making it.

Statute of limitations.

Cited in Davis v. Mills, 113 Fed. 680, holding that state statute of limitation controls foreign statute for penalty for failure to file corporation's report; Davis v. Mills, 58 C. C. A. 126, 121 Fed. 706, raising, without deciding, question whether action against corporation on notes and for goods sold is within provision requiring certain actions to be brought within specified time; St. Louis & S. F. R. Co. v. Sizemore, 53 Tex. Civ. App. 502, 116 S. W. 403, holding that statute of limitations of state of forum applies to action for death of wife; Wheatley v. Glover, 125 Ga. 729, 54 S. E. 626, holding a stockholder's charter liability is statutory and is barred twenty years after cause of action accrues; Ross v. Kansas City S. R. Co. 34 Tex. Civ. App. 587, 79 S. W. 626, holding an action for personal injuries received in another state and brought under the statute of that state is barred within the time set out in such statute.

Cited in footnotes to Swearingen v. Sewickley Dairy Co. 53 L. R. A. 471, which holds that limitation runs against stockholder's liability from time of insolvency of corporation; West v. Topeka Sav. Bank, 63 L. R. A. 137, which holds that statute of limitations begins to run on stockholder's subscription to stock payable at intervals on call, immediately on corporation's suspension of business for insolvency; Brand v. Brand, 63 L.R.A. 206, which holds judgment of court

of state where note is sent for collection that it is barred by limitation not bar to suit in another state.

Cited in note (48 L. ed. U. S. 810) on conflict of laws as to limitation of actions to enforce liability of stockholder.

Conflict of laws.

Cited in notes (56 L.R.A. 193, 208) on conflict of laws as to actions for death or bodily injury; (63 L.R.A. 868, 869) on conflict of laws as to insurance contracts; (40 L.R.A.(N.S.) 422, 434) on questions of state law as to which state court decisions must be followed in actions originating in, or removed to, Federal courts.

48 L. R. A. 644, BELL v. WAYNE, 123 Mich. 386, 81 Am. St. Rep. 204, 82 N. W. 215.

Proximate cause of injury on bridge.

Cited in Briggs v. Pine River Twp. 150 Mich. 387, 114 N. W. 221, holding township was not liable for personal injuries received on a narrow culvert where the proximate cause of injury was plaintiff's loss of control of bicycle; Noe v. Rapid R. Co. 133 Mich. 163, 94 N. W. 743 (dissenting opinion), on what is proximate cause; Neidhardt v. Minneapolis, 112 Minn. 156, 29 L.R.A.(N.S.) 828, 127 N. W. 484, holding that leaving of opening unguarded is proximate cause of injury from being forced off highway by rapidly approaching vehicle.

Cited in notes (18 L.R.A.(N.S.) 1140) on what injuries may be deemed proximately caused by absence of guard rail in highway; (20 L.R.A.(N.S.) 682) on liability of municipality for defects or obstructions in bridges.

Liability of municipality for injury from frightening of horse.

Cited in note (8 L.R.A.(N.S.) 77) on liability of municipality for injury to person or property of one whose horse is frightened without fault of either upon defective highway.

48 L.R.A. 649, RIBICH v. LAKE SUPERIOR SMELTING CO. 123 Mich. 401, 81 Am. St. Rep. 215, 82 N. W. 279.

Duty of master to warn servant of danger.

Cited in Nowakowski v. Detroit Stone Works, 130 Mich. 310, 89 N. W. 956, holding it not to be master's duty to warn eighteen-year-old servant of dangers from explosions of molten iron in factory, where such explosions occurred daily; Borkowski v. American Radiator Co. 165 Mich. 272, 130 N. W. 640, holding that master is bound to warn molder's helper of danger of explosion from contact of molten metal with water; Hosking v. Cleveland Iron Min. Co. 163 Mich. 542, 128 N. W. 777, holding that duty of master to warn miner of danger of delay in supporting roof was question for jury; Adams v. Grand Rapids Refrigerator Co. 160 Mich. 597, 27 L.R.A.(N.S.) 957, 136 Am. St. Rep. 454, 125 N. W. 724, 19 Ann. Cas. 11, holding master is liable for failure to acquaint servant with ascertainable damages in pouring molten enamel into water; De Kallands v. Washtenaw Home Teleph. Co. 153 Mich. 36, 116 N. W. 564, 15 Ann. Cas. 593, holding telephone lineman working over trolley lines assumes the risk of unseen contact.

Cited in note (27 L.R.A.(N.S.) 954) on liability to servant working with, for injuries caused by explosion of, molten metal.

Distinguished in Davis v. Port Huron Engine & Thresher Co. 126 Mich. 432, 85 N. W. 1125, holding that servant going upon roof to string call-bell wire, and assisting in wiring for lights, assumes risk from live wire there; Harrison v. Detroit, Y. A. A. & J. R. Co. 137 Mich. 87, 100 N. W. 451, holding electric railroad

company is not liable for failure to instruct motorman of danger involved in contact of trolley pole with high tension wire where the conditions were obvious; Kopf v. Monroe Stone Co. 133 Mich. 293, 95 N. W. 72, holding employer is not liable for failure to instruct servant working in quarry not to pour dynamite into holes, where servant is acquainted with explosive nature of dynamite.

Contributory negligence.

Cited in Malone v. American Smelting & Ref. Co. 77 Neb. 880, 110 N. W. 572, holding it was not negligence, as a matter of law, for servant, of ordinary intelligence, to throw water into hot fire box under instructions from foreman.

Remittitur of judgment.

Cited in Hardy v. Chicago, R. I. & P. R. Co. 149 Iowa, 51, 127 N. W. 1093, reducing to $12,000, verdict of $15,000 for loss of sight of one eye, impairment of other, and serious burns on body; St. Louis, I. M. & S. R. Co. v. Adams, 74 Ark. 331, 109 Am. St. Rep. 85, 86 S. W. 287, allowing remittitur to relieve judgment of excess damages where plaintiff was entitled to recover but improper evidence was admitted.

48 L. R. A. 652, STATE *ex rel.* McCLURG v. POWELL, 77 Miss. 543, 27 So. 927.

Constitutional amendment.

Approved in *Re* Denny, 156 Ind. 119, 51 L. R. A. 728, footnote p. 722, 59 N. E. 359, requiring majority of all votes cast at election for any purpose, to adopt constitutional amendment; Rice v. Palmer, 78 Ark. 447, 96 S. W. 396, holding that the majority required to adopt a constitutional amendment is a majority of all voting at an election for representatives where the provisions for amendment called for a majority of all voting at the election.

Cited in Gabbert v. Chicago, R. I. & P. R. Co. 171 Mo. 97, 70 S. W. 891, holding that court has authority to determine whether constitutional amendment has been legally adopted, although it has received required number of votes; People *ex rel.* Elder v. Sours, 31 Colo. 427, 102 Am. St. Rep. 34, 74 Pac. 167 (dissenting opinion), majority sustaining constitutional amendment consolidating city and county government; Knight v. Sheldon, 134 Fed. 428, holding under constitution, a constitutional amendment requires a majority of total vote cast at election; Eufaula v. Gibson, 22 Okla. 523, 98 Pac. 565, holding a majority of all votes legally cast whether intelligible or not was necessary to change a county seat by special election; McBee v. Brady, 15 Idaho, 773, 100 Pac. 97, holding that constitutional provisions for adoption of amendments are mandatory.

Cited in footnote to Com. *ex rel.* Elkin v. Griest, 50 L. R. A. 568, which holds governor's approval of proposed constitutional amendment unnecessary.

Cited in notes (10 L.R.A.(N.S.) 152) on effect of noncompliance with prescribed method of amending constitution; (22 L.R.A.(N.S.) 480) on basis for computation of majority essential to adoption of proposition submitted at general election.

— Plurality of subjects.

Cited in McBee v. Brady, 15 Idaho, 772, 100 Pac. 97, holding a constitutional amendment changing salaries of supreme and district court judges, merging probate and district courts, and changing districts and terms is void under constitutional provision that electors shall be allowed to vote on amendments separately.

— Judicial questions.

Approved in Knight v. Sheldon, 134 Fed. 440, holding constitutionality of adoption of amendment to state constitution is a judicial question.

Cited in Hammond v. Clark, 136 Ga. 319, 38 L.R.A.(N.S.) 82, 71 S. E. 479; McBee v. Brady, 15 Idaho, 776, 100 Pac. 97; McConaughy v. Secretary of State, 106 Minn. 401, 119 N. W. 408; Kadderly v. Portland, 44 Or. 133, 74 Pac. 710; Rice v. Palmer, 78 Ark. 442, 96 S. W. 396,—holding the constitutional adoption of an amendment to state constitution is a judicial question.

Exceptions to errors.

Cited in Barnett v. State, 42 Tex. Crim. Rep. 321, 62 S. W. 765, sustaining provision against reversal of conviction on appeal for errors not excepted to at trial, unless such errors tend to injure appellant's rights.

48 L. R. A. 662, *Re* ANDREWS, 162 N. Y. 1, 76 Am. St. Rep. 294, 56 N. E. 529.

Execution of wills.

Approved in Re Emmons, 110 App. Div. 703, 96 N. Y. Supp. 506, denying probate, under the statute, of holographic will witnessed by but one person, though a valid codicil referring to such will was afterward executed.

Cited in *Re* Kivlin, 37 Misc. 188, 74 N. Y. Supp. 937, denying probate of will not executed in compliance with statute; Everdell v. Hill, 58 App. Div. 160, 68 N. Y. Supp. 719, concurring opinion by Ingraham, J., who holds will not executed, where prescribed formalities not observed; Blackett v. Ziegler, 153 Iowa, 348, 37 L.R.A.(N.S.) 293, 133 N. W. 901, holding that codicil attached to canceled will will not revive will, if it does not refer to or identify will in any manner; Re Rogers, 52 Misc. 418, 103 N. Y. Supp. 423, denying probate where testator signed by mark without presence of witnesses and where witnesses afterwards subscribed without hearing any declaration of intent to make a will; Re Eckler, 47 Misc. 327, 95 N. Y. Supp. 986, holding it is incumbent upon proponent of a will to show that such will expressed testator's intentions where there is strong evidence of undue influence; Re Moore, 109 App. Div. 765, 96 N. Y. Supp. 729, denying probate of holographic will where testator denied before attesting witnesses that it was his will.

Subscription to wills.

Cited in *Re* Noon, 31 Misc. 422, 65 N. Y. Supp. 568, sustaining subscription to will where testatrix left blank space at beginning of attestation clause, and wrote name there with intention to execute; *Re* Donner, 37 Misc. 58, 74 N. Y. Supp. 828, denying due subscription where will is on four sheets of paper, with signatures on second and third pages, without connection; *Re* Dake, 75 App. Div. 409, 78 N. Y. Supp. 29, denying sufficiency of execution of codicil, where signature to one sheet preceded in physical order sheet on which body of provisions written, and latter was not shown to be with, or even present at, such execution; *Re* Albert, 38 Misc. 63, 76 N. Y. Supp. 965, denying probate where foot of page containing signatures says, "continued on next page," and such page creates legacies and is signed by testator; *Re* Boardman, 1 Power. 82, sustaining sufficiency of signature to will where intent thereto shown; Re Field, 204 N. Y. 455, 39 L.R.A. (N.S.) 1063, 97 N. E. 881, Reversing 144 App. Div. 741, 129 N. Y. Supp. 590, holding that will on printed blank is signed at end, where disposing clauses are written on separate sheets of paper pinned on front of blank; Re Seaman, 146 Cal. 461, 106 Am. St. Rep. 53, 80 Pac. 700, 2 Ann. Cas. 726, denying probate of will where testator's signature was written at physical end of paper containing will but not at the end of writing constituting will; Sears v. Sears, 77 Ohio St. 122, 17 L.R.A.(N.S.) 361, 82 N. E. 1067, 11 Ann. Cas. 1008, denying probate where testator left blank place for his signature after testimonium clause and filled in his name in attestation clause: Re Gibson, 128 App. Div. 774, 113 N. Y.

Supp. 266, holding a marginal insertion in a will, a paragraph of which runs below testator's signature does not invalidate the will except as to such paragraph when the paragraph was immaterial.

Cited in footnote to Irwin v. Jacques, 69 L.R.A. 422, which holds will signed on last page is not signed at end as required where a dispositive clause extends lengthwise of last page from near bottom to near top in no way connected with the body of the instrument.

Distinguished in *Re* Douglass, 38 Misc. 611, 78 N. Y. Supp. 103, sustaining will not signed at end but affirmed in duly executed codicils; *Re* Snell, 32 Misc. 614, 67 N. Y. Supp. 581, holding will executed by signature at end, although written on several sheets not permanently fastened when signed; Stinson's Estate, 228 Pa. 481, 30 L.R.A.(N.S.) 1176, 139 Am. St. Rep. 1014, 77 Atl. 807, holding that signature is at end, though writing proceeds from first to third page and then back to second where signature is written.

Incorporation of extrinsic papers into wills.

Cited in note (107 Am. St. Rep. 71) on incorporation of extrinsic papers into wills.

48 L. R. A. 666, WETMORE v. WETMORE, 162 N. Y. 503, 56 N. E. 997.

Modification of decrees for alimony.

Cited in footnote to Henderson v. Henderson, 48 L. R. A. 766, which holds unmodifiable without wife's consent, decree in conformity with separation agreement for payment of stipulated monthly sum for wife's maintenance.

Appealability of order of amendment.

Cited in Van Nostrand v. Van Nostrand, 126 App. Div. 927, 110 N. Y. Supp. 665, on a determination amending a judgment as a judgment.

Appealability of decree refusing modification.

Followed in Livingston v. Livingston, 173 N. Y. 379, 61 L. R. A. 801, footnote p. 800, 93 Am. St. Rep. 600, 66 N. E. 123, Affirming 74 App. Div. 271, 77 N. Y. Supp. 476, holding appealable, appellate division's refusal to modify provision for alimony in decree of divorce.

Presumption of reversal upon law.

Cited in *Re* Braudreth, 169 N. Y. 440, 58 L. R. A. 149, 62 N. E. 563; *Re* Keefe, 164 N. Y. 354, 58 N. E. 117; People *ex rel.* Manhattan R. Co. v. Barker, 165 N. Y. 312, 59 N. E. 151, sustaining presumption that reversal by appellate division was upon error of law.

Contempt as affecting application to court.

Distinguished in Sibley v. Sibley, 66 App. Div. 553, 73 N. Y. Supp. 244, denying application for reduction of alimony by one in contempt for refusal to pay.

48 L. R. A. 669, PURDY v. ERIE R. CO. 162 N. Y. 42, 56 N. E. 507.

Regulation of carriers.

Appeal dismissed in 185 U. S. 149, 46 L. ed. 849, 22 Sup. Ct. Rep. 605.

Cited in Saratoga Springs v. Saratoga Gas, Electric Light, Heat & P. Co. 122 App. Div. 226, 107 N. Y. Supp. 341 (dissenting opinion), on legislative regulation of charges.

Cited in footnotes to Pingree v. Michigan C. R. Co. 53 L. R. A. 274, which denies power of legislature to fix rates of carrier upon which previous legislature conferred exclusive power to fix its own rates; People *ex rel.* Jackson v.

Suburban R. Co. 49 L. R. A. 650, which holds electric railway company bound to perform duties imposed by ordinance under which road operated.

Cited in note (11 L.R.A.(N.S.) 975) on power to require carriers to reduce rates to classes of persons.

Mileage book act.

Followed in Horton v. Erie R. Co. 65 App. Div. 588, 72 N. Y. Supp. 1018, and Minor v. Erie R. Co. 171 N. Y. 568, 64 N. E. 454, Affirming 73 App. Div. 621, 76 N. Y. Supp. 513, sustaining act requiring corporation subsequently reorganized and incorporated, to issue mileage books.

Cited in note (7 L.R.A.(N.S.) 1087) on validity of statutes requiring issuance of mileage books at reduced rates.

Consideration of questions on appeal.

Followed in Corcoran v. New York C. & H. R. R. Co. 164 N. Y. 588, 58 N. E. 1086, without discussion, Dodge v. Cornelius, 168 N. Y. 245, 61 N. E. 244, refusing to pass upon validity of statute if question not raised in lower court; Paul v. Delaware, L. & W. R. Co. 175 N. Y. 478, 67 N. E. 1087, refusing to consider on appeal question of invalidity of contract sued on, because not raised below.

Cited in New York Bank Note Co. v. Hamilton Bank Note Engraving & Printing Co. 180 N. Y. 293, 73 N. E. 48, holding an objection to the validity of contract sued on cannot be raised for the first time on appeal.

Existing laws as part of franchise.

Cited in Interstate Consol. Street R. Co. v. Massachusetts, 207 U. S. 85, 52 L. ed. 114, 28 Sup. Ct. Rep. 26, 12 Ann. Cas. 555, holding a corporation cannot attack the validity of a statute where it was incorporated after such statute was passed and subject to its provisions.

Power of state to interfere with right to contract.

Cited in McGuire v. Chicago, B. & Q. R. Co. 131 Iowa, 374, 33 L.R.A.(N.S.) 722, 108 N. W. 902, upholding statute making railroads liable for injury to employees by fellow servants regardless of previous contracts of indemnity; Ives v. South Buffalo R. Co. 201 N. Y. 319, 34 L.R.A.(N.S.) 185, 94 N. E. 431, Ann. Cas. 1912B, 156, holding workmen's compensation law void.

48 L. R. A. 673, MURRAY v. DWIGHT, 161 N. Y. 301, 55 N. E. 901.

Who are servants; master's liability.

Approved in Sherwood v. Warner, 27 App. D. C. 68, 4 L.R.A.(N.S.) 654, holding a janitor of building was not acting as the owner's servant where, at the solicitation of mechanics sent to repair elevator, he aided in the extrication of one of their number caught in the machinery.

Cited in Singer v. McDermott, 30 Misc. 740, 62 N. Y. Supp. 1086, and Lewis v. Long Island R. Co. 162 N. Y. 67, 56 N. E. 548, denying relation of master and servant between person hiring wagon and driver thereof; Mills v. Thomas Elevator Co. 54 App. Div. 125, 66 N. Y. Supp. 398, holding employee of company furnishing and operating hod elevator not servant of construction company; Huebner v. Hammond, 80 App. Div. 127, 80 N. Y. Supp. 295, holding owner of lighter not master as to longshoreman placed upon lighter by steamship company using same; Connor v. Koch, 63 App. Div. 263, 71 N. Y. Supp. 836, holding that employee becomes servant of contractor compensating and directing his services; Hallett v. New York C. & H. R. R. Co. 167 N. Y. 546, 60 N. E. 653, holding switchman assigned by railroad company to service of telegraph company working on right of way, servant of latter; Howard v. Ludwig, 171 N. Y. 515, 64 N. E.

172 (dissenting opinion), majority holding relation of master and servant created between hirer and driver by contract for trucks and drivers, to be subject to hirer's directions; Loughrain v. Autophone Co. 77 App. Div. 544, 78 N. Y. Supp. 919, holding one contracting with manufacturing corporation to transport freight not fellow servant of servant of corporation; Deyo v. Kingston Consol. R. Co. 94 App. Div. 581, 88 N. Y. Supp. 487, holding relation of master and servant does not exist between manager of public park and one setting off fireworks under contract; Walsh v. Riesenberg, 94 App. Div. 472, 89 N. Y. Supp. 58, denying existence of relation of master and servant between operator of elevator and one installing fire extinguisher system, although latter paid former $5 as is customary in such cases; Driscoll v. Towle, 181 Mass. 419, 63 N. E. 922, holding it question for jury whether relation of master and servant exists between one engaged in general teaming business and driver of wagon; The Slingsby, 57 C. C. A. 57, 120 Fed. 753, holding seamen hired by captain to run winch not servant of stevedores contracting to discharge and load vessel and furnish labor and appliances, except winch and winch man; Sharp v. Erie R. Co. 90 App. Div. 505, 85 N. Y. Supp. 553, holding railroad company not liable for death of boy stealing ride and killed by peace officer in former's employ because he refused to halt when so ordered; Highman v. T. W. Waterman Co. 32 R. I. 587, 80 Atl. 178, holding that driver furnished with team to lumber company remains servant of teaming company; United States Board & Paper Co. v. Landers, 47 Ind. App. 316, 93 N. E. 232, holding that boiler repairer is not fellow-servant of employee of company whose boiler is being repaired; Cannon v. Fargo, 138 App. Div. 24, 122 N. Y. Supp. 576, on whether gate tender assisting express messenger to unload box is latter's fellow-servant; Kellogg v. Church Charity Foundation, 203 N. Y. 197, 38 L.R.A.(N.S.) 485, 96 N. E. 406, Ann. Cas. 1913A, 883, holding that owner of ambulance hiring horse and driver from liveryman is not master of driver, though name of hospital is on driver's cap; Henry v. Stanley Hod Elevator Co. 129 App. Div. 615, 114 N. Y. Supp. 38, holding an operative employed and paid by an elevator company was the servant of such company where it furnished elevator and operative to construction company and the elevator was operated on signals given by employees of construction company; Muldoon v. City Fireproofing Co. 134 App. Div. 456, 119 N. Y. Supp. 320, holding a driver was servant of company where under the directions of its foreman he hauled material for which company paid him though he was sent to work by person not in company's employ; Dalzell v. New York, N. H. & H. R. Co. 136 App. Div. 332, 121 N. Y. Supp. 28, holding a railroad's servant was not acting in the discharge of its business where he acted under directions of foreman of electric company installing motors on such railroad but independent of railroad company's control; Standard Oil Co. v. Anderson, 212 U. S. 225, 53 L. ed. 485, 29 Sup. Ct. Rep. 252, holding a winchman in the employ and pay of a shipper is a servant of such shipper while loading its vessel at signals of stevedore's employees.

Cited in footnote to Stewart v. California Improv. Co. 52 L. R. A. 205, which holds owner of steam roller liable for engineer's neglect to warn travelers, though roller hired by city.

Cited in note (17 L.R.A.(N.S.) 339) on servants of employer and of contractor as fellow servants.

Distinguished in Baldwin v. Abraham, 57 App. Div. 84, 67 N. Y. Supp. 1079, holding relation of master and servant not created, as matter of law, under contract engaging vans and drivers; Wirth v. General Ry. Signal Co. 136 App. Div. 539, 121 N. Y. Supp. 66, holding that a servant of a railroad assigned by it to

assist in the installing of a signal system that he might learn its operation, is a servant of the independent contractor who is installing the signals.

48 L. R. A. 679, LYNDE v. LYNDE, 162 N. Y. 405, 76 Am. St. Rep. 332, 56 N. E. 979.

Affirmed in 181 U. S. 183, 45 L. ed. 810, 21 Sup. Ct. Rep. 555.

Order refusing to compel plaintiff's attorney to pay over alimony collected by him reversed in 64 N. J. Eq. 736, 58 L. R. A. 471, 97 Am. St. Rep. 692, 52 Atl. 694.

Validity of divorce decree.

Followed in Winston v. Winston, 165 N. Y. 555, 59 N. E. 273, denying validity of foreign divorce against resident, without personal service of process or appearance.

Cited in Guggenheim v. Wahl, 203 N. Y. 397, 96 N. E. 726, holding that foreign decree cannot be collaterally attacked here, when rendered by court with jurisdiction over subject-matter and parties; Ransom v. Ransom, 54 Misc. 413, 104 N. Y. Supp. 198, holding a decree of divorce granted to wife in another state without personal service upon husband and without his appearance is no defense to an action of divorce brought by husband in state of New York; Williams v. Igel, 62 Misc. 355, 116 N. Y. Supp. 778, holding divorce granted wife in another state, without personal service upon husband and without his appearance personally or by attorney, is wholly void; Haddock v. Haddock, 201 U. S. 587, 50 L. ed. 877, 26 Sup. Ct. Rep. 525, 5 Ann. Cas. 1, holding a decree of divorce granted a husband in one state without personal service upon wife and without her personal appearance is not enforceable in a sister state under the full faith and credit clause of the Federal constitution; Strauss v. Strauss, 122 App. Div. 733, 107 N. Y. Supp. 842, holding a decree of divorce granted in another state cannot be attacked on ground of no domicile where the party so attacking it voluntarily appeared in the original action and filed a cross-bill for divorce.

Distinguished in Lacey v. Lacey, 38 Misc. 200, 77 N. Y. Supp. 235, sustaining validity of decree of divorce against husband served with publication before becoming domiciled in another state.

Alimony; force of foreign decree.

Followed in Israel v. Israel, 9 L.R.A.(N.S.) 1171, 79 C. C. A. 32, 148 Fed. 578, 8 Ann. Cas. 697, holding a decree for future alimony and maintenance money is not enforceable in another state when such decree is subject to future modification by the court granting it; Freund v. Freund, 71 N. J. Eq. 528, 63 Atl. 756, holding a decree for future alimony subject to modification is not a final judgment enforceable in a sister state, under the full faith and credit clause of Federal constitution; Sistare v. Sistare, 80 Conn. 6, 125 Am. St. Rep. 102, 66 Atl. 772, denying the enforcement of order by court of another state of future payments of alimony where such order was subject to change by court issuing it and enforceable by methods prescribed by statute of such state; Page v Page, 189 Mass. 89, 75 N. E. 92, 4 Ann. Cas. 296, holding a decree for future payments of alimony of a sister state is not enforceable in a court of equity in absence of an allegation in the bill that such decree was final; Hunt v. Monroe, 32 Utah, 438, 11 L.R.A.(N.S.) 252, 91 Pac. 269; Mayer v. Mayer, 154 Mich. 391, 19 L.R.A.(N.S.) 248, 129 Am. St. Rep. 477, 117 N. W. 890,—holding an award of money to a wife, in a decree of divorce, for support of children, is not enforceable in a sister state, where under the statutes of state in which divorce was granted such awards were subject to revision by courts granting them.

Cited in Arrington v. Arrington, 127 N. C. 198, 52 L. R. A. 205, footnote p. 201, 80 Am. St. Rep. 791, 37 S. E. 212 (disenting opinion), majority holding

foreign decree for alimony after defendant's appearance entitled to full faith and credit; Moore v. Moore, 40 Misc. 163, 81 N. Y. Supp. 729, holding past-due foreign alimony collectible in state where service of process properly made; Gilbert v. Gilbert, 83 Ohio St. 271, 35 L.R.A.(N.S.) 523, 94 N. E. 421, holding that decree for alimony payable in installments will not support action as on final judgment for fixed sum in another state; Wells v. Wells, 209 Mass. 288, 35 L.R.A. (N.S.) 562, 95 N. E. 845, holding personal service of notice of petition for alimony unnecessary to support decree, where husband has entered appearance in divorce suit; Moore v. Moore, 142 App. Div. 461, 126 N. Y. Supp. 936, 2 N. Y. Civ. Proc. N. S. 121, holding that court has jurisdiction in action on foreign decree, to render judgment in personam requiring husband to apply income of trust to alimony; Moore v. Moore, 143 App. Div. 431, 128 N. Y. Supp. 259, holding that same remedies apply to enforcement of alimony awarded by foreign decree as by domestic decree; Freund v. Freund, 71 N. J. Eq. 530, 63 Atl. 756; Hubbard v. Ellithorpe, 135 Iowa, 263, 124 Am. St. Rep. 271; 112 N. W. 796,— on conclusive nature of decrees for alimony; Wagner v. Wagner (Wagener v. Latham) 26 R. I. 28, 65 L.R.A. 817, 57 Atl. 1058, 3 Ann. Cas. 578, holding a decree for alimony in a fixed and absolute sum, granted in a sister state can be enforced in Rhode Island in an action at law; Ulman v. Ulman, 148 Mich. 355, 111 N. W. 1072, on the enforcement of decree for alimony in courts of other states; Patton v. Patton, 67 Misc. 406, 123 N. Y. Supp. 329, enforcing a final decree for alimony granted in District of Columbia where the decree is absolute in form and no law of said District relative to the modification of such decrees is referred to in complaint; Tisdale v. Rider, 119 App. Div. 597, 104 N. Y. Supp. 77, holding a judgment for alimony against a husband, which is defective through lack of personal service, is cured of defect by husband's appearance jointly with wife to set aside the judgment; Van Horn v. Van Horn, 48 Wash. 389, 125 Am. St. Rep. 940, 93 Pac. 670, holding an interlocutory order of a court of one state allowing temporary alimony and suit money cannot be enforced in another state.

Cited in notes (9 L.R.A.(N.S.) 1168) on action to recover alimony accruing under decree in another state; (102 Am. St. Rep. 702) on power of courts to create and enforce liens to secure payment of alimony.

Distinguished in France v. France, 79 App. Div. 295, 79 N. Y. Supp. 579, enforcing provisions for alimony in foreign decree of divorce, although included therein pursuant to illegal agreement not to defend action for divorce.

— Effect of discharge in bankruptcy.

Cited in Arrington v. Arrington, 131 N. C. 145, 92 Am. St. Rep. 769, 42 S. E. 554, holding that discharge of bankrupt discharges judgment for alimony.

Right to dower.

Cited in Starbuck v. Starbuck, 62 App. Div. 443, 71 N. Y. Supp. 104, holding wife obtaining foreign divorce from resident personally served at residence entitled to dower in realty acquired after such divorce.

Legitimacy of child.

Cited in *Re* Hall, 61 App. Div. 276, 70 N. Y. Supp. 406, sustaining legitimacy of offspring of marriage in state where divorce of previously married party valid.

Conflict of laws.

Cited in note (59 L. R. A. 179) on conflict of laws on subject of divorce.

Receiver's extraterritorial powers.

Cited in Hilliker v. Hale, 54 C. C. A. 257, 117 Fed. 225, denying power of receiver of insolvent corporation to sue stockholder in foreign jurisdiction.

Service necessary to judgment in personam.

Cited in White v. Glover, 138 App. Div. 799, 123 N. Y. Supp. 482, holding that to obtain valid judgment in personam, process must be personally served or there must be personal or authorized appearance.

48 L. R. A. 685, VANDEGRIFT v. COWLES ENGINEERING CO. 161 N. Y. 435, 55 N. E. 941.

Contracts; dependent provisions.

Cited in Ewing v. Wightman, 167 N. Y. 110, 60 N. E. 322, holding agreement to convey or deliver possession and agreement to pay purchase price, dependent; Logan v. Consolidated Gas Co. 107 App. Div. 392, 95 N. Y. Supp. 163, which holds destruction of gas tank before completion, which contractor had agreed to deliver in complete working order does not terminate his obligation; Clarke v. Koeppel, 119 App. Div. 459, 104 N. Y. Supp. 65, which holds contractor cannot recover for work done on building destroyed by fire before completion where negligence of owner not shown to have caused fire.

— Breach.

Cited in Ellis v. Miller, 164 N. Y. 439, 58 N. E. 516, holding that manufacturer's sale and transfer of his business does not constitute breach of contract to furnish goods; Pitts v. Davey, 40 Misc. 100, 81 N. Y. Supp. 264, holding that vendees prevented performance of contract to deliver cement in weekly instalments by notifying vendor not to deliver till further notice; Alpern v. Farrell, 133 App. Div. 281, 117 N. Y. Supp. 706, holding existence of uncancelled lis pendens does not justify vendee in rejecting title where proof of withdrawal of complaint is shown; Lese v. Lamprecht, 123 App. Div. 921, 107 N. Y. Supp. 1132 (dissenting opinion), on default in contracts.

— Effect of assignment for creditors.

Cited in United Press v. A. S. Abell Co. 79 App. Div. 559, 80 N. Y. Supp. 454, holding that assignment for benefit of creditors disables news-gathering association from performing contract to furnish news to papers; Re Morgantown Tin Plate Co. 184 Fed. 113, holding that insolvency or bankruptcy alone does not constitute either breach or authorize rescission or abandonment of contract; Demarest v. Dunton Lumber Co. 151 Fed. 519, which holds assignee of contract to buy lumber cannot maintain action for breach thereof where seller refused to recognize such assignment; Phenix Nat. Bank v. Waterbury, 197 N. Y. 166, 90 N. E. 435, denying that discharge in bankruptcy destroys liability on contract not absolutely owing at time of filing petition in bankruptcy.

Assignability of contracts.

Cited in Roberts Cotton Oil Co. v. F. E. Morse & Co. 97 Ark. 522, 135 S. W. 334, holding contract of sale of cotton seed meal assignable.

Liability to referee.

Cited in Keeler v. Bell, 48 Misc. 429, 95 N. Y. Supp. 841, holding plaintiff in cause terminated by stipulation for judgment in his favor, liable for referee's fees where cause was originally referred to referee even though no report thereof made.

48 L. R. A. 691, PLATT BROS. v. WATERBURY, 72 Conn. 531, 77 Am. St. Rep. 335, 45 Atl. 154.

Later action for nuisance, 80 Conn. 182, 125 Am. St. Rep. 111, 67 Atl. 508, referring to cited case as a former adjudication of similar action.

Cited in Waterbury v. Platt Bros. & Co. 76 Conn. 437, 56 Atl. 856, giving history of former litigation relative to same sewers.

Liability for improper construction and use of sewers.

Approved in Watson v. New Milford, 72 Conn. 566, 77 Am. St. Rep. 345, 45 Atl. 167, holding use of services for town buildings to damage of riparian owners, actionable wrong; Markwardt v. Guthrie, 18 Okla. 41, 9 L.R.A.(N.S.) 1154, 90 Pac. 26, 11 Ann. Cas. 581, holding city discharging sewage into river, liable for damages resulting to lower riparian owner thereby.

Cited in Virginia Hot Springs v. McCray, 106 Va. 466, 10 L.R.A.(N.S.) 468 56 S. E. 216, 10 Ann. Cas. 179, holding city discharging sewage into river liable for damage resulting to lower riparian owner thereby; Glasgow v. Altoona, 27 Pa. Super. Ct. 59, holding city using stream for sewer liable to riparian owners for damages for pollution; Fitzgerald v. Sharon, 143 Iowa, 732, 121 N. W. 523, holding city constructing culverts carrying filthy water on abutting owner's land, liable for damages therefor.

Cited in footnotes to Smith v. Sedalia, 48 L. R. A. 711, which denies city's right to discharge sewers into stream without compensating land owner; Mansfield v. Balliett, 58 L. R. A. 628, which holds city liable for emptying sewage into natural watercourse, creating nuisance as to riparian owner; Carmichael v. Texarkana, 58 L. R. A. 911, which denies liability of citizens calling on city to construct sewer, for its negligence in construction or operation; Trevett v. Prison Asso. 50 L. R. A. 564, which sustains liability of prison association for pollution of stream by sewage to injury of dairyman.

Cited in notes (61 L.R.A. 694) on duty and liability of municipality with respect to drainage; (20 L.R.A.(N.S.) 1050, 1051, 1055) on right of municipality to create nuisance by discharging sewage; (34 L.R.A.(N.S.) 431) on injury to wharf right by sewer or drainage system.

Condemnation of property for sewer purposes.

Cited in Waterbury v. Platt Bros. 75 Conn. 391, 60 L. R. A. 217, 96 Am. St. Rep. 229, 53 Atl. 958, holding power to condemn property injured by sewer system for temporary period not conferred by authority to construct sewers and condemn property.

Prescriptive right to maintain nuisance.

Cited in notes (53 L.R.A. 892, 896) on prescriptive right to maintain public nuisance; (107 Am. St. Rep. 218) on effect of prescription on right to continue public nuisances.

— Pollution of stream.

Cited in Lawton v. Herrick, 83 Conn. 424, 76 Atl. 986, holding that riparian proprietor cannot acquire by prescription right to deposit sawdust and pomace into stream.

Cited in notes (1 L.R.A.(N.S.) 752; 25 L.R.A.(N.S.) 590, 594) on prescriptive right to pollute stream; (84 Am. St. Rep. 913–917, 923, 925, 926) on extent of municipal right to pollute waters.

Legislative power to authorize use of streams for sewer outlets.

Approved in Winchell v. Waukesha, 110 Wis. 110, 84 Am. St. Rep. 902, 85 N. W. 668, denying that creation of public nuisance by pollution of stream is within legislative authorization to construct sewage system.

Cited in footnotes to Sayre v. Newark, 48 L. R. A. 722, and Grey *ex rel.* Simmons v. Paterson, 48 L. R. A. 717, which sustain right of legislature to authorize cities to use tidal streams for sewer outlets.

Cited in note (1 L.R.A.(N.S.) 124) on effect of legislative authority upon liability for pollution of waters by sewers.

Municipal liability.

Cited in Hourigan v. Norwich, 77 Conn. 363, 59 Atl. 487, holding city liable for death of child by negligence of board of water commissioners in maintaining city water works.

Cited in footnote to Wilson v. Mitchell, 65 L.R.A. 158, which holds that municipality cannot ratify act of waterworks superintendent in wrongfully connecting well with city water mains so as to become liable for water taken from the well.

Cited in notes (47 L.R.A. 594) on municipal liability for arrest and imprisonment under invalid ordinance; (108 Am. St. Rep. 141, 143, 164), as to what municipal corporations are answerable for injuries due to defects in streets and other public places.

Review of grant or denial of injunction.

Cited in Kewanee v. Otley, 204 Ill. 408, 68 N. E. 388, holding granting or denial of injunction to restrain discharge of sewage upon lands, within discretion of court, and will not be reviewed in absence of abuse of discretion.

Facts in series as evidence.

Cited in Hodges v. Price, 38 Wash. 7, 80 Pac. 202, holding that it was proper to allow the filing of a supplemental complaint setting forth acts of the defendant occurring since the commencement of the action, where the same show the purpose and intention of the defendant in first breaking the contract sued on.

48 L. R. A. 707, VALPARAISO v. HAGEN, 153 Ind. 337, 74 Am. St. Rep. 305, 54 N. E. 1062.

Pollution of stream.

Cited in Weston Paper Co. v. Pope, 155 Ind. 400, 56 L. R. A. 901, 57 N. E. 719, denying right to discharge factory waste so as to injuriously pollute stream.

Cited in notes (1 L.R.A.(N.S.) 126) on effect of legislative authority upon liability for pollution of waters by sewers; (84 Am. St. Rep. 912–914, 918–921, 923–925, on extent of municipal right to pollute waters.

Distinguished in Markwardt v. Guthrie, 18 Okla. 50, 9 L.R.A.(N.S.) 1157, 90 Pac. 26, 11 Ann. Cas. 581, holding city discharging sewage into river, liable in damages for injuries resulting therefrom to riparian owner.

Liability for improper construction and use of sewers.

Cited in Hall v. Breyfogle, 162 Ind. 503, 70 N. E. 883, holding injunction will not issue to restrain town from opening street on ground that in so doing storm water will be discharged on abutting land.

Cited in footnote to Carmichael v. Texarkana, 58 L. R. A. 911, which denies liability of citizens calling on city to construct sewer, for its negligence in construction or operation.

Cited in note (20 L.R.A.(N.S.) 1052) on right of municipality to create nuisance by discharging sewage.

Disapproved in Grey *ex rel.* Simmons v. Paterson, 60 N. J. Eq. 390, 48 L. R. A. 720, 83 Am. St. Rep. 642, 45 Atl. 995; Winchell v. Waukesha, 110 Wis. 106, 84 Am. St. Rep. 902, 85 N. W. 668; Platt Bros. v. Waterbury, 72 Conn. 553, 48 L. R. A. 706, 77 Am. St. Rep. 335, 45 Atl. 154, — holding municipality liable to lower riparian owners for pollution of stream with sewage.

Rights as to drainage.

Cited in Parker v. Monroe, 128 La. 957, 55 So. 587, holding that grant of

power to provide for drainage system includes power to determine system and exercise of that discretion cannot be judicially questioned.

Cited in note (48 L. R. A. 691) on right of municipal corporation to drain sewage into waters.

Uses for which eminent domain cannot be exercised.

Cited in note (102 Am. St. Rep. 831) on uses for which power of eminent domain cannot be exercised.

48 L. R. A. 711, SMITH v. SEDALIA, 152 Mo. 283, 53 S. W. 907.

Cited in Smith v. Sedalia, 182 Mo. 6, 81 S. W. 165, for statement of facts.

Effect of failure to designate grounds of reversal.

Followed in Roman v. Boston Trading Co. 87 Mo. App. 190, holding failure to designate ground for ordering new trial not reversible error; Leach v. St. Louis & S. F. R. Co. 139 Mo. App. 302, 118 S. W. 510; Sharp v. Odum, 121 Mo. App. 567, 97 S. W. 225,—holding failure to designate ground for ordering new trial not reversible error.

Negligent construction of sewers.

Cited in Johnson v. St. Louis, 137 Fed. 442, holding city constructing sewer causing abutting building to settle, liable to owner for damage thereto; Johnson v. St. Louis, 96 C. C. A. 617, 172 Fed. 36, 18 Ann. Cas. 949, holding damage to adjoining building caused by laying sewer in alley damnum absque injuria under Missouri constitution.

Cited in footnote to Carmichael v. Texarkana, 58 L. R. A. 911, which denies liability of citizens calling on city to construct sewer, for its negligence in construction or operation.

Rights as to drainage.

Cited in Thompson v. Winona, 96 Miss. 596, 51 So. 129, Ann. Cas. 1912B, 449, holding city liable for damages from privately operated sewer system where it compelled residents to connect therewith.

Cited in notes (48 L.R.A. 701) on right of municipal corporation to drain sewage into waters; (84 Am. St. Rep. 915, 917, 921, 923, 924) on extent of municipal right to pollute waters; (107 Am. St. Rep. 237) on fouling of waters by discharges of sewage.

Prescriptive rights.

Cited in Chicago, B. & Q. R. Co. v. Ives, 202 Ill. 72, 66 N. E. 940, holding that permissive use of right of way does not ripen into prescriptive right; Kellogg v. Kirksville, 149 Mo. App. 5, 129 S. W. 57, holding that prescriptive right as defense to action for pollution of stream by sewage is insufficiently pleaded by allegation that wrong accrued more than ten years before action; State ex rel. Detienne v. Vandalia, 119 Mo. App. 426, 94 S. W. 1009, which holds maintenance of purpresture in street with permission of city, not adverse to right of public; Anthony v. Kennard Bldg. Co. 188 Mo. 720, 87 S. W. 921, which holds one seeking to establish easement by prescription must prove adverse user of same for prescribed period under claim of right and with notice to owner; Stewart v. Andrews, 239 Ill. 192, 87 N. E. 864, on prescriptive right acquired by use of way "without objection or hindrance" for statutory period.

Cited in notes (53 L.R.A. 892, 897) on prescriptive right to maintain public nuisance; (25 L.R.A.(N.S.) 590, 592, 593) on prescriptive right to pollute stream.

When limitations begin to run.

Cited in De Geofroy v. Merchants Bridge Terminal R. Co. 179 Mo. 721, 64 L. R. A. 969, 101 Am. St. Rep. 524, 79 S. W. 386, holding that statute of limitations

begins to run against right of action for injury to abutting property at time structure in street is completed.

Cited in footnote to Church of Holy Communion v. Paterson Extension R. Co. 55 L. R. A. 81, which holds limitation begins to run for injuries to church wall from insufficiency of retaining wall built in constructing track, from time injury occurs.

48 L. R. A. 717, GREY *ex rel.* SIMMONS v. PATERSON, 60 N. J. Eq. 385, 83 Am. St. Rep. 642, 45 Atl. 995.

Report of later appeal in Doremus v. Paterson, 63 N. J. L. 606, 52 Atl. 1107.

Appeal from decree on amended bill Doremus v. Paterson, 65 N. J. Eq. 712, 55 Atl. 304.

Amended bill on demurrer Doremus v. Paterson, 69 N. J. Eq. 189, 57 Atl. 548.

Appeal from demurrer to amended bill Doremus v. Paterson, 69 N. J. Eq. 775, 61 Atl. 396.

Hearing on amended answer as to damages Doremus v. Paterson, 73 N. J. Eq. 476, 69 Atl. 225.

Title to lands under water.

Cited in Jersey City v. Hall, 79 N. J. L. 573, 76 Atl. 1058, Ann. Cas. 1912A, 696, holding that state holds title to lands under tidewaters in right of its sovereignty and for benefit of public.

Cited in footnote to Shepard's Point Land Co. v. Atlantic Hotel, 61 L. R. A. 937, which holds title to land under tide waters vested in, and grantable by, state.

Cited in note (24 L.R.A.(N.S.) 1241) on government grant bounded by nontidal, navigable river as carrying title to land thereunder.

Liability with respect to drainage.

Cited in Kewanee v. Otley, 204 Ill. 417, 68 N. E. 388, authorizing injunction against city's pollution of stream by discharging sewage therein; Paterson v. East Jersey Water Co. 74 N. J. Eq. 99, 70 Atl. 472, granting injunction at instance of city that had constructed costly sewage system restraining water company from diverting water from river; Worthen v. White Spring Paper Co. 74 N. J. Eq. 654, 70 Atl. 468, granting injunction at instance of lower proprietor suffering damages thereby restraining pollution of river with materials used in bleaching; Doremus v. Paterson, 65 N. J. Eq. 712, 55 Atl. 304, holding injunction will not issue to owners of land on artificial canal connecting with river nor to lessees of right to use water to restrain pollution of stream by city; Beidler v. Sanitary Dist. 211 Ill. 636, 67 L.R.A. 838, 71 N. E. 1118, allowing damages to abutting owners on dock canal for lowering water in same by construction of drainage canal; Van Cleve v. Passaic Valley Sewerage Comrs. 71 N. J. L. 223, 58 Atl. 571, on right of city to discharge sewage into river and denying constitutionality of Passaic Valley Sewerage Act; Doremus v. Paterson, 73 N. J. Eq. 503, 69 Atl. 225, on power under eminent domain to take right to discharge city sewage into river.

Cited in footnotes to Mansfield v. Balliett, 58 L. R. A. 628, which holds city liable for emptying sewage into natural water course, creating nuisance as to riparian owner; Carmichael v. Texarkana, 58 L. R. A. 911, which denies liability of citizens calling on city to construct sewer, for its negligence in construction or operation.

Cited in notes (48 L. R. A. 702) on right of municipality to drain sewage into waters; (61 L. R. A. 694) on duty and liability of municipality with respect to drainage; (1 L.R.A.(N.S.) 125, 127) on effect of legislative authority upon lia-

bility for pollution of waters by sewers; (20 L.R.A.(N.S.) 1051) on right of municipality to create nuisance by discharging sewage; (84 Am. St. Rep. 918, 922, 923, 924, 926) on extent of municipal right to pollute waters.

Damages for overflows.

Cited in Stevenson v. Morgan, 64 N. J. Eq. 222, 53 Atl. 677, holding damages for injuries to land from past overflows not recoverable in action to enjoin future overflows.

Estoppel of riparian owner not objecting to improvements.

Cited in Paterson v. East Jersey Water Co. 74 N. J. Eq. 96, 70 Atl. 472, which holds city as lower riparian owner not estopped to complain of diversion of water by upper proprietor by failure to make objection when plant to divert water is being erected.

Abatement of nuisance.

Cited in Laird v. Atlantic Coast Sanitary Co. 73 N. J. Eq. 53, 67 Atl. 287, granting injunction at instance of neighboring householders restraining operation of fertilizer plant in such manner as to emit foul odors; People v. Transit Development Co. 131 App. Div. 181, 115 N. Y. Supp. 297, holding evidence showing advantages to public from operation of plant admissible in public prosecution to restrain burning of hard coal.

Right to crossing.

Cited in Speer v. Erie R. Co. 64 N. J. Eq. 610, 54 Atl. 539, holding railroad company which agreed to maintain crossing for owner as inducement to grant of right of way required to provide crossing after elevating tracks, and owner not compelled to accept compensation in lieu thereof.

Injunctions.

Cited in L. Martin Co. v. L. Martin & W. Co. 75 N. J. Eq. 259, 21 L.R.A. (N.S.) 529, 72 Atl. 294, 20 Ann. Cas. 57, holding that equity, on enjoining unfair competition may decree an account of profits; Nelson v. New Jersey Short Line R. Co. 73 N. J. Eq. 192, 67 Atl. 1032, on terms upon which injunction restraining trespass will issue.

Cited in note (99 Am. St. Rep. 740) on injunction against trespass on realty.

Explained in Doremus v. Paterson, 69 N. J. Eq. 777, 61 Atl. 396, holding injunction in alternative will issue at instance of lower proprietors above tide water to restrain city polluting stream by discharging sewage.

Right of court of equity to ascertain compensation.

Cited in L. Martin Co. v. L. Martin & W. Co. 75 N. J. Eq. 259, 21 L.R.A.(N.S.) 529, 72 Atl. 294, on right of court of equity to ascertain compensation.

Distinguished in Northeastern Teleph. & Teleg. Co. v. Hepburn, 73 N. J. Eq. 668, 69 Atl. 249, holding injunction restraining property owners from interfering with construction of telephone line will not be continued until compensation may be ascertained where company erected poles without right.

Use of streams.

Cited in McCarter v. Hudson County Water Co. 70 N. J. Eq. 721, 14 L.R.A. (N.S.) 209, 118 Am. St. Rep. 754, 65 Atl. 489, 10 Ann. Cas. 116, to show uses made of streams.

Power to condemn riparian rights apart from land.

Cited in note (17 L.R.A.(N.S.) 1007) on power to condemn riparian rights apart from land to which appurtenant.

What waters are navigable.

Cited in note (126 Am. St. Rep. 713) on what waters are navigable.

Liability of municipality for incidental damages.

Cited in Newark v. Hatt, 77 N. J. Eq. 51, 71 Atl. 330, holding landowner not entitled to damages for vacation of street, where access to land is not wholly destroyed.

48 L. R. A. 722, SAYRE v. NEWARK, 60 N. J. Eq. 361, 83 Am. St. Rep. 629, 45 Atl. 985.

Riparian right; sewage.

Followed in Grey *ex rel.* Simmons v. Paterson, 60 N. J. Eq. 389, 48 L. R. A. 720, 83 Am. St. Rep. 642, 45 Atl. 995, denying right of riparian owners on tidal river to injunction against authorized pollution of stream with sewage.

Cited in Belleville Twp. v. Orange, 70 N. J. Eq. 246, 62 Atl. 331, holding township situated on tide water, contracting with city as to conditions of construction of sewer is without power to compel specific performance thereof for purpose of protecting public rights; Philadelphia Trust, S. D. & Ins. Co. v. Merchantville, 75 N. J. L. 455, 68 Atl. 170, holding under statute authorizing location of sewage-disposal plant by borough, decision of borough officials as to location is conclusive.

Cited in footnote to Carmichael v. Texarkana, 58 L. R. A. 911, which denies liability of citizens calling on city to construct sewer, for its negligence in construction or operation.

Cited in notes (48 L.R.A. 702) on right of municipality to drain sewage into waters; (1 L.R.A.(N.S.) 127) on effect of legislative authority upon liability for pollution of waters by sewage; (84 Am. St. Rep. 914, 922) on extent of municipal right to pollute waters.

Liability of municipality for incidental damages.

Cited in Newark v. Hatt, 77 N. J. L. 52, 71 Atl. 330, holding owner not entitled to damages for vacation of street, where access to land is not wholly destroyed.

Title of state to land under water.

Cited in Jersey City v. Hall, 79 N. J. L. 572, 76 Atl. 1058, Ann. Cas. 1912A, 696, holding that state holds title to lands under tidewaters in right of its sovereignty and for benefit of public.

48 L. R. A. 732, CINCINNATI VOLKSBLATT CO. v. HOFFMEISTER, 62 Ohio St. 189, 78 Am. St. Rep. 707, 56 N. E. 1033.

Shareholder's right to inspect books.

Cited in Johnson v. Langdon, 135 Cal. 627, 87 Am. St. Rep. 156, 67 Pac. 1050, sustaining shareholder's right to inspect company's books, irrespective of motives; Wight v. Heublein, 111 Md. 658, 75 Atl. 507, denying shareholder's right to inspect company's books for purpose of compelling it to purchase shareholder's stock at excessive price; Hub Constr. Co. v. New England Breeders' Club, 74 N. H. 287, 67 Atl. 574, holding allegation of purpose of inspection not necessary in petition by creditor of insolvent corporation to inspect its accounts where such action is statutory; Guthrie v. Harkness, 199 U. S. 155, 50 L. ed. 132, 26 Sup. Ct. Rep. 4, 4 Ann. Cas. 433, which holds Federal statute providing for examination of national banks does not abrogate common law right of stockholder to inspect books; State v. Monida & Y. Stage Co. 110 Minn. 201, 124 N. W. 971, sustaining mandamus permitting stockholder to examine company's books where proper demand had been previously refused; Clawson v. Clayton, 33 Utah, 271, 93 Pac. 729, holding inspection of corporate books by accountant as his agent incident of stockholder's right to inspect books; Kimball v. Dern, 39 Utah, 181,

35 L.R.A.(N.S.) 139, 116 Pac. 28, Ann. Cas. 1913E, 166, holding that stockholder has right to inspect books, although it is for purpose of instituting litigation against corporation.

Cited in footnote to McClintock v. Young Republicans, 68 L.R.A. 459, which sustains right of member of corporation organized in interest of political organization to inspect membership roll for purpose of instituting measures to promote objects of the organization.

Cited in notes (107 Am. St. Rep. 675, 678, 682, 683, 684, 688) on right of stockholder to inspect corporate books and remedies for its enforcement; (20 L.R.A.(N.S.) 187, 197, 199) on right of stockholder to inspect books; (2 Brit. Rul. Cas. 976) on delegability of right of partner or stockholder to inspect books.

Distinguished in Ohio Humane Soc. v. Biles, 11 Ohio C. C. N. S. 384, 30 Ohio C. C. 833, holding that the rights of stockholders to inspect the books of the corporation, do not attach in case of a corporation not organized for profit.

— Injunction to enforce such right.

Cited in Arbuckle v. Woolson Spice Co. 21 Ohio C. C. 367, 11 Ohio C. D. 733, holding that an action would lie for an injunction to enable the stockholders of a corporation to inspect the books of the company; Kennon v. Ohio Trust Co. 16 Ohio S. & C. P. Dec. 339, holding sufficient a petition for an injunction to compel the allowance of examination of the books of the corporation by a stockholder, where such facts are alleged and also that a demand for such inspection has been made and has been refused.

Equitable remedies.

Distinguished in State v. Baldwin, 77 Ohio St. 546, 19 L.R.A.(N.S.) 49, 83 N. E. 907, 12 Ann. Cas. 10, holding mandamus proper remedy to restore detective to office from which mayor had illegally removed him.

Nature of corporation.

Cited in Re Rieger, Kapner & Altmark, 157 Fed. 615, on liability of stockholders of corporation.

Materiality of motive in doing a legal act.

Cited in Kilcoyne v. Hutchins, 10 Ohio C. C. N. S. 235, 30 Ohio C. C. 546, holding that the motive of the petitioners for the prohibition of sales of intoxicating liquors within a certain district, cannot be inquired into so as to defeat their petition where they have acted according to law.

— In demanding inspection of books and records.

Cited in Kennon v. Ohio Trust Co. 16 Ohio S. & C. P. Dec. 734; Caldwell v. Hill & G. Co. 17 Ohio S. & C. P. Dec. 801,—holding that a stockholder has the right to examine the books of the corporation and his motive in so doing is immaterial; Wells v. Lewis 12 Ohio S. & C. P. Dec. 180, holding that the motive of the person seeking to examine the records of a public corporation is immaterial.

Corporate or firm entity.

Cited in First Nat. Bank v. Cochran, 8 Ohio N. P. 696, 12 Ohio S. & C. P. Dec. 35, holding that under the statutes a partnership is a legal entity distinct from the members composing it with regard to the distribution of its assets among its separate creditors.

Occasion for mandamus.

Cited in Krickenberger v. Wilson, 3 Ohio N. P. N. S. 184, 15 Ohio S. & C. P. Dec. 782, holding that mandamus does not lie where the right is not clear or where there is a complete remedy in law or equity; State v. Unida Gold Min-

Co. 13 Ohio C. C. N. S. 101, denying mandamus to compel secretary of corporation to call stockholders' meeting.

Cited in note (125 Am. St. Rep. 509, on duties) performance of which may be compelled by mandamus.

48 L. R. A. 735, NOBLE v. TYLER, 61 Ohio St. 432, 56 N. E. 191.

Tenant's action for trespass.

Cited in Hillhouse v. Jennings, 60 S. C. 400, 38 S. E. 596, sustaining action for trespass by tenant in possession under parol lease for twelve months.

Apportionment of rent.

Cited in In re Hopkins (Assignment of) 5 Ohio L. Rep. 179, on apportionment of rent.

Cited in notes (27 L.R.A.(N.S.) 450) on apportionment of rent upon death of life beneficiary between distribution periods; (36 L.R.A.(N.S.) 638) on right to rents as between life tenant and remainderman.

48 L. R. A. 738, CHAMPAIGN COUNTY v. CHURCH, 62 Ohio St. 318, 78 Am. St. Rep. 718, 57 N. E. 50.

Constitutionality of statute imposing penalty for lax administration of the law.

Cited in State v. Davies, 6 Ohio C. C. N. S. 625, 27 Ohio C. C. 605, on the validity of statute making particular parts of the state responsible for the lax administration of the law within its borders, and sustaining statute requiring county to pay juror's fees in criminal cases.

Cited in footnote to Cigar Makers' international Union v. Goldbert, 70 L.R.A. 156, which holds that due process of law as to legal penalties requires legislative body to prescribe amount of penalty or some definite standard for fixing amount or that such amount be determined in judicial proceeding against offender.

Nature of action to collect penalty under the statute.

Cited in State v. Lake Shore & M. S. R. Co. 7 Ohio N. P. N. S. 582, 19 Ohio S. & C. P. Dec. 875, holding that under the statute requiring the use of automatic couplings and providing a penalty for failure to provide same, the action to be brought by the prosecuting attorney where the violation occurs, is civil in its nature and knowledge or intention are not ingredients which must be proved.

Validity of statutes imposing liability for injury irrespective of negligence.

Cited in note (34 L.R.A.(N.S.) 164) on constitutionality of statute imposing liability for injury to servant irrespective of negligence.

Object of taxation.

Cited in footnote to Dodge v. Mission Twp. 54 L.R.A. 242, which holds promotion of construction and operation of sugar mills a private purpose not authorizing taxation.

What constitutes mob.

Cited in note (10 L.R.A.(N.S.) 927) on what is a mob or riot for act of which municipality responsible.

48 L. R. A. 744, RUNYAN v. CENTRAL R. CO. 64 N. J. L. 67, 44 Atl. 985.

Report of later appeal in 65 N. J. L. 229, 47 Atl. 422.

Effect of custom as to payment of fare.

Cited in Tidey v. Erie R. Co. 66 N. J. L. 384, 49 Atl. 427, holding that reliance

upon custom to accept round-trip ticket as two fares in same direction shows absence of intent to avoid payment of fares.

48 L. R. A. 748, JONES v. FOREST OIL CO. 194 Pa. 379, 44 Atl. 1074.

Statute against wasting gas or oil.

Cited in Ohio Oil Co. v. Indiana, 177 U. S. 205, 44 L. ed. 737, 20 Sup. Ct. Rep. 576, sustaining validity of state statute prohibiting gas or oil from escaping into open air unless first confined for two days.

Interference with percolating waters.

Cited in Stone v. Providence Gas & Water Co. 13 Pa. Dist. R. 558, holding water company injuring neighbors' wells by cutting off percolating waters by sinking deep well, liable in damages; Davison v. Shenandoah Borough, 38 Pa. Co. Ct. 700, refusing injunction against boring of artesian wells on one's own land; Mohn v. Bollman, 26 Lanc. L. Rev. 279, holding that lower property owner can build reservoir to catch overflow of spring on higher land.

Property in oil or gas.

Cited in note (44 L. ed. U. S. 730) on property in petroleum oil or gas.

48 L. R. A. 751, CREDLE v. AYERS, 126 N. C. 11, 35 S. E. 128.

Entry by mortgagee on default.

Cited in Woodlief v. Wester, 136 N. C. 165, 48 S. E. 578, on right of mortgagee to take possession of mortgaged premises after default.

48 L. R. A. 753, DALLEMAND v. SAALFELDT, 175 Ill. 310, 67 Am. St. Rep. 214, 51 N. E. 645.

Duty of master to warn, and servant's assumption of risk.

Cited in Ross v. Shanley, 185 Ill. 393, 56 N. E. 1105, Affirming 86 Ill. App. 150, holding that workman may rely upon foreman's performance of duty to see that place for work is reasonably safe; Pittsburg, C. C. & St. L. R. Co. v. Hewitt, 102 Ill. App. 437, holding railroad company bound to instruct and warn new employee as to link couplings used, where patent coupling broken; Browne v. Siegel, C. & Co. 191 Ill. 235, 60 N. E. 815, holding master not liable for death of workman who fell into elevator well left unguarded in violation of ordinance, where latter assumed risk and was guilty of contributory negligence; Chicago, R. I. & P. R. Co. v. Cleveland, 92 Ill. App. 314, sustaining flagman's right to assume that shanty is at reasonably safe distance from tracks; Chicago & A. R. Co. v. Bell, 111 Ill. App. 290, holding railroad company liable to laborer employed in pit under track, for failure to warn him of danger when engine run over pit to be coaled up; Chicago & E. I. R. Co. v. Heerey, 203 Ill. 504, 68 N. E. 74, holding instruction in action for death of fireman from parting of engine and tender, "that if decedent knew safety chain was not coupled, he assumed risk, but if prudent servant would have continued work under circumstances, he did not assume risk," error as confusing assumption of risk with contributory negligence; Chicago, R. I. & P. R. Co. v. Galloway, 137 Ill. App. 306, which holds doctrine of assumed risk not applicable where master does not inform inexperienced servant of danger incident to turntable; Williams v. Sleepy Hollow Min. Co. 37 Colo. 75, 7 L.R.A.(N.S.) 1176, 86 Pac. 337, 11 Ann. Cas. 111, holding in action for drowning of servant in mine, burden is on master to show servant knew of existence of deep water in mine; Wells & F. Co. v. Kapaczynski, 218 Ill. 152, 75 N. E. 751, which holds doctrine of assumption of risk has no application where appellate court in reversing judgment for defendant in action for personal injuries finds injury resulted from defendant's negligence; Rose v. Minneapolis, St. P. & S. Ste. M. R. Co. 107 Minn. 278, 21 L.R.A.(N.S.) 152, 120 N. W.

360, on burden of proof of assumption of risk.

Cited in footnote to Kinzel v. Atlanta, K. & N. R. Co. 69 L.R.A. 757, which holds risk of land slides assumed by engineer reluctantly obeying order to take train through mountainous region on regular trip at time of heavy rains.

Cited in notes (4 L.R.A.(N.S.) 830) on servant's assumption of risk in obeying orders to perform obviously dangerous work; (25 L.R.A.(N.S.) 366) on assumption of risk of injury by dust or splinters caused by progress of work; (29 L.R.A.(N.S.) 597) on effect of promise to repair where danger is great and imminent; (97 Am. St. Rep. 900) on right of recovery by employees accepting extra hazardous duties.

Annotation in 48 L. R. A. 753, referred to with approval in Long v. Illinois C. R. Co. 113 Ky. 812, 58 L. R. A. 239, footnote p. 237, 68 S. W. 1095, holding risk not assumed by section hand obeying boss's order to take hand car to next station to wait for fast train.

Vice principalship with reference to servant's rank.

Cited in note (51 L. R. A. 520, 542) on vice principalship considered with reference to superior rank of negligent servant.

Contributory negligence.

Cited in notes (49 L.R.A. 47) on contributory negligence in entering or remaining in employment; (33 L.R.A.(N.S.) 1120, 1141) on burden of proof as to contributory negligence.

Proof of, and reputation for, due care.

Cited in Chicago & E. I. R. Co. v. Beaver, 199 Ill. 37, 65 N. E. 144, holding showing of due care and caution essential to recovery for personal injuries; Cleveland, C. C. & St. L. R. Co. v. Oliver, 83 Ill. App. 68, and Chicago, R. I. & P. R. Co. v. Keely, 103 Ill. App. 209, holding that due care of person negligently killed may be established by proof of circumstances and by presumption arising from instinct of self-preservation; Illinois C. R. Co. v. Prickett, 109 Ill. App. 479, holding evidence of deceased engineer's reputation for care, competent in action for death from negligent explosion of boiler, where fireman killed and no direct proof possible; Illinois C. R. Co. v. Kief, 111 Ill. App. 360, holding proof of reputation for care incompetent in action for death at railroad crossing, where witness testified to facts surrounding accident; Chicago & A. R. Co. v. Wilson, 128 Ill. App. 95, holding evidence of habits and sobriety of deceased competent in action for tortious killing when nobody saw the accident.

Distinguished in Cox v. Chicago & N. W. R. Co. 92 Ill. App. 18, sustaining exclusion of evidence of habits of due care, where there is evidence of all circumstances up to instant of injury.

Questions proper for jury.

Cited in Illinois Steel Co. v. Ryska, 102 Ill. App. 355, holding questions of negligence and assumption of risk for jury, where workman sent to top of blast furnace without knowledge of unusual danger from gas; Colson v. Craver, 80 Ill. App. 103, holding for jury, question of inexperienced operator's negligence in working without helper, by direction of foreman; North Chicago Street R. Co. v. Dudgeon, 184 Ill. 487, 56 N. E. 796, holding question for jury, whether conductor should anticipate order to change crews at place of injury; Pagels v. Meyer, 88 Ill. App. 175, holding that question whether employee was negligent in failing to clean away product from machine when hurried by foreman is for jury; Howe v. Medaris, 82 Ill. App. 520, holding for jury, question whether what operator saw and knew of the danger would make its disregard by prudent man negligence; Frank v. Beck, 19 Utah, 44, 56 Pac. 419, holding question as to negli-

gence in ordering servant into place of great danger to assist in rescuing fellow workman, without explaining dangers of situation, for jury; Murray v. Chicago, R. I. & P. R. Co. 152 Iowa, 737, 133 N. W. 123, holding it question for jury whether inexperienced girl assumed risk in operating unguarded laundry mangle; Stephens v. Southern R. Co. 82 S. C. 547, 64 S. E. 601, holding question for jury, whether fireman jumping from moving train at command of engineer to get coffee was acting within scope of employment; Viohl v. North Pacific Lumber Co. 46 Or. 300, 80 Pac. 112, holding question for jury, whether servant ordered to perform other than usual task guilty of contributory negligence in forgetting defect in machinery that he previously knew of; Central Union Bldg. Co. v. Kolander, 212 Ill. 34, 72 N. E. 50, holding for jury, question whether defective condition of automatic stop was proximate cause of injury on elevator.

Annotation cited in Young v. Missouri, K. & T. R. Co. 82 Kan. 337, 108 Pac. 99, holding question for jury, whether servant in mine knowing of presence of gas in room and continuing to work therein until explosion was guilty of contributory negligence; Pullman v. Geller, 128 Ky. 77, 129 Am. St. Rep. 295, 107 S. W. 271, holding question for jury, whether servant ordered by foreman to use defective tongs and doing so resulting in injury was guilty of contributory negligence.

Cited in footnote to Neeley v. Southwestern Cotton Seed Oil Co. 64 L. R. A. 146, which holds contributory negligence of employee in using defective ladder to adjust belt, after complaining to manager and being told that it was all right, question for jury.

Liability for injury to servant obeying order.

Annotation cited in Texas & N. O. R. Co. v. Kelly, 34 Tex. Civ. App. 27, 80 S. W. 1073, holding correct charge that servant obeying order to use hand car without brake is not negligent, unless ordinarily prudent man would not have used same.

Cited in footnotes to Little v. Southern R. Co. 66 L.R.A. 509, which denies employer's liability for injury to employee proximately caused by his violation of a penal statute or municipal ordinance although employer directed such violation; Dill v. Marmon, 69 L.R.A. 163, which denies master's liability for injury to servant assisting in shifting cars to be loaded at mill due to negligence of foreman in charge of men but not at the head of a department of the work in directing him to push car started by momentum of another car.

Cited in notes (4 L.R.A.(N.S.) 838) on attempting dangerous work in obedience to orders, without fully appreciating danger; (30 L.R.A.(N.S.) 436) on servant's right of action for injuries received in obeying direct command; (30 L.R.A. (N.S.) 453) on servant's right of action for injuries received in obeying command accompanied by assurance of safety.

Liability of master for injuries to servant outside scope of his employment.

Cited in Louisville & N. R. Co. v. Pendleton, 126 Ky. 623, 104 S. W. 382, holding railroad company not liable for death of car inspector voluntarily assisting switching crew.

Liability for failure to equip elevator.

Cited in Weeks v. Fletcher, 29 R. I. 116, 69 Atl. 294, construing statute providing for equipment of elevator with automatic signal as giving right of action to employee for violation thereof.

Cited in note (15 L.R.A.(N.S.) 785) on liability of master to servant injured by elevators not inclosed as required.

Sufficiency of evidence.

Cited in Brown v. Chicago, 135 Ill. App. 129, on sufficiency of evidence to support verdict for plaintiff in action for personal injuries and quoting language of cited as proper test.

Cited in note (2 L.R.A.(N.S.) 905) on recovery for death on circumstantial evidence.

48 L. R. A. 766, HENDERSON v. HENDERSON, 37 Or. 141, 82 Am. St. Rep. 741, 60 Pac. 597, 61 Pac. 136.

Separation agreements.

Approved in Ogilvie v. Ogilvie, 37 Or. 184, 61 Pac. 627, denying that separation agreement made after wife's desertion justifies inference of separation by consent.

Cited in Moreland v. Moreland, 108 Va. 100, 60 S. E. 730, upholding validity of agreement between husband and wife already separated providing for maintenance of wife and adjustment of property rights; Lemmert v. Lemmert, 103 Ind. 64, 63 Atl. 380, holding contract made in settlement of wife's action for divorce, not bar to husband's subsequent action for divorce where separation was not by mutual consent; Caseday v. Lindstrom, 44 Or. 315, 75 Pac. 222, holding agreement between husband and wife separating without mutual consent as to rights in certain property, custody of children and alimony constitutes valid postnuptial contract.

Cited in footnotes to Baum v. Baum, 53 L. R. A. 650, which holds void, separation agreement on consideration that husband support wife and children, and assign policies on his life; Palmer v. Palmer, 61 L. R. A. 641, which holds void, contract between husband and wife to secure divorce; Bailey v. Dillon, 66 L.R.A. 427, which sustains right of husband and wife in contemplation of separation to enter into fair and reasonable agreement through intervention of trustee as to wife's support which during continuance of separation husband may have specifically enforced.

Cited in notes (12 L.R.A.(N.S.) 851) on validity of agreement between husband and wife renouncing marital rights; (83 Am. St. Rep. 870) on validity and effect of separation agreements.

Distinguished in Foote v. Nickerson, 70 N. H. 514, 54 L. R. A. 564, footnote p. 554, 48 Atl. 1088, denying power to make valid contract for separation.

Power to modify decree for alimony.

Cited in Brandt v. Brandt, 40 Or. 484, 67 Pac. 508, holding statute retrospectively cutting off accrued alimony, within power to modify decrees for maintenance; Huffman v. Huffman, 47 Or. 616, 114 Am. St. Rep. 943, 86 Pac. 593, which holds under statute court without authority to award wife in lieu of alimony land which husband was homesteading; Stanfield v. Stanfield, 22 Okla. 589, 98 Pac. 334, holding court without authority to modify decree for alimony according to agreement of parties where same made without fraud or mistake.

Disapproved in Wallace v. Wallace, 74 N. H. 259, 67 Atl. 580, 13 Ann. Cas. 293, holding under statute court may modify decree for alimony based upon agreement of parties seeking divorce.

48 L. R. A. 770, FENTON v. FIDELITY & C. CO. 36 Or. 283, 56 Pac. 1096.

Contracts of indemnity.

Cited in Cochran v. Selling, 36 Or. 336, 59 Pac. 329, holding contract of indemnity created by agreement to save harmless against payment; Employers Liability Assur. Corp. v. Light, Heat & Power Co. 28 Ind. App. 441, 63 N. E. 54, holding that contract for indemnity against claims for personal injuries attaches

when insured's liability to employee becomes fixed; Pickett v. Fidelity & C. Co. 60 S. C. 491, 38 S. E. 160, and Sanders v. Frankfort M. Acci. & Plate Glass Ins. Co. 72 N. H. 493, 101 Am. St. Rep. 688, 57 Atl. 655, holding insurer against employer's liability liable where adverse judgment is obtained against insured, although not paid and latter insolvent: Allen v. Gilman, M. & Co. 137 Fed. 139: Finley v. United States Casualty Co. 113 Tenn. 598, 83 S. W. 2, 3 Ann. Cas. 962, —construing employer's liability policy declaring its purpose of indemnifying insured against loss from liability for damages and providng payment of judgment against insured as condition precedent to bringing action thereon, as one insuring against damages by reason of liability and not against it directly; Getchell & M. Lumber & Mfg. Co. v. Peterson, 124 Iowa, 615, 100 N. W. 550, on nature of indemnity insurance and liabilities connected therewith.

Cited in note (33 L.R.A.(N.S.) 514) on character of, and rules governing contracts by fidelity and guaranty companies.

Distinguished in Bain v. Atkins, 181 Mass. 244, 57 L. R. A. 792, footnote p. 791, 92 Am. St. Rep. 411, 63 N. E. 414, denying right of injured person to sue insurer against loss through liability for injuries, after settlement with insured.

— Construction.

Cited in Rochester Min. Co. v. Maryland Casualty Co. 143 Mo. App. 561, 128 S. W. 204; Steinchcombe v. New York L. Ins. Co. 46 Or. 322, 80 Pac. 213; Tillamook Lumbering Co. v. Liverpool & L. & G. Ins. Co. 175 Fed. 509; East Carolina R. Co. v. Maryland Casualty Co. 145 N. C. 118, 58 S. E. 906,—which holds construction most favorable to insured is to be adopted where policy susceptible of two constructions; Sheard v. United States Fidelity & G. Co. 58 Wash. 36, 107 Pac. 1024, holding that period of limitation fixed in contractor's indemnity bond is unreasonable, when liens can be filed after such period; Conqueror Zinc & Lead Co. v. Ætna L. Ins. Co. 152 Mo. App. 339, 133 S. W. 156, holding that indemnity company is liable for interest only from date employer pays judgment for injury to employe.

— Conditions precedent to recovery.

Cited in Stephens v. Pennsylvania Casualty Co. 135 Mich. 193, 97 N. W. 686, 3 Ann. Cas. 478, denying that payment of judgment against railroad company for injuries is condition precedent to recovery on contract of indemnity insurance.

Distinguished in Connolly v. Bolster, 187 Mass. 271, 72 N. E. 981, holding payment of judgment by insured condition precedent to liability of insurer against liability for negligence where policy provides no action will lie unless judgment against insured paid by him first.

— Notice.

Cited in Van Buren County v. American Surety Co. 137 Iowa, 495, 126 Am. St. Rep. 290, 115 N. W. 24, applying by analogy principle of indemnity insurance to surety contract and holding notice of default in contract to build bridge by substitution of poorer material not due surety until discovery of fraud.

48 L. R. A. 773, WOODS v. NICHOLS, 21 R. I. 537, 45 Atl. 548.

Liability for conversion.

Cited in Fidalgo Island Shingle Co. v. Brown, 61 Wash. 518, 112 Pac. 629, holding that attempted sale of property by conditional vendee and its use by assigns without acquiring title is conversion.

Cited in footnotes to Dean v. Cushman, 55 L. R. A. 959, which denies liability for conversion without demand, of purchaser in good faith of mortgaged chattels from mortgagor in possession; Oliver Ditson Co. v. Bates, 57 L. R. A. 289,

which sustains lessor's right to piano purchased from retail dealer leasing it, two years after sale.

Measure of damages in trover.

Explained upon later appeal in 22 R. I. 226, 47 Atl. 211, holding evidence of the value of the converted property at a time subsequent to the conversion, inadmissible, unless shown to be in same condition as when conversion occurred.

Cited in Davis v. Bliss, 187 N. Y. 84, 10 L.R.A.(N.S.) 462, 79 N. E. 851, holding measure of damages for conversion of property under conditional sale is amount remaining unpaid at date of conversion; Higdon v. Garrett, 163 Ala. 289, 50 So. 323, holding measure of damages for conversion of chattels under conditional sale is amount unpaid with interest where value of property is more than amount unpaid.

Cited in note (10 L.R.A.(N.S.) 459) on damages recoverable by conditional vendor from third person who converts personalty after partial payment.

48 L. R. A. 775, STATE v. DALTON, 22 R. I. 77, 84 Am. St. Rep. 818, 46 Atl. 234.

Trading stamps and lotteries.

Approved in People *ex rel.* Madden v. Dycker, 72 App. Div. 315, 76 N. Y. Supp. 111, denying validity of statute prohibiting use of trading stamps.

Cited in Com. v. Sisson, 178 Mass. 581, 60 N. E. 385, discussing, without deciding, validity of prohibition of use of trading stamps; State v. Shugart, 138 Ala. 94, 100 Am. St. Rep. 17, 35 So. 28, holding merchant's issue of trading stamps with cash purchases, redeemable in goods at another store after certain number of stamps acquired, not illegal; Winston v. Beeson, 135 N. C. 284, 65 L. R. A. 173, footnote p. 167, 47 S. E. 457, holding that concern selling trading stamps to merchants to be given to customers to induce trade, and which redeems stamps with articles kept for that purpose, does not conduct "gift enterprise;" State v. Caspare, 115 Md. 22, 80 Atl. 606, holding trading stamp act void; State v. Dodge, 76 Vt. 204, 56 Atl. 983, 1 Ann. Cas. 47; Leonard v. Bassindale, 46 Wash. 302, 89 Pac. 879; State v. Ramseyer, 73 N. H. 36, 58 Atl. 958, 6 Ann. Cas. 445,—holding statute prohibiting use of trading stamps by merchants invalid exercise of police power; Denver v. Frueauff, 39 Colo. 33, 7 L.R.A.(N.S.) 1136, 88 Pac. 389, 12 Ann. Cas. 521, holding ordinance forbidding use of trading-stamps invalid as improper use of police power; Montgomery v. Kelly, 142 Ala. 559, 70 L.R.A. 212, 110 Am. St. Rep. 43, 38 So. 67, holding ordinance requiring license of all merchants using trading-stamps and providing penalty for violation thereof, unconstitutional; People ex rel. Appel v. Zimmerman, 102 App. Div. 110, 92 N. Y. Supp. 497, holding statute requiring trading stamps to be redeemed in money, unconstitutional; O'Keeffe v. Somerville, 190 Mass. 113, 112 Am. St. Rep. 316, 76 N. E. 457, 5 Ann. Cas. 684, holding statute imposing excise tax on business of issuing trading-stamps invalid as improper exercise of police power; State ex rel. Simpson v. Sperry & H. Co. 110 Minn. 388, 30 L.R.A.(N.S.) 968, 126 N. W. 120, holding one issuing trading-stamps not amenable to act prohibiting gift enterprises where same not attended by great chance and uncertainty; Ex parte Drexel, 147 Cal. 770, 2 L.R.A.(N.S.) 596, 82 Pac. 429, 3 Ann. Cas. 878, discharging on habeas corpus one convicted of violating ordinance making it misdemeanor to issue trading-stamps; District of Columbia v. Kraft, 35 App. D. C. 261, 30 L.R.A.(N.S.) 961, holding valid, statute making it crime to conduct gift enterprise; Opinion of Justices, 208 Mass. 609, 94 N. E. 848, holding contrary.

Cited in footnotes to Meyer v. State, 51 L.R.A. 496, which holds giving customers chance to operate slot machine and secure, in addition to purchase, article whose value determined by place where revolving wheel stops, a lottery; Winston

v. Beeson, 65 L.R.A. 167, which holds that concern selling trading stamps to merchants to be given to customers does not conduct a gift enterprise; Hewin v. Atlanta, 67 L.R.A. 795, which holds furnishing of trading stamps by merchants to customers in consideration of cash payment not taxable as a separate business; Montgomery v. Kelly, 70 L.R.A. 209, which holds void ordinance requiring payment of license fee under penalty by merchant who having already paid privilege tax on business issues trading stamps in connection therewith.

Cited in note (2 L.R.A.(N.S.) 589, 590) on trading stamps.

Distinguished in State v. Hawkins, 95 Md. 145, 93 Am. St. Rep. 328, 51 Atl. 850, sustaining validity of statute prohibiting giving of trading stamp calling for something uncertain or unknown at time of purchase.

Legislative power and interference with liberty.

Cited in Crafts v. Ray, 22 R. I. 186, 49 L. R. A. 608, 46 Atl. 1043, sustaining exemption of private corporation from taxation for ten years in consideration of location of plant; *Re* Ten Hour Law, 24 R. I. 605, 61 L. R. A. 613, 54 Atl. 602, expressing opinion that statute limiting hours of employment of servants of street railway company would be valid; Young v. Com. 101 Va. 863, 45 S. E. 327; Henry v. Cherry, 30 R. I. 34, 24 L.R.A.(N.S.) 1006, 136 Am. St. Rep. 928, 73 Atl. 97, 18 Ann. Cas. 1006, on statutes impairing personal liberty.

48 L. R. A. 783, PITTS v. RHODE ISLAND HOSPITAL TRUST CO. 21 R. I. 544, 79 Am. St. Rep. 821, 45 Atl. 553.

Maintenance of infant.

Cited in note (57 L. R. A. 736) on parent's duty to support child as affected by child's interest in trust estate or other property.

48 L. R. A. 785, NATIONAL L. INS. CO. v. MEAD, 13 S. D. 37, 79 Am. St. Rep. 876, 82 N. W. 78.

Reaffirmed in 13 S. D. 342, 83 N. W. 1119.

Followed without discussion in National L. Ins. Co. v. Mead, 13 S. D. 343, 83 N. W. 335; Ransom v. Pierre, 41 C. C. A. 587, 101 Fed. 667.

Municipal bonding powers.

Cited in Pierre v. Dunscomb, 45 C. C. A. 502, 106 Fed. 614, holding that refunding of indebtedness includes power to borrow money and issue bonds for corporate purposes; Stone v. Chicago, 207 Ill. 504, 69 N. E. 970, sustaining power of city to borrow money by issuing twenty-year bonds to provide fund to pay judgments.

Creation or limit of municipal indebtedness.

Cited in Cass County v. Wilbarger County, 25 Tex. Civ. App. 59, 60 S. W. 988, raising, without deciding, question whether funding of debt by issuance of bonds is "creation of debt;" Williamson v. Aldrich, 21 S. D. 16, 108 N. W. 1063, holding that sinking fund is to be deducted in determining city's debt limit; Hyde v. Ewert, 16 S. D. 147, 91 N. W. 474, holding indebtedness of school corporation whose boundaries are coincident with city boundaries will not be considered in determining limit of municipal indebtedness; Ewert v. Mallery, 16 S. D. 156, 91 N. W. 479, upholding issue of bonds by school corporation exceeding legal limit where purpose is to refund existing bonds of greater value; Walling v. Lummis, 16 S. D. 354, 92 N. W. 1063, upholding issuance of 4 per cent bonds by county to refund 7 per cent warrants although constitutional limit of indebtedness exceeded.

Cited in footnotes to South Bend v. Reynolds, 49 L.R.A. 795, which holds limit of indebtedness not exceeded by contract for erection by individual of city hall

on city land, with agreement to pay fair rental and with option to purchase; Ramsey v. Shelbyville, 68 L.R.A. 300, which holds obligation beyond revenue for year created by ordinance obligating city to raise each year $1,000 to maintain library if it should be donated to city.

Cited in note (37 L.R.A.(N.S.) 1099, 1101) on creation of indebtedness within meaning of debt limit provisions.

Grounds of equitable jurisdiction.

Cited in Washington County v. Williams, 49 C. C. A. 636, 111 Fed. 816 (dissenting opinion), majority denying equitable jurisdiction of joint action upon repudiation of county railroad bonds.

48 L. R. A. 790, UNION REFRIGERATOR TRANSIT CO. v. LYNCH, 18 Utah, 378, 55 Pac. 639.

Affirmed in 177 U. S. 147, 44 L. ed. 708, 20 Sup. Ct. Rep. 585.

Situs of property for taxation.

Cited in footnotes to Hall v. American Refrigerator Transit Co. 56 L. R. A. 89, which sustains tax on average number of refrigerator cars coming into state in course of interstate business; Cumberland & P. R. Co. v. State, 52 L. R. A. 764, which sustains state tax on proportionate part of gross receipts of interstate railroad; Grigsby Constr. Co. v. Freeman, 58 L. R. A. 349, which holds contractor's outfit brought into state for several months' use in constructing railroad, taxable in state.

Cited in note (69 L.R.A. 443) on situs, for taxing purposes, of tangible personalty of domestic corporations.

Corporate taxation.

Cited in State ex rel. Salt Lake City v. Eldredge, 27 Utah, 488, 76 Pac. 337, which holds statute authorizing state board of equalization to assess franchises and other property of public service corporations, invalid in so far as it authorizes them to assess property wholly within one county.

Cited in note (60 L. R. A. 655) on corporate taxation and the commerce clause.

Effect of punctuation on interpretation.

Approved in Richardson v. Treasure Hill Min. Co. 23 Utah, 367, 65 Pac. 74, denying that comma can control evident meaning of constitutional provision.

48 L. R. A. 796, OLSON v. MINNEAPOLIS & ST. L. R. CO. 76 Minn. 149, 78 N. W. 975.

Master's liability for injury to servant.

Cited in Jackson v. Georgia Southern & F. R. Co. 132 Ga. 153, 63 S. E. 841 (dissenting opinion), on liability of railroad for death of fireman by collision of engine while running back to engine-house to get cushion; Southern R. Co. v. Bentley, 1 Ala. App. 368, 56 So. 249, holding railroad not liable for injury to employee unloading car from being knocked off car by overhanging limb while riding for fun.

Cited in notes (48 L.R.A. 754) on servant's right of action for injuries received in obeying direct command; (51 L.R.A. 550, 574, 579, 604) on vice principalship considered with reference to superior rank of negligent servant.

Distinguished in Thomas v. Wisconsin C. R. Co. 108 Minn. 491, 23 L.R.A.(N.S.) 960, 122 N. W. 456, holding that relation of master and servant exists during noon hour, when master expects servants to remain upon premises.

48 L. R. A. 809, RUGGLES v. TYSON, 104 Wis. 500, 79 N. W. 766, 81 N. W. 367.

Later appeal in 110 Wis. 577, 84 Am. St. Rep. 937, 86 N. W. 250.

Jurisdiction as to real estate.

Cited in Ridley v. Halliday, 106 Tenn. 611, 53 L. R. A. 479, 82 Am. St. Rep. 902, 61 S. W. 1025, holding that chancery court may, in proper case, convert realty into personalty; Re Kingston, 130 Wis. 564, 110 N. W. 417, holding court without authority under statute to order sale of interests in remainder in such a way as to separate remainder from life estate; Steele v. Korn, 137 Wis. 57, 129 Am. St. Rep. 1051, 118 N. W. 207, holding court should decree sale of trust property to free same from lien where it is for best interest of all owners.

Cited in footnote to Ball v. Safe Deposit & T. Co. 52 L. R. A. 403, which denies jurisdiction of equity to permit future sales by trustee of ground rents, contrary to provisions of will creating contingent remainders.

Limited in Bloor v. Smith, 112 Wis. 347, 87 N. W. 870, denying power of court to make conveyance.

Interests of unborn beneficiaries.

Cited in *Re* Luscombe, 109 Wis. 193, 85 N. W. 341, holding trustee's duty to unborn children unaffected by consent to distribution by all beneficially interested.

Cited in note (8 L.R.A.(N.S.) 51, 52, 61, 74) on devestiture of estates of persons not in being.

Validity of trust.

Cited in Holmes v. Walter, 118 Wis. 422, 62 L. R. A. 991, 95 N. W. 380, holding indefinite trust not created by devise to testator's wife in trust for herself and children, of all his property, with power to continue business.

48 L. R. A. 819, STATE *ex rel.* ROSE v. SUPERIOR COURT, 105 Wis. 651, 81 N. W. 1046.

Suit by state in sovereign capacity.

Cited in State *ex rel.* Atty. Gen. v. Frost, 113 Wis. 655, 89 N. W. 915, holding state suing in sovereign capacity to be subject to provisions for removal of suits "of civil nature" into Federal courts.

Prohibition.

Cited in State ex rel. Pabst Brewing Co. v. Carpenter, 129 Wis. 190, 8 L.R.A. (N.S.) 793, 108 N. W. 641, granting prohibition restraining county court from compelling corporation to produce private books to determine stock held by decedent in proceeding under inheritance tax law.

Jurisdiction of court to control official action.

Cited in Lange v. La Crosse & E. R. Co. 118 Wis. 562, 95 N. W. 952, denying court's power to avoid ordinance granting to railway company right to use streets; Tebbetts v. People, 31 Colo. 468, 73 Pac. 869, denying power of court of equity to prohibit enactment of ordinance granting railroad company right to use other streets; State *ex rel.* Milwaukee v. Ludwig, 106 Wis. 236, 82 N. W. 158, sustaining power of supreme court to enforce jurisdiction of inferior courts; Duggan v. Emporia, 84 Kan. 439, 114 Pac. 235, Ann. Cas. 1912A, 719, refusing injunction against calling and holding of election; Broad v. Spokane, 59 Wash. 271, 109 Pac. 1014; Gardiner v. Bluffton, 173 Ind. 460, 89 N. E. 853, Ann. Cas. 1912A, 713,—holding that court cannot inquire into motives of councilmen to determine validity of improvement ordinances; State ex rel. People's Land & Mfg. Co. v. Holt, 132 Wis. 135, 111 N. W. 1106, holding mandamus will not issue to compel city council to let contract for lighting streets to lowest bidder where council has not decided streets should be lighted or in what manner; State ex rel. Rudolph v. Hutchinson, 134 Wis. 287, 114 N. W. 453, holding court without

authority to compel mayor to sign order on city treasurer for salary of aldermen; State ex rel. Ginn v. Wilson, 121 Wis. 526, 99 N. W. 336, holding mandamus will not issue to compel school board authorized by city charter to establish text books to carry out resolution adopting certain books; Roby v. Chicago, 215 Ill. 609, 74 N. E. 768, denying court will enjoin passage of ordinance giving street railway franchise; Frantz v. Autry, 18 Okla. 609, 91 Pac. 193, holding court without authority to enjoin submission of constitution to people before its adoption and approval by president of the United States; Tilly v. Mitchell & L. Co. 121 Wis. 10, 105 Am. St. Rep. 1007, 98 N. W. 969, holding court has authority to enjoin ordinance granting right to private parties to build bridge over public street which council had no power to enact.

Cited in note (2 L.R.A.(N.S.) 152) on power to enjoin passage of municipal ordinance.

Municipal powers.

Cited in Kaukauna Electric Light Co. v. Kaukauna, 114 Wis. 334, 89 N. W. 542, holding that city confers and limits franchise of using public streets as governmental body; Manitowoc v. Manitowoc & M. Traction Co. 145 Wis. 28, 140 Am. St. Rep. 1056, 129 N. W. 925, holding that city may, as condition of grant to interurban railway of right to run on streets, fix maximum rate between cities.

Powers of board of education as to text-books.

Cited in Madden v. Kinney, 116 Wis. 569, 93 N. W. 535, holding inexpediency of bad motives of board in making contract for text-books, of no significance where board of education has power to "establish text-books to be used."

Civil contempt proceedings.

Cited in Emerson v. Huss, 127 Wis. 227, 106 N. W. 518, on the imposition and disposition of an indemnity for civil contempt; Cline v. Whitaker, 144 Wis. 443, 140 Am. St. Rep. 1039, 129 N. W. 400, holding that wilful violation of injunction is contempt, though injunction was erroneously granted.

48 L. R. A. 830, ILLINOIS STEEL CO. v. BUDZISZ, 106 Wis. 499, 80 Am. St. Rep. 54, 81 N. W. 1027, 82 N. W. 534.

Amendment of pleadings.

Cited in Wheeler v. Castor, 10 N. D. 355, 61 L. R. A. 755, 92 N. W. 381, and Whereatt v. Worth, 108 Wis. 301, 81 Am. St. Rep. 899, 84 N. W. 441, holding discretionary, power to allow amendment setting up statute of limitations, same as with other defenses; Post v. Campbell, 110 Wis. 383, 85 N. W. 1032, sustaining amendment which only changes statement of material facts; Rahles v. J. Thompson & Sons Mfg. Co. 137 Wis. 510, 23 L.R.A.(N.S.) 298, 118 N. W. 350, sustaining amendment in action for personal injuries predicating defendant's negligence on failure to warn inexperienced workman of danger where in original complaint it was predicated on defective machine; Palmer v. Schultz, 138 Wis. 459, 120 N. W. 348, holding refusal of amendment to answer not abuse of discretion where to allow same would work great injustice to plaintiff; Kersten v. Weichman, 135 Wis. 4, 114 N. W. 499, sustaining amendment to reply in action for rent conforming pleading to facts; Price v. Grzyll, 133 Wis. 625, 114 N. W. 100, upholding power of trial court to allow issue of justification to be brought into case by amendment after verdict in action for assault rendered; Kleimenhagen v. Dixon, 122 Wis. 531, 100 N. W. 826, upholding permission to amend complaint to conform with proof in action against village to restrain drainage where complaint alleged proceedings thereat in respect to drain void for other reasons than irregularity in calling meeting but evidence showed otherwise.

Distinguished in Sullivan v. Collins, 107 Wis. 293, 83 N. W. 310, holding error, allowance of amendment setting up statute of limitations on trial, without showing excuse for delay, or the imposition of terms.

Title by adverse possession.

Cited in Pitman v. Hill, 117 Wis. 323, 94 N. W. 40, holding title to wild land by adverse possession established by proof of assignee of government certificate of entry taking wood for own use and payment of taxes for more than twenty years; Illinois Steel Co. v. Jeka, 119 Wis. 125, 95 N. W. 97, holding that continuous occupancy for twenty years raises presumption of occupancy under claim of right; Illinois Steel Co. v. Budzisz, 119 Wis. 584, 97 N. W. 166, holding it question for jury whether acts sufficient to establish adverse claim; Progress Blue Ribbon Farms v. Harter, 147 Wis. 137, 132 N. W. 895, holding that continuous use of land up to division fences for forty years by plaintiff and his predecessors in title constitutes adverse possession; Closuit v. John Arpin Lumber Co. 130 Wis. 262, 110 N. W. 222, holding land is acquired by adverse possession where it is inclosed with other land and used as pasture for statutory period by successive owners of adjoining land; Illinois Steel Co. v. Budzisz, 139 Wis. 297, 119 N. W. 935, holding grantee of tenant in possession without notice of tenancy remaining in possession for statutory period acquires title as against former owner; Ovig v. Morrison, 142 Wis. 247, 125 N. W. 449, which holds bad faith or mistake of boundaries does not affect character of possession necessary to ripen into title by adverse possession; Rice v. Kelly, 81 Neb. 96, 115 N. W. 625, which holds actual hostile exclusive occupancy of land just outside calls of deed sufficient to ripen into title; Clithero v. Fenner, 122 Wis. 361, 106 Am. St. Rep. 978, 99 N. W. 1027, which holds fencing of land pasturing cattle and cutting hay thereon for twenty years sufficient to ripen into title by adverse possession where these were uses to which premises were adapted; Illinois Steel Co. v. Budzisz, 139 Wis. 313, 119 N. W. 935, holding calls of deed limit extent to which title can be claimed by adverse claimant unless actually occupied.

Cited in note (15 L.R.A.(N.S.) 1191, 1200, 1203) on necessity of color of title, not expressly made a condition by statute, in adverse possession.

— Tacking possession.

Cited in Illinois Steel Co. v. Bilot, 109 Wis. 428, 83 Am. St. Rep. 905, 84 N. W. 855, holding that two possessions may be united in one continuing adverse possession; Oldig v. Fisk, 1 Neb. (Unof.) 127, 95 N. W. 492, and Gilman v. Brown, 115 Wis. 5, 91 N. W. 227, holding that land is acquired by adverse possession where it is actually occupied, inclosed, and cultivated for statutory period under continuous claims with privity between owners; Sheldon v. Michigan C. R. Co. 161 Mich. 509, 126 N. W. 1056, which holds successive owners of land adjacent to unfenced right of way do not have continuous possession thereof where deeds do not include right of way and no parol agreements made to transfer possession; Mielke v. Dodge, 135 Wis. 394, 115 N. Y. 1099, holding continuity of adverse possession not broken by conveyance of land adversely claimed by husband to wife before such conveyances were authorized; Illinois Steel Co. v. Paczocha, 139 Wis. 28, 119 N. W. 550, which holds privity between successive occupants required for statute of limitations is merely privity of physical possession; Illinois Steel Co. v. Jeka, 123 Wis. 424, 101 N. W. 399, holding evidence of adverse possession sufficient to submit that question to jury where prior occupant of land claimed adverse possession; Sheldon v. Michigan C. R. Co. 161 Mich. 518, 126 N. W. 1056 (dissenting opinion), on taking possession of adverse claimants.

Cited in note (35 L.R.A.(N.S.) 499) on adverse possession; parol transfer of possession as basis of tacking.

48 L. R. A. 839, BRULEY v. GARVIN, 105 Wis. 625, 81 N. W. 1038.

Privileged communications to attorney.

Approved in State v. Snowden, 23 Utah, 327, 65 Pac. 479, holding conversations with attorney in negotiating for his services, privileged.

Cited in note (34 L.R.A.(N.S.) 577) on privilege of communication to attorney where no fee paid.

Distinguished in Koeber v. Somers, 108 Wis. 504, 52 L. R. A. 515, footnote p. 512, 84 N. W. 991, holding conversation authorizing attorney to compromise action not privileged.

Revocation of license.

Cited in Neumeister v. Goddard, 125 Wis. 91, 103 N. W. 241, holding parol license to construct ditch on land revoked by conveyance of land by licensor to his wife; Price & B. Co. v. Madison, 17 S. D. 253, 95 N. W. 933, holding license to cut timber revoked by conveyance of land by licensor; Watson v. Adams, 32 Ind. App. 283, 69 N. E. 696, denying that parol license to cut timber can be revoked for failure to remove timber within time specified where license had been acted on and no forfeiture clause in contract.

Damages for injuries to land.

Cited in Atlanta & B. Air Line R. Co. v. Wood, 160 Ala. 666, 49 So. 426, holding action lies for depositing dirt in mill pond and otherwise obstructing it.

Character of purchase of standing timber.

Cited in note (13 L.R.A.(N.S.) 278) on character of purchase of standing timber to be removed within specified period, as of realty, or of personalty.

48 L. R. A. 842, BASKET v. MOSS, 115 N. C. 448, 44 Am. St. Rep. 463, 20 S. E. 733.

Contracts void as against public policy.

Cited in Cansler v. Penland, 126 N. C. 795, 36 S. E. 285, holding void, tax collector's agreement to turn over entire tax list to collect, without reserving any control over it; McNeill v. Durham & C. R. Co. 135 N. C. 733, 67 L. R. A. 250, 47 S. E. 765 (dissenting opinion), majority holding one accepting free transportation which carrier forbidden to grant not *in pari delicto* so as to prevent recovery for injuries due to its negligence; Aughey v. Windrem, 137 Iowa, 320, 114 N. W. 1047, holding agreement to resign as guardian of lunatic void as against public policy; Re Irwin, 123 Mo. App. 513, 100 S. W. 565, holding agreement with those interested therein to administer estate for certain sum in consideration of their obtaining office for him, void as against public policy; McNeill v. Durham & C. R. Co. 135 N. C. 733, 67 L.R.A. 250, 47 S. E. 765, holding person riding on pass exempting railroad company from liability can maintain action for injuries received; King v. Raleigh & P. S. R. Co. 147 N. C. 266, 125 Am. St. Rep. 546, 60 S. E. 1133, 15 Ann. Cas. 40, denying recovery of compensation on contract to pay for editorials on bond issue; Shelby Vinegar Co. v. C. L. Hawn & Son, 149 N. C. 357, 63 S. E. 78, denying recovery on contract of sale of intoxicating liquors to be shipped into prohibition territory.

Cited in footnotes to Livingston v. Page, 59 L. R. A. 336, which holds void, contract by publisher of newspaper to use it in influencing choice of delegates, and action of convention; Jones v. Dannenberg Co. 52 L. R. A. 271, which holds void, in hands of bona fide purchaser, note given to stop criminal prosecution.

Cited in notes (1 L.R.A.(N.S.) 1032) on equitable enforcement for limited time to prevent public inconvenience of contract against public policy; (117 Am. St. Rep. 518, 519) on contracts, consideration for which has partly failed, or is partly illegal; (5 L.R.A.(N.S.) 892; 1 Brit. Rul. Cas. 97) on right of labor union to impose political obligations on members.

Limited in Farrington v. Stucky, 91 C. C. A. 311, 165 Fed. 333, denying recovery on contract whereby railroad company agreed not to erect depot between certain points in consideration of bonus.

Relation between sheriff and deputy.

Cited in Somers v. Burke County, 123 N. C. 585, 68 Am. St. Rep. 834, 31 S. E. 873, holding deputy's relation to sheriff not one of agency coupled with an interest, so as to entitle him to tax lists after sheriff's termination of office.

48 L. R. A. 851, KERSTEN v. MILWAUKEE, 106 Wis. 200, 81 N. W. 948, 1103.

Subsequent appeal in 118 Wis. 256, 95 N. W. 126.

Basis of assessment for local improvements.

Cited in Friedrich v. Milwaukee, 114 Wis. 308, 90 N. W. 174, holding uniform rate per front foot for lowering grade of street, arbitrary and unlawful where cut in places much deeper than in others.

Cited in footnotes to Barber Asphalt Paving Co. v. French, 54 L. R. A. 492, which sustains paving assessment according to frontage; Webster v. Fargo, 56 L. R. A. 156, which sustains statute imposing entire cost of paving on abutters according to frontage; Adams v. Shelbyville, 49 L. R. A. 797, which sustains statute providing for local assessments by frontage, with provision for hearing grievances before final assessment; Ramsey County v. Robert P. Lewis Co. 53 L. R. A. 421, which sustains annual frontage tax on land in front of which water pipes laid; Iowa Pipe & Tile Co. v. Callanan, 67 L.R.A. 408, which holds void, assessment for sewer on abutting property only eight feet deep at same front foot rate as full sized lots.

Cited in note (28 L.R.A.(N.S.) 1193) on assessments for improvements by front foot rule.

— Necessity for benefits.

Cited in Lathrop v. Racine, 119 Wis. 475, 97 N. W. 192, holding special assessment, levied, regardless of benefits, upon owners along navigable river, to pay for city's construction of docks because of such owners' failure to build them upon demand, void; Kirst v. Street Improv. Dist. No. 120, 86 Ark. 19, 109 S. W. 526, sustaining injunction restraining enforcement of assessment not according to benefits; Eiermann v. Milwaukee, 142 Wis. 612, 27 L.R.A.(N.S.) 1089, 126 N. W. 53, setting aside assessment at suit of property owner, for construction of sidewalk which was accepted by city although very defective; Haubner v. Milwaukee, 124 Wis. 160, 101 N. W. 930, holding uniform assessment of lots for lowering street void when actual cost of work much greater in front of some lots than others.

Cited in footnotes to King v. Portland, 55 L. R. A. 812, which upholds street improvement assessment, plan of which not obviously shown to impose burdens in substantial excess of benefit; Smith v. Worcester, 59 L. R. A. 728, which holds conclusive, decision of legislature that land owners are within assessment district benefited by sewer; Sears v. Street Comrs. 62 L. R. A. 145, which authorizes consideration of benefit to abutting property from newly located passenger station in assessing cost of improving streets leading thereto.

Distinguished in Sanderson v. Herman, 108 Wis. 668, 84 N. W. 890, holding assessment purporting to be according to benefits not overcome by mere fact of

uniformity; Spence v. Milwaukee, 143 Wis. 50, 126 N. W. 22, holding that abutters benefited by improvement more than amount of assessment cannot have assessment declared void.

Change of street grade.

Distinguished in State *ex rel.* Taylor v. Superior, 108 Wis. 20, 83 N. W. 1100, discussing, without deciding, whether statutory remedy for damages from change of grade, exclusive; Jorgenson v. Superior, 111 Wis. 569, 87 N. W. 565, holding view of premises and assessment of damages jurisdictional prerequisites in case of change of grade.

Remedy for void assessment.

Cited in Spence v. Milwaukee, 132 Wis. 673, 113 N. W. 38, which holds injunction proper remedy to obtain relief from assessment arbitrarily made; Fraser v. Mulany, 129 Wis. 386, 109 N. W. 139, holding injunction will issue to restrain construction of ditch where assessment therefor omitted lands directly benefited and assessed lands not benefited; Newton v. Superior, 146 Wis. 315, 130 N. W. 242 (dissenting opinion), on exclusiveness of remedy by appeal.

48 L. R. A. 856, FRANKE v. MANN, 106 Wis. 118, 81 N. W. 1014.

Right to church property.

Cited in Cape v. Plymouth Cong. Church, 117 Wis. 156, 93 N. W. 449, holding majority of religious organization withdrawing and forming new church of different denomination not entitled to church property as against minority adhering to original church; Marien v. Evangelical Creed Congregation, 132 Wis. 652, 113 N. W. 66, holding injunction will issue restraining diverting of church property charged with trust to use of different denomination; Cape v. Plymouth Cong. Church, 130 Wis. 179, 109 N. W. 928, which holds majority of religious organization cannot divert property charged with trust for use of other denomination than that provided for in trust deed; Landrith v. Hudgins, 121 Tenn. 657, 120 S. W. 783, holding courts in determining property rights in church property not bound by decision of church bodies thereon.

Cited in notes (3 L.R.A.(N.S.) 875) on enjoining control, use of, or interference with, church property; (24 L.R.A.(N.S.) 700, 708) on litigation growing out of schism in religious society.

Distinguished in Lee v. Methodist Episcopal Church, 193 Mass. 51, 78 N. E. 646, which holds property of one church does not become property of another by mere application of "discipline" where no dedication or formal union made.

Denial of corporate existence.

Cited in Citizens Bank v. Jones, 117 Wis. 453, 94 N. W. 329, holding mortgagors, by execution and delivery of mortgage to banking corporation as mortgagee, estopped to deny latter's corporate existence or capacity.

Prejudicial error.

Cited in Bates v. Chicago, M. & St. P. R. Co. 140 Wis. 244, 133 Am. St. Rep. 1069, 122 N. W. 745, which holds prejudicial error must affirmatively appear to cause reversal of judgment.

What constitutes corporation de facto.

Cited in note (118 Am. St. Rep. 258) on what constitutes a corporation de facto.

48 L. R. A. 862, CARLAND v. AURIN, 103 Tenn. 555, 76 Am. St. Rep. 699, 53 S. W. 940.

Rights as to flow of surface waters.

Cited in Louisville & N. R. Co. v. Binkley, 1 Tenn. Ch. App. 548, holding

purchaser of land obstructing ditch and causing water to flow on other's land liable for damages.

Cited in footnotes to Brandenberg v. Ziegler, 55 L.R.A. 414, which denies owner's right to drain surface water from pond on neighbor's land by cutting through natural rim of basin; Todd v. York County, 66 L.R.A. 561, which holds that owner's right to discharge surface water from premises does not permit him to collect it in volume and by means of artificial channel discharge it on another's land contrary to natural course of drainage; Baldwin v. Ohio Township, 67 L.R.A. 642, which sustains right of one through whose lands natural water course flows to accumulate surface waters in such streams as against lower riparian owner; Ginter v. St. Mark's Church, 69 L.R.A. 621, which holds owners of improved property adjacent to sewer required to connect gutters and spouts on buildings therewith as against owners of premises adjoining alley on which water otherwise falls.

Cited in notes (20 L.R.A.(N.S.) 156, 158) on obstruction of surface water in city; (85 Am. St. Rep. 721, 723) on right of land owner to accelerate or diminish flow of water to or from lands of another.

Limited in Franklin v. Durgee, 71 N. H. 189, 58 L. R. A. 113, footnote p. 112, 51 Atl. 911, denying right to fill depressions in land, casting surface water back on highway to its injury.

Lessee's action for injury to leasehold.

Cited in Morrison v. Chicago & N. W. R. Co. 117 Iowa, 590, 91 N. W. 793, sustaining right of lessee, under statute, to recover damages for railroad company's obstructing passageway appurtenant to land, by construction of bridge before commencement of term.

Necessity of allegation of proximate cause.

Approved in Beopple v. Illinois C. R. Co. 104 Tenn. 424, 58 S. W. 231, denying necessity of alleging that negligence attributed to defendant was proximate cause of plaintiff's injuries.

Right of one in possession to maintain action for nuisance.

Cited in note (34 L.R.A.(N.S.) 561) on right of one in possession to maintain action for nuisance without proving title.

Liability to adjoining owner for damages from vapors.

Cited in note (123 Am. St. Rep. 576) on liability of land owners to adjoining proprietors for damages from creation of offensive fumes and vapors.

L. R. A. CASES AS AUTHORITIES.

CASES IN 49 L. R. A.

49 L. R. A. 33, LIMBERG v. GLENWOOD LUMBER CO. 127 Cal. 598, 60 Pac. 176.

Cited in Limberg v. Glenwood Lumber Co. 145 Cal. 256, 78 Pac. 728, on the history of the litigation.

Assumption of risk by employees.

Cited in Murdock v. Oakland, S. L. & H. Electric R. Co. 128 Cal. 27, 60 Pac. 469, holding risk not assumed by conductor, as matter of law, because he remains an hour on dangerous car after discovery of its condition; Dolan v. Sierra R. Co. 135 Cal. 439, 67 Pac. 686, holding risk of defective trestle not assumed by brakeman traveling over it, where its condition not known to him; Adolff v. Columbia Pretzel & Baking Co. 100 Mo. App. 206, 73 S. W. 321, holding risk not assumed, as matter of law, by servant operating dangerous machine under threat of discharge, if order disobeyed, and referring particularly to annotation in 49 L. R. A. 33; Dowd v. New York, O. & W. R. Co. 170 N. Y. 471, 63 N. E. 541, holding burden of proving assumption of risk on master, and referring particularly to annotation in 49 L.R.A. 33; West Pratt Coal Co. v. Andrews, 150 Ala. 376, 43 So. 348, holding that it is not sufficient to constitute an assumption of risk, that the ways, works, or machinery are open to observation, but it is necessary that the servant knew or could have known by reasonable observation, the dangers attendant thereon, and also citing annotation on this point; Humphreys v. Ft. Smith Traction, Light & P. Co. 78 Ark. 157, 71 S. W. 662, holding that in the absence of evidence that the car was run too fast, it was proper to refuse an instruction to the effect that the plaintiff assumed the risk of injury by the car jumping the track because of a flat wheel, and also approving annotation on this point; Pre v. Standard Portland Cement Co. 9 Cal. App. 608, 100 Pac. 122, holding that where the servant is under the same obligation as the master as to the safety of the working place and has equal facilities for ascertaining the dangers, and continues to work there, he assumes the risk of injury from the dangers which exist to his knowledge; Coulter v. Union Laundry Co. 34 Mont. 600, 87 Pac. 973, holding that where the evidence was uncontradicted that the mangle in the laundry was defective, and that the defect was apparent, and the plaintiff knew it, she assumed the risk of operating it, though she had notified the employer of the defect, where she continued to use it an unreasonable time thereafter.

Annotation approved in Rase v. Minneapolis, St. P. & S. Ste. M. R. Co. 107 Minn. 267, 21 L.R.A.(N.S.) 148, 120 N. W. 360, holding that the doctrine of assumption of risk does not rest on contract, but because of consent with knowledge of the dangers and risks assumed, and is distinct from the doctrine of contributory negligence.

Cited in footnotes to Martin v. Chicago, R. I. & P. R. Co. 59 L.R.A. 698, which holds risk of excessive speed assumed by brakeman accepting or continuing in employment with knowledge and without complaint; St. Louis Cordage Co. v. Miller, 63 L.R.A. 551, which holds assumption of risk and contributory negligence distinct and separate defenses.

Cited in notes (3 L.R.A.(N.S.) 1100) on assumption by tenant's employee of risk of unsafe portions of building in landlord's possession; (13 L.R.A.(N.S.) 692) on assumption of risk of defective tool, machine, or appliance, where defect obvious, but its importance not appreciated; (21 L.R.A.(N.S.) 138, 143) on distinction between assumption of risk and contributory negligence; (28 L.R.A.(N.S.) 1234, 1237) on servant's assumption of risks from master's negligence.

Evidence of precautions after injury.

Cited in Georgia Southern & F. R. Co. v. Cartledge, 116 Ga. 166, 59 L. R. A. 120, footnote p. 118, 42 S. E. 405, holding incompetent evidence of additional precautions after injury; Dow v. Sunset Teleph. & Teleg. Co. 157 Cal. 188, 106 Pac. 587, holding admissible evidence that after accident employee of electric lighting company found telephone wire on light wire and removed it; Helling v. Schindler, 145 Cal. 313, 78 Pac. 710, holding that repairs made after the happening of the accident because of defects brought out thereby, could not be shown for the purpose of proving negligence prior to the happening of the accident.

Cited in note (32 L.R.A.(N.S.) 1134) on admissibility of evidence of condition before and after accident of property whose defects alleged to have caused injury.

Distinguished in Meck v. De Latour, 2 Cal. App. 264, 83 Pac. 300, holding that in an action for the abatement of a nuisance evidence was admissible to show that after the complaint had been made that the defendant took precautions to prevent the nuisance.

Expert testimony.

Cited in Parkin v. Grayson-Owen Co. 157 Cal. 45, 106 Pac. 210, holding that expert cannot testify that method adopted in hitching team was not safe one; Lee v. Salt Lake City, 30 Utah, 39, 83 Pac. 562, holding that it was improper to ask an expert whether riding over a depression in a side walk, by the plaintiff, would with the exercise of ordinary care throw her off the bicycle.

49 L. R. A. 62, WAHL v. FRANZ, 40 C. C. A. 638, 100 Fed. 680.

Jurisdiction of Federal courts.

Approved in McKown v. Kansas & T. Coal Co. 105 Fed. 658, holding action for $2,000 not removable to United States circuit court by interposition of counterclaim for $10,000.

Cited in Kirby v. Chicago & N. W. R. Co. 106 Fed. 556, holding condemnation proceeding a civil suit removable to Federal courts when other jurisdictional facts exist; Myers v. Chicago & N. W. R. Co. 118 Iowa, 320, 91 N. W. 1076, holding condemnation proceeding removable to Federal court, where amount involved exceeds $2,000, and controversy is between citizens of different states.

Distinguished in Williams v. Crabb, 59 L. R. A. 431, 54 C. C. A. 221, 117 Fed.

201, holding that circuit court of United States has concurrent jurisdiction of suit to contest will, when amount in controversy sufficient and parties citizens of different states.

49 L. R. A. 77, DENVER & R. G. R. CO. v. ROLLER, 41 C. C. A. 22, 100 Fed. 738.

Jurisdiction over foreign corporations.

Followed in Bristol v. Brent, 38 Utah, 66, 110 Pac. 356, holding that court has jurisdiction over foreign railroad maintaining local agent who obtained routing orders from prospective shippers and that process can be served on him.

Approved in Doe v. Springfield Boiler & Mfg. Co. 44 C. C. A. 130, 104 Fed. 687, holding no jurisdiction secured over foreign corporation by service upon broker making occasional sales without remuneration from company.

Cited in Weller v. Pennsylvania R. Co. 113 Fed. 506, holding that circuit courts have no jurisdiction for patent infringement over railway company maintaining agency within district for solicitation of business only, without contracting for carriage of freight or passengers; Smith v. Empire State-Idaho Min. & Development Co. 127 Fed. 465, holding service of process in Washington action on secretary of foreign corporation maintaining principal place of business in Washington, good; Bell v. New Orleans & N. E. R. Co. 2 Ga. App. 818, 59 S. E. 102, holding that service upon a commercial agent of a nonresident railroad corporation doing business in the state, was sufficient to give the court jurisdiction where the agent had an office in the state, which office was maintained by the corporation; Central R. Co. v. Eichberg, 107 Md. 371, 14 L.R.A.(N.S.) 392, 68 Atl. 690, holding that where a domestic corporation maintains an office and advertised connections with a foreign railroad corporation and solicited through business over the other road, the latter was doing business within the state so that service upon the joint agent of both was sufficient to give jurisdiction; Patton v. Continental Casualty Co. 119 Tenn. 372, 104 S. W. 305, holding that an acceptance of the process by the insurance commissioner is sufficient to give the court jurisdiction over a foreign insurance company doing business within the state, as provided by the statutes; Sleicher v. Pullman Co. 170 Fed. 366, holding that a corporation which maintains offices in the state where its agents solicit business, and where its director's meetings are held, is doing business within the state and subject to the service of process under the state statutes.

Cited in footnote to Buie v. Chicago, R. I. & P. R. Co. 55 L. R. A. 861, which authorizes service of railroad company by serving in other state, officers of company organized to construct extension of system.

Cited in notes (70 L.R.A. 534, 547) on right of nonresidents to sue foreign corporations; (4 L.R.A.(N.S.) 462) as to who is managing agent of foreign corporation for purposes of service of process; (23 L.R.A.(N.S.) 835) on soliciting trade as doing business within state; (85 Am. St. Rep. 922, 931) on jurisdiction of foreign corporations.

Distinguished in Green v. Chicago, B. & Q. R. Co. 205 U. S. 533, 51 L. ed. 917, 27 Sup. Ct. Rep. 595, holding that soliciting business in Pennsylvania for a railroad whose eastern terminus is Chicago, is not doing business within the state so as to give the courts of the former state, jurisdiction over an Iowa corporation; West v. Cincinnati, N. O. & T. P. R. Co. 170 Fed. 355, holding that the objections to the service of process made in the Federal courts after removal from the state court, will be determined as if the case had originally been brought in the former, and without regard to the state laws.

Liability for injury from fright or nervous shock.

Approved in Green v. Shoemaker, 111 Md. 82, 23 L.R.A.(N.S.) 672, 73 Atl. 688, holding that if the fright was the reasonable and natural consequence of the blasting and the injury to the plaintiff's health was the reasonable and natural result of the fright, and the latter was the proximate cause of the injury, damages could be recovered therefor; Louisville & N. R. Co. v. Brown, 127 Ky. 746, 13 L.R.A.(N.S.) 1139, 106 S. W. 795, holding that it was competent for the plaintiff to relate the torture he endured while under the wreck, to prove mental pain and suffering resulting from the injury.

Cited in footnotes to Watkins v. Kaolin Mfg. Co. 60 L. R. A. 617, which sustains right of action for physical injury or disease from fright or nervous shock from negligent acts; Sanderson v. Northern P. R. Co. 60 L. R. A. 403, which denies right to recover for fright resulting in physical injury, but without contemporaneous injury, unless fright proximate result of legal wrong; Watson v. Dilts, 57 L. R. A. 559, which holds one liable for frightening woman, causing nervous prostration, by stealthily entering her home in nighttime; Homans v. Boston Elev. R. Co. 57 L. R. A. 292, which holds carrier liable for nervous shock to passenger from jar to nervous system, accompanying blow; Kline v. Kline, 58 L. R. A. 397, which sustains right to damages for mental suffering for assault by pointing gun with threat to shoot unless house abandoned; Reed v. Maley, 62 L. R. A. 900, which holds that merely soliciting woman to sexual intercourse gives her no right of action because of resulting fright, mortification, and shame.

Measure of compensatory damages for personal injury.

Cited in Swensen v. Bender, 51 C. C. A. 634, 114 Fed. 8, holding jury may consider "probable incapacity" for future work in estimating compensatory damages.

Proximate cause.

Cited in Marbury v. Illinois C. R. Co. 99 C. C. A. 483, 176 Fed. 15, holding that whether the failure of the defendant to heat its cars was the proximate cause of the plaintiff's relapse was a question for the jury where testimony that it might have been was conflicting.

Facts included in hypothetical questions.

Cited in Swensen v. Bender, 51 C. C. A. 632, 114 Fed. 6, and Woodward v. Chicago, M. & St. P. R. Co. 58 C. C. A. 404, 122 Fed. 68, holding experts may answer hypothetical question stating facts fairly in evidence, though not embracing all facts of the case.

Declarations as res gestæ.

Cited in Mississippi C. R. Co. v. Turnage, 95 Miss. 864, 24 L.R.A.(N.S.) 264, 49 So. 840, holding that nonexpert may testify as to expressions of present pain by injured person.

Cited in footnote to Sample v. Consolidated Light & R. Co. 57 L. R. A. 186, which holds admissible, declaration of motorman as to cause of accident while car still on body of injured child.

Cited in note(24 L.R.A.(N.S.) 263) on admissibility of expressions or statements, subsequent to injury, of present pain.

Maps and photographs as evidence.

Approved in Southern P. Co. v. Hall, 41 C. C. A. 53, 100 Fed. 763, holding map or diagram admissible in evidence, showing place where personal injury occurred.

Cited in Louisville & N. R. Co. v. Brown, 127 Ky. 747, 13 L.R.A.(N.S.) 1139, 106 S. W. 795, holding that photographs of a railroad wreck, having been prov-

en to be accurate, are admissible in an action against the railroad company for damages for personal injuries resulting from the wreck.

Cited in footnotes to Livermore Foundry & Mach. Co. v. Union Compress & Storage Co. 53 L. R. A. 482, which holds photographs of wrecked machinery taken immediately after accident, admissible; Geneva v. Burnett, 58 L. R. A. 287, which holds X-ray picture admissible; Maynard v. Oregon R. & Nav. Co. 68 L.R.A. 477, which holds photograph of scene of collision not inadmissible to show force of impact because of slight change of conditions.

Cited in note (114 Am. St. Rep. 438) on photographs as evidence.

Requests to charge.

Approved in Corbus v. Leonhardt, 51 C. C. A. 640, 114 Fed. 14, holding requested charge properly refused when embodied in instructions given.

Liability of carrier for negligence of another using tracks.

Cited in note (26 L.R.A.(N.S.) 988) on carrier's liability for injury to passenger through negligence of another permitted to use tracks.

49 L. R. A. 92, RUNDELL v. LA COMPAGNIE GENERALE TRANSATLANTIQUE, 40 C. C. A. 625, 100 Fed. 655.

Actions for negligent death at sea.

Approved in *Re* La Bourgogne, 117 Fed. 271, holding no recovery permissible for negligence resulting in death on high seas under general maritime law.

Cited in Lindstrom v. International Nav. Co. 117 Fed. 172, holding company operating American registered vessel liable for death of passenger washed overboard.

Distinguished in *Re* Clyde S. S. Co. 134 Fed. 99, holding that a suit may be maintained in a court of admiralty to recover damages from a vessel at fault, for the death resulting from a collision, where the right of action therefor is given by the laws of the state in which both vessels belonged.

Distinguished with approval in Williams v. Alaska Commercial Co. 2 Alaska, 63, holding that an action could not be maintained in an admiralty court to recover for death by wrongful act on the high seas, but could where death occurred within the three mile limit.

Conflict of negligence laws.

Cited in Darks v. Scudder-Gale Grocer Co. 146 Mo. App. 256, 130 S. W. 430, holding that action for death from being poisoned by ginger extract accrued in state in which it was ordered from commission broken.

Cited in notes (56 L.R.A. 217) on conflict of laws as to action for death or bodily injury; (23 Eng. Rul. Cas. 631) on law governing collisions at sea.

49 L. R. A. 98, CLEVELAND, C. C. & ST. L. R. CO. v. TARTT, 39 C. C. A. 568, 99 Fed. 369.

Injuries to trespassers on railways.

Cited in Shanks v. Springfield Traction Co. 101 Mo. App. 706, 74 S. W. 386, holding it question for jury whether motorman negligent in not attempting to stop car until within 10 feet of deaf man walking on track; Aldrich v. St. Louis Transit Co. 101 Mo. App. 89, 74 S. W. 141, holding carrier not liable for injury to deaf person who had time to cross track, but who turned back and was struck, although car could have been stopped when injured person was first seen by motorman; Leighton v. Wheeler, 106 Me. 453, — L.R.A.(N.S.) —, 76 Atl. 916, holding that engineer who tries to stop train as soon as he sees that person on track will not seasonably leave track, is not negligent; Nichols v.

Chicago, B. & Q. R. Co. 44 Colo. 516, 98 Pac. 808, holding that if an engineer sees a pedestrian approaching the track in such a manner that it is apparent that he does not know of the approach of the train, it is the duty of the engineer to take such steps as an ordinarily prudent person would to prevent injury to such person; Pittsburgh, C. C. & St. L. R. Co. v. Ferrell, 39 Ind. App. 534, 78 N. E. 988, (dissenting opinion), on what constitutes wilful injury to person upon railroad track; Bennett v. Metropolitan Street R. Co. 122 Mo. App. 714, 99 S. W. 480, holding motorman not negligent where he used every means possible to warn the plaintiff who was standing upon the track watching a crew repairing the track, where the motorman did not know that the plaintiff was deaf; Southern R. Co. v. Fisk, 86 C. C. A. 373, 159 Fed. 377; Texas & P. R. Co. v. Modawell, 9 L.R.A.(N.S.) 649, 80 C. C. A. 651, 151 Fed. 424,—holding that the only duty which a railroad company owes to a trespasser upon its tracks is to use reasonable care to prevent injury to him after his peril has been discovered.

Cited in footnotes to Becker v. Louisville & N. R. Co. 53 L. R. A. 268, which requires stopping of train to enable trespasser discovered on railroad bridge to escape; Schreiner v. Great Northern R. Co. 58 L. R. A. 76, which holds failure to build fence not proximate cause of injury to one pushed on track by cow.

49 L. R. A. 102, CHESAPEAKE & O. R. CO. v. KING, 40 C. C. A. 432, 99 Fed. 251.

Duty of persons crossing railroad track.

Cited in Chattanooga, R. & S. R. Co. v. Downs, 45 C. C. A. 513, 106 Fed. 643, holding it negligence *per se* for one to step upon track without looking for train; Chicago & N. W. R. Co. v. Weeks, 99 Ill. App. 526, holding it negligence *per se* for intending passenger to cross track in sight of approaching train, upon miscalculation as to time to cross safely; Dieckmann v. Chicago & N. W. R. Co. 145 Iowa, 269, 31 L.R.A.(N.S.) 348, 139 Am. St. Rep. 420, 121 N. W. 676, holding that passenger required to cross track to board train may rely on invitation of station agent to cross at particular time; Erie R. Co. v. Schultz, 106 C. C. A. 23, 183 Fed. 676, holding that contributory negligence of person driving load over railroad after gates are raised is question for jury; Chicago, R. I. & P. R. Co. v. Stepp, 22 L.R.A.(N.S.) 358, 90 C. C. A. 431, 164 Fed. 793; Illinois C. R. Co. v. Daniels, 96 Miss. 329, 27 L.R.A.(N.S.) 132, 50 So. 721,—holding that a person crossing a parallel track to board a train, is not bound to look and listen before crossing the track, but is bound to exercise ordinary precautions under the circumstances, and whether he has done this is for the jury.

Cited in note (13 L.R.A.(N.S.) 621) on running train or car between standing train and station.

Degree of care toward passenger at station.

Cited in note (33 L.R.A.(N.S.) 858) on degree of care toward passenger at station.

Termination of relation of carrier and passenger.

Cited in Layne v. Chesapeake & O. R. Co. 68 W. Va. 216, 31 L.R.A.(N.S.) 415, 69 S. E. 700, holding that relation of carrier and passenger does not terminate until passenger had alighted and left place where passengers are discharged.

49 L. R. A. 108, SMITH v. DAY, 40 C. C. A. 366, 100 Fed. 244.

Cited in Smith v. Day, 136 Fed. 965, on the history of the litigation.

Negligence in blasting.

Later appeal in 117 Fed. 957, holding failure to give notice of firing blast

not negligence *per se* where injured person boarded vessel some time before accident with knowledge of blasting near by.

— Contributory negligence.

Cited in footnote to Cary v. Morrison, 65 L.R.A. 659, which holds it duty of one occupying neighboring property when warned of coming blast to use reasonable diligence to escape from danger.

Acts of third persons as affecting liability for negligence.

Cited in Baltimore v. Maryland, 92 C. C. A. 335, 166 Fed. 646, holding that if the injury resulted from the failure of the city to properly guard an excavation in the street, the negligence of the driver of an automobile was not imputable to the passenger, unless the latter himself had contributed to the negligence.

49 L. R. A. 111, GASTINEAU v. COM. 108 Ky. 473, 94 Am. St. Rep. 386, 56 S. W. 705.

Police regulations.

Cited in State v. Nelson, 10 Idaho, 525, 67 L.R.A. 811, 109 Am. St. Rep. 226, 79 Pac. 79, 3 Ann. Cas. 322, holding that an ordinance providing that it shall be unlawful for any person maintaining a saloon, barroom, or drinking shop, or any apartment thereto, to permit any females to enter said places, was unconstitutional; Carthage v. Block, 139 Mo. App. 393, 123 S. W. 483, holding that an ordinance which prohibited the drinking of intoxicating liquors in public places, streets, alleys, area-ways, etc., was unconstitutional.

Cited in footnotes to Re Stegenga, 61 L.R.A. 763, which sustains city's authority to provide for punishment of loiterers in streets and bar-rooms; Adams v. Cronin, 63 L.R.A. 61, which upholds statute forbidding women entering wine rooms for liquor; State v. Nelson, 67 L.R.A. 808, which holds void ordinance making it unlawful for any person maintaining a saloon, barroom or drinking shop to permit females to enter their place of business.

Cited in notes (18 L.R.A.(N.S.) 657, 659, 48 L. ed. U. S. 365) on validity of police regulations excluding women from saloons; (22 L.R.A.(N.S.) 1012) on statutes regulating admission of minors to saloons; (34 L.R.A.(N.S.) 604 on constitutionality of discrimination based on race or color in police regulations affecting morality.

Distinguished in Adams v. Cronin, 29 Colo. 501, 63 L. R. A. 67, 69 Pac. 590, upholding ordinance prohibiting keepers of dramshops from maintaining wine rooms for purpose of supplying liquor to women, and referring particularly to annotation in 49 L.R.A. 111; Com. use of Madisonville v. Price, 123 Ky. 166, 94 S. W. 32, 13 Ann. Cas. 489, holding that an ordinance prohibiting any saloon keeper from permitting any female or infant to drink or remain in the saloon, was valid; People v. Case, 153 Mich. 103, 18 L.R.A.(N.S.) 660, 116 N. W. 558, holding that an ordinance prohibiting any saloon keeper from harboring any female about his place of business or permitting any females to resort thereto for the purpose of drinking, was valid, and citing annotation on this point.

49 L. R. A. 114, HECHINGER v. MAYSVILLE, 22 Ky. L. Rep. 486, 57 S. W. 619.

Police regulations as to loiterers.

Cited in Carthage v. Block, 139 Mo. App. 393, 123 S. W. 483, holding that an ordinance which prohibited the drinking of intoxicating liquors in public places, streets, alleys, area-ways, etc., was unconstitutional; State v. Nelson, 10 Idaho, 525, 67 L.R.A. 811, 109 Am. St. Rep. 226, 79 Pac. 79, 3 Ann. Cas. 322, holding that an ordinance providing that it shall be unlawful for any person

maintaining a saloon, barroom or drinking shop, or any apartment thereto, to permit any females to enter said places, was unconstitutional.

Cited in footnote to *Re* Stegena, 61 L.R.A. 763, which sustains city's authority to provide for punishment of loiterers in streets and bar-rooms.

49 L. R. A. 116, STANDARD LIFE & ACCI. INS. CO. v. THORNTON, 40 C. C. A. 564, 100 Fed. 582.

Insurance; presumption as to suicide of insured.

Approved in Jenkin v. Pacific Mut. L. Ins. Co. 131 Cal. 124, 63 Pac. 180, holding death by gunshot wound presumed to have been result of accident in absence of legitimate proof to contrary; Supreme Court of Honor v. Barker, 96 Ill. App. 497, holding death from discharge of gun under circumstances indicating suicide, presumed to have resulted from negligence or accident, in absence of proof to contrary; Starr v. Ætna L. Ins. Co. 41 Wash. 206, 4 L.R.A.(N.S.) 642, 83 Pac. 113, holding that the burden is upon the insurance company to overcome the presumption of accidental injury, and to prove that the injury was the result of a cause within the exceptions of the policy.

Cited in Wilkinson v. Ætna L. Ins. Co. 144 Ill. App. 67, holding that the violent external means having been proven the presumption is against death by suicide or murder, and in favor of accidental death; Metropolitan L. Ins. Co. v. De Vault, 109 Va. 403, 63 S. E. 982, 17 Ann. Cas. 27; Cosmopolitan L. Ins. Co. v. Koegel, 104 Va. 633, 52 S. E. 166,—holding that the presumption is against death by suicide and that the plaintiff must recover unless the evidence is such as to exclude the reasonable hypothesis that the death was accidental; Sovereign Camp, W. W. v. Boehme, 44 Tex. Civ. App. 162, 97 S. W. 847; Kane v. Supreme Tent, K. M. 113 Mo. App. 119, 87 S. W. 547,—holding that the presumption being against suicide, the burden is thrown upon the defendant to prove that the death did result from suicide.

Cited in footnotes to Brown v. Sun Life Ins. Co. 51 L. R. A. 252, which sustains recovery on policy of one whose death caused by taking overdose of morphine; Boynton v. Equitable Life Assur. Co. 52 L. R. A. 687, which requires insurer, claiming suicide of insured, to overcome every reasonable hypothesis of accidental death; Fidelity & C. Co. v. Freeman, 54 L. R. A. 680, which holds suicide of insured not conclusively shown by evidence; Courtmanche v. Supreme Court, I. O. F. 64 L. R. A. 668, which holds accidental death of assured from taking poison to frighten wife into giving him money not within provision that policy does not include assurance against self-destruction; Brignac v. Pacific Mut. L. Ins. Co. 66 L.R.A. 323, which holds that suicidal intent will not be found where facts admit of different construction.

Accidental injury as question for jury.

Cited in Preferred Acci. Ins. Co. v. Fielding, 35 Colo. 24, 83 Pac. 1013, 9 Ann. Cas. 916, holding that it was for the jury to determine whether or not the injuries were accidental or not, where the testimony on that point was consistent with the theory of accident.

Voluntary exposure to unnecessary danger.

Cited in footnotes to Smith v. Ætna L. Ins. Co. 56 L. R. A. 272, which holds injury by fall from steps of moving train covered by policy; Smith v. Ætna L. Ins. Co. 64 L. R. A. 117, which holds steeple-chase riding by one giving occupation as cotton merchant, voluntary exposure to unnecessary danger; Small v. Travelers' Protective Asso. 63 L. R. A. 510, which holds attempt by experienced traveling man to board train running at 8 or 10 miles an hour, voluntary exposure to danger.

Submitting question of negligence to jury.

Approved in Herrick v. Quigley, 41 C. C. A. 297, 101 Fed. 189, holding question of proximate cause, where several circumstances contributed to injury, for jury; Mason & O. R. Co. v. Yockey, 43 C. C. A. 230, 103 Fed. 266, holding for jury, question of negligence where locomotive fireman injured while working on defective engine which he had not fired for some months.

Direction of verdict.

Cited in Hudson v. New York & A. Transp. Co. 110 C. C. A. 104, 188 Fed. 630, holding it not proper test of whether verdict should be directed that court in weighing evidence would grant new trial; Goodwin v. Cincinnati Traction Co. 99 C. C. A. 661, 175 Fed. 63, holding direction of a verdict improper where there is substantial conflict in the evidence.

Exemption in policy against accident on trains.

Cited in note (22 L.R.A.(N.S.) 1257) on exemption in accident policy against accident on railroad trains.

49 L. R. A. 123, TRAVELERS' INS. CO. v. JOHNSON CITY, 40 C. C. A. 58, 99 Fed. 663.

Liability for bond issue.

Followed in Swanson v. Ottumwa, 131 Iowa, 551, 5 L.R.A.(N.S.) 867, 106 N. W. 9, 9 Ann. Cas. 1117, holding that the holder of bonds issued by the city could not recover on quantum meruit, where the bonds had been issued to reimburse a railroad company, and were issued without authority.

Cited in Geer v. School Dist. No. 11, 49 C. C. A. 547, 111 Fed. 690, holding district authorized to issue bonds for school purposes liable to purchaser thereof, though issued in excess of limitation, when proceeds actually used in erection of building; Chelsea Sav. Bank v. Ironwood, 130 Fed. 412, holding city bound to return consideration received for bonds, illegal because irregularly issued; Uncas Nat. Bank v. Superior, 115 Wis. 351, 91 N. W. 1004, holding city not estopped by recitals in general bonds for special improvements from defending on ground of lack of power to issue same.

Liability upon ultra vires contract.

Cited in Standard Sav. & Loan Co. v. Aldrich, 20 L.R.A.(N.S.) 399, 89 C. C. A. 646, 163 Fed. 221, holding that there could be no recovery as money had and received where the plaintiffs had loaned the defendant company money upon an ultra vires contract which was absolutely void.

49 L. R. A. 127, MUTUAL L. INS. CO. v. HILL, 38 C. C. A. 159, 97 Fed. 263.

Forfeiture for nonpayment of premiums.

Reversed in 178 U. S. 347, 44 L. ed. 1097, 20 Sup. Ct. Rep. 914, denying right of beneficiary to recover on abandoned policy where he has refused to pay premium.

Appeal from decision on merits in 55 C. C. A. 536, 118 Fed. 708, Affirming 113 Fed. 44, holding rights of beneficiaries ignorant of nonpayment of premiums unaffected by attempted waiver by assured under policy governed by New York statutes providing against forfeitures for nonpayment of premiums without due notice to assured.

Followed without discussion in Mutual L. Ins. Co. v. Cohen, 38 C. C. A. 696, 97 Fed. 986.

Cited in Hathaway v. Mutual L. Ins. Co. 99 Fed. 537, holding life policy upon which premiums not paid for more than a year not forfeited by subsequent legis-

lation protecting policy for one year only, unless insured notified of accrual of premium.

Cited in footnotes to McQuillan v. Mutual Reserve Fund Life Asso. 56 L. R. A. 233, which holds forfeiture of policy waived by retaining payment made after default, without notice of any condition affixed; Johnson v. New York L. Ins. Co. 50 L. R. A. 99, which holds necessity of giving notice before forfeiting policy for nonpayment of premium dispensed with by converting life policy into nonforfeitable policy for fixed term of years; Mutual L. Ins. Co. v. Dingley, 49 L. R. A. 132, which holds policy in other state within statutory prohibition against forfeiting policy without notice of accrual of premium.

Construction of contracts of insurance.

Cited in New York L. Ins. Co. v. Orlopp, 25 Tex. Civ. App. 289, 61 S. W. 336, holding statutes of state by the laws of which policy stipulated to be governed, part of the contract.

Cited in notes (63 L.R.A. 842) on conflict of laws as to contracts of insurance; (104 Am. St. Rep. 485, 488, 489) on conflict of laws as to nonforfeiture of insurance policy.

49 L. R. A. 132, MUTUAL L. INS. CO. v. DINGLEY, 40 C. C. A. 459, 100 Fed. 408.

Reversed in 184 U. S. 695, 46 L. ed. 763, 22 Sup. Ct. Rep. 937.

Forfeiture for nonpayment of premiums.

Cited in footnotes to McQuillan v. Mutual Reserve Fund Life Asso. 56 L. R. A. 233, which holds forfeiture of policy waived by retaining payment made after default, without notice of any condition affixed; Johnson v. New York L. Ins. Co. 50 L. R. A. 99, which holds necessity of giving notice before forfeiting policy for nonpayment of premium dispensed with by converting life policy into nonforfeitable policy for fixed term of years; Mutual L. Ins. Co. v. Hill, 49 L. R. A. 127, which requires notice of accrual of premium before forfeiting policy for nonpayment.

Law governing contracts of foreign insurance company.

Followed in Burns v. Burns, 109 App. Div. 100, 95 N. Y. Supp. 797, holding that where the insurance certificate provided that it was agreed that the contract should be governed by the laws of Ohio, and the policy was issued, and payable at the home office in that state which it was agreed should be the place of contract, the laws of Ohio determined who were the beneficiaries.

Cited in Napier v. Bankers' L. Ins. Co. 51 Misc. 286, 100 N. Y. Supp. 1072, holding that whenever the contract is silent as to the place of performance, the place of making is presumed to be the place of performance, and the interpretation and validity must be determined by the law of the latter place.

Cited in footnotes to Cravens v. New York L. Ins. Co. 53 L. R. A. 305, which holds life policies of foreign company taking effect on delivery and collection of premium governed by law of state of delivery, notwithstanding provision in policy; Swing v. Munson, 58 L. R. A. 223, which holds insurance contract, valid where made, not enforceable in state where property located whose laws directly violated.

Cited in notes (63 L.R.A. 863) on conflict of laws as to contracts of insurance; (104 Am. St. Rep. 485) on conflict of laws as to nonforfeiture of insurance policy.

49 L. R. A. 138, *Re* WICKES, 128 Cal. 270, 60 Pac. 867.

Wife's domicil for divorce purposes.

Cited in McGrew v. Mutual L. Ins. Co. 132 Cal. 92, 84 Am. St. Rep. 20, 64

Pac. 103, holding that wife may acquire separate domicil, when husband begins action of divorce against her.

Cited in footnote to Watertown v. Greaves, 56 L. R. A. 865, which sustains power of deserted wife to establish separate domicil without decree of court.

49 L. R. A. 141, BEGBIE v. BEGBIE, 128 Cal. 154, 60 Pac. 667.

Abatement of action by death of party.

Cited in Hite v. Mercantile Trust Co. 156 Cal. 768, 106 Pac. 102, holding that a divorce action abated upon the death of one of the parties; Re Lambert, 115 La. 470, 39 So. 447, holding that where the interdict dies pending an appeal from a judgment removing curator, the suit abates.

Recovery of costs.

Cited in Lew v. Bray, 81 Conn. 217, 70 Atl. 628, holding that the right to costs depends upon the statutes in force at the termination of the action, and not at the commencement.

49 L. R. A. 142, ALLEN v. ALLEN, 73 Conn. 54, 84 Am. St. Rep. 135, 46 Atl. 242.

Interest of the public in the maintenance of marital relation.

Cited in Gould v. Gould, 78 Conn. 243, 2 L.R.A.(N.S.) 543, 61 Atl. 604, holding that arguments in favor of a judgment of dismissal in a divorce action will be considered upon appeal, though no argument is submitted on behalf of the defendant, because of the interest which the public has in the granting of a divorce; Parrish v. Parrish, 52 Or. 162, 96 Pac. 1066, holding that the state being a party to an action to annul a marriage under the statute, the courts will not permit the waiver of statutory requirement because of the interest of the state in the action.

Husband and wife; agreement for separation.

Cited in Foote v. Nickerson, 70 N. H. 514, 54 L. R. A. 563, 48 Atl. 1088, holding void, voluntary agreement for separation between husband and wife, as contrary to public policy.

Evidence of facts occurring since commencement of action.

Cited in Hodges v. Price, 38 Wash. 7, 80 Pac. 202, holding it was proper to admit a supplemental complaint alleging facts arising since the commencement of the action, to show the intention of the party in doing the acts.

49 L. R. A. 144, BROWN'S APPEAL, 72 Conn. 148, 44 Atl. 22.

Effect of divorce upon curtesy.

Cited in footnote to Doyle v. Rolwing, 55 L. R. A. 332, which holds right of curtesy defeated by divorce for wife's fault.

Release of dower.

Cited in footnote to Land v. Shipp, 50 L. R. A. 560, which holds wife's right of dower not affected by release made directly to husband in deed of separation.

Construction of statutes.

Cited in Newton's Appeal, 84 Conn. 241, 79 Atl. 742, holding that intent will prevail over letter of statute; McGovern v. Mitchell, 78 Conn. 551, 63 Atl. 433, holding that generic terms as used in the constitution broad enough to cover a particular case must be held not applicable to that case when such application involves a violation of other essential provisions, and not necessary to give effect to the evident purpose of that provision.

49 L. R. A. 147, HYGEIA DISTILLED WATER CO. v. HYGEIA ICE CO. 72 Conn. 646, 45 Atl. 957.

What words constitute trademark.

Cited in Consolidated Ice Co. v. Hygeia Distilled Water Co. 80 C. C. A. 506, 151 Fed. 11, holding that the word, Hygeia, is properly used as a trade mark.

Cited in footnote to Kyle v. Perfection Mattress Co. 50 L. R. A. 628, which holds word "perfection," as name of mattress, a valid trademark.

Cited in notes (85 Am. St. Rep. 91) on what words or phrases may constitute a valid trademark; (25 Eng. Rul. Cas. 256) on right to trademark in invented words: (45 L. ed. U. S. 365) on trademark in geographical name.

Enjoining fraudulent use of trade mark.

Cited in Woodcock v. Guy, 33 Wash. 240, 74 Pac. 358, holding complaint insufficient to warrant the enjoining of the use of the word, "Gargeline," where it is not alleged that the plaintiff has suffered by the use of such word, or that the public is liable to be defrauded, and only asks to be protected in the use of the word "Gargline."

What subject of judicial notice.

Approved in Arthur v. Norfield Parish Cong. Church Soc. 73 Conn. 731, 49 Atl. 241, holding laws and usages of Congregationalism to be subject-matter of judicial notice, reviewable on appeal.

49 L. R. A. 153, KAGER v. VICKERY, 61 Kan. 342, 78 Am. St. Rep. 318, 59 Pac. 628.

Judgment or execution after death of party.

Approved in Seeley v. Johnson, 61 Kan. 341, 78 Am. St. Rep. 314, 59 Pac. 631, holding void, sale of real estate made under special execution issued after death of creditor, without revivor of judgment.

Cited in Gibson v. Plummer, 85 Kan. 228, 116 Pac. 618, holding void, judgment quieting title rendered long time after death of defendant: Moehlenpah v. Mayhew, 138 Wis. 575, 119 N. W. 826, on the effect of the death of a party pending the trial, and citing annotation on this point.

Annotation specially approved in State ex rel. Potter v. Riley, 219 Mo. 687, 118 S. W. 647, holding that if a person dies pending a suit wherein the court has acquired jurisdiction, and a judgment is rendered against such party so dying, without there being any record of the death, such judgment is voidable but if the person is dead at the time of the commencement of the action the judgment is void.

Cited in footnote to *Ex parte* Massie, 56 L. R. A. 671, which holds void, judgment rendered after death of defendant, though on same day.

Cited in notes (49 L.R.A. 171) on effect of judgment entered against dead person; (126 Am. St. Rep. 627) on validity and effect of judgment for or against deceased person.

Ejectment against mortgagee in possession.

Cited in Kelso v. Norton, 65 Kan. 786, 93 Am. St. Rep. 308, 70 Pac. 896, holding that ejectment will not lie against mortgagee in possession at suit of heirs of mortgagor while debt unpaid, although foreclosure barred by statute of limitations.

Ejectment of claimant under void foreclosure.

Cited in note (40 L.R.A.(N.S.) 844) on ejectment of one in possession claiming under void foreclosure.

49 L. R. A. 175, GEORGIA R. & BKG. CO. v. FITZGERALD, 108 Ga. 507, 34 S. E. 316.

Admissions against interest.

Cited in Massee-Felton Lumber Co. v. Sirmans, 122 Ga. 299, 50 S. E. 92, holding that declarations and entries of a person, since deceased, against his interest, and not made with a view to pending legislation, are admissible; Taylor v. Grand Lodge, A. O. U. W. 101 Minn. 76, 11 L.R.A.(N.S.) 98, 118 Am. St. Rep. 606, 111 N. W. 919, 11 Ann. Cas. 260, holding that a prior application for life insurance in another company made under circumstances of a nature to vouch for its truth, is admissible to prove that the deceased therein gave the date of his birth as different from that given in the application involved in the action; Smith v. Moore, 142 N. C. 289, 7 L.R.A.(N.S.) 690, 55 S. E. 275, holding that a declaration of the decedent that she had made a deed of the land to her son-in-law because of the many kindnesses he had shown her, was admissible in an action to set aside the deed.

Admissions as to cause of injury.

Cited in Dixon v. Union Ironworks, 90 Minn. 497, 97 N. W. 375, holding declarations of deceased that injury was caused by his own fault admissible against his administrator.

Effect of settlement with deceased for injury.

Approved in Southern Bell Teleph. & Teleg. Co. v. Cassin, 111 Ga. 590, 50 L. R. A. 701, 36 S. E. 881, holding widow's action barred by voluntary settlement by husband, discharging liability for negligence resulting in death.

49 L. R. A. 176, HORNE v. RODGERS, 110 Ga. 362, 35 S. E. 715.

Cited in Horne v. Carstarphen, 128 Ga. 196, 57 S. E. 238, for facts of the case.

Enforcing contract for sale of land.

Cited in later appeal in 113 Ga. 225, 38 So. 768, holding purchaser not obliged to complete contract for purchase of land until vendor tenders good and sufficient marketable title.

Absence of judge from the bench.

Cited in Brantley v. State, 10 Ga. App. 25, 72 S. E. 520, holding it not reversible error for judge to step into adjoining room where he was within hearing; Martin v. State, 10 Ga. App. 455, 73 S. E. 686, holding verdict a nullity, where judge leaves county during deliberation of jury; Kruse v. St. Louis, I. M. & S. R. Co. 97 Ark. 146, 133 S. W. 841, holding temporary absence of judge during argument of counsel not reversible error, unless opponent meanwhile committed prejudicial act; State v. Moon, 20 Idaho, 218, 117 Pac. 757, Ann. Cas. 1913A, 724, holding that failure to object until motion for new trial waives failure of trial judge to accompany jury on view of premises; Thomas v. State, 150 Ala. 48, 43 So. 371, holding that the temporary absence of the judge from the bench during the argument of a trial for murder, does not warrant a reversal of the verdict where his absence was not objected to, and the defendant suffered no detriment; Pennsylvania Co. v. Barton, 130 Ill. App. 588, holding that where no objection has been interposed and no mention made of the absence of the judge as a ground for new trial until after the motion for a new trial has been made and argued, a reversal will not follow because of such absence; Bateson v. State, 46 Tex. Crim. Rep. 43, 80 S. W. 88; Skaggs v. State, 88 Ark. 69, 113 S. W. 346, 16 Ann. Cas. 622,—holding that the temporary absence of the judge from the room during a criminal prosecution does not vitiate the proceedings unless it appears that he has lost control of the proceedings;

Stokes v. State, 71 Ark. 115, 71 S. W. 248, holding that a temporary absence of the judge from the court room during the trial of a murder prosecution renders the whole trial void; Slaughter v. United States, 5 Ind. Terr. 249, 82 S. W. 732, holding that the absence of the judge from the court room, so that he could not hear what was going on, vitiated the whole trial; People v. White, 5 Cal. App. 343, 90 Pac. 471, holding that where there is no objection made at the time, of the judge's absence at the time the jury viewed place where the crime was committed, such absence was not prejudicial to the defendant or subversive of his legal rights and is no ground for a new trial.

49 L. R. A. 181, RUHSTRAT v. PEOPLE, 185 Ill. 133, 76 Am. St. Rep. 30, 57 N. E. 41.

Proper exercise of the police power.

Cited in Chicago v. Pennsylvania Co. 252 Ill. 192, 36 L.R.A.(N.S.) 1083, 96 N. E. 833, Ann. Cas. 1912 D, 400, holding that police power does not extend to requiring railroad to maintain lights under street crossing; O'Donnell v. Riter-Conley Mfg. Co. 124 Ill. App. 546, holding that an ordinance requiring the building of a temporary floor during the construction of a building is a valid exercise of the police power; Kirk v. Board of Health (Kirk v. Wyman) 83 S. C. 387, 23 L.R.A.(N.S.) 1195, 65 S. E. 387 (dissenting opinion), on the unreasonable exercise of the police power; Ex parte Hayden, 147 Cal. 650, 1 L.R.A. (N.S.) 185, 109 Am. St. Rep. 183, 82 Pac. 315, holding that a requirement that all fruit, green or dried, should have printed upon the package, the county and the immediate vicinity where such fruit was grown, was not a proper exercise of the police power; Ex parte Drexel, 147 Cal. 766, 2 L.R.A.(N.S.) 594, 82 Pac. 429, 3 Ann. Cas. 878, on the same point; Chicago v. Gunning System, 214 Ill. 639, 70 L.R.A. 237, 73 N. E. 1035, 2 Ann. Cas. 892, Affirming 114 Ill. App. 381, holding that an ordinance which made unreasonable restrictions on the maintenance of bill-boards, was not valid; Belleville v. St. Clair County Turnp. Co. 234 Ill. 441, 17 L.R.A.(N.S.) 1078, 84 N. E. 1049, holding that in the exercise of the police power to build and maintain roads, a city could not take exclusive possession of a turnpike, which had been built under a contract giving the turnpike company the right to collect tolls; People ex rel. Chicago v. Illinois C. R. Co. 235 Ill. 380, 18 L.R.A.(N.S.) 920, 85 N. E. 606, holding invalid an ordinance requiring a railroad company to repave the street under its tracks where the same had been elevated and the street lowered, as required by the statute; Hume v. Laurel Hill Cemetery, 142 Fed. 565, holding that the prohibiting of the burial of dead bodies within an entire county embracing large tracts of land which are remote from human habitation and which are unoccupied, is not a reasonable exercise of the police power; State v. Redmon, 134 Wis. 111, 14 L.R.A.(N.S.) 237, 126 Am. St. Rep. 1003, 114 N. W. 137, 15 Ann. Cas. 408, holding that a statute providing that the upper berth of a sleeping car shall not be made up, if unoccupied, if the occupant of the lower berth so desires, is not a proper exercise of police power.

Cited in note (78 Am. St. Rep. 236, 237, 238, 270) on acts which legislature may declare criminal.

— Prohibiting use of national flag for commercial purposes.

Cited in Halter v. Nebraska, 205 U. S. 40, 51 L. ed. 700, 27 Sup. Ct. Rep. 419, 10 Ann. Cas. 525, Affirming 74 Neb. 759, 7 L.R.A.(N.S.) 1082, 121 Am. St. Rep. 754, 105 N. W. 298, holding that a state statute prohibiting the use of the national flag for commercial advertising purposes and labels, was constitutional.

Cited in footnote to People ex rel. McPike v. Van De Carr, 66 L.R.A. 189, which holds void, statute providing for punishment of persons placing words, figures, or designs on national or state flag for advertising or other purposes or using or displaying flag so decorated.

Cited in notes (7 L.R.A.(N.S.) 1079) on statutes against desecration of flag; (25 Eng. Rul. Cas. 220) on placing of flag on trademark.

Distinguished in Com. v. R. I. Sherman Mfg. Co. 189 Mass. 80, 75 N. E. 71, 4 Ann. Cas. 268, holding that a statute forbidding the use of the great seal of the state for commercial purposes, was constitutional.

Disapproved in Re Cahn, 27 App. D. C. 181, holding that statute prohibiting the use of the seal and coat of arms a state for commercial purposes was valid.

Statutes restricting personal liberty.

Approved in State *ex rel.* Zillmer v. Kreutzberg, 114 Wis. 540, 58 L. R. A. 753, 91 Am. St. Rep. 934, 90 N. W. 1098, holding void statute forbidding discharge of employee because member of labor union, as invalid exercise of police power and infringement of Constitution; Mathews v. People, 202 Ill. 403, 63 L. R. A. 79, 95 Am. St. Rep. 241, 67 N. E. 28, holding free employment agency act, prohibiting agencies from furnishing lists of workmen to employers during strike, void; Republic Iron & Steel Co. v. State, 160 Ind. 386, 62 L. R. A. 142, 66 N. E. 1005, holding act providing for weekly payment of wages due employees, unconstitutional; People *ex rel.* McPike v. Van De Carr, 91 App. Div. 28, 86 N. Y. Supp. 644, holding provisions in act forbidding use of representation of United States or New York state flag for advertising purpose or trademark, unconstitutional.

Cited in Bessette v. People, 193 Ill. 344, 56 L. R. A. 561, footnote, p. 558, 62 N. E. 215, holding void, requirement that horseshoers practise business for four years, submit to examination, and pay license fee; Christy v. Elliott, 216 Ill. 40, 1 L.R.A.(N.S.) 226, 108 Am. St. Rep. 196, 74 N. E. 1035, 3 Ann. Cas. 487, holding that an ordinance which limited the speed of automobiles to fifteen miles an hour, was valid though it interfered with certain personal liberties.

Cited in footnote to Bailey v. People, 54 L. R. A. 839, which holds void, restriction on number which lodging-house keepers may permit to occupy one room.

Special or class legislation.

Cited in People v. Wilcox, 237 Ill. 424, 86 N. E. 672, holding that a statute regulating the catching of fish by the use of nets, within the state, but which excepted from the operation of the law Lake Michigan, was a special or local law, and void under the constitution; Charles J. Off & Co. v. Morehead, 235 Ill. 44, 20 L.R.A.(N.S.) 169, 126 Am. St. Rep. 184, 85 N. E. 264, 14 Ann. Cas. 434, holding that a statute which provided that all sales in bulk of stocks of merchandise, or portions thereof other than in the ordinary course of trade, would be void as to creditors unless notice thereof was filed a certain time before, was void; Carr v. State, 175 Ind. 265, 32 L.R.A.(N.S.) 1200, 93 N. E. 1071 (dissenting opinion), on validity of Sunday law exempting professional baseball.

49 L. R. A. 186, STATE v. ROOK, 61 Kan. 382, 59 Pac. 653.

What constitutes jeopardy.

Cited in State v. Hager, 61 Kan. 506, 48 L. R. A. 256, 59 Pac. 1080, holding party to criminal proceeding not put in jeopardy by determination of plea of former jeopardy upon state's appeal from order discharging prisoner; State v. Horine, 70 Kan. 259, 78 Pac. 411, holding that without arraignment or a

waiver of an arraignment, and without a plea or a refusal to plead, or the entry of a plea by the court, the defendant was not in jeopardy.

Cited in footnote to *Re* Ascher, 57 L. R. A. 806, which holds accused not put in jeopardy by discharge of jury after trial commenced, because jurors prejudiced in his favor.

State's right to appeal criminal case.

Cited in footnote to State v. Meyer, 52 L. R. A. 346, which sustains state's right to writ of error to review judgment reversing conviction.

49 L. R. A. 190, CLARK v. SKEEN, 61 Kan. 526, 78 Am. St. Rep. 337, 60 Pac. 327.

Stipulations affecting negotiability.

Approved in City Nat. Bank v. Goodloe-McClelland-Commission Co. 93 Mo. App. 135, holding negotiability of note not destroyed by provision that "makers and indorsers agree to all extensions and partial payments before or after maturity, without prejudice to holder."

Cited in Haslach v. Wolf, 66 Neb. 601, 60 L. R. A. 435, footnote p. 434, 92 N. W. 374, holding negotiability not destroyed by agreement to pay certain amount "with exchange;" Holliday State Bank v. Hoffman, 85 Kan 76, 35 L.R.A.(N.S.) 395, 116 Pac. 239, Ann. Cas. 1912D, 1, holding non-negotiable, note stipulating that maker shall deliver additional collateral on depreciation of attached collateral, or note shall mature at once; First Nat. Bank v. Nordstrom, 70 Kan. 486, 78 Pac. 804, holding that where a note is made payable at a place different from the place at which it is executed, the insertion therein, of the words "with exchange" does not make the note non-negotiable; First Nat. Bank v. Lightner, 74 Kan. 740, 8 L.R.A.(N.S.) 234, 118 Am. St. Rep. 353, 88 Pac. 59, 11 Ann. Cas. 596, holding that an order to pay to another a certain sum of money "on account of contract" is a negotiable instrument, since the same is not drawn upon a particular fund, but merely shows how the drawee is to be reimbursed.

Cited in notes (35 L.R.A.(N.S.) 391) on bills and notes: provision accelerating maturity as affecting negotiability: (125 Am. St. Rep. 201, 213) on agreements and conditions destroying negotiability.

Distinguished in City Nat. Bank v. Gunter Bros. 67 Kan. 233, 72 Pac. 842, holding note rendered non-negotiable by provision by which makers and indorsers agree to all extensions and partial payments before or after maturity.

49 L. R. A. 193, HALBERT v. SAN SABA SPRINGS LAND & LIVE-STOCK ASSO. 89 Tex. 230, 34 S. W. 639.

Computing time under statute.

Cited in Miles v. Dana, 13 Tex. Civ. App. 245, 36 S. W. 848, holding reconvened term not "next succeeding term" for entry of judgment by default upon publication of citation returnable to ensuing term; Eyl v. State, 37 Tex. Civ. App. 310, 84 S. W. 607, holding that where the statute reads that time is to be computed from and after a certain day, such day is excluded in computing the time; Nebola v. Minnesota Iron Co. 102 Minn. 92, 112 N. W. 880, 12 Ann. Cas. 56, holding that in determining whether a cause of action is barred by the statute of limitations, the day on which accrued is excluded.

Annotation approved in Rusk v. Hill, 117 Ga. 729, 45 S. E. 42, holding that when a bill of exceptions was certified to on the tenth day of the month, and served on the twentieth it was served within the ten days time required by statute; State v. Elson, 77 Ohio St. 494, 15 L.R.A.(N.S.) 692, 83 N. E. 904,

holding that under a statute fixing the open game season from Nov. 15th to December 5th, November 15th is not counted in the season, and December 5th is.

Annotation cited in State ex rel. Dawson v. Sessions, 84 Kan. 863, 115 Pac. 641, Ann. Cas. 1912A, 796, holding that day on which bills are presented to governor is to be excluded in computing three day limit for his action.

Cited in notes (49 L.R.A. 244) on rule as to first and last days in computation of time; (15 L.R.A.(N.S.) 686, 692) on first and last days in computation of time; (23 L.R.A.(N.S.) 760) on days of grace for payment of insurance premium or assessment, where date of payment or expiration of such period falls on Sunday or holiday; (38 L.R.A.(N.S.) 1160, 1162) on limitation of actions: rule as to first and last days in computation of time.

Construing statutes according to intent.

Approved in Storrie v. Houston City Street R. Co. 92 Tex. 144, 44 L. R. A. 723, 46 S. W. 796, holding that intention of legislature should control construction of statute, when manifested by implication from language used.

49 L. R. A. 201, CONWAY v. SMITH MERCANTILE CO. 6 Wyo. 327, 44 Pac. 940.

Decision on merits in 6 Wyo. 468, 46 Pac. 1084, rehearing of which was denied in 7 Wyo. 503, 54 Pac. 230.

Computing time for performance of statutory duties.

Annotation cited in Baker v. Hammett, 23 Okla. 485, 100 Pac. 1114, holding that in computing time from after certain day, first day is excluded and last day included; Johnston v. New Omaha Thomson-Houston Electric Light Co. 86 Neb. 173, 125 N. W. 153, 20 Ann. Cas. 1314, holding that transcript filed on Monday was in time, where last day fell on Sunday.

Cited in footnote to Ocumpaugh v. Norton, 68 L.R.A. 272, which holds that aggregate of half holidays shall be added in computing time for taking appeals under statute excluding holidays from number of days specified.

Cited in note (49 L. R. A. 202, 232) on rule as to first and last days in computation of time.

— Signing of bill of exceptions.

Cited in Harden v. Card, 14 Wyo. 490, 85 Pac. 246, holding that under the statute, the signing and the filing of the bill of exceptions need not be done within the time granted for reducing the exceptions to writing.

Who may sign bill of exceptions.

Cited in Patterson v. Yancey, 97 Mo. App. 691, 71 S. W. 845, holding bill of exceptions properly signed by judge before whom case tried, although signed after county of trial had been taken out of his circuit.

Right of trial judge to rely upon stenographer's report of the evidence.

Cited in State ex rel. Dimond Bros. v. Craig, 15 Wyo. 446, 89 Pac. 584, holding that the trial judge had a right to rely upon the stenographic report of the evidence in making the corrections to the bill of exceptions, and he was not bound to remember the evidence or make notes thereof, himself.

49 L. R. A. 218, STATE *ex rel.* STATE PHARMACEUTICAL ASSO. v. MICHEL, 52 La. Ann. 936, 78 Am. St. Rep. 364, 27 So. 565.

Computing time under the statute.

Approved in Schenck v. Schenck, 52 La. Ann. 2104, 28 So. 302, holding appearance of advertisement on Sunday fulfils law requiring publication once a week for thirty days; State *ex rel.* Garig v. King, 104 La. 478, 29 So. 18, holding

Sundays included in computing ten days within which to perfect appeal from order of district court appointing receiver.

Cited in State ex rel. Watkins v. Norton, 21 N. D. 475, 131 N. W. 257, holding that Sundays are not excluded in computing fifteen-day period in which governor may veto bill; State ex rel. Dawson v. Sessions, 84 Kan. 860, 115 Pac. 641, Ann. Cas. 1912 A, 796, holding that day on which bills are presented to governor should be excluded in computing three day limit for his action; State v. Waldron, 128 La. 560, 34 L.R.A.(N.S.) 810, 54 So. 1009, holding that appeal on March 1, is taken within three days of sentence on February 25, Sunday intervening; Geneva Cooperage Co. v. Brown, 124 Ky. 23, 124 Am. St. Rep. 388, 98 S. W. 279, holding that an action brought September 19th, 1904, for a personal injury received September 19th, 1903, is barred by the statute providing that actions for personal injuries be brought within one year; State v. Vicknair, 118 La. 970, 43 So. 635, holding that under the statute providing that appeals in criminal cases shall be taken in open court within three days after sentence, where the court adjourned immediately after sentence, for five days, the appeal taken then was good; Carter v. Henry, 87 Miss. 416, 39 So. 690, 6 Ann. Cas. 715, holding that the day upon which a bill is presented to the governor is to be excluded in computing the time within which he is required to sign or return the same; Johnson v. Murphy, 124 La. 145, 49 So. 1007, holding that Sunday is not included in computing the three days allowed for answering in the city court; Salley v. Seaboard Air Line R. Co. 76 S. C. 176, 56 S. E. 782, holding that where the act is to be performed within one week Sunday is not included; Craig v. United States Health & Acci. Ins. Co. 80 S. C. 156, 18 L.R.A.(N.S.) 109, 128 Am. St. Rep. 877, 61 S. E. 423, 15 Ann. Cas. 216, holding that where the time within which an act is to be done exceeds one week Sundays are included.

Annotation cited in State v. Gandy, 87 S. C. 524, 70 S. E. 163, holding that service of notice of appeal on Monday is sufficient, when last day falls on Sunday.

Cited in note (49 L. R. A. 243) on rule as to first and last days in computation of time.

49 L. R. A. 248, WARREN v. TANNER, 21 Ky. L. Rep. 1678, 56 S. W. 167.

Later phase of same case in 112 Ky. 674, 23 Ky. L. Rep. 1919, 66 S. W. 500.

Ferries.

Cited in Peru v. Barrett, 100 Me. 217, 70 L.R.A. 568, 109 Am. St. Rep. 494, 60 Atl. 908; Hatten v. Turman, 123 Ky. 848, 97 S. W. 770,—holding that merchant operating boat across river for customers within mile of ferry violates law.

Cited in note (59 L. R. A. 548) on establishment, regulation, and protection of ferries.

49 L. R. A. 251, CAYE v. FABEL, 108 Ky. 124, 94 Am. St. Rep. 348, 55 S. W. 887.

Who is a common carrier.

Cited in Collier v. Langan & T. Storage & Moving Co. 147 Mo. App. 726, 127 S. W. 435, holding that furniture mover is common carrier; Southern R. Co. v. Com. 116 Ky. 911, 77 S. W. 207, holding that a wagon line which hauled for everybody that applied, between a railroad station and an inland town, was a common carrier.

Cited in note (21 L.R.A.(N.S.) 189) on cartman, etc., as common carrier.

Carrier's lien.

Cited in Thomas v. Frankfort & C. R. Co. 116 Ky. 884, 76 S. W. 1093, holding that a carrier has a lien upon the goods transported by it, for the usual charges of such transportation and the charges advanced to the previous connecting carrier; Bennett Bros. Lumber Co. v. Robinson, 87 C. C. A. 90, 159 Fed. 915, on the same point.

Cited in footnote to Southern R. Co. v. Lockwood Mfg. Co. 68 L.R.A. 227, which holds carrier's lien for subsequent demurrage charges not cut off by placing car of lumber on team track to be conveniently unloaded by consignee.

49 L. R. A. 252, NEWPORT v. MASONIC TEMPLE ASSO. 108 Ky. 333, 56 S. W. 405.

Exemption from taxation.

Cited in Com. v. Lexington Cemetery Co. 114 Ky. 170, 70 S. W. 280, holding that funds of a cemetery company derived from the sale of lots, are not exempt from taxation under the statute exempting cemeteries not held for private or corporate gain.

Cited in note (16 L.R.A.(N.S.) 837) on effect of devotion of property otherwise nontaxable to purposes of particular society.

Distinguished in Com. v. Young Men's Christian Asso. 116 Ky. 723, 105 Am. St. Rep. 234, 76 S. W. 522, holding that a Young Men's Christian Association which was used for religious service, was exempt from taxation.

What constitutes charity exempt from taxation.

Cited in Fitterer v. Crawford, 157 Mo. 59, 50 L. R. A. 193, 57 S. W. 532, holding masonic building not exclusively used for lodge purposes not exempt from taxation; Widows' & Orphans' Home v. Bosworth, 112 Ky. 202, 65 S. W. 591, holding that an institution to provide a home for the orphans and widows of deceased Odd Fellows of the state, was a private charity and not exempt from taxation; Widows' & Orphans' Home v. Com. 126 Ky. 401, 16 L.R.A.(N.S.) 847, 103 S. W. 354 (dissenting opinion), on the same point.

Cited in footnote to Gray Street Infirmary v. Louisville, 55 L. R. A. 270, which denies exemption of infirmary maintained by proprietors of medical college.

Bequests for charitable uses.

Cited in Mason v. Perry, 22 R. I. 490, 48 Atl. 671, holding bequest to masonic lodge for general lodge purposes, permitting use of fund occasionally for entertainments, invalid.

49 L. R. A. 255, HIGHTOWER v. BAILEY, 108 Ky. 198, 94 Am. St. Rep. 350, 56 S. W. 147.

Mechanics' lien laws.

Cited in Browinski v. Pickett, 113 Ky. 423, 68 S. W. 408, upholding lien on building in favor of one furnishing materials to contractor for the building, although contractor had been paid; Great Southern Fire Proof Hotel Co. v. Jones, 193 U. S. 550, 48 L. ed. 788, 24 Sup. Ct. Rep. 576, upholding statute giving lien on property of owner to subcontractors, laborers, and those who furnish machinery, material, or title to contractor; Caden v. Allen, Clark, Peters Hardware Co. 147 Ky. 433, 144 S. W. 66, holding it no defense to enforcement of materialman's lien for roofing that contractor who purchased it was himself dealer in same material; Prince v. Neal-Millard Co. 124 Ga. 888, 53 S. E. 761, 4 Ann. Cas. 615, holding that the statute giving the materialman who furnishes material to a contractor, a lien upon the real estate improved with such material is con-

stitutional; Allen County v. United States Fidelity & G. Co. 122 Ky. 833, 93 S. W. 44, holding that the materialmen could acquire a lien upon the court house which was being improved by the contractor to whom the materials were furnished; Schnute, H. & Co. v. Sweeney, 136 Ky. 777, 125 S. W. 180, holding that the lien law gives a lien to every one who performs labor or furnishes material for the improvement of real estate, by contract, whether named in the contract or not, or whether the owner has knowledge that he is furnishing the work or material; Carson v. Shelton, 128 Ky. 251, 15 L.R.A.(N.S.) 511, 107 S. W. 793, holding that a person furnishing groceries to a subcontractor to supply his boarding house where he boarded his men, were not supplies within the meaning of the lien law, entitling the person to a lien upon the railroad which the contractor was engaged in building.

49 L. R. A. 258, TAYLOR v. BECKHAM, 108 Ky. 278, 94 Am. St. Rep. 357, 56 S. W. 177.

Writ of error to United States Supreme Court dismissed for want of jurisdiction in 178 U. S. 548, 44 L. ed. 1187, 20 Sup. Ct. Rep. 890.

Succession upon resignation of governor.

Cited in footnote to State, Clifford, Prosecutor, v. Heller, 57 L. R. A. 312, which denies right of president of senate to act, after resignation, as governor in place of governor resigning office.

Elections and election contests.

Cited in Powers v. Com. 110 Ky. 402, 53 L. R. A. 247, footnote p. 245, 61 S. W. 735, holding judgment of legislature in contest for office of governor, final, conclusive, and self-executing; Pratt v. Breckinridge, 112 Ky. 50, 65 S. W. 136 (dissenting opinion), majority holding act regulating elections, so far as providing for appointment of election commissioners by legislature, unconstitutional; Rice v. Palmer, 78 Ark. 461, 96 S. W. 396 (dissenting opinion), on the determination of the proper adoption of a constitutional amendment as a judicial question for the courts.

Cited in footnotes to Davis v. Hambrick, 51 L. R. A. 671, which holds decision of state central committee between bodies claiming to be executive committee of county, conclusive on courts; Moody v. Trimble, 50 L. R. A. 810, which holds decision of dispute between contesting candidates of party for Congress by governing authority in state, conclusive on courts.

Judicial questions.

Cited in Henderson v. Lexington, 132 Ky. 407, 22 L.R.A.(N.S.) 35, 111 S. W. 318, on the right of the courts to inquire into the motive which induced legislative action.

Distinguished in Zimmerman v. Brooks, 118 Ky. 101, 80 S. W. 443, holding that it is a judicial question for the courts to determine whether the legislature in creating a new county has complied with the constitutional requirements.

Abatement of election contest by death of party.

Cited in Galvin v. Shafer, 130 Ky. 567, 113 S. W. 485, holding that an election contest abates upon the death of the contestee.

Impeachment of enrolled bill by legislative journals.

Cited in Duncan v. Combs, 131 Ky. 338, 115 S. W. 222, holding that an enrolled bill can not be impeached by the journals of either house.

Power of governor to convoke legislature at another place than capitol.

Cited in Coyle v. Smith, 28 Okla. 124, 113 Pac. 944, holding that action of

governor in convoking legislature at another place than seat of government, concurred in by legislature, is not subject to review by court.

49 L. R. A. 270, SEASONGOOD, S. K. & CO. v. TENNESSEE & O. RIVER TRANSP. CO. 21 Ky. L. Rep. 1142, 54 S. W. 193.

Compulsory service by common carrier.

Cited in Louisville & N. R. Co. v. Central Stock Yards Co. 133 Ky. 173, 30 Ky. L. Rep. 18, 97 S. W. 778, holding that railroad may be required to transport live stock by delivering car to connecting carrier.

Cited in footnote to Memphis News Pub. Co. v. Southern R. Co. 63 L. R. A. 150, which holds train run by carrier at solicitation of newspaper publisher guaranteeing daily revenue of specified amount not chartered train justifying carrier's exclusion of other publishers from its use.

49 L. R. A. 272, CASSARD v. TRACY, 52 La. Ann. 835, 27 So. 368.

Effect of law changing remedy.

Approved in Norwood v. Wimby. 104 La. 648, 29 So. 311, dismissing appeal from judgment upon reconventional demand where jurisdiction over main demand conferred upon court of appeal by Constitution adopted subsequent to judgment; State v. Fourchy, 106 La. 754, 31 So. 325, holding that legislature may change procedure and forum of disbarment proceedings after right of action accrues.

Cited in Monteleone v. Seaboard F. & M. Ins. Co. 126 La. 810, 52 So. 1032, holding insurance law as to proofs of loss applicable to policies issued before it went into effect; State v. Grunewald, 123 La. 537, 49 So. 162, on the validity of retrospective laws.

49 L. R. A. 285, SWEDISH AMERICAN NAT. BANK v. DICKINSON CO. 6 N. D. 222, 69 N. W. 455.

Introducing new matter by supplemental pleadings.

Approved in Allen v. Davenport, 115 Iowa, 25, 87 N. W. 743, holding new and distinct cause of action cannot be introduced by exercising right to file amended petition alleging newly discovered facts.

Cited in Cassidy v. Saline County Bank, 7 Ind. Terr. 556, 104 S. W. 829, holding that by a supplemental complaint it could not be set up that since the commencement of the action upon an open account, a judgment had been recovered thereon in another state.

Cited in footnote to Schwab v. Schwab, 52 L. R. A. 414, which denies right to introduce by supplemental bill, facts showing grounds for absolute divorce.

Cited in note (49 L. R. A. 285) on right to set up judgment in other court by amendment or supplemental complaint in pending action.

Merger of cause of action and judgment.

Cited in Colonial & U. S. Mortg. Co. v. Northwest Thresher Co. 14 N. D. 169, 70 L.R.A. 824, 116 Am. St. Rep. 642, 103 N. W. 915, 8 Ann. Cas. 1160 (dissenting opinion), on the merger of the cause of action into the judgment thereon.

49 L. R. A. 294, MAINE WATER CO. v. WATERVILLE, 93 Me. 586, 45 Atl. 830.

Municipal water supply.

Cited in note (61 L. R. A. 67) on establishment and regulation of municipal water supply.

Power of municipality to exempt property from taxation.

Cited in note (29 L.R.A.(N.S.) 186) on power of municipality to exempt property from taxation.

49 L. R. A. 301, HOWARTH v. LOMBARD, 175 Mass. 570, 56 N. E. 888.

Followed without discussion in King v. Vinal, 175 Mass. 581, 56 N. E. 1135.

Contractual liability founded on statutory requirements.

Cited in Pulsifer v. Greene, 96 Me. 446, 52 Atl. 921, sustaining action against stockholder in his own domicil to enforce liability under Kansas statutes as also being contractual; Aldrich v. McClaine, 45 C. C. A. 634, 106 Fed. 793, holding liability of stockholder in insolvent national bank to respond to assessment, contractual, though founded on national banking act; Mandell Bros. v. Fogg, 182 Mass. 584, 94 Am. St. Rep. 667, 66 N. E. 198, refusing to hold wife liable under foreign statute for goods purchased by her husband without her knowledge, while temporarily in foreign state; Carter v. Samuel Hano Co. 72 N. H. 551, 58 Atl. 243, upholding power of court of equity to make assessment on stockholders, if necessary, where stockholders liable to creditors; Spargo v. Converse, 112 C. C. A. 337, 191 Fed. 825, holding that assessment is valid against estate of stockholder, though made after his death.

Enforcement of stockholder's double liability.

Cited in Elson v. Wright, 134 Iowa, 637, 112 N. W. 105, holding that the proper method of enforcing the double liability of a stockholder is by an assessment in a receivership proceeding; Miller v. Spaulding, 107 Me. 272, 78 Atl. 358, holding that creditor cannot sue for all in another state to enforce double liability of stockholders.

Enforcement of foreign statute.

Cited in Carey v. Baxter, 201 Mass. 529, 88 N. E. 12, holding that an action may be maintained in Massachusetts for damages for death by wrongful act occurring in New York through the negligence of the defendant, though the statute of the former state giving the right of action differs from the local statutes.

Enforcing stockholder's liability under foreign statutes.

Approved in Broadway Nat. Bank v. Baker, 176 Mass. 295, 57 N. E. 603, holding recovery of judgment in jurisdiction of stockholder's residence unnecessary to enforcement of liability when all necessary preliminary proceedings had been taken in Kansas; Pfaff v. Gruen, 92 Mo. App. 575, sustaining creditor's action against stockholder of foreign corporation in his own domicil to enforce decreed assessment; Anglo-American Land, Mortg. & Agency Co. v. Dyer, 181 Mass. 595, 92 Am. St. Rep. 437, 64 N. E. 416, sustaining action against stockholder of foreign corporation in his own domicil to recover assessment on shares not fully paid; Nashua Sav. Bank v. Anglo-American Land Mortg. & Agency Co. 189 U. S. 232, 47 L. ed. 787, 23 Sup. Ct. Rep. 517, holding it unnecessary to prove express promise to pay under foreign statute providing that moneys payable by members of corporation shall be deemed debt due from such member; Kirtley v. Holmes, 52 L. R. A. 743, footnote p. 738, 46 C. C. A. 107, 107 Fed. 6, sustaining right to enforce stockholder's liability in courts of his domicil; Bernheimer v. Converse, 206 U. S. 532, 51 L. ed. 1175, 27 Sup. Ct. Rep. 755, holding that a chancery receiver may sue in a foreign jurisdiction to enforce the statutory liability of stockholders, where he is the quasi-assignee of the corporation and a representative of the creditors, under the statute.

Cited in Goss v. Carter, 84 C. C. A. 402, 156 Fed. 751, holding that where the receiver represents all the creditors entitled to share in the fund, he may

sue in a foreign state to enforce the stockholder's liability out of which the fund is to be created; Clark v. Knowles, 187 Mass. 39, 105 Am. St. Rep. 376, 72 N. E. 352, 2 Ann. Cas. 26; Miller v. Smith, 26 R. I. 152, 66 L.R.A. 477, 106 Am. St. Rep. 699, 58 Atl. 634; Abbott v. Goodall, 100 Me. 235, 60 Atl. 1030,—holding that a suit in equity against the resident stockholders alone can not be maintained by the creditors of a foreign corporation to enforce the double liabilities of the stockholders under the statute of the domicil of the corporation; Putman v. Misochi, 189 Mass. 423, 109 Am. St. Rep. 648, 75 N. E. 956, 4 Ann. Cas. 733, holding that the stockholder's liability is contractual and may be enforced in other jurisdictions, so that where a stockholder of a Main corporation had been compelled to pay a judgment against the corporation he could maintain a suit in Massachusetts against the others for contribution.

Cited in footnotes to Bank of China v. Morse, 56 L. R. A. 139, which holds assessment under English statute in proceeding to wind up corporation will not be enforced here against resident; Finney v. Guy, 49 L. R. A. 486, which holds action to enforce stockholder's liability not maintainable out of state; Blair v. Newbegin, 58 L.R.A. 644, which sustains right to enforce stockholder's liability in other state without making corporation a party; Miller v. Smith, 66 L.R.A. 473, which holds that courts of state of stockholder's residence will not take jurisdiction of suit by corporate creditor on behalf of all to enforce his statutory liability to contribute toward payment of corporate debts in advance of judicial determination of his proportionate liability where laws of state of incorporation contemplate pro rata contribution to be enforced in equitable proceeding against all stockholders.

Cited in note (33 L.R.A.(N.S.) 898, 899, 904, 905, 907, 910) on right to enforce stockholders' liability outside of state of incorporation.

Distinguished in Miller v. Aldrich, 202 Mass. 114, 132 Am. St. Rep. 480, 88 N. E. 441, holding that where the foreign statute merely establishes a rule of practice, the stockholder's liability under the statute can not be enforced in another state; Hunt v. Whewell, 122 Wis. 38, 99 N. W. 599, holding that an order of a Minnesota court directing the payment of an assessment can not be enforced in Wisconsin against a resident of that state, the same as a judgment of former state.

Effect of judicial determination upon nonresident stockholder.

Approved in Straw & E. Mfg. Co. v. L. D. Kilbourne Boot & Shoe Co. 80 Minn. 135, 83 N. W. 36, holding foreign stockholders bound by judicial determination as to amount of corporate assets and liabilities, and assessment per share against stock generally; Commonwealth Mut. F. Ins. Co. v. Hayden Bros. 61 Neb. 457, 85 N. W. 443, holding judicial assessment upon foreign stockholder of insolvent corporation binding only as to amount of assets and liabilities and necessity for assessment ordered.

Cited in Converse v. Ayer, 197 Mass. 453, 84 N. E. 98, holding that the judgment of the courts of the corporation's domicile imposing certain liabilities upon the stockholders is conclusive in an action in a foreign state to enforce the statutory liability; Francis v. Hazlett, 192 Mass. 142, 116 Am. St. Rep. 230, 78 N. E. 405, holding that nonresident stockholders of a corporation are concluded by the judgment appointing a receiver, and finding that the corporation was wholly insolvent, and authorizing the receiver to bring suit against the stockholders; King v. Cochran, 76 Vt. 148, 104 Am. St. Rep. 922, 56 Atl. 667, holding that the stockholder's liability is contractual and may be enforced in another state and the stockholders will be bound by the decrees of the court of the domicile fixing the liability; Hamilton v. Simon, 178 Fed. 134, on the conclusive-

ness of the assessment upon the stockholders; Timberlake v. Supreme Commandery, U. O. G. C. 208 Mass. 419, 36 L.R.A.(N.S.) 599, 94 N. E. 685, on effect on nonresident beneficiaries, not parties to action, of judgment against fraternal insurance company.

Receiver's right to enforce corporate claims.

Approved in Tompkins v. Blakey, 70 N. H. 588, 49 Atl. 111; Childs v. Cleaves, 95 Me. 516, 50 Atl. 714; Fish v. Smith, 73 Conn. 383, 84 Am. St. Rep. 161, 47 Atl. 711, — sustaining action by receiver of foreign corporation, as such, against stockholder in his own domicil to enforce statutory liability upon stock; Murray v. Boston Ice Co. 180 Mass. 164, 61 N. E. 1001, holding that receiver cannot sue on corporation claim in his own name outside jurisdiction of appointment, unless actually or virtually assignee of such claim; State v. German Sav. Bank, 65 Neb. 421, 91 N. W. 414, upholding power of receiver of insolvent bank to compromise doubtful claims against stockholders for double liability.

Cited in Converse v. Hamilton, 224 U. S. 260, 56 L. ed. 755, 32 Sup. Ct. Rep. 415, holding that receiver can enforce in another state stockholder's double liability; Irvine v. Bankard, 181 Fed. 210, holding that receiver may enforce stockholder's liability in Federal court in another state.

Cited in notes (4 L.R.A.(N.S.) 826) on power of receiver to sue out of jurisdiction of appointment; (31 L.R.A.(N.S.) 368) on right of receiver, assignee, or trustee to recover statutory added liability of corporate shareholder; (47 L. ed. U. S. 381) on right of receiver to enforce liability of corporate stockholder outside state of appointment.

Jurisdiction over receivers.

Cited in Tobin v. Central Vermont R. Co. 185 Mass. 341, 70 N. E. 431, holding that the state court would not take jurisdiction of an action for personal injuries caused by the negligence of the receiver of a railroad corporation, whose property has been sold to the defendants under a decree of the Federal courts.

49 L. R. A. 308, SHAW v. CHICAGO & G. T. R. CO. 123 Mich. 629, 81 Am. St. Rep. 230, 82 N. W. 618.

Liability for mail crane frightening horse.

Cited in footnote to Cleghorn v. Western R. Co. 60 L. R. A. 269, which holds railroad company liable for frightening of horse by mail crane erected in or beside highway.

Injuries due to throwing mail pouches from moving trains.

Cited in Carver v. Minneapolis & St. L. R. Co. 120 Iowa, 348, 94 N. W. 862, holding carrier liable for injury to mail carrier struck, while on station platform, by mail pouch thrown by mail clerk from moving train; Huddleston v. St. Louis, I. M. & S. R. Co. 90 Ark. 383, 119 S. W. 280, holding that it would be presumed that the injury to a person by being struck by a mail pouch thrown from a passing train, was occasioned by the negligence of the carrier and the burden was on it to prove the contrary.

Liability of railroad company for injuries from objects thrown from moving train.

Cited in St. Louis Southwestern R. Co. v. Arnold, 32 Tex. Civ. App. 276, 74 S. W. 819, holding that a railroad company was liable to a track walker who was injured by timbers being thrown from a moving train by the employees of a contractor who was building the fence along the right of way, where the com-

pany knew or could have known that the timbers were to be thrown from the train.

Cited in note (6 L.R.A.(N.S.) 581) on liability of railroad for injuries by objects thrown from moving train.

Excessive verdict.

Cited in Phelan v. Granite Bituminous Paving Co. 227 Mo. 703, 127 S. W. 318, holding that a judgment of $7,500 for the loss of an eye was not an excessive verdict.

Reducing excessive judgment.

Cited in Carton v. Day, 157 Mich. 45, 121 N. W. 295, holding that where a motion to open a default judgment it appeared that there was no merit in the defense up to a certain amount, it was proper for the court to deny the motion on the condition that the plaintiff reduce the judgment to that amount.

Liability of railroad for injury to passenger at station.

Cited in note (13 L.R.A.(N.S.) 589) on liability of railroad for negligent injury to passenger at station by persons there to transact business.

49 L. R. A. 311, BACON v. REICH, 121 Mich. 480, 80 N. W. 278.

49 L. R. A. 315, WHEELER v. TRADERS' DEPOSIT BANK, 107 Ky. 653, 55 S. W. 552.

Liability of a surety maker of note on forged note.

Cited in Fretwell v. Carter, 78 S. C. 536, 59 S. E. 639, holding that one who signs a note as a maker and as a surety, he is bound to a bona fide holder, even though the signature of another maker is a forgery, and also citing annotation on this point.

Cited in note (13 L.R.A.(N.S.) 426) on forgery of part of signatures on note as defense against bona fide holder by others.

49 L. R. A. 319, BRAUN v. NORTHERN P. R. CO. 79 Minn. 404, 79 Am. St. Rep. 497, 82 N. W. 675, 984.

Judicial notice of custom.

Cited in Taylor v. Grand Lodge, A. O. U. W. 101 Minn. 77, 11 L.R.A.(N.S.) 98, 118 Am. St. Rep. 606, 111 N. W. 919, 11 Ann. Cas. 260, holding court would take judicial notice of the custom of life insurance companies to require as a condition precedent to the issuance of an insurance policy as a properly executed application therefor.

Sufficiency of tender of fare to prevent ejection.

Cited in note (31 L.R.A.(N.S.) 996) on sufficiency of tender of fare to prevent ejection.

49 L. R. A. 322, ILLINOIS C. R. CO. v. SIMS, 77 Miss. 325, 27 So. 527.

Imputed negligence of bailee to bailor.

Cited in notes (17 L.R.A.(N.S.) 926) on imputing negligence of bailee to bailor in action by latter against third person for destruction of property; (110 Am. St. Rep. 289) on imputed negligence of bailee to bailor.

49 L. R. A. 323, UTLEY v. HILL, 155 Mo. 232, 78 Am. St. Rep. 569, 55 S. W. 1091.

Followed without discussion in Smith v. Hill, 155 Mo. 278, 55 S. W. 1132; Haas v. Garnett, 155 Mo. 568, 55 S. W. 1132; Boatmen's Bank v. Garnett, 155 Mo. 569, 55 S. W. 1132.

Liability of officers of corporation for non-feasance.

Cited in Ray County Sav. Bank v. Hutton, 224 Mo. 71, 123 S. W. 47, holding that the vice-president of a corporation is not liable for mere non-feasance, without proof of actual fraud on his part; Davenport v. Prentice, 126 App. Div. 460, 110 N. Y. Supp. 1056, holding that a charge that it was the duty of the president of the bank to have such knowledge of the contents of the reports to the superintendent of banking, that he can truthfully make oath that the reports were true in all respects, was erroneous where the banking law required the oath to be made to the best of his knowledge and belief.

Liability for receiving deposits in an insolvent bank.

Cited in State v. Dunning, 130 Iowa, 682, 107 N. W. 927, holding that one may not be convicted under the statute for receiving deposits in an insolvent bank, unless knowledge is shown, and the fact of insolvency is not sufficient to give knowledge even though it was not known because of negligence.

Liability of directors.

Followed without discussion in Union Nat. Bank v. Hill, 155 Mo. 279, 55 S. W. 1133, as to liability of directors for negligent discharge of duties.

Approved in Stone v. Rottman, 183 Mo. 570, 82 S. W. 76, holding that aside from the statutory liability, the directors of a corporation are not liable to creditors for nonfeasance.

Cited in Mason v. Moore, 73 Ohio St. 294, 4 L.R.A.(N.S.) 606, 76 N. E. 932, 4 Ann. Cas. 240, holding that the directors are not liable for the acts of the cashier, unless the loss is the result of their own neglect of duty; Yates v. Jones Nat. Bank, 206 U. S. 180, 51 L. ed. 1015, 27 Sup. Ct. Rep. 638, holding that the directors of a bank are not liable for false representations in the report of the bank's financial condition, unless they knowingly participate or assent to the misrepresentations.

Cited in notes (4 L.R.A.(N.S.) 600) on liability of directors for default or negligence of cashier; (6 L.R.A.(N.S.) 872) on false statements in required reports to public officers as basis of common law action by individuals for deceit against officers or directors.

Exclusiveness of statutory penalties.

Cited in Harrod v. Latham Mercantile & Commercial Co. 77 Kan. 470, 95 Pac. 11, holding that the penalties provided against unauthorized insurance companies doing business within the state are not exclusive so as to preclude a party who has suffered a loss because of a violation of the statute, from suing for damages; Jones v. Horn, 104 Mo. App. 711, 78 S. W. 638, holding contra; Casey v. St. Louis Transit Co. 116 Mo. App. 251, 91 S. W. 419, holding that under the statute imposing a penalty of $5,000 for death by wrongful act, a complaint asking for a less sum, does not state a cause of action.

Enlarging prescribed penalties.

Approved in Paddock v. Missouri P. R. Co. 155 Mo. 543, 56 S. W. 453, holding that affreightment contract cannot be declared void because company failed to post schedule of maximum rates, as statutory penalty is exclusive; Holwerson v. St. Louis & Suburban R. Co. 157 Mo. 250, 50 L. R. A. 861, 57 S. W. 770, holding that penal ordinance for violation of general ordinance as to stopping street cars cannot be constructively enlarged so as to confer right of action upon person injured by such violation.

Cited in Webb v. Rockefeller, 195 Mo. 65, 6 L.R.A.(N.S.) 876, 93 S. W. 772, holding that an action would not lie against the incorporators of a bank, because of false statements in the articles of association as to the amount of

paid up capital stock, since such statements are not made for the benefit of creditors.

Reviewing finding of referee.

Approved in Roth v. Continental Wire Co. 94 Mo. App. 265, 68 S. W. 594, holding that appellate court may reverse or modify findings upon compulsory reference when clearly resulting from mistake or against weight of evidence; Smith v. Baer, 166 Mo. 405, 66 S. W. 166, holding that appellate court will not disturb finding of fact on compulsory reference when supported by substantial evidence; Snoqualmi Realty Co. v. Moynihan, 179 Mo. 638, 78 S. W. 1014, holding that appellate court will not interfere with referee's finding of fact where sharp conflict of evidence exists; Citizens' Nat. Bank v. Donnell, 172 Mo. 402, 72 S. W. 925, holding that appellate court will refuse to interfere with referee's finding of facts, unless without substantial evidence to support it.

Cited in Fullerton Lumber Co. v. Massard, 144 Mo. App. 65, 128 S. W. 831; Link v. Hathway, 143 Mo. App. 511, 127 S. W. 913,—holding that it is the duty of the trial court to review the findings of facts by the referee, and that it may set aside the findings.

Relation of contract of guaranty to main contract.

Cited in Mt. Calvary Church v. Albers, 174 Mo. 342, 73 S. W. 508, holding contract of guaranty under facts of case narrower than terms of principal contract.

Title of bank to deposits.

Cited in note (86 Am. St. Rep. 777) on title of bank to money deposited with it.

49 L. R. A. 337, THOMPSON v. WEST, 59 Neb. 677, 82 N. W. 13.

Effect of repealing statute upon pending action.

Followed in Provident Loan & T. Co. v. Brunner, 4 Neb. (Unof.) 49, 93 N. W. 144, holding that the repeal of the statute permitting the recovery of a deficiency judgment, did not affect actions then pending.

Approved in Patrick v. National Bank of Commerce, 63 Neb. 206, 88 N. W. 183, and Hanscom v. Meyer, 61 Neb. 801, 86 N. W. 381, holding pending actions unaffected by repeal of statute permitting recovery of deficiency judgments on mortgage foreclosure; Rushton v. Dierks Lumber Co. 2 Neb. (Unof.) 567, 89 N. W. 616, holding pending actions not affected by repeal of statutes permitting recovery of deficiency judgments; Merrill v. Miller, 2 Neb. (Unof.) 632, 89 N. W. 606, holding accrued causes of action not affected by repeal of statutes permitting recovery of deficiency judgments.

Cited in Wolff v. Phelps, 3 Neb. (Unof.) 514, 92 N. W. 143; Ritchey v. Seeley, 68 Neb. 122, 93 N. W. 977,—holding that the repeal of a statute permitting the recovery of a deficiency judgment did not affect judgments then pending; Sanford v. Anderson, 69 Neb. 254, 95 N. W. 632; Burrows v. Vanderbergh, 69 Neb. 46, 95 N. W. 57,—holding same as to mortgages given before the repeal of the act; Mann v. Burkland, 68 Neb. 271, 94 N. W. 116, holding that the amendment of a statute regulating the recovery of deficiency judgments did not affect an action then pending.

Cited in footnote to Cleveland, C. C. & St. L. R. Co. v. Wells, 58 L. R. A. 651, which sustains statute repealing act allowing penalties, made applicable to pending actions.

Burden of proof as to boni fides holder of negotiable peper.

Cited in Wyman v. Searle, 88 Neb. 36, 128 N. W. 801, on burden of proof of bona fides of holder of coupons of irrigation bonds.

Distinguished in First Nat. Bank v. Moore, 78 C. C. A. 581, 148 Fed. 958, holding that the rule in the Federal courts is, that the burden is upon the defendant in an action upon a negotiable note to prove knowledge or bad faith upon the part of the holder of the note, claiming to be a bona fide purchaser for value before maturity.

Power of bank to execute undertakings.

Approved in Sturdevant Bros. v. Farmers & M. Bank, 62 Neb. 476, 87 N. W. 156, holding incorporated state bank unauthorized to pledge credit, as matter of accommodation, by executing undertakings in judicial proceedings.

Rights of religious corporations to hold real estate.

Cited in Eis v. Croze, 149 Mich. 74, 112 N. W. 943, on the right of a religious corporation to hold real estate.

Power of board of trustees to bind a religious society.

Cited in First Presbyterian Church v. McColly, 126 Ill. App. 336, holding that a trespass committed by the trustees of a religious corporation is not the trespass of such corporation, unless authorized through its board of trustees at a meeting.

49 L. R. A. 343, HIGH SCHOOL DIST. NO. 137 v. LANCASTER COUNTY, 60 Neb. 147, 83 Am. St. Rep. 525, 82 N. W. 380.

Cited in School Dist. v. Cuming County, 81 Neb. 607, 116 N. W. 522, on the history of the legislation involved.

Necessity of uniform valuation.

Approved in State *ex rel.* Young v. Osborn, 60 Neb. 419, 83 N. W. 357, holding valuation of property for taxation purposes must be uniform; State *ex rel.* Bee Bldg. Co. v. Savage, 65 Neb. 744, 91 N. W. 716, holding that rule of uniformity applies to valuation of property for purpose of raising revenue as well as to rate of taxation.

Cited in State ex rel. Morton v. Back, 72 Neb. 410, 69 L.R.A. 453, 100 N. W. 952, holding that the rule of uniformity in taxation must be applied to the assessment of the proportional share of railway property valued and assessed by the state board, and situated in a city and subject to taxation for municipal purposes; Western U. Teleg. Co. v. Omaha, 73 Neb. 542, 103 N. W. 84, holding that the statutes providing for the valuation of franchises and property of a corporation must not prevent uniformity between the valuation of them and of property in general.

Cited in note (60 L. R. A. 369) on constitutional equality in United States in relation to corporate taxation.

Free admission of nonresident pupils.

Cited in footnote to Edmondson v. Board of Education, 58 L. R. A. 170, which sustains statute requiring admission, free of charge of children within half mile of city limits, to city schools receiving state aid.

Cited in note (24 L.R.A.(N.S.) 1105) on validity of statute giving nonresident right to attend school without charge.

Distinguished in Wilkinson v. Lord, 85 Neb. 139, 24 L.R.A.(N.S.) 1107, 122 N. W. 699, sustaining the validity of a statute providing for free high schools, and the admission of pupils from other districts upon the payment of seventy-five cents a week, and if the school district refuses to vote taxes to meet the obligations, the school board to furnish data to county clerk for a levy.

49 L. R. A. 347, PROBATE JUDGE v. SULLOWAY, 68 N. H. 511, 44 Atl. 720.

Debts due from administrator or executor.

Cited in Stewart v. Hurd, 107 Me. 465, 32 L.R.A.(N.S.) 675, 78 Atl. 838, Ann. Cas. 1912 D, 662, holding that appointment by mortgagee of mortgagor as executor does not discharge mortgage: United Brethren v. Akin, 45 Or. 250, 66 L.R.A. 656, 77 Pac. 748, 2 Ann. Cas. 353, holding that the executor was chargeable with the amount of a note executed to the testator during his lifetime, though the executor was insolvent at the time of his appointment and remained so.

Cited in notes (26 L.R.A.(N.S.) 414, 419) on effect on debt of appointment of debtor as executor or administrator; (112 Am. St. Rep. 407, 411) on liability for debt of executor or administrator owing to the estate.

Limited in Wachsmuth v. Penn Mut. L. Ins. Co. 241 Ill. 412, 26 L.R.A.(N.S.) 415, 132 Am. St. Rep. 226, 89 N. E. 787, holding that where a debtor of an estate is appointed the executor, the debt is considered paid if the debtor is solvent at the time of his appointment, though he afterward becomes insolvent.

Liability of surety on bond.

Cited in State v. Corron, 73 N. H. 454, 62 Atl. 1044, 6 Ann. Cas. 486, holding that sureties upon a liquor dealer's bond were liable for any judgment enforceable against the dealer.

Cited in footnotes to Abshire v. Salyer, 56 L. R. A. 936, which holds sureties on guardian's bond given to obtain release from future liabilities of surety on prior bond, liable for past defalcations; *Re* Howell, 61 L. R. A. 314, which holds sureties on insolvent administrator's bond not liable for debt owed estate by administrator at time of appointment.

Cited in notes (52 L.R.A. 188) on effect against surety on official bond of judgment against officer; (40 L.R.A.(N.S.) 710) on effect upon surety of judgment against principal.

Explained in Sanders v. Dodge, 140 Mich. 238, 112 Am. St. Rep. 399, 103 N. W. 597, holding that if the executor is insolvent at the time of his appointment and remains so during the administration of the estate, the sureties are not liable for the personal debt of the executor.

Necessity of a decree of the probate court before action on bond.

Cited in State v. Carron, 73 N. H. 458, 62 Atl. 1044, 6 Ann. Cas. 486, holding by analogy that a decision of the state board revoking and cancelling a liquor license was not necessary in an action against his sureties upon his bond, to make the judgment of the state board conclusive upon the sureties.

Who bound by judgment.

Cited in footnote to Allred v. Smith, 65 L.R.A. 924, which holds judgment in action quasi in rem binding on the parties only.

49 L. R. A. 351, ALLEN v. GERARD, 21 R. I. 467, 79 Am. St. Rep. 816, 44 Atl. 592.

Attaching property in custody of court.

Approved in Corbitt v. Farmers' Bank, 114 Fed. 604, holding money paid into Federal court pending litigation in regard thereto not subject to attachment by other court; Dale v. Brumbly, 64 L. R. A. 112, which holds that order of court to pay sum in its custody to one entitled to receive it does not make it subject to attachment.

Cited in Shelton v. Wolthausen, 80 Conn. 605, 125 Am. St. Rep. 131, 69 Atl. 1030, on the right to attach funds in the custody of the law; First Nat. Bank

v. Londonderry Min. Co. 50 Colo. 90, 114 Pac. 313, holding that no separate or outside suit can be brought to disturb funds in custody of court.

Cited in footnotes to McAlmond v. Bevington, 53 L.R.A. 597, which holds money deposited with justice by third person as bail not subject to garnishment for prisoner's debt; Dale v. Brumbly, 64 L.R.A. 112, which holds money in hands of clerk of court not subject to attachment.

49 L. R. A. 353, RYAN v. CUDAHY, 157 Ill. 108, 48 Am. St. Rep. 305, 41 N. E. 760.

Right of associations to make rules for the government of its members.

Cited in Louisville Bd. of Fire Underwriters v. Johnson, 133 Ky. 810, 24 L.R.A. (N.S.) 158, 119 S. W. 153, holding that voluntary and other associations may adopt reasonable rules for the government of its members and enforce compliance with them.

Annotation cited in Pearson v. Anderburg, 28 Utah, 500, 80 Pac. 307, on the validity of a rule requiring the member of an association to exhaust his remedies in the tribunals of the association before bringing action in the courts.

Cited in note (2 L.R.A.(N.S.) 673) on validity of rule of board of trade requiring arbitration of disputes.

Conclusiveness of decisions of tribunals of associations or corporations.

Cited in Bartlett v. L. Bartlett & Son Co. 116 Wis. 464, 93 N. W. 473, holding that court will enjoin expulsion of member from chamber of commerce where association tribunal, in reaching its conclusion, ignored its own laws; Gaines v. Farmer, 55 Tex. Civ. App. 608, 119 S. W. 874, holding that court cannot determine regularity and result of election of officers of benevolent association; Pacaud v. Waite, 218 Ill. 146, 2 L.R.A.(N.S.) 677, 75 N. E. 779, holding that the rule providing for the appointment of a committee to decide a dispute between the members of a board of trade, was a valid one, and the decision of the committee was binding upon the members, in the absence of fraud; Champion v. Hannahan, 138 Ill. App. 399, holding the equity has jurisdiction to determine the validity of an amendment increasing the amount and manner of enforcing payment of dues; White Star Min. Co. v. Hultberg, 220 Ill. 623, 77 N. E. 327 (dissenting opinion), on the conclusiveness of the award of arbitrators.

Cited in footnote to Hembeau v. Great Camp, K. of M. 49 L. R. A. 592, which sustains agreement by members of voluntary benefit society that decision of its tribunals rejecting claim shall be conclusive.

Cited in notes (59 Am. St. Rep. 200) on remedy of members of associations by injunction; (68 Am. St. Rep. 860) on jurisdiction of equity over boards of trade.

— When pertaining to discipline.

Approved in People *ex rel.* Keefe v. Women's Catholic O. of F. 162 Ill. 86, 44 N. E. 401, denying mandamus to reinstate member of benefit society expelled for reasons of discipline; Board of Trade v. Weare, 105 Ill. App. 312; Board of Trade v. Riordan, 94 Ill. App. 305; Green v. Board of Trade, 174 Ill. 593, 49 L. R. A. 372, 51 N. E. 599, — denying injunction against trial of member of voluntary association for violation of reasonable by-law adopted for government and discipline; Board of Trade v. Nelson, 162 Ill. 439, 53 Am. St. Rep. 312, 44 N. E. 743, denying mandamus to reinstate member suspended by tribunal of board of trade according to rules assented to upon becoming member, when notified of proceedings.

Cited in People ex rel. Dodson v. Board of Trade, 224 Ill. 376, 79 N. E. 611, Affirming 125 Ill. App. 26, holding that the courts would not interfere by man-

damus to prevent a forfeiture of a membership in the board of trade according to a good and valid by-law of the association; Dickinson v. Board of Trade, 114 Ill. App. 307, holding that the expulsion of a member from the board of trade for violation of a valid rule of the board will not be prevented by the courts, although the court itself would not enforce the rule.

— When property rights involved.

Cited in Modern Woodmen v. Deters, 65 Ill. App. 372, holding that courts may examine proceedings of beneficiary associations to determine whether laws of the order have been complied with when property rights are involved; Nelson v. Board of Trade, 58 Ill. App. 415, holding that courts may review proceedings of quasi-judicial tribunal of corporations when property rights involved; Froelich v. Musicians Mut. Ben. Asso. 93 Mo. App. 389, sustaining injunction against expulsion of member by unauthorized proceedings, where property rights involved; Bank of Montreal v. Waite, 105 Ill. App. 380, holding that courts may review judgment of board of directors where property rights are imperiled.

— When pertaining to ecclesiastical matters.

Cited in footnotes to Hatfield v. De Long, 51 L. R. A. 751, which authorizes injunction against expulsion of church member by improperly organized tribunal; Travers v. Abbey, 51 L. R. A. 260, which holds that courts will not review removal of pastor by church officials; Trinity M. E. Church v. Harris, 50 L. R. A. 636, which holds consolidation of several churches by bishop's appointment of one pastor, binding on courts.

Cited in note (3 L.R.A.(N.S.) 862) on enjoining control, use of, or interference with, church property.

Annotation in 49 L. R. A. 353, referred to particularly in Hundley v. Collins, 131 Ala. 240, 90 Am. St. Rep. 33, 32 So. 575, denying mandamus to restore person to membership in church.

Right to expel a member of an association.

Cited in Federal L. Ins. Co. v. Risinger, 46 Ind. App. 149, 91 N. E. 533, holding that insurance company cannot expel member without notice.

Annotation cited in Sabourim v. Lippe, 195 Mass. 481, 81 N. E. 282, on the right to expel a member of an association without notice.

49 L. R. A. 365, GREEN v. BOARD OF TRADE, 174 Ill. 585, 51 N. E. 599.

Validity of by-laws of associations.

Cited in Fraternal Aid Asso. v. Hitchcock, 121 Ill. App. 408, holding that a by-law of a benefit association authorizing an officer of such association to finally construe a by-law as to its liability and compelling a member to abide by his decision was invalid.

Annotation cited in McGuinness v. Court Elm City, No. 1, F. A. 78 Conn. 46, 60 Atl. 1023, 3 Ann. Cas. 209, on the validity of a by-law of fraternal benefit society prohibiting its members from resorting to the courts for redress of membership grievances.

Rights of association to discipline members.

Cited in People ex rel. Dodson v. Board of Trade, 224 Ill. 376, 79 N. E. 611, holding that the courts would not interfere by mandamus to prevent a forfeiture of a membership in the board of trade under a good and valid by-law of the association; Bostedo v. Board of Trade, 227 Ill. 91, 81 N. E. 42, Affirming 130 Ill. App. 568, holding that the courts will not interfere to prevent a board of trade from proceedings to try a member under a charge of violating by-laws for the government of its members, which conform to its charter; Moyse v.

New York Cotton Exchange, 70 Misc. 612, 129 N. Y. Supp. 173, on right of member of cotton exchange to aid of counsel on hearing of charges against him.

Cited in notes (59 Am. St. Rep. 207) on remedies of members of associations; (114 Am. St. Rep. 26) on right of corporation or association to expel members.

Conclusiveness of decisions of tribunals of associations or corporations.

Approved in Board of Trade v. Riordan, 94 Ill. App. 305, and Board of Trade v. Weare, 105 Ill. App. 301, denying injunction against trial of member of voluntary association for violation of reasonable by-law adopted for government and discipline.

Cited in notes (49 L.R.A. 365, 370, 371) on conclusiveness of decisions of tribunals of associations or corporations; (68 Am. St. Rep. 860, 870) on jurisdiction of equity over voluntary unincorporated associations.

49 L. R. A. 373, SUPREME LODGE, O. OF S. F. v. RAYMOND, 57 Kan. 647, 47 Pac. 533.

Decision in action to enjoin enforcement of judgment of district court in Supreme Lodge, O. of S. F. v. Carey, 57 Kan. 655, 47 Pac. 621.

Conclusiveness of decisions of tribunals of associations or corporations.

Approved in Cotter v. Grand Lodge, A. O. U. W. 23 Mont. 91, 57 Pac. 650, sustaining provision of by-laws of fraternal benefit order requiring beneficiary of deceased member to exhaust prescribed remedies within order as condition precedent to bringing action at law; Supreme Lodge, O. of S. F. v. Dey, 58 Kan. 283, 49 Pac. 74, sustaining action by member of fraternal benefit society to recover claim before resorting to appeal to tribunal of order permitted, but not required, by its laws; Modern Woodmen v. Taylor, 67 Kan. 374, 71 Pac. 806, holding that member of fraternal insurance association from whom clerk refused to receive dues must exhaust remedies of the order before resorting to courts.

Cited in Supreme Council, C. B. L. v. Grove, — Ind. —, 36 L.R.A.(N.S.) 917, 96 N. E. 159, holding void provision in benefit certificate making conclusive decision of association on right of member to benefit provided.

Cited in note (49 L. R. A. 373) on conclusiveness of decisions of tribunals of associations or corporations.

— Exhausting remedies provided by association before appeal to the state courts.

Annotation cited in Rabb v. Trevelyan, 122 La. 184, 47 So. 455, holding that by analogy, a book-maker who has been ruled off the turf by the proprietor of a race track, must exhaust all the remedies afforded by the Turf Association to which he belongs, before he can be heard in the state courts.

49 L. R. A. 381, BALTIMORE & O. R. CO. v. STANKARD, 56 Ohio St. 224, 60 Am. St. Rep. 745, 46 N. E. 577.

Conclusiveness of decisions of tribunals of associations or corporations.

Cited in Myers v. Jenkins, 63 Ohio St. 119, 81 Am. St. Rep. 613, 57 N. E. 1089, Reversing in part 16 Ohio C. C. 554, holding that member of Independent Order of Odd Fellows can resort to courts to recover benefits only when lodge refuses or neglects to determine right thereto in substantial accordance with laws of the order, or to pay same when so determined; Sanitary District v. McMahon & M. Co. 110 Ill. App. 531, holding agreement in contract to submit all differences to private person, whose decision was to be final, invalid; Houston v. Howze, 162 Ala. 503, 50 So. 266, holding that equity has jurisdiction of

matter involving right of complainant to office in fraternal society, to which office is attached exemption from dues and right to insurance.

Annotation cited in Kieffer v. Reformed Church, 9 North. Co. Rep. 79, holding that court will not assume jurisdiction to determine dispute between pastor and church, until after decision in appellate judicatory of church.

Cited in notes (49 L.R.A. 373, 378, 384) on conclusiveness of decisions of tribunals of associations or corporations; (4 L.R.A.(N.S.) 1155) on review by civil courts of expulsion of member of religious society.

Right to benefits after recovering statutory penalty.

Cited in footnote to Oyster v. Burlington Relief Department, 59 L. R. A. 292, which denies right to recover on certificate of railroad relief department, after recovering full statutory penalty for employee's death.

Validity of contracts as to enforcement of rights in courts.

Cited in Tilden v. Bernard, 12 Ohio C. C. N. S. 194, 31 Ohio C. C. 256, holding clause in contract for submission of disputes to arbitrators, whose decision shall be final, void; Garrison v. Cincinnati, H. & D. R. Co. 15 Ohio S. & C. P. Dec. 560, holding contract of employer for exemption from negligence, void; Fire Asso. v. Appel, 4 Ohio N. P. N. S. 44, 16 Ohio S. & C. P. Dec. 532, holding that stipulation in policy as to appraisement does not touch fundamental right of recovery; Appel v. Cooper Ins. Co. 4 Ohio N. P. N. S. 232, 16 Ohio S. & C. P. Dec. 501, on validity of limitation in policy of time for bringing action.

Cited in note (2 L.R.A.(N.S.) 673) on validity of rule of board of trade requiring arbitration of disputes.

— Bar to action.

Cited in Cleveland v. Griffin, 5 Ohio C. C. N. S. 476, 27 Ohio C. C. 170, holding that clause in contract that parties shall be bound by final estimate of engineer is no bar to consideration of matter in courts.

Validity of by-law of railroad relief association.

Cited in Barden v. Atlantic Coast Line R. Co. 152 N. C. 332, — L.R.A.(N.S.) —, 67 S. E. 971, on the validity of a by-law of a railroad relief association.

Jurisdiction as a matter of law.

Cited in Blair v. National Shirt & Overalls Co. 137 Ill. App. 419, holding that jurisdiction cannot be conferred by agreement if contrary to law.

49 L. R. A. 389, PERRY v. COBB, 88 Me. 435, 34 Atl. 278.

Conclusiveness of decisions of tribunals of associations or corporations.

Cited in note (49 L. R. A. 376) on conclusiveness of decisions of tribunals of associations or corporations.

49 L. R. A. 400, LAWSON v. HEWELL, 118 Cal. 613, 50 Pac. 763.

Conclusiveness of decisions of tribunals of associations or corporations.

Cited in Josich v. Austrian Benev. Soc. 119 Cal. 77, 51 Pac. 18, refusing to interfere with action of benevolent society which expelled member, after fair trial, for use of opprobrious language; Clifford v. Hedrick, 159 Ill. App. 71, holding that court will not enjoin directors of trade union from revoking charter of local union.

Cited in notes (49 L.R.A. 353, 355) on conclusiveness of decisions of tribunals of associations or corporations; (68 Am. St. Rep. 864) on jurisdiction of equity over voluntary unincorporated associations.

Amendment of by-laws of association.

Cited in Reynolds v. Supreme Council, R. A. 192 Mass. 158, 7 L.R.A.(N.S.)

1163, 78 N. E. 129, 7 Ann. Cas. 776, holding that the duties of members of a fraternal benefit association, prescribed by the by-laws, remain subject to modification when a power of amendment is reserved; Williams v. Supreme Council, C. M. B. A. 152 Mich. 7, 115 N. W. 1060, on the same point.

49 L. R. A. 404, BROUGHEL v. SOUTHERN NEW ENGLAND TELEPH. CO. 72 Conn. 617, 45 Atl. 435.

Actions for wrongful instantaneous death.

Approved in later appeal in 73 Conn. 616, 84 Am. St. Rep. 176, 48 Atl. 751, sustaining recovery by administrator of substantial damages for wrongful instantaneous death of intestate, unaccompanied by physical pain or suffering.

Cited in Missouri, K. & T. R. Co. v. Elliott, 42 C. C. A. 201, 102 Fed. 108, holding administrator's action for wrongful death of intestate under statutes of Indian territory unaffected by fact that deceased was instantaneously killed; Black v. Griggs, 74 Conn. 585, 51 Atl. 523, upholding action of court in sending jury back to reconsider question of damages, where it had brought in verdict of $200 for loss of life of woman thirty-five years old and in good health.

Distinguished in Dillon v. Great Northern R. Co. 38 Mont. 497, 100 Pac. 960, holding that under the statute providing for the survival of the cause of action for personal injuries, no cause of action survives for the instantaneous death of the party.

Raising claim of variance.

Approved in Palmer v. Hartford Dredging Co. 73 Conn. 190, 47 Atl. 125, holding technical claims of variance between allegations and evidence unavailing when raised after default and trial of entire case.

Reversals for errors of law appearing in the findings.

Cited in Metcalf v. Central Vermont R. Co. 78 Conn. 619, 63 Atl. 633, holding that findings cannot be set aside for errors of judgment alone, but it must be shown that there was errors of law in that the judge adopted some erroneous rule of law, or the facts were legally inconsistent with the conclusions reached; Goodhart v. State, 84 Conn. 70, 78 Atl. 853, Ann. Cas. 1912 B, 1297 (dissenting opinion), on review of judgment on application of erroneous rule of law to findings.

Changing theory of action on appeal.

Cited in Fifer v. Fifer, 13 N. D. 28, 99 N. W. 763, holding that appellants cannot try their action upon one theory in the trial court, and upon another, in the supreme court.

49 L. R. A. 408, CHICAGO v. COLLINS, 175 Ill. 445, 67 Am. St. Rep. 224, 51 N. E. 907.

Injunction against enforcement of ordinance.

Cited in Macon v. Hughes, 110 Ga. 805, 36 S. E. 247, sustaining injunction against enforcement of *ultra vires* ordinance calling for election; Chicago v. Banker, 112 Ill. App. 96, holding that court of equity will enjoin enforcement of unconstitutional ordinance, complainant having no adequate remedy at law: Glucose Ref. Co. v. Chicago, 138 Fed. 211, holding that a bill which stated that the complainant and many others were similarly situated, and were threatened by many suits for the violations of the ordinance which was void, and that a compliance therewith would work irreparable injury, states a cause for equitable interference; Spiegler v. Chicago, 216 Ill. 123, 74 N. E. 718, holding that where a city is attempting to enforce an ordinance against a number of per-

sons whose interests are identical, equity has jurisdiction to maintain a bill to prevent a multiplicity of suits, and determine the validity of the ordinance in one action; Rago v. Melrose Park, 161 Ill. App. 19; Kappes v. Chicago, 119 Ill. App. 440,—holding that injunction lies to prevent the enforcement of an ordinance which has not been declared invalid, where such action will prevent a multiplicity of suits; Farson v. Chicago, 138 Fed. 187, on the jurisdiction of a Federal court to enjoin the enforcement of a city ordinance.

Cited in footnotes to Agua Pura Co. v. Las Vegas, 50 L.R.A. 224, which holds compliance with water company's valid contract not condition to injunctive relief against interference with same by city ordinance; Paul v. Washington, 65 L.R.A. 902, which denies right to enjoin enforcement of municipal ordinance on ground that it is unreasonable and void.

Cited in note (118 Am. St. Rep. 375) on injunction against enforcement of void municipal ordinance.

Distinguished in Wood v. Chicago, 205 Ill. 72, 68 N. E. 712, holding that supreme court will not entertain appeal in proceeding to prevent enforcement of an ordinance not raising question as to violation of constitution or statute; Chicago v. Chicago City R. Co. 222 Ill. 576, 78 N. E. 890, holding that equity would not interfere to prevent the enforcement of an ordinance on the ground that it would prevent a multiplicity of suits, where the ordinance was to regulate street car service, and there were only two companies furnishing such service.

Equitable interference to prevent multiplicity of suits.

Approved in Wilkie v. Chicago, 188 Ill. 447, 80 Am. St. Rep. 182, 58 N. E. 1004, Reversing 88 Ill. App. 318, restraining enforcement of alleged illegal ordinance requiring master plumbers to secure license in order to avoid multiplicity of suits and to have controversy settled at one hearing; Chicago Teleph. Co. v. Illinois Mfrs. Asso. 106 Ill. App. 57, sustaining injunction against removal of telephones for nonpayment of rate in excess of that fixed by municipal ordinance, when multiplicity of suits thereby prevented.

Cited in Wilcox v. Jennings, 153 Ill. App. 440, sustaining injunction against attachment, where multiplicity of suit will be avoided; North American Ins. Co. v. Yates, 116 Ill. App. 221, holding that where actions were brought against fifty defendants to prevent violations of a state law the facts being the same in each equity will take jurisdiction to prevent a multiplicity of suits; Adams v. Oberndorf, 121 Ill. App. 501, holding that injunction will lie to restrain a number of parties from prosecuting numerous suits in pursuance of a conspiracy to harass and annoy plaintiff, where such suits have a common basis upon false demands; Williamson v. Warfield, P. H. Co. 136 Ill. App. 179, holding that equity will take jurisdiction of an action to enforce a contract of insurance where it will prevent a multiplicity of suits, because of numerous defendants; Vandalia Coal Co. v. Lawson, 43 Ind. App. 247, 87 N. E. 47, holding that a bill to enjoin the maintenance of many actions for personal injuries arising from the same act, is demurrable where the only grounds for preventing a multiplicity of suits is to save costs, and where the actions might have been consolidated at law; William Fox Amusement Co. v. McClellan, 62 Misc. 107, 114 N. Y. Supp. 594, on the jurisdiction of equity to prevent a multiplicity of suits.

Cited in footnote to Ramsey v. Shelbyville, 68 L.R.A. 300, which sustains right of taxpayers to maintain action to annul ordinance accepting gift and obligating city for its maintenance though it has not yet taken effect.

Cited in note (20 L.R.A.(N.S.) 853) on equity jurisdiction because of multiplicity of actions for personal injuries growing out of single tort.

Distinguished in Andel v. Starkel, 192 Ill. 209, 61 N. E. 356, denying injunction against enforcement of mandamus compelling treasurer to pay member of grand jury, when answer and evidence negative danger of multiplicity of suits.

Validity of ordinances imposing licenses.

Cited in Chicago v. M. & M. Hotel Co. 248 Ill. 272, 93 N. E. 753, holding void, ordinance to license and regulate hotels; Pegg v. Columbus, 80 Ohio St. 390, 23 L.R.A.(N.S.) 461, 89 N. E. 14, holding that an ordinance imposing a license fee upon all vehicles used upon the streets of the city, was invalid when applied to persons using their own vehicles whether for business or pleasure: Chicago v. A. M. Forbes Cartage Co. 1 Ill. C. C. 478, holding that a public teaming company is subject to control by the city, but not a company which does teaming under contract; Reser v. Umatilla County, 48 Or. 331, 120 Am. St. Rep. 815, 86 Pac. 595, holding that a statute imposing a tax of twenty cents a head on sheep pasturing within the state, and five cents a head for each and every county through which such sheep shall be driven, was unconstitutional as not being uniform.

Cited in footnote to People v. Schneider, 69 L.R.A. 346, which upholds power of city council to require registering and numbering of automobiles.

Cited in note (129 Am. St. Rep. 285) on constitutional limitations on power to impose license or occupation taxes.

Distinguished in Harder's Fire Proof Storage & Van Co. v. Chicago, 235 Ill. 84, 85 N. E. 245, 14 Ann. Cas. 536, holding that the fact that the fund to be received from a license tax, was to be used for the improvement of city streets, did not make the same invalid as a tax upon the privilege of using the public streets; People v. Schneider, 139 Mich. 678, 69 L.R.A. 349, 103 N. W. 172, 5 Ann. Cas. 790; Com. v. Boyd, 188 Mass. 80, 108 Am. St. Rep. 464, 74 N. E. 255,—holding that a statute requiring a license fee for operating automobiles, was valid, it being a license fee and not a tax.

What constitutes double taxation.

Approved in Ellis v. Frazier, 38 Or. 472, 53 L. R. A. 458, 63 Pac. 642, holding invalid, double taxation effected by imposing license on use of bicycle in addition to ad valorem tax levied under general taxation.

Cited in footnote to Smith v. Scruggs, 58 L. R. A. 921, which holds license tax on vehicles not void as double taxation.

Distinguished in Slade v. Chicago, 1 Ill. C. C. 522, holding that a license, when not required as a tax may be required of an automobile as a police regulation.

Necessity of uniformity in license fees.

Cited in State v. Bixman, 162 Mo. 70, 62 S. W. 828 (dissenting opinion), majority sustaining statute imposing fee on sales of beer, but exempting that exported.

Validity of ordinance in conflict with statute.

Cited in Burke v. Chicago, 127 Ill. App. 171, holding that so far as an ordinance is in material conflict with the statute on the same subject, it is void.

49 L. R. A. 412, WARMAN v. FIRST NAT. BANK, 185 Ill. 60, 57 N. E. 6.

Bank as bona fide purchaser for value.

Cited in McCasland v. Southern Illinois Nat. Bank, 127 Ill. App. 39, holding that where a note had been discounted at a bank and the proceeds credited to the payee's account, and the same drawn out, the bank was a bona fide purchaser for value: City Deposit Bank v. Green, 130 Iowa, 388, 106 N. W. 942, holding that if a bank discounted a note for a depositor and credited his ac-

count with the proceeds, and allowed him to check out the same before notice of any defense, the bank became a bona fide holder for value; Elgin City Bkg. Co. v. Hall, 119 Tenn. 564, 108 S. W. 1068, holding that when a bank discounts a note for a depositor and credits his account with the proceeds which remains in the bank, the latter does not become a bona fide purchaser for value.

Distinguished in Walsh, B. & Co. v. First Nat. Bank, 228 Ill. 450, 81 N. E. 1067, Affirming 131 Ill. App. 513, holding that the indorsement of a bill of lading with a sight draft attached to a bank, which credited the shipper's account with the amount of the draft vested title to the shipment in the bank; Hodge v. Smith, 130 Wis. 337, 110 N. W. 192, holding that when the title of any person negotiating the paper was defective, the burden is on the plaintiff to prove payment of the proceeds credited the seller.

Applying agent's debt against principal's check.

Approved in Percival v. Strathman, 112 Iowa, 749, 84 N. W. 929, holding that principal may recover amount of agent's debt deducted by bank upon payment of check indorsed to latter for collection, though without notice of lack of ownership.

49 L. R. A. 416, NEVELS v. KENTUCKY LUMBER CO. 108 Ky. 550, 94 Am. St. Rep. 388, 56 S. W. 969.

Sale of right to cut logs by cotenant.

Cited in Burt & B. Lumber Co. v. Clay City Lumber Co. 111 Ky. 727, 64 S. W. 652, denying right of cotenant to sell privilege of cutting logs from land owned in common; Collier v. Wm. Cameron & Co. 55 Tex. Civ. App. 155, 117 S. W. 915, holding that purchaser from cotenant of right to cut timber is liable to other cotenant for one-half of value of lumber.

49 L. R. A. 417, IRVINE v. McCREARY, 108 Ky. 495, 56 S. W. 966.

Easements.

Cited in Muir v. Cox, 110 Ky. 566, 62 S. W. 723, holding lots conveyed with reference to existing passways to highway, although not mentioned in deeds; Gorton-Pew Fisheries Co. v. Tolman, 210 Mass. 410, 38 L.R.A.(N.S.) 889, 97 N. E. 54, holding that devise of homestead, only reasonable means of access to which is way visible on ground passing through property devised to other, carries easement in way.

Cited in notes (8 L.R.A.(N.S.) 353) on implication from necessity of easement other than of way; (26 L.R.A.(N.S.) 335) on easements created by severance of tract with apparent benefit existing; (122 Am. St. Rep. 215) on grant of easements by implication.

Relief against diminution of light and air.

Cited in footnote to Townsend v. Epstein, 52 L. R. A. 409, which sustains abutter's right to relief against diminution of light and air by bridge over street.

49 L. R. A. 421, GARGAN v. WEST END STREET R. CO. 176 Mass. 106, 79 Am. St. Rep. 298, 57 N. E. 217.

Liability for injury from projecting fender.

Approved in Levison v. Metropolitan Street R. Co. 36 Misc. 829, 74 N. Y. Supp. 882, denying right of recovery to one injured by falling over fender projecting from rear of car, when company without knowledge of disarrangement.

Cited in Powers v. Connecticut Co. 82 Conn. 670, 26 L.R.A.(N.S.) 408, 74 Atl. 931, holding that it was proper to direct a verdict for the defendant company in an action for personal injuries by falling over a fender on the back of a

car after alighting where the car was lighted so that the fender was visible: Whilt v. Public Service Corp. 76 N. J. L. 731, 72 Atl. 420, Affirming 74 N. J. L. 143, 64 Atl. 972, holding that the street car company was not liable for injuries because of a fender being down on the rear of the car, where the company did not know it, and was not negligent.

Cited in note (26 L.R.A.(N.S.) 406) on liability to passenger falling over fender.

What constitutes passenger.

Cited in footnote to Chattanooga Electric R. Co. v. Boddy, 51 L. R. A. 885, which holds one going behind street car from which he has alighted, to parallel track where he is struck, not a passenger.

Cited in note (104 Am. St. Rep. 589) on who are passengers on street railways.

Unlawful use of street.

Cited in Morris v. Whipple, 183 Mass. 30, 66 N. E. 199, holding it question for jury whether laying strip of carpet across busy street is temporary occupation of street and obstruction of its lawful use.

Liability for injury to person at rear of vehicle.

Cited in Stuart v. Holyoke Street R. Co. 210 Mass. 241, 36 L.R.A.(N.S.) 1097, 96 N. E. 683, holding that owner of long wagon is not bound to look out that rear wheels do not injure children approaching wagon after forward part has passed.

Cited in note (4 L.R.A.(N.S.) 729) on injury to street car passenger who upon alighting passes around end of car, and is struck by car on other track.

49 L. R. A. 423, REED v. PEACOCK, 123 Mich. 244, 81 Am. St. Rep. 194, 82 N. W. 53.

49 L. R. A. 424, BAGEARD v. CONSOLIDATED TRACTION CO. 64 N. J. L. 316, 81 Am. St. Rep. 498, 45 Atl. 620.

Duty to passengers unable to care for themselves.

Cited in footnote to Southern R. Co. v. Hobbs, 63 L. R. A. 68, which holds carrier liable to partially blind passenger carried beyond her station without having reasonable opportunity to alight, though conductor had promised to assist her.

Cited in note (31 L.R.A.(N.S.) 815) on duty to passengers taken ill during journey.

— Results of intoxication.

Cited in Hoppock v. Easton Transit Co. 77 N. J. L. 343, 72 Atl. 453, holding that if a person because of voluntary intoxication exposes himself to dangers and receives injuries, which by the exercise of ordinary prudence he would have avoided if sober, he is guilty of contributory negligence and cannot recover for such injury; Vizacchero v. Rhode Island Co. 26 R. I. 399, 69 L.R.A. 192, 59 Atl. 105, holding that intoxication does not relieve a man of the degree of care required of a sober man in the same circumstances.

Cited in footnote to Vizacchero v. Rhode Island Co. 69 L.R.A. 188, which holds that intoxication does not relieve person from degree of care required of sober man under same conditions.

Cited in note (8 L.R.A.(N.S.) 298) on duty of carrier to look after drunken passenger after leaving train.

Proof of statements made on former trial as admissions.

Cited in Knapp v. Brotherhood, A. Y. 149 Iowa, 140, 126 N. W. 336, holding

that testimony by party's witnesses may be introduced on subsequent trial as admissions, if material to issues: Robert R. Sizer & Co. v. Melton, 129 Ga. 150, 58 S. E. 1055, holding that it was error to admit answers to interrogatories taken in another case, for the purpose of proving admissions of an officer of a corporation, where it did not appear that these had been offered in evidence before, and were not offered for the purpose of impeachment.

49 L. R. A. 427, STATE *ex rel.* GUILBERT v. HALLIDAY, 61 Ohio St. 352, 56 N. E. 118.

Taxation of patent rights.

Cited in footnote to Crown Cork & Seal Co. v. State, 53 L. R. A. 417, which denies right of corporation to have assessment of stock limited to value of property other than patents.

Valuation of personalty for purposes of taxation.

Cited in State v. Western U. Teleg. Co. 111 Minn. 31, 124 N. W. 380, holding that the cost of replacing property with allowances for deterioration is neither final nor exclusive standard of the valuation of telegraph property for taxation; Cleveland Electric R. Co. v. Vickery, 11 Ohio S. & C. P. Dec. 637, on legal method of valuation of property of street railway.

49 L. R. A. 435, GRIFFITH v. BRACKMAN, 97 Tenn. 387, 37 S. W. 273.

Mortgagor becoming tenant on default.

Annotation cited in Prather v. Brandon, 44 Ind. App. 49, 88 N. E. 700, holding that contract for purchase of land on instalment plan, on default payments to be retained by vendor as rent, does not create tenancy.

Cited in note (49 L. R. A. 438, 439) on effect of stipulation that vendee or mortgagor shall, on default, become a tenant.

49 L. R. A. 440, TERRITORY v. RICHARDSON, 9 Okla. 579, 60 Pac. 244.

Pardon while appeal pending.

Cited in footnote to People v. Marsh, 51 L. R. A. 461, which sustains pardon granted while case pending on bill of exceptions.

Effect of pardon.

Cited in State ex rel. Collins v. Lewis, 111 La. 695, 35 So. 816, holding that a full and free pardon reinstates the person pardoned to all his civil and political rights but does not reinstate him as a member of a grand jury which has passed out of existence.

Collateral attack on judgment for fraud.

Cited in note (36 L.R.A.(N.S.) 988) on character and kinds of judgments and orders not collaterally assailable for fraud not affecting jurisdiction.

49 L. R. A. 444, *Re* PARRY, 188 Pa. 33, 41 Atl. 448.

Tenancies in personal property.

Cited in Brewer v. Bowersox, 92 Md. 582, 48 Atl. 1060, holding wife entitled as tenant by entirety to deposit made by husband payable to either, when intrusted with certificate of deposit; Re West, 37 Pittsb. L. J. N. S. 65, holding that deed to husband and wife creates estate by entireties; Heilig v. Heilig, 21 Lanc. L. Rev. 53, holding that mortgage to husband and wife creates estate by entireties; Hoover v. Potter, 42 Pa. Super. Ct. 23, holding that deed to husband and wife as tenants in common creates estate by entireties; Meyer's Estate, 20 Pa. Dist. R. 240, holding that husband's trustee in bankruptcy is not

entitled, during life of wife, to any part of principal or income of estate by entireties; Yeany v. Yeany, 12 Pa. Dist. R. 440, holding that where note is payable to "J. V. his wife or his heirs" and the wife dies, her interest passes to the husband by right of survivorship.

Cited in footnote to Johnston v. Johnston, 61 L. R. A. 166, which holds estate by entirety not created by giving note secured by deed of trust to husband and wife for loan, part of which advanced by each.

Distinguished in *Re* Bauernschmidt, 97 Md. 61, 54 Atl. 637, holding that rental of safe deposit box in name of husband and wife as joint tenants, husband taking one key and wife the other, did not pass any title to securities contained in such box.

49 L. R. A. 446, BROWNBACK v. NORTH WALES, 194 Pa. 609, 45 Atl. 660.

Statutes relating to transient dealers and peddlers.

Approved in Mechanicsburg v. Koons, 18 Pa. Super. Ct. 135, sustaining ordinance requiring license for persons canvassing from house to house for purpose of selling goods; Com. v. Rearick, 26 Pa. Super. Ct. 387, holding valid ordinance requiring persons, selling goods from house to house, or taking orders for goods to be delivered, to take out license.

Cited in State ex rel. Greenwood v. Nolan, 108 Minn. 173, 122 N. W. 255, holding invalid peddler's license act which excluded bona fide residents from its operation.

Cited in footnotes to State v. Foster, 50 L. R. A. 339, which sustains statute regulating business of temporary and transient dealers; Rosenbloom v. State, 57 L. R. A. 923, which sustains license tax on peddlers, though venders of own products exempt.

Power to license.

Cited in Mahanoy City v. Hersker, 40 Pa. Super. Ct. 55, holding that borough may impose license fee upon theatrical exhibitions under statute given boroughs power to regulate, license or prohibit such performances; Mallie v. Yeadon, 10 Del. Co. Rep. 533, holding valid, ordinance prescribing fee for permit to bury body.

Cited in note (129 Am. St. Rep. 278) on constitutional limitations on power to impose license or occupation taxes.

Situs of sale.

Cited in Com. v. Guja, 28 Pa. Super. Ct. 61, holding sale made where order is taken where agent takes orders for intoxicating liquors to be sent to him and delivered, and collected for by him.

49 L. R. A. 448, LAURAGLENN MILLS v. RUFF, 57 S. C. 53, 35 S. E. 387.

Set-off between corporation and stockholder.

Cited in footnote to Fidelity Ins. Trust & S. D. Co. v. Mechanics' Sav. Bank, 56 L. R. A. 228, which sustains stockholder's right to set off, in action to enforce liability in Federal court in other state, debt due him from corporation.

49 L. R. A. 451, NASHVILLE STREET R. CO. v. GRIFFIN, 104 Tenn. 81, 57 S. W. 153.

Liability for ejectment of passengers.

Cited in footnotes to Kiley v. Chicago City R. Co. 52 L. R. A. 626, which denies right of recovery for injuries in resisting ejection from street car by one having incorrect transfer given him by former conductor; Southern R. Co. v. Wood, 55 L. R. A. 536, which holds carrier liable for ejection of passenger whose round-trip ticket unstamped from inability to find agent.

Rules on street car systems.

Cited in Birmingham R. Light & P. Co. v. McDonough, 153 Ala. 126, 13 L.R.A. (N.S.) 447, 127 Am. St. Rep. 18, 44 So. 960, holding reasonable rule prohibiting passenger who has paid fare on one car from passing into another car in charge of another conductor without paying an additional fare.

Cited in note (13 L.R.A.(N.S.) 446) on right to require passenger passing from one street car to another on same line, to pay second fare.

49 L. R. A. 454, WATSON v. LOUISVILLE & N. R. CO. 104 Tenn. 194, 56 S. W. 1024.

Rights under railroad tickets.

Cited in Sanden v. Northern P. R. Co. 43 Mont. 218, 34 L.R.A.(N.S.) 714, 115 Pac. 408, holding that purchaser of continuous-trip ticket is not entitled to stop over; McCollum v. Southern P. Co. 31 Utah, 499, 88 Pac. 663, holding that railroad ticket purchased at regular fare does not represent the contract of carriage and conditions printed thereon can not relieve the carrier of its duties as such; Boling v. St. Louis & S. F. R. Co. 189 Mo. 231, 88 S. W. 35, holding purchaser of ticket at special price bound by conditions printed on ticket and signed by purchaser where the latter was aware of such conditions or otherwise.

Cited in footnotes to Crary v. Lehigh Valley R. Co. 59 L. R. A. 815, which requires proof of negligence causing injury to passenger using excursion ticket by which passenger assumes risk of accident; United R. & Electric Co. v. Hardesty, 57 L. R. A. 276, which denies carrier's duty to accept coupon detached from commutation book; Schubach v. McDonald, 65 L.R.A. 136, which holds that assignee of nontransferable railroad ticket sold at reduced rate cannot acquire any assignable right therein.

49 L. R. A. 459, SAN ANTONIO & A. PASS. R. CO. v. SOUTHWESTERN TELEG. & TELEPH. CO. 93 Tex. 313, 77 Am. St. Rep. 884, 55 S. W. 117.

Right of eminent domain.

Cited in Gulf, C. & S. F. R. Co. v. Southwestern Teleg. & Teleph. Co. 25 Tex. Civ. App. 490, 61 S. W. 406, holding that telephone companies have same right under statute to condemn lands, as telegraph companies; Ft. Worth & R. G. R. Co. v. Southwestern Teleg. & Teleph. Co. 96 Tex. 170, 60 L. R. A. 150, 71 S. W. 270, upholding right of telephone company to condemn easement over railroad right of way.

Telegraph and telephone companies.

Cited in Sunset Teleph. & Teleg. Co. v. Eureka, 172 Fed. 759, holding that "telegraph" as used in statute includes "telephone;" Texarkana v. Southwestern Teleg. & Teleph. Co. 48 Tex. Civ. App. 21, 105 S. W. 915, holding that "magnetic telegraph lines" in statute authorizing poles and wires in public highways, includes telephone lines; Wichita v. Missouri & K. Teleph. Co. 70 Kan. 451, 78 Pac. 886, on telegraph and telephone companies as being similar and subject to same laws.

49 L. R. A. 462, NEW YORK, P. & N. R. CO. v. CROMWELL, 98 Va. 227, 81 Am. St. Rep. 722, 35 S. E. 444.

Duty of railroad as to perishable freight.

Cited in Missouri, K. & T. R. Co. v. McLean, 55 Tex. Civ. App. 135, 118 S. W. 161, holding railroad liable for damage to cabbages from failure to properly ice refrigerator car; Gibson v. Little Rock & H. S. W. R. Co. 93 Ark. 441, 124 S. W. 1033, holding railroad liable for injury to fruits in refrigerator car, though

caused by failure of independent contractor to keep drain open; St. Louis, I. M. & S. R. Co. v. Renfroe, 82 Ark. 149, 10 L.R.A.(N.S.) 320, 118 Am. St. Rep. 58, 100 S. W. 889, holding railroad liable for failure to properly ice refrigerator car containing perishable fruit, though refrigerator car company owned the car; Philadelphia, B. & W. R. Co. v. Diffendal, 109 Md. 507, 72 Atl. 193, holding that carrier accepting refrigerator car loaded with peaches has implied notice that the goods are perishable and is liable for failure to properly ice the car; Brennisen v. Pennsylvania R. Co. 100 Minn. 105, 110 N. W. 362, 10 Ann. Cas. 169, on duty of railroad to ice refrigerator cars carrying perishable fruits.

Cited in notes (10 L.R.A.(N.S.) 318) on duty of carrier as to refrigerator cars; (90 Am. St. Rep. 302) on cold storage; (130 Am. St. Rep. 45) on liability of railroad company for injuries or losses due to operation of refrigerator cars not owned by it.

Liability for refusal to transport fruit.

Cited in Mathis v. Southern R. Co. 65 S. C. 280, 61 L. R. A. 827, footnote p. 824, 43 S. E. 684, holding carrier liable for refusal to receive for transportation, fruit not in properly iced refrigerator car.

49 L. R. A. 464, HALL v. VERNON, 47 W. Va. 295, 81 Am. St. Rep. 791, 34 S. E. 764.

Rights of cotenants of coal lands.

Approved in Cecil v. Clark, 47 W. Va. 409, 81 Am. St. Rep. 802, 35 S. E. 11, holding one tenant in common of coal land accountable to cotenant excluded therefrom, though taking only just share of rents and profits.

Conveyance of easement in fee simple.

Cited in Uhl v. Ohio River R. Co. 51 W. Va. 121, 41 S. E. 340 (dissenting opinion), majority holding agreement to execute deed in "fee simple" of land granted for right of way means only conveyance of "easement in fee simple," not the land and oil in it.

Partition of minerals.

Followed in Preston v. White, 57 W. Va. 284, 50 S. E. 236, holding that partition in kind can not be granted between co-owners of oil and gas under land.

Cited in Musick Consol. Oil Co. v. Chandler, 158 Cal. 13, 109 Pac. 613, on division of placer mining claim by surface partition; Dangerfield v. Caldwell, 81 C. C. A. 400, 151 Fed. 558, denying partition in kind of land known to have oil and gas under its surface; Watford Oil & Gas. Co. v. Shipman, 233 Ill. 13, 122 Am. St. Rep. 144, 84 N. E. 53, holding that partition in kind can not be granted of oil and gas under land; Robertson Consol. Land Co. v. Paull, 63 W. Va. 251, 59 S. E. 1085, 15 Ann. Cas. 775, holding that partition can not be decreed between co-owners of "coal, gas, oil and minerals" under a certain tract of land.

Distinguished in Manley v. Boone, 87 C. C. A. 201, 159 Fed. 637, sustaining partition, without sale, of mining property under Alaska laws.

49 L. R. A. 468, CHILDERS v. NEELY, 47 W. Va. 70, 81 Am. St. Rep. 777, 34 S. E. 828.

Dissolution of partnership.

Cited in Vierling v. Leich, 29 Ind. App. 175, 64 N. E. 230, holding that upon dissolution of partnership, if final disposition cannot be made otherwise, court has power to appoint receiver to collect accounts; Daniel v. Gillespie, 65 W. Va. 368, 64 S. E. 254, holding that equity has exclusive jurisdiction over settlement of partnership accounts.

Mining partnerships.

Cited in Bartlett v. Boyles, 66 W. Va. 328, 66 S. E. 474, holding that members of mining partnership not agreeing, those having majority interest, control its management; Edinger v. Southern Oil Co. 69 W. Va. 39, 71 S. E. 266, holding that mining partners, owning majority interest, who make agreement to connect well with those of local gas company, are chargeable to co-partners only for sum received from gas company; Kirchner v. Smith, 61 W. Va. 444, 58 S. E. 614, 11 Ann. Cas. 870, holding that mining partnership exists where co-owners unite in working a mine though no partnership contract is made; Greenlee v. Steelsmith, 64 W. Va. 362, 62 S. E. 459, holding that oil mining partners have lien on the joint property for advances, though the oil produced has been divided so that no lien exists as to it; Blackmarr v. Williamson, 57 W. Va. 254, 50 S. E. 254, 4 Ann. Cas. 265, holding that mining partnership will not be dissolved at instance of one partner on sole ground of disagreement as to future operations.

49 L. R. A. 471, CARNEY v. NEW YORK L. INS. CO. 162 N. Y. 453, 76 Am. St. Rep. 347, 57 N. E. 78.

Ultra vires contract of employment.

Approved in Caldwell v. Mutual Reserve Fund Life Asso. 53 App. Div. 250, 65 N. Y. Supp. 826, holding contract of mutual insurance company to pay office manager for six months' service all admission fees paid in during term of ten years, and 50 per cent of annual dues for expenses, besides paying expenses of department, excess of its powers; Nephew v. Michigan C. R. Co. 128 Mich. 602, 87 N. W. 753, holding that general attorney having power to adjust claims for personal injuries cannot be presumed to have authority, as part of such settlement.

Cited in Llewellyn v. Aberdeen Brewing Co. 65 Wash. 322, 118 Pac. 30, holding that trustees of corporation may remove at any time attorney and general manager employed for term of three years; Rennie v. Mutual L. Ins. Co. 99 C. C. A. 560, 176 Fed. 206, holding that president of insurance company with general authority to make contracts, has no power to make oral contract for payment of annual sum for life to agent after termination of his agency; Commercial Wood & Cement Co. v. Northampton Portland Cement Co. 115 App. Div. 392, 100 N. Y. Supp. 960, holding invalid contract entered into by executive committee of directors of corporation made for term extending beyond term of such directors.

Annotation cited in Laird v. Michigan Lubricator Co. 153 Mich. 55, 17 L.R.A. (N.S.) 179, 116 N. W. 534, on power of directors of corporation to make contract of employment extending beyond their own term.

Cited in notes (17 L.R.A.(N.S.) 177) on time for which contracts of employment may be made on behalf of corporation by officers, directors and agents: (38 L.R.A.(N.S.) 827) on implied authority of claim agent to promise employment to induce settlement of claim.

Distinguished in Usher v. New York C. & H. R. R. Co. 76 App. Div. 423, 78 N. Y. Supp. 508, upholding contract between railroad superintendent on behalf of company and injured employee, to give latter a place for life in consideration of release of company from liability for damages, where company retained release; Rollins v. Co-operative Bldg. Bank, 98 App. Div. 613, 90 N. Y. Supp. 631, holding valid contract made by directors of bank, for period of ten years, but with provision for termination at any time upon ten days notice.

49 L. R. A. 475, GATZOW v. BUENING, 106 Wis. 1, 80 Am. St. Rep. 17, 81 N. W. 1003.

Presentation of claim before action.

Approved in Malloy v. Chicago & N. W. R. Co. 109 Wis. 31, 85 N. W. 130, holding that statutory provision that no action for personal injuries be maintained unless, within one year after accident, written notice be served on person held liable, stating time, place of injury, etc., is statute of limitation and not condition precedent; O'Donnell v. New London, 113 Wis. 295, 89 N. W. 511, holding compliance with statute requiring presentation of demands against city to council, condition precedent to bringing negligence action in circuit court; Wuerfler v. Grand Grove, O. of D. 116 Wis. 30, 96 Am. St. Rep. 940, 92 N. W. 433, holding by-law requiring submission of disputes to grand lodge waived by failure to plead it in answer.

Cited in Arp v. Allis-Chalmers Co. 130 Wis. 455, 8 L.R.A.(N.S.) 1000, 118 Am. St. Rep. 1036, 110 N. W. 386, holding statute requiring notice of claim for personal injury within one year, applicable to action for injury sustained in another state; Wysocki v. Wisconsin Lakes Ice & Cartage Co. 125 Wis. 641, 104 N. W. 707, holding statute requiring notice of claim for personal injury within one year not applicable to action by parent for injury to minor son; Hatch v. Minneapolis, St. P. & S. Ste. M. R. Co. 15 N. D. 494, 107 N. W. 1087, holding that failure to give notice of claim is a matter of defense where provided for in contract of shipment of stock.

Relief against competitive conspiracies.

Approved in State *ex rel.* Durner v. Huegin, 110 Wis. 259, 62 L. R. A. 745, 85 N. W. 1046, denying habeas corpus to release persons held to await trial for conspiracy to injure another in similar line of business; Brown v. Jacobs Pharmacy Co. 115 Ga. 441, 57 L. R. A. 553, 90 Am. St. Rep. 126, 41 S. E. 553, sustaining injunction against combination of dealers to compel another to sell at fixed prices or, upon refusal, to prevent wholesalers from furnishing him goods; Gray v. Building Trades Council, 91 Minn. 179, 63 L. R. A. 758, 97 N. W. 663, holding boycott to be unlawful conspiracy which may be enjoined.

Cited in Baldwin v. Escanaba Liquor Dealers Asso. 165 Mich. 110, 130 N. W. 214, holding that combination of liquor dealers to injure business of newspaper is unlawful conspiracy: Kemp v. Division No. 241, 153 Ill. App. 378, holding that strike to compel discharge of employe is illegal: Lohse Patent Door Co. v. Fuelle, 215 Mo. 469, 22 L.R.A.(N.S.) 625, 128 Am. St. Rep. 492, 114 S. W. 997, holding boycott by labor organization to constitute unlawful conspiracy which justifies relief by injunction: Leonard v. Abner-Drury Brewing Co. 25 App. D. C. 174, holding unlawful, combination among brewers, and attempted coercion to compel another brewing company to join the combination: Pickett v. Walsh, 192 Mass. 588, 6 L.R.A.(N.S.) 1081, 116 Am. St. Rep. 272, 78 N. E. 753, 7 Ann. Cas. 638, holding unlawful a strike against one with whom labor union had no dispute for purpose of reaching another with whom dispute existed.

Cited in footnotes to West Virginia Transp. Co. v. Standard Oil Co. 56 L. R. A. 804, which sustains malicious competition to get customers from rival and obtain business for one's self; Martell v. White, 64 L. R. A. 260, which holds action maintainable on behalf of quarry owner against members of association to which he does not belong, enforcing by-law imposing fine on members dealing with nonmembers: Brown v. American F. L. M. Co. 67 L.R.A. 195, which holds loan agents entitled to sue for statements that they are inattentive, neglectful, insolvent, and guilty of fraud for which their principal has taken business from them made to break up their business and secure their custom.

Cited in notes (62 L.R.A. 725) on effect of bad motive to make actionable what would otherwise not be; (7 L.R.A.(N.S.) 978) on combination of dealers as giving common law right of action to merchant prevented from obtaining goods; (26 L.R.A.(N.S.) 149) on right of injured person not party to agreement to assail validity as tending to monopoly; (33 L.R.A.(N.S.) 1035) on lawfulness of boycott for other than labor union.

Consideration of uncontroverted facts on appeal.

Cited in Optenberg v. Skelton, 109 Wis. 245, 85 N. W. 356, holding fact assumed by trial court as undisputed will, in absence of bill of exceptions certified as containing all the evidence, be so considered in connection with pleadings and verdict in determining whether judgment supported thereby.

Action for unlawful interference with burial.

Cited in footnote to Wright v. Hollywood Cemetery Corp. 52 L. R. A. 621, which holds unwarranted interference with right of burial by proper relatives, actionable.

Cited in note (101 Am. St. Rep. 740) on exemplary damages for act of employee in interfering with funeral cortege.

Recovery for mental anguish.

Cited in Ford v. Schliessman, 107 Wis. 483, 83 N. W. 761, sustaining recovery for mental anguish resulting from unlawful trespass in dwelling in nighttime, though unaccompanied by personal violence; Hacker v. Heiney, 111 Wis. 319, 87 N. W. 249, sustaining recovery for mental anguish resulting from malicious charges of unchastity; Hacker v. Heiney, 111 Wis. 320, 87 N. W. 249, holding no error committed in charging that plaintiff was entitled to receive compensatory damages, and also, if evidence warranted, punitive damages, for injury to reputation and feelings from malicious charges of unchastity; Ellis v. Brockton Pub. Co. 198 Mass. 543, 126 Am. St. Rep. 454, 84 N. E. 1018, 15 Ann. Cas. 83, holding that "damages for actual injury sustained" includes damages for mental suffering; Koerber v. Patek, 123 Wis. 464, 68 L.R.A. 961, 102 N. W. 40, holding compensatory damages for mental suffering proper in action by son for wilful mutilation of dead body of mother.

Distinguished in Pankopf v. Hinkley, 141 Wis. 147, 24 L.R.A.(N.S.) 1160, 123 N. W. 625, holding that there could be a recovery for physical injuries, such as a miscarriage, the proximate result of a fright or shock.

Right to special verdicts.

Cited in Pearson v. Kelly, 122 Wis. 665, 100 N. W. 1064, holding that court must submit for special verdict as to material issues of fact where so requested by a party.

49 L. R. A. 483, GILKEY v. HOWE, 105 Wis. 41, 81 N. W. 120.

What constitutes de facto corporation.

Approved in Gilman v. Druse, 111 Wis. 408, 87 N. W. 557, holding *de facto* corporation created by organization and transaction of business under defective articles, when attempt made to comply with law; Winneconne v. Winneconne, 111 Wis. 12, 86 N. W. 589, sustaining plea in abatement that alleged incorporated village never existed, because incorporation attempted under unconstitutional statute.

Cited in Slocum v. Head, 105 Wis. 434, 50 L. R. A. 326, 81 N. W. 673, holding *de facto* corporation created by signers of articles organizing, holding meetings, electing officers, etc., when corporate existence not challenged by state.

Distinguished in Huber v. Martin, 127 Wis. 446, 3 L.R.A.(N.S.) 666, 115 Am.

St. Rep. 1023, 105 N. W. 1031, 7 Ann. Cas. 400, holding that attempted incorporation under unconstitutional act does not create a de facto corporation and its existence may be questioned other than the state.

Liability for debts contracted by defacto county.

Disapproved in George D. Barnard & Co. v. Polk County, 98 Minn. 291, 6 L.R.A.(N.S.) 793, 108 N. W. 294, holding that where defacto county is dissolved, the old county of which it is a part is not liable for debts contracted by it.

49 L. R. A. 486, FINNEY v. GUY, 106 Wis. 256, 82 N. W. 595.

Later appeal in 111 Wis. 299, 87 N. W. 255, wherein judgment dismissing complaint on remand of cause on former appeal is affirmed.

Enforcing liability of stockholder in foreign corporation.

Followed in Hunt v. Whewell, 122 Wis. 37, 99 N. W. 599, refusing to enforce statutory liability of stockholders under foreign statute.

Cited in Hale v. Tyler, 104 Fed. 760, holding that special receiver, appointed in Minnesota for that purpose, may maintain suits in Federal courts of another jurisdiction to enforce statutory liability of nonresident stockholders in insolvent Minnesota corporation; Eau Claire Nat. Bank v. Benson, 106 Wis. 630, 82 N. W. 604, holding that additional liability of individual stockholder of foreign corporation cannot be enforced by action at law in his own domicil, where laws of corporation's jurisdiction require such rights to be determined in equitable action by all creditors against all stockholders; Pfaff v. Gruen, 92 Mo. App. 571, sustaining ancillary proceedings against stockholder of foreign corporation in his own domicil to enforce payment of proportionate assessment determined in action brought in jurisdiction of corporation's existence; Converse v. Hamilton, 136 Wis. 592, 118 N. W. 190 (dissenting opinion), on uncertainty of law as to enforcement of stockholder's liability under foreign statute.

Cited in footnotes to Blair v. Newbegin, 58 L. R. A. 644, which sustains right to enforce stockholder's liability in other state without making corporation a party; Kirtley v. Holmes, 52 L. R. A. 738, which sustains right to enforce stockholder's liability in courts of his domicil; Bank of China v. Morse, 56 L. R. A. 139, which holds assessment under English statute in proceeding to wind up corporation will not be enforced here against resident; Miller v. Smith, 66 L.R.A. 473, which holds that courts of state of stockholder's residence will not take jurisdiction of suit by corporate creditor on behalf of all to enforce his statutory liability to contribute toward payment of corporate debts in advance of judicial determination of his proportionate liability where laws of state of incorporation contemplate pro rata contribution to be enforced in equitable proceeding against all stockholders.

Cited in note (33 L.R.A.(N.S.) 900, 910) on right to enforce stockholders' liability outside of state of incorporation.

Distinguished in Converse v. Mears, 162 Fed. 769, holding domestic receiver of corporation entitled to sue in foreign jurisdiction to enforce stockholder's liability.

Proceedings in equity to enforce stockholder's liability.

Approved in McNaughton v. Ticknor, 113 Wis. 557, 89 N. W. 493, and Eau Claire Nat. Bank v. Benson, 106 Wis. 633, 82 N. W. 604, dismissing creditor's action to enforce stockholder's liability when laws of corporation's jurisdiction require equitable action by all creditors against all stockholders; Rehbein v. Rahr, 109 Wis. 140, 85 N. W. 315, holding that creditor must proceed in equity to enforce individual liability of bank stockholder, in order that rights of all creditors and stockholders may be protected; Boyd v. Mutual Fire Asso. 116

Wis. 167, 61 L. R. A. 925, 96 Am. St Rep. 948, 90 N. W. 1086, holding that rights and liabilities of creditors, stockholders, officers, and members are to be determined upon creditor's action in equity to wind up corporation; Williams v. Brewster, 117 Wis. 377, 93 N. W. 479, holding liability for payment of unlawful dividends enforceable with other liabilities against directors in equity.

What is res judicata.

Cited in Clausen v. Head, 110 Wis. 409, 84 Am. St. Rep. 933, 85 N. W. 1028, holding judgment between corporation and third party not *res judicata* in subsequent action between such person and members of corporation.

Service of process to enforce liability.

Cited in Gager v. Paul, 111 Wis. 647, 87 N. W. 875, holding that commencement of action to wind up corporation does not stop running of six months' limitation on enforcement of individual liability of stockholder upon transferred shares, where he was not made a party to such action; Hazlett v. Woodhead, 27 R. I. 515, 63 Atl. 952, holding that service upon corporation is not service upon nonresident stockholder so as to adjudicate his liability as such.

Exclusiveness of statutory remedy.

Cited in Emery v. Worcester, 137 Wis. 284, 118 N. W. 807, holding that where a right rests upon statute, the remedy provided by the statute is exclusive; Harrigan v. Gilchrist, 121 Wis. 268, 99 N. W. 909, on same point.

Rights depending upon comity.

Cited in International Harvester Co. v. McAdam, 142 Wis. 119, 26 L.R.A. (N.S.) 778, 124 N. W. 1042, holding married woman's accommodation note, valid where made, enforceable though such contract would be invalid if made within the state; Disconto Gesellschaft v. Umbreit, 127 Wis. 665, 15 L.R.A.(N.S.) 1050, 115 Am. St. Rep. 1063, 106 N. W. 821, holding that court will not permit foreign plaintiff to enforce prior garnishment against property within the state as against rights of subsequent garnishment by resident.

49 L. R. A. 497, PIFER v. BROWN, 43 W. Va. 412, 27 S. E. 399.

Revoking license after expense incurred.

Cited in Kewanee v. Otley, 204 Ill. 413, 68 N. E. 388, holding parol consent by riparian owner to pollution of stream, revocable; Johnson v. Sherman County Irrig. Water Power & Improv. Co. 63 Neb. 520, 88 N. W. 676, holding irrevocable license not acquired by flowage of land by gradual encroachment, without agreement with, or compensation of, owners; Jones v. Stover, 131 Iowa, 122, 6 L.R.A. (N.S.) 156, 108 N. W. 112, holding revocable a parol license without consideration to drain water onto the land of another; Montgomery v. Economy Fuel Co. 61 W. Va. 626, 57 S. E. 137, holding revocable a parol license without consideration, to enter upon land and make mine opening and erect mining structures; Howes v. Barmon, 11 Idaho, 69, 69 L.R.A. 570, 114 Am. St. Rep. 255, 81 Pac. 48, holding that right to use a stairway constitutes a revocable license; Crosier v. Brown, 66 W. Va. 276, 25 L.R.A.(N.S.) 177, 66 S. E. 326, holding that an oral consent to pass over land, could not give title though there was a consideration; Watson v. Adams, 32 Ind. App. 283, 69 N. E. 696, holding irrevocable a parol license, upon consideration that has been performed, to cut and remove timber from land.

Annotation cited in Entwhistle v. Henke, 113 Ill. App. 579, holding parol license to enter upon land revocable; Falls City Lumber Co. v. Watkins, 53 Or. 216, 99 Pac. 884, on revocability of parol license; Shaw v. Proffitt, 57 Or. 212, 110 Pac. 1092, Ann. Cas. 1913A, 63, holding that license implied from silence with

knowledge of expenditures is not made irrevocable by expenditures, but express license is.

Cited in footnotes to Hicks Bros. v. Swift Creek Mill Co. 57 L. R. A. 720, which holds revocation of parol license to construct dam and ditch on land not prevented by large expenditures on faith of it; Ewing v. Rhea, 52 L. R. A. 140, which holds grantee not estopped to destroy irrigating ditch by grantor's acquiescence in expenditures in its construction; Crescent Canal Co. v. Montgomery, 65 L.R.A. 941, which holds that purchaser of land over which an irrigation ditch is in operation takes subject to the right of the owner of the ditch; Howes v. Barmon, 69 L.R.A. 568, which holds revocable license created by oral permission to use outside stairway to reach second story of adjoining building; Rodefer v. Pittsburg O. V. & C. R. Co. 70 L.R.A. 844, which holds siding or switch constructed by railroad company to manufactory at expense of and over land of manufacturer for sole purpose of affording facilities for receiving and shipping freight and silent as to period it is to remain not maintainable by railroad company against manufacturer's objection.

Cited in notes (49 L.R.A. 526) on revocability of license to maintain burden on land after licensee has incurred expense in creating burden; (19 L.R.A.(N.S.) 700, 701; 25 L.R.A.(N.S.) 727, 730; on same point; (1 L.R.A.(N.S.) 359) on right to revoke so-called license which is in nature of lease; (6 L.R.A.(N.S.) 154) on effect of incurrence of expense upon parol license to drain water onto property.

Distinguished in Ridgeley v. West Fairmont, 46 W. Va. 449, 33 S. E. 235, holding that defendant in action for damages to lot by change of grade may show agreement with owner not to claim damages in consideration of extension of sewer, which has been constructed and accepted.

Estoppel.

Cited in Pocahontas Light & Water Co. v. Browning, 53 W. Va. 442, 44 S. E. 267, holding easement to right of way for pipe line not created by silence, where company laying pipe not misled thereby.

Acquisition of easement.

Cited in Crosier v. Brown, 66 W. Va. 276, 25 L.R.A.(N.S.) 177, 66 S. E. 326, holding that right of way cannot be established by user under parol license.

Grant of water power.

Cited in note (67 L.R.A. 369) on grant of water power.

49 L. R. A. 527, BRYSON v. McSHANE, 48 W. Va. 126, 35 S. E. 848.

Oral agreements to convey land.

Cited in Davies v. Cheadle, 31 Wash. 173, 71 Pac. 728, holding oral agreement to devise lands in consideration of maintenance taken out of statute of frauds by complete performance on part of promisee; Dalby v. Maxfield, 244 Ill. 219, 135 Am. St. Rep. 312, 91 N. E. 420, holding enforceable, parol promise of brother to leave farm and personalty to sister, where she after conveying her interest to him, continued to reside on farm; Harrison v. Harrison, 80 Neb. 107, 115 N. W. 1042, holding enforceable a parol agreement to convey land in return for home and care during lifetime which was furnished pursuant thereto.

Cited in footnotes to Clancy v. Flusky, 52 L. R. A. 277, which authorizes specific performance of executed oral contract to convey land to son for taking care of father for life, though father left before death; Russell v. Briggs, 53 L. R. A. 556, which holds superintendence of repairs on buildings, etc., insufficient to take out of statute of frauds, oral agreement to convey interest in land to be received in exchange.

Cited in note (15 L.R.A.(N.S.) 469) on specific performance of oral contract to devise or convey land in consideration of services or support where no possession taken, or improvements made.

Validity of parol contract partly performed.

Cited in Kendall v. Morrison, 33 Tex. Civ. App. 346, 77 S. W. 31, holding enforceable contract to give party proceeds of insurance policy in consideration of care of insured and beneficiary for life.

49 L. R. A. 530, BRADFORD v. HANOVER F. INS. CO. 43 C. C. A. 310, 102 Fed. 48.

Denying validity of checks and bonds.

Approved in Andrus v. Bradley, 102 Fed. 55, holding drawer of check estopped from denying validity as against bona fide indorsee, though payee committed fraud in connection therewith.

Contracts by insurer's agents and subagents.

Cited in Franklin F. Ins. Co. v. Bradford, 55 L. R. A. 408, which holds company liable on policy delivered without knowledge of duly authorized agent by his subagent; Insurance Co. of N. A. v. Thornton, 55 L. R. A. 547, which holds appointment of subagents within implied authority of insurance agent for territory within radius of 35 miles.

Liability for unauthorized acts of agent.

Cited in note (88 Am. St. Rep. 790) on liability of principal for unauthorized acts of agent.

49 L. R. A. 534, HURON v. SECOND WARD SAV. BANK, 30 C. C. A. 38, 57 U. S. App. 593, 86 Fed. 272.

Estoppel of municipal corporations as to bonds.

Approved in Geer v. Ouray County, 38 C. C. A. 257, 97 Fed. 441, holding county estopped from denying existence of judgments recited in bonds issued for alleged purpose of satisfying same, when in hands of bona fide holders before maturity; Beatrice v. Edminson, 54 C. C. A. 608, 117 Fed. 434; Clapp v. Otoe County, 45 C. C. A. 587, 104 Fed. 481; Brattleboro Sav. Bank v. Hardy Twp. Trustees, 98 Fed. 533; Wesson v. Mt. Vernon, 39 C. C. A. 306, 98 Fed. 809; Grattan Twp. v. Chilton, 38 C. C. A. 87, 97 Fed. 148, — holding municipality estopped by recitals of proper officers that bonds were issued in conformity to empowering statute, when in hands of bona fide holders; Pierre v. Dunscomb, 45 C. C. A. 505, 106 Fed. 617; State v. Wichita County, 62 Kan. 501, 64 Pac. 45; Waite v. Santa Cruz, 89 Fed. 635; Independent School District v. Rew, 55 L. R. A. 369, footnote p. 364, 49 C. C. A. 202, 111 Fed. 5, holding municipal corporation estopped to deny truth of recitals in bonds held by innocent purchaser; Kearney v. Woodruff, 53 C. C. A. 119, 115 Fed. 92, holding bona fide purchaser of municipal bonds in aid of water company entitled to rely upon recitals that all necessary antecedent steps had been taken, except only as to ascertaining whether issue exceeded statutory 10 per cent of taxable property; Keene Five-Cent Sav. Bank v. Lyon County, 97 Fed. 167, holding that negotiable bonds reciting issue under legislation authorizing same for purpose of finding outstanding indebtedness may be enforced by bona fide holder up to amount for which county could legally contract indebtedness; Fairfield v. Rural Independent School District, 54 C. C. A. 348, 116 Fed. 844; Haskell County, v. National L. Ins. Co. 32 C. C. A. 594, 61 U. S. App. 53, 90 Fed. 231; Pierre v. Dunscomb, 45 C. C. A. 504, 106 Fed. 616; Seward County v. Ætna L. Ins. Co. 32 C. C. A. 587, 61 U. S. App. 41, 90 Fed. 224,—holding county estopped from denying validity of indebtedness by

recitals in bonds issued to refund same, when held by bona fide purchaser; Barber County v. Society for Savings, 41 C. C. A. 668, 101 Fed. 768, holding county estopped from alleging fraudulency of refunded indebtedness by recitals in bonds issued therefor, when held by bona fide purchaser; Hughes County v. Livingston, 43 C. C. A. 547, 104 Fed. 311, holding municipality estopped from denying validity of bonds issued to refund outstanding indebtedness by allegations of author-

Cited in Santa Cruz v. Wall[illegible], 39 C. C. A. 117, 98 Fed. 398 (dissenting opinion), majority holding city not estopped by recitals therein from showing invalidity of bonds issued under statute making all proceedings matter of public record and charging purchasers with notice thereof; Platt v. Hitchcock County, 71 C. C. A. 651, 139 Fed. 931, holding municipality estopped to deny recitals in bonds affecting their validity as against innocent purchasers.

Distinguished in Peck v. Hempstead, 27 Tex. Civ. App. 87, 65 S. W. 653, holding city not estopped from denying validity of bonds issued without authority of city council, although in hands of innocent purchaser.

Refunding bonds as additional indebtedness.

Approved in Geer v. Ouray County, 38 C. C. A. 252, 97 Fed. 437, sustaining statute authorizing counties in Colorado to refund judgment and bonded debts without submitting to vote of people, as not being creation of additional indebtedness; Pratt County v. Society for Savings, 32 C. C. A. 598, 61 U. S. App. 61, 90 Fed. 235, sustaining bonds issued to refund judgments without being submitted to popular vote, as not being borrowing of money or increase of indebtedness; Keene Five-Cent Sav. Bank v. Lyon County, 90 Fed. 536, and Lyon County v. Keene Five-Cent Sav. Bank, 40 C. C. A. 394, 100 Fed. 339, holding negotiable refunding bonds issued by county, under legislation authorizing issuance in exchange for valid outstanding indebtedness, presumed not to have increased indebtedness—when in hands of bona fide holders before maturity; Independent School District v. Rew, 55 L. R. A. 369, 49 C. C. A. 206, 111 Fed. 9; Fairfield v. Rural Independent School District, 54 C. C. A. 348, 116 Fed. 844; Pierre v. Dunscomb, 45 C. C. A. 503, 106 Fed. 615; Taylor v. School District, 97 Fed. 755; National L. Ins. Co. v. Mead, 13 S. D. 50, 48 L. R. A. 789, 79 Am. St. Rep. 876, 82 N. W. 78; Ransom v. Pierre, 41 C. C. A. 586, 101 Fed. 667,—holding no increased indebtedness incurred by issuance of bonds to refund outstanding indebtedness.

Cited in Re Menefee, 22 Okla. 374, 97 Pac. 1014; Hamilton County v. Montpelier Sav. Bank & T. Co. 84 C. C. A. 529, 157 Fed. 25.—holding that refunding bonds do not create a debt within meaning of statute limiting indebtedness; Re Menefee, 22 Okla. 374, 97 Pac. 1014, holding that issuing refunding bonds does not create any debt so as to require submission to vote of the people.

What included in power to borrow money.

Cited in National L. Ins. Co. v. Mead, 13 S. D. 43, 48 L. R. A. 787, 79 Am. St. Rep. 876, 82 N. W. 78, and Pierre v. Dunscomb, 45 C. C. A. 502, 106 Fed. 614, holding power to borrow money and issue bonds for corporate purposes includes power to issue bonds for refunding indebtedness; Stone v. Chicago, 207 Ill. 503, 69 N. E. 970, holding issuance of bonds to pay judgments against city is pledging of credit for corporate purpose.

Certification by county clerk.

Cited in Ætna L. Ins. Co. v. Hamilton County, 54 C. C. A. 469, 117 Fed. 83, holding unavailing, allegation that purchaser of municipal bonds relied upon unauthorized certification of county clerk that indebtedness did not exceed $80,000.

Effect of diverting borrowed money.

Cited in Chauncey v. Dyke Bros. 55 C. C. A. 593, 119 Fed. 15 (dissenting opin-

ion), majority holding diversion by mortgagee of part of money borrowed for improvements devests mortgagee's lien therefor, as against laborers and material men.

Creation of indebtedness within debt limit provisions.

Cited in footnote to Ramsey v. Shelbyville, 68 L.R.A. 300, which holds obligation beyond revenue for year created by ordinance obligating city to raise each year $1,000 to maintain library if it should be donated to city.

Cited in note (37 L.R.A.(N.S.) 1099, 1101, 1102) on creation of indebtedness within meaning of debt limit provisions.

49 L. R. A. 542, STATE v. McKEE, 73 Conn. 18, 84 Am. St. Rep. 124, 46 Atl. 409.

Bribery as a criminal offense.

Cited in footnote to Baum v. State, 55 L. R. A. 250, which authorizes disfranchisement for bribery at election.

Charging offense in statutory language.

Cited in footnote to Haughn v. State, 59 L. R. A. 789, which holds indictment for bunco steering, following statutory language, insufficient.

Liberty of the press.

Cited in State v. Pioneer Press Co. 100 Minn. 177, 9 L.R.A.(N.S.) 482, 117 Am. St. Rep. 684, 110 N. W. 867, 10 Ann. Cas. 351, holding valid act prohibiting the publication of details of execution of criminal; Coleman v. MacLennan, 78 Kan. 720, 20 L.R.A.(N.S.) 369, 130 Am. St. Rep. 390, 98 Pac. 281, on power of state to suppress papers publishing principally news relating to crimes and criminals.

Acts which legislature may declare criminal.

Cited in note (78 Am. St. Rep. 260) on acts which legislature may declare criminal.

49 L. R. A. 548, STATE *ex rel.* PEREZ v. WALL, 41 Fla. 463, 79 Am. St. Rep. 195, 26 So. 1020.

49 L. R. A. 550, WARD v. CORNETT, 91 Va. 676, 22 S. E. 494.

Pleading as evidence.

Approved in Coldiron v. Asheville Shoe Co. 93 Va. 370, 25 S. E. 238, holding that answer which is responsive to bill is evidence for defendant.

Rate of interest.

Cited in Puckett v. Mullins, 106 Va. 249, 55 S. E. 676, holding that bond for amount "with interest from date" draws legal rate of interest.

49 L. R. A. 557, TECUMSEH MILLS v. LOUISVILLE & N. R. CO. 108 Ky. 572, 57 S. W. 9.

Right of carrier to limit liability.

Cited in footnotes to Mears v. New York, N. H. & H. R. Co. 56 L. R. A. 884, which authorizes carrier to stipulate for exemption from liability for wet; Ullman v. Chicago & N. W. R. Co. 56 L. R. A. 246, which sustains carrier's right to secure entire exemption from liability as insurer for loss not due to negligence or misfeasance; Russell v. Erie R. Co. 67 L.R.A. 433, which sustains carrier's right to limit common law liability by special contract thereby exempting itself from liability for loss resulting otherwise than by negligence or misfeasance.

Cited in notes (63 L.R.A. 519) on conflict of laws as to carrier's contracts;

(88 Am. St. Rep. 126, 128) on limitation of carrier's liability in bills of lading.

49 L. R. A. 560, SLAYTON v. BARRY, 175 Mass. 513, 78 Am. St. Rep. 510, 56 N. E. 574.

Infant's liability for torts.

Followed in Brooks v. Sawyer, 191 Mass. 153, 114 Am. St. Rep. 59, 76 N. E. 953, holding infant not liable in tort for false representation as to age by which he induced another to purchase from him an option for purchase of real estate which the infant repudiated.

Cited in Drude v. Curtis, 183 Mass. 319, 62 L. R. A. 756, 67 N. E. 317, denying right of infant on coming of age and disaffirming sale, to maintain action either in contract or tort for recovery of purchase money from vendor, also an infant.

Cited in notes (67 L.R.A. 678) on liability of infant for torts; (35 L.R.A. (N.S.) 575) on same point.

49 L. R. A. 562, ANGUS v. SCULLY, 176 Mass. 357, 79 Am. St. Rep. 318, 57 N. E. 674.

Intervening impossibility of performance.

Cited in Bartlett v. Bisbey, 27 Tex. Civ. App. 408, 66 S. W. 70, holding one contracting to build house not excused because, when partially completed, it is destroyed by unprecedented storm; Dixon v. Breon, 22 Pa. Super. Ct. 347, holding one contracting to cut and manufacture specified timber excused by destruction of same by forest fire; Rowe v. Peabody, 207 Mass. 233, 93 N. E. 604, holding that contractor is not relieved from performance of tunnel contract because soil renders it impossible unless at a great cost; John Soley & Sons v. Jones, 208 Mass. 568, 95 N. E. 94, holding that subcontractor can recover, where he was prevented from performance by termination of main contract by municipal commission.

Cited in footnotes to Ontario Deciduous Fruit Growers' Asso. v. Cutting Fruit Packing Co. 53 L.R.A. 681, which denies liability for failure to deliver specified quantity of fruit contracted for, from failure of crop due to unusual climatic conditions; Krause v. Crothersville School Trustees, 65 L.R.A. 111, which holds covenant to repair building and construct annex thereto discharged by destruction by lightning of main building when work is practically completed.

Recovery for work not according to contract.

Cited in Eastern Expanded Metal Co. v. Webb Granite & Constr. Co. 195 Mass. 363, 81 N. E. 251, 11 Ann. Cas. 631, holding that contractor furnishing material and labor for building under contract partly illegal, may recover quantum meruit for part done, where he repudiates contract before doing any of the part which was illegal; Vickery v. Ritchie, 202 Mass. 250, 26 L.R.A.(N.S.) 812, 88 N. E. 835, holding that contractor may recover quantum meruit for labor and material for building, where through fraud of architect, the owner and the contractor thought contract called for widely different amount; Young v. Chicopee, 186 Mass. 519, 72 N. E. 63, on right to recover reasonable value of work done where completion of contract for repair of bridge was prevented by fire.

Distinguished in Gillis v. Cobe, 177 Mass. 592, 59 N. E. 455, holding that in action for labor and materials furnished for building not constructed according to contract, contractor has burden of showing that building has added to market value of land.

49 L. R. A. 564, OPINION OF JUSTICES, 175 Mass. 599, 57 N. E. 675.

Appropriation of public funds to private use.

Approved in Earle v. Com. 180 Mass. 583, 57 L. R. A. 294, 91 Am. St. Rep. 326, 63 N. E. 10, sustaining statute providing compensation for decrease of business resulting from exercise of eminent domain for public work.

Cited in Opinion of Justices, 190 Mass. 615, 77 N. E. 820, on power of state to appropriate money to be used as reward for distinguished public service.

49 L. R. A. 566, CINCINNATI, L. & N. R. CO. v. CINCINNATI, 62 Ohio St. 465, 57 N. E. 229.

Followed without discussion in Norwood v. Arnold, 62 Ohio St. 666, 58 N. E. 1102; Youngstown v. Bonnell, 65 Ohio St. 575, 63 N. E. 1126.

Assessments to reimburse for condemnation.

Followed in Carlisle v. Cincinnati, 8 Ohio C. C. N. S. 48, 29 Ohio C. C. 82, holding that damages awarded to property owners and the costs in the suit to assess compensation for injuries to caused by the improvement cannot be included in the assessment for the improvement.

Cited in Dayton v. Bauman, 66 Ohio St. 390, 64 N. E. 433, holding constitutional limitation on assessing power prohibits raising money, directly or indirectly, by assessment to pay compensation, damages, or costs for lands appropriated for public use; McGlynn v. Toledo, 22 Ohio C. C. 36, 12 Ohio C. D. 16, holding that compensation awarded abutting property owners for damages caused by street improvements cannot be assessed as part of the costs of the improvement, against the property owners; Friedman v. Norwood, 1 Ohio C. C. N. S. 98, 25 Ohio C. C. 261, holding that damages paid to abutting property owners for the appropriation of property, property rights, the change of grade and the cost of excavation by change of grade cannot be assessed back upon the abutting property; Whipple v. Toledo, 7 Ohio C. C. N. S. 521, 29 Ohio C. C. 44, holding an assessment upon lands partially appropriated for street improvement is invalid if the costs of such appropriation are included in the assessment.

Cited in note (28 L.R.A.(N.S.) 1198) on assessments for improvements by front-foot rule.

Distinguished in Hendrickson v. Toledo, 3 Ohio C. C. N. S. 356, 13–23 Ohio C. C. 257, on the right to assess back to the property owners the cost of acquiring lands for a street improvement where no question of estoppel arises; Adkins v. Toledo, 6 Ohio C. C. N. S. 437, 27 Ohio C. C. 421, holding that the costs of the preliminary action to making an improvement, such as the cost of serving notices, costs of advertising, etc., may be included in the assessment upon the property benefited; Queen City Foundry Co. v. Cincinnati, 8 Ohio N. P. 170, 11 Ohio S. & C. P. Dec. 418, sustaining front-foot assessment where it does not exceed special benefits.

Assessment of railroad right of way.

Cited in footnote to United R. & Electric Co. v. Baltimore, 52 L. R. A. 772, which holds railroad right of way and tracks not within provision as to increasing taxation on "landed property."

49 L. R. A. 572, MIDDLESEX WATER CO. v. KNAPPMANN WHITING CO. 64 N. J. L. 240, 81 Am. St. Rep. 467, 45 Atl. 692.

Contract for water supply.

Cited in Middlesex Water Co. v. Sawyer, 65 N. J. L. 375, 47 Atl. 570, setting aside verdict denying recovery of contract price for furnishing water for fire purposes as being against weight of evidence as to sufficiency of pressure; Ukiah

City v. Ukiah Water & Improv. Co. 142 Cal. 179, 64 L. R. A. 235, footnote p. 231, 100 Am. St. Rep. 107, 75 Pac. 773, holding contract to compensate municipality for loss of property by fire from negligent failure to furnish water not shown by mere acceptance, and payment for furnishing, of water for general fire purposes; Niehaus Bros. Co. v. Contra Costa Water Co. 159 Cal. 322, 36 L.R.A. (N.S.) 1055, 113 Pac. 375, holding that connection by water company of its mains with fire plugs on private property does not impose on company contract liability for loss by fire; Buchanan & S. Lumber Co. v. East Jersey Coast Water Co. 71 N. J. L. 351, 59 Atl. 31, holding water company not liable for loss by fire caused by its failure to furnish sufficient water, where its contract specifically exempted it from liability; Milford v. Bangor R. & Electric Co. 104 Me. 244, 30 L.R.A.(N.S.) 536, 71 Atl. 759, holding that action on the case will lie for damages caused by failure of water company to furnish water, under contract, for extinguishing fires.

Cited in footnotes to Ukiah City v. Ukiah Water & Improv. Co. 64 L.R.A. 231, which holds contract by water company to compensate municipality for loss of property by fire due to negligent failure to furnish water not established by mere acceptance of, and payment for, service of such company in the furnishing of water; Allen & Currey Mfg. Co. v. Shreeveport Waterworks Co. 68 L.R.A. 650, which denies citizen's right of action against water company for destruction of property by fire because of failure to keep fire hydrants in good condition.

Cited in note (61 L. R. A. 98) on establishment and regulation of municipal water supply.

Distinguished in Hunt Bros. Co. v. San Lorenzo Water Co. 150 Cal. 54, 7 L.R.A.(N.S.) 915, 87 Pac. 1093, holding water company not liable for damages caused by fire, where it had agreed to lay pipes and put in hydrants but had failed to do so; Thompson v. Trenton Water Power Co. 77 N. J. L. 679, 73 Atl. 410, holding grantor of water power liable, under contract, for damages caused by failure to supply water where caused by matter over which grantor had control.

Excuses for breach of contract.

Cited in Smith v. Compton, 67 N. J. L. 551, 58 L. R. A. 482, 52 Atl. 386, holding performance of contract of marriage not excused because consummation would be attended with imminent hazard to life of one promising; Costa v. Cranford, 75 N. J. L. 545, 68 Atl. 160, holding sewer contractor bound by terms of his contract which permitted city to change route though new route required more expensive work.

49 L. R. A. 578, BEHRING v. SOMERVILLE, 63 N. J. L. 568, 44 Atl. 641.

Findings upon special verdict.

Approved in Bouvier v. Baltimore & N. Y. R. Co. 65 N. J. L. 328, 47 Atl. 772, holding that material facts relied on must be expressly found in order to sustain special verdict; Russell v. Russell, 63 N. J. Eq. 284, 49 Atl. 1081, denying right to rescind contract for fraud while retaining benefit from partial execution by cocontractor.

Cited in Collins v. Whiteside, 75 N. J. L. 867, 69 Atl. 174, holding that in passing upon judgment entered upon special verdict, only the pleadings and the postea can be considered.

Cited in note (24 L.R.A.(N.S.) 24, 25) on what special verdict must contain.

Implied knowledge.

Cited in Ash v. McLellan, 101 Me. 20, 62 Atl. 598, holding party charged with knowledge of a matter which he might easily have learned, and which he ought to have learned.

Recovery of money paid under mistake.

Cited in footnote to Scott v. Ford, 68 L.R.A. 469, which denies right to recover back money paid by executors under mistaken belief that payee was entitled thereto as representative of a deceased legatee.

49 L. R. A. 580, GRAY v. KAUFMAN DAIRY & ICE CREAM CO. 162 N. Y. 388, 76 Am. St. Rep. 327, 56 N. E. 903.

Surrender and acceptance of leased premises.

Cited in *Re* Mahler, 105 Fed. 433, holding resumption of possession and reletting by lessor upon bankruptcy of lessee amounts to eviction terminating lease; Crane v. Edwards, 80 App. Div. 334, 80 N. Y. Supp. 747, holding surrender accepted by direction to lessee to move out, and posting of "to let" notice on premises; Eimermann v. Nathan, 116 Wis. 128, 92 N. W. 550, holding written notice of termination of tenancy waived by acts amounting to acceptance of surrender and by landlord telling tenant he could not hold over; McInerney v. Brown, 141 App. Div. 38, 125 N. Y. Supp. 639, holding that rental to another for term beginning on same day, on refusal of tenant to take possession, is acceptance of surrender; Schmidt v. Vahjen, 143 App. Div. 480, 127 N. Y. Supp. 1038, holding that act of landlord in allowing another to occupy premises gratuitously is acceptance of surrender; Levitt v. Zindler, 136 App. Div. 696, 121 N. Y. Supp. 483, holding surrender not accepted as matter of law by putting up "To let" sign and endeavoring to get a new tenant; Dagett v. Champney, 122 App. Div. 257, 106 N. Y. Supp. 892, holding that where tenant mails key to landlord who returns it with refusal to accept surrender, but subsequently lets the premises to a new tenant, the surrender dates from time of lease to new tenant; Gutman v. Conway, 45 Misc. 364, 90 N. Y. Supp. 290, holding that reletting the premises by the landlord is an acceptance of surrender by tenant, though landlord states he will hold the tenant for the rent; Sammis v. Day, 48 Misc. 329, 96 N. Y. Supp. 777, on what constitutes implied surrender of premises.

Cited in notes (13 L.R.A.(N.S.) 401, 403) on doctrine that notice to tenant of reletting by landlord is necessary; (114 Am. St. Rep. 721) on right of landlord to relet on abandonment of premises by tenant.

Disapproved in Oldewurtel v. Wiesenfeld, 97 Md. 176, 54 Atl. 969, holding reletting of premises by landlord, with notice to tenant that he would be held for balance due under lease, not an acceptance of surrender of premises.

Payment of rent.

Cited in Harby v. Henes, 45 Misc. 370, 90 N. Y. Supp. 461, holding that acceptance of check marked "payment in full" by landlord with statement that he would sue the tenant for the balance, does not constitute an accord and satisfaction.

Letters as evidence.

Approved in Packer v. United States, 46 C. C. A. 40, 106 Fed. 910, holding inadmissible unanswered letter written to person charged with crime, after transaction complained of.

49 L. R. A. 585, STATE v. SAVERY, 126 N. C. 1083, 36 S. E. 22.

Appeal by state in criminal cases.

Cited in State v. Branner, 149 N. C. 564, 63 S. E. 169, holding that state can

not appeal from order of court striking out plea of "Guilty" and entering verdict of "Not guilty."

Cited in footnote to State v. Meyer, 52 L. R. A. 346, which sustains state's right to writ of error to review judgment reversing conviction.

49 L. R. A. 588, STATE v. HAY, 126 N. C. 999, 78 Am. St. Rep. 691, 35 S. E. 459.

Compulsory vaccination.

Cited in Com. v. Pear, 183 Mass. 246, 66 N. E. 719, holding act permitting compulsory vaccination, constitutional; Jacobson v. Massachusetts, 197 U. S. 33, 49 L. ed. 652, 25 Sup. Ct. Rep. 358, 3 Ann. Cas. 765, holding that state has power to enact compulsory vaccination law; Com. v. Pear, 183 Mass. 246, 67 L.R.A. 939, 66 N. E. 719, holding valid act authorizing board of health to require all inhabitants of a town to be vaccinated; Morgan v. Stewart, 144 N. C. 428, 57 S. E. 149, holding that compulsory vaccination law is valid and that local authorities have power to adopt reasonable regulations for its enforcement; Re Viemeister, 179 N. Y. 240, 70 L.R.A. 798, 103 Am. St. Rep. 859, 72 N. E. 97, 1 Ann. Cas. 334, holding valid statute providing for exclusion of children from public schools until vaccinated; Hutchins v. Durham, 137 N. C. 69, 49 S. E. 46, 2 Ann. Cas. 340, holding that schoolboard may require vaccination of all pupils on pain of exclusion until vaccinated; Kirk v. Board of Health (Kirk v. Wyman) 83 S. C. 391, 23 L.R.A.(N.S.) 1196, 65 S. E. 387 (dissenting opinion) on validity of compulsory vaccination laws.

Cited in footnotes to Com. v. Pear, 67 L.R.A. 935, which sustains power of legislature to authorize health authorities of municipality to require under penalty all citizens to be vaccinated when considered necessary for the public health; Re Viemeister, 70 L.R.A. 796, which upholds statute requiring vaccination as proper requisite to attendance at public school.

Cited in notes (17 L.R.A.(N.S.) 710) on compulsory vaccination; (78 Am. St. Rep. 242) on acts which legislature may declare criminal; (80 Am. St. Rep. 230, 231) on powers which may be delegated to boards of health; (49 L. ed. U. S. 644) on constitutionality of compulsory vaccination.

Police power.

Cited in Durham v. Eno Cotton Mills, 141 N. C. 645, 7 L.R.A.(N.S.) 334, 54 S. E. 453, holding act prohibiting discharge of sewage into stream used for water supply to be a valid exercise of police power.

49 L. R. A. 590, TURNER v. BOGER, 126 N. C. 300, 35 S. E. 592.

Stipulations as to attorney's fees.

Approved in Exchange Bank v. Apalachian Land & Lumber Co. 128 N. C. 195, 38 S. E. 813, holding invalid, provision in promissory note for attorney's fees in case of suit thereon; Huyett-Smith Mfg. Co. v. Gray, 129 N. C. 442, 57 L. R. A. 198, 40 S. E. 178, denying right of recovery of attorney's fees stipulated for in contract sued upon.

Cited in New Home Sewing Mach. Co. v. Seago, 128 N. C. 163, 38 S. E. 805, dissenting opinion by Clark, J., who holds invalid, stipulation in penal bond providing in New Home Sewing Mach. Co. v. Seago, 128 N. C. 163, 38 S. E. 805, dissenting opinion by Clark, J., who holds invalid, stipulation in penal bond providing for attorney's fee for collection of principal sum; Staton v. Webb, 137 N. C. 41, 49 S. E. 55, holding mortgagee not entitled to attorney's fee upon foreclosure sale, in absence of agreement in the mortgage.

Distinguished in Hickson Lumber Co. v. Pollock, 139 N. C. 175, 51 S. E. 855,

holding bank entitled to reimbursement for money necessarily expended in collecting collaterals; Loftis v. Duckworth, 146 N. C. 344, 59 S. E. 689, on commissions to trustees acting under deed of trust.

49 L. R. A. 592, HEMBEAU v. GREAT CAMP, K. OF M. 101 Mich. 161, 45 Am. St. Rep. 400, 59 N. W. 417.

Conclusiveness of decisions of association or corporation tribunals.

Approved in Raymond v. Farmers' Mut. F. Ins. Co. 114 Mich. 392, 72 N. W. 254, sustaining by-laws of mutual fire insurance company providing for arbitration of differences; Russell v. North American Ben. Asso. 116 Mich. 702, 75 N. W. 137, sustaining by-laws, referred to in policy and made part thereof, providing for arbitration of disputed claims by three arbitrators whose award shall be final; Fillmore v. Great Camp, K. of M. 103 Mich. 442, 61 N. W. 785, sustaining provision in laws of mutual benefit association providing for determination of death claims by tribunal of the order, whose decision shall be final; Eighmy v. Brotherhood of Railway Trainmen, 113 Iowa, 683, 83 N. W. 1051, holding decision of certain officers as to whether injury constitutes total disability, condition precedent to recovery upon brotherhood certificate providing for reference of such claims; Harris v. Detroit Typographical Union, 144 Mich. 423, 108 N. W. 362, holding member of voluntary society bound by remedies provided in its by-laws.

Cited in Allen v. Patrons' Mut. F. Ins. Co. 165 Mich. 22, 130 N. W. 196, upholding provision requiring insured to refer dispute to board of arbitration; Patrons' Mut. F. Ins. Co. v. Atty. Gen. 166 Mich. 441, 131 N. W. 1119, holding valid, by-law providing that board of arbitration shall have exclusive jurisdiction and their finding shall be final; Conley v. Supreme Court, I. O. F. 158 Mich. 197, 122 N. W. 567, holding that member of beneficiary association can not bring action against the society until remedies provided by its by-laws have been exhausted; Hogadone v. Grange Mut. F. Ins. Co. 133 Mich. 343, 94 N. W. 1045; Dick v. Supreme Body, I. C. 138 Mich. 387, 101 N. W. 564 (dissenting opinion),—on conclusiveness of decision of tribunal provided by by-laws of voluntary association; Hoste v. Dalton, 137 Mich. 526, 100 N. W. 750, holding valid an arbitration agreement which provides final appeal to circuit court.

Cited in notes (49 L.R.A. 374) on conclusiveness of decisions of tribunals of associations or corporations; (52 Am. St. Rep. 546, 558) on arbitration of mutual or membership life or accident insurance claims.

Disapproved in Pepin v. Societe St. Jean Baptiste, 23 R. I. 82, 91 Am. St. Rep. 620, 49 Atl. 387, holding by-law of beneficial association providing for final determination of disputes between members and society, by a committee, invalid.

49 L. R. A. 594, HICKEY v. O'BRIEN, 123 Mich. 611, 81 Am. St. Rep. 227, 82 N. W. 241.

Contracts for indefinite quantities.

Approved in Ames-Brooks Co. v. Ætna Ins. Co. 83 Minn. 350, 86 N. W. 344, sustaining contract to insure all grain cargoes of certain season on condition of continuance of specified rates; E. G. Dailey Co. v. Clark Can Co. 128 Mich. 595, 87 N. W. 761, upholding contract to furnish all tin cans required by canning factory for specified time; Burgess Sulphite Fibre Co. v. Broomfield, 180 Mass. 287, 62 N. E. 367, upholding contract for sale of all scrap iron on vendor's premises at specified amount per ton, which vendor should designate he wished taken away; Excelsior Wrapper Co. v. Messinger, 116 Wis. 556, 93 N. W. 459, up-

holding contract to furnish all paper of specified kind needed in vendee's business, for a year.

Cited in Spencer v. Taylor, 69 Kan. 497, 77 Pac. 276, holding valid a contract for mineral water sufficient to supply city; Hardwick v. American Can. Co. 113 Tenn. 668, 88 S. W. 797, holding contract to furnish five thousand or more stoves annually not too indefinite where prior dealings would furnish data as to kind; Sterling Coal Co. v. Silver Spring Bleaching & Dyeing Co. 89 C. C. A. 523, 162 Fed. 851; Woodbridge Ice Co. v. Semon Ice Cream Co. 81 Conn. 486, 71 Atl. 577,—on validity of contract to sell such quantity as purchaser shall need in his business.

Cited in footnotes to Loudenback Fertilizer Co. v. Tennessee Phosphate Co. 61 L. R. A. 402, which sustains contract for purchase of entire consumption for term of years of phosphate rock in manufacturing fertilizer, estimated at specified amount, with right to demand double; Cold Blast Transp. Co. v. Kansas City Bolt & Nut Co. 57 L. R. A. 696, which holds void, accepted offer to deliver at specified prices during specified period articles in such amounts as acceptor may desire.

Cited in note (11 L.R.A.(N.S.) 714, 717) on mutuality of accepted proposition to furnish such material as one needs.

Distinguished in Jordan v. Walker, 154 Mich. 398, 117 N. W. 942, holding contract for pickles too indefinite where both quantity and quality were undetermined.

49 L. R. A. 596, MACKIN v. PORTLAND GAS CO. 38 Or. 120, 61 Pac. 134. Rehearing denied in 38 Or. 129, 62 Pac. 20.

Injunction to compel company to supply gas to consumer.

Cited in Gallagher v. Equitable Gaslight Co. 141 Cal. 708, 75 Pac. 329, holding that injunction will lie to compel company to furnish gas at price agreed upon in contract with consumer; State ex rel. Latshaw v. Water & Light Comrs. 105 Minn. 476, 127 Am. St. Rep. 581, 117 N. W. 827, denying mandamus to compel company to accept arrearages and furnish gas to customer who refuses to pay additional price charged where payment is not made by specified time.

Mandamus to compel service by public service corporation.

Cited in State ex rel. Deeney v. Butte Electric & Power Co. 43 Mont. 123, 115 Pac. 44, sustaining mandamus to compel furnishing of electricity, though relator refused to pay old gas bill.

Jurisdiction of court of equity.

Cited in McDowell v. Avon-by-the-Sea Land & Improv. Co. 71 N. J. Eq. 113, 63 Atl. 13, holding that equity has jurisdiction to enjoin the cutting off of water supply from premises pending settlement of dispute as to water rents.

49 L. R. A. 600, STORK v. PHILADELPHIA, 195 Pa. 101, 45 Atl. 678.

Followed without discussion in Marsh v. Philadelphia, 195 Pa. 130, 45 Atl. 1094.

Liability for injuries to property.

Cited in Flynn v. Philadelphia, 199 Pa. 477, 49 Atl. 249, Affirming 9 Pa. Dist. R. 607, holding that city cannot retain amount of damages awarded property owners for injuries resulting from work done, without negligence on part of contractors, under indemnification contract: *Re* Chatham Street, 16 Pa. Super. St. 108, holding damages for unavoidable injury to abutting property recoverable in proceedings before jury of view, where caused by permanent ridge in highway

from laying sewer at level; Marshall v. American Teleg. & Teleph. Co. 16 Pa. Super. Ct. 620, sustaining right of recovery for cutting of trees in exercise of eminent domain; Corey v. Edgewood, 18 Pa. Super. Ct. 227, sustaining right of recovery for damage necessarily resulting to street railroad company's right of way by change of street grade; McGrane v. Philadelphia & Reading R. Co. 20 Pa. Super. Ct. 203, holding proceeding before viewers an appropriate remedy for direct injuries to property, due to erection of temporary tracks, and trespass for negligent performance of work; Curran v. East Pittsburg, 20 Pa. Super. Ct. 593, holding trespass not appropriate remedy for injuries to land, caused by cutting off drain; Cooper v. Scranton City, 21 Pa. Super. Ct. 22, holding trespass not proper remedy for recovery of damages for overflowing of property by surface water due to change of grade of street; Fyfe v. Turtle Creek, 22 Pa. Super. Ct. 295, holding proceeding before viewers an appropriate remedy for recovery of damages for injury to building due to depriving land of lateral support in construction of sewer; Walsh v. Scranton, 23 Pa. Super. Ct. 278, holding owner of property abutting on highway entitled to compensation for impairment of special right of ingress and egress; Rogers v. Pottsville, 28 Pa. Co. Ct. 349, 14 Montg. Co. L. Rep. 165, holding owners entitled to assessment of damages by viewers for cutting off access to house by change of grade of street; Wilson v. Ephrata, 22 Lanc. L. Rev. 93, holding that assessment of damages, and not trespass, is proper remedy for injury from change of grade of street; Ralston v. Sharon Hill Borough, 43 Pa. Super. Ct. 284, holding that claimant in proceeding to assess damages for construction of sewer is limited to direct damage from act of eminent domain itself, irrespective of negligence; Strauss v. Allentown, 215 Pa. 99, 63 Atl. 1073, 7 Ann. Cas. 686, holding city not liable for damage from increased flow of water in its natural channels caused by paving streets and otherwise developing and improving the city; Schiveriner v. Philadelphia, 35 Pa. Super. Ct. 131, holding city not liable, in absence of negligence, for damage caused by increased flow of water onto adjoining property from improvement of public park; Herr v. Altoona, 31 Pa. Super. Ct. 378, holding that there can be no recovery in trespass action, for injury caused by street or sewer improvement, without a showing of negligence in doing the work; Barrett v. Minersville, 38 Pa. Super. Ct. 82, holding city not liable, in action for negligence, for damage to land at end of street caused by flow of water in gutter of improved street; Re Ogontz Ave. 225 Pa. 130, 73 Atl. 1096, on right of owner of land not abutting on street, to damages for injury caused by its improvement.

Cited in footnote to Louisville R. Co. v. Foster, 50 L. R. A. 813, which denies abutter's right to recover for noises, smells, and disturbances, from operation of street railway and turntable in street.

Waiver of want of jurisdiction by appearance.

Cited in Lewisburg Bridge Co. v. Union County, 232 Pa. 265, 81 Atl. 324, holding that appearance to defend does not give jurisdiction by acquiescence, where court is without jurisdiction over subject-matter.

49 L. R. A. 604, CRAFTS v. RAY, 22 R. I. 179, 46 Atl. 1043.

Validity of tax laws.

Cited in Kersey v. Terre Haute, 161 Ind. 474, 68 N. E. 1027, upholding vehicle tax ordinance although excluding certain vehicles from its operation.

Cited in notes (60 L.R.A. 47) on corporate taxation in United States as affected by the contract clause in Federal Constitution; (29 L.R.A.(N.S.) 184) on power of municipality to exempt property from taxation.

Distribution of burdens of state.

Cited in State v. McGrillis, 28 R. I. 171, 9 L.R.A.(N.S.) 638, 66 Atl. 301, 13 Ann. Cas. 701, sustaining ordinance requiring owners of land adjacent to sidewalks to remove snow and ice from them; Henry v. Cherry, 30 R. I. 36, 24 L.R.A.(N.S.) 1007, 136 Am. St. Rep. 928, 73 Atl. 97, 18 Ann. Cas. 1006, on construction of constitutional provision that burdens should be fairly distributed among citizens.

49 L. R. A. 610, McCLAIN v. WILLIAMS, 11 S. D. 227, 74 Am. St. Rep. 791, 76 N. W. 930.

Inn or boarding-house keeper's lien.

Cited in Barnett v. Walker, 79 Misc. 328, 79 N. Y. Supp. 859, holding that boarding-house keeper cannot acquire lien on property of third person brought to house by boarder; Wertheimer-Swarts Shoe Co. v. Hotel Stevens Co. 38 Wash. 413, 107 Am. St. Rep. 864, 80 Pac. 563, 3 Ann. Cas. 625, holding under statute hotel keeper has no lien upon samples of traveling salesman for salesman's bill, where he knows they belong to employer.

Cited in notes (24 L.R.A.(N.S.) 959) on innkeeper's lien on third person's property in possession of guest; (107 Am. St. Rep. 879) on innkeepers' liens.

49 L. R. A. 612, WESTON v. BARNICOAT, 175 Mass. 454, 56 N. E. 619.

Admissibility of evidence.

Approved in Whipple v. Rich, 180 Mass. 479, 63 N. E. 5, holding evidence admissible for one purpose not rendered inadmissible because it could not be used for another purpose, with regard to which it tends to influence the mind.

Cited in Hartnett v. Goddard, 176 Mass. 330, 57 N. E. 677, holding admissible, testimony by party as to purpose of association, when sued for libel for furnishing name of debtor to members thereof; Hubbard v. Allyn, 200 Mass. 171, 86 N. E. 356, holding testimony of baker's employee as to reasons given by customers for refusing to use baker's goods admissible in action by baker for libel.

Procuring discharge of employee.

Approved in Moran v. Dunphy, 177 Mass. 487, 52 L. R. A. 116, 83 Am. St. Rep. 289, 59 N. E. 125, holding it actionable tort to maliciously induce employer to discharge employee, whether accomplished by advice, falsehood, or threats; Plant v. Woods, 176 Mass. 504, 51 L. R. A. 345, 79 Am. St. Rep. 330, 57 N. E. 1011 (dissenting opinion), majority granting injunction against conspiracy by members of labor union to compel former members to join by threatening strikes and boycotts to induce employers to discharge employees failing to seek reinstatement.

Cited in note (33 L.R.A.(N.S.) 1034) on lawfulness of boycott for other than labor union.

Measure of recovery upon breach of contract.

Approved in Walton v. Ruggles, 180 Mass. 26, 61 N. E. 267, holding that full amount of note left unsecured may be recovered upon breach of agreement to assume and pay off mortgage.

Procuring breach of contract.

Cited in Wells & R. Co. v. Abraham, 146 Fed. 194, restraining purchase of proprietary medicine in violation of contract system of sale in use of its manufacturers.

Contract by sample.

Cited in Cox v. Andersen, 194 Mass. 141, 80 N. E. 236, as to when sale is by

sample; Androvette v. Parks, 207 Mass. 90, 92 N. E. 1006, holding that goods are not sold by sample, where so called sample is simply intended to represent general character of goods.

Effect of sale with particular description.

Cited in note (35 L.R.A.(N.S.) 287, 291) on effect of sale with particular description of kind or quality.

Privileged communications.

Cited in note (26 L.R.A.(N.S.) 1081) on qualified privilege of communication between members of association or private corporation.

49 L. R. A. 617, FIRST BAPTIST CHURCH v. FORT, 93 Tex. 215, 54 S. W. 892.

Right to use and control of church property.

Cited in Gibson v. Morris, 28 Tex. Civ. App. 557, 67 S. W. 443, and Gipson v. Morris, 31 Tex. Civ. App. 647, 73 S. W. 85, holding right to control church property as between factions of Baptist church depends upon which faction contains majority of members; Mack v. Kime, 129 Ga. 24, 24 L.R.A.(N.S.) 689, 58 S. E. 184, holding where church acquires property under instrument not expressly providing that it shall be used for promotion of particular doctrine, courts will not interfere to prevent union with another church authorized by governing body; Boyles v. Roberts, 222 Mo. 758, 121 S. W. 805 (dissenting opinion), on jurisdiction of superior ecclesiastical tribunals of general church organization over all church property, where it is not donated to support specific form of belief.

Cited in notes (3 L.R.A.(N.S.) 874) on enjoining control, use of, or interference with, church property; (24 L.R.A.(N.S.) 695, 703, 706) on litigation growing out of schism in religious society.

49 L. R. A. 625, SWANSON v. CHICAGO, M. & ST. P. R. CO. 79 Minn. 398, 82 N. W. 670.

Closing gates at railway crossings.

Cited in Mooers v. Northern P. R. Co. 80 Minn. 25, 82 N. W. 1085, holding railroad company not liable for injury to stock when exercising ordinary care to keep farm gate closed.

Cited in footnotes to Haines v. Atlantic City R. Co. 50 L. R. A. 862, which denies liability for trespasser's unauthorized act in raising and then lowering railroad gates, injuring passing team; Atchison, T. & S. F. R. Co. v. Conlon, 53 L. R. A. 781, which holds land owner for whose benefit farm crossing with gates maintained by railroad company, mere licensee.

Cited in notes (49 L.R.A. 628) on duty to keep gates in railroad fence closed.

Distinguished in Strobeck v. Bren, 93 Minn. 431, 101 N. W. 795, holding defendant's failure to keep gates opening on right of way of a railroad closed was not the proximate cause of killing of plaintiff's cattle which escaped into defendant's land through a break in a line fence caused by a tree falling on it during storm.

49 L. R. A. 640, JONES v. CHICAGO, ST. P. M. & O. R. CO. 80 Minn. 488, 8[illegible] W. 446.

Conflict of laws in negligence action.

Cited in note (56 L.R.A. 223) on conflict of laws as to action bodily injury.

— As to evidence and procedure in an action.

Cited in O'Dell v. Goff, 153 Mich. 647, 117 N. W. 59, holding that the lex fori governs the rules of evidence in an action; Kaufman v. Barbour, 98 Minn. 160, 107 N. W. 1128, holding that the law of the forum governs the pleading and evidence of an action on contract; Fryklund v. Great Northern R. Co. 101 Minn. 37, 111 N. W. 727, holding that the law of the forum governs in all matters of procedure, including questions of pleading, evidence and parties to and form of action.

Presumption of negligence.

Cited in note (113 Am. St. Rep. 993) on presumption of negligence from happening of accident causing personal injuries.

Liability for injury from defective car.

Cited in footnote to Crawford v. United R. & E. Co. 70 L.R.A. 489, which holds street car company liable for injury to employee by defect in car due to custom in leaving it for several hours of night in public street after inspection, without rule or regulation for guarding from negligent or wanton injury.

49 L. R. A. 642, McCULLEN v. CHICAGO & N. W. R. CO. 41 C. C. A. 365, 101 Fed. 66.

Negligence in case of railroad fires.

Approved in Great Northern R. Co. v. Coats, 53 C. C. A. 384, 115 Fed. 454, holding presumptive negligence established by evidence that fire started from sparks from passing locomotive.

Cited in Northwestern Mut. F. Asso. v. Northern P. R. Co. 68 Wash. 298, 123 Pac. 468, holding it question for jury whether plaintiff's prima facie case is rebutted by proof that engine was equipped with efficient spark arrester; Fodey v. Northern P. R. Co. 21 Idaho, 722, 123 Pac. 835, holding that negligence is presumed from proof that fire was caused by sparks from locomotive: Fireman's Fund Ins. Co. v. Oregon R. & Nav. Co. 58 Wash. 338, 108 Pac. 770, holding it question for jury whether fire was negligently set by railroad, where it was customary to dump cinders from engines on ties; Toledo, St. L. & W. R. Co. v. Sullivan, 41 Ind. App. 394, 83 N. E. 1024, which holds evidence sufficient to justify verdict that fire was caused by defective locomotive; Chenoweth v. Southern P. Co. 53 Or. 115, 99 Pac. 86; Atchison, T. & S. F. R. Co. v. Geiser, 68 Kan. 286, 75 Pac. 68, 1 Ann. Cas. 812,—holding whether prima facie case of negligence made by proof that fire was set out by locomotive is overcome by evidence of proper construction and management is question for jury; Toledo, St. L. & W. R. Co. v. Star Flouring Mills Co. 77 C. C. A. 203, 146 Fed. 956, as to whether from evidence fire was started by escape of sparks constitutes prima facie case of negligence.

Cited in footnotes to Garrett v. Southern R. Co. 49 L. R. A. 645, which denies presumption of negligence from mere proof that sparks from locomotive set fire to adjacent property; Louisville & N. R. Co. v. Marbury Lumber Co. 50 L. R. A. 620, which holds presumption of negligence from setting of fire by sparks from locomotive insufficient to take case to jury, when due care proved.

Cited in note (5 L.R.A.(N.S.) 101, 103) on presumption of negligence from setting of fire by locomotive as necessarily making negligence question for jury.

49 L. R. A. 645, GARRETT v. SOUTHERN R. CO. 41 C. C. A. 237, 101 Fed. 102.

Negligence in case of railroad fires.

Cited in Toledo, St. L. & W. R. Co. v. Star Flouring Mills Co. 77 C. C. A.

203, 146 Fed. 956, as to what evidence is sufficient to make out prima facie case of negligence when fire is started by escaping sparks.

Cited in footnotes to McCullen v. Chicago & N. W. Co. 49 L. R. A. 642, which sustains presumption of negligence from issuance of sparks from locomotive sufficient to kindle fire and destroy adjacent property; Louisville & N. R. Co. v. Marbury Lumber Co. 50 L. R. A. 620, which holds presumption of negligence from setting of fire by sparks from locomotive insufficient to take case to jury, when due care proved.

Distinguished in Cincinnati, N. O. & T. P. R. Co. v. South Fork Coal Co. 1 L.R.A.(N.S.) 540, 71 C. C. A. 316, 139 Fed. 537, holding presumption of negligence arose where trains collided, oil escaping from tank cars was ignited by fire from engine and lumber near track set on fire.

Admissibility of proof of reputation.

Cited in Louisville & N. R. Co. v. McClish, 53 C. C. A. 61, 115 Fed. 269, holding proof of general good reputation of witness admissible only when direct attack has been made on his general reputation for veracity.

49 L. R. A. 647, WELLS, F. & CO. v. ENRIGHT, 127 Cal. 669, 60 Pac. 439.

Estoppel to plead statute of limitations.

Cited in State Loan & T. Co. v. Cochran, 130 Cal. 252, 62 Pac. 466, holding agreement by sureties to waive statute of limitations in consideration of forbearance of suit, valid; Tebbets v. Fidelity & C. Co. 155 Cal. 139, 99 Pac. 501, holding provision in insurance policy that no recovery can be had thereon unless suit is brought within given time is valid though it shortens statutory period; Watertown Nat. Bank v. Bagley, 62 Misc. 383, 116 N. Y. Supp. 772, holding general agreement to waive statute of limitations cannot be construed as agreement to waive it forever.

Cited in footnote to Holman v. Omaha & C. B. R. & Bridge Co. 62 L. R. A. 395, which holds one estopped to plead statutory bar to action by agreement not to plead it.

Cited in note (63 L. R. A. 193) on estoppel to plead defense of limitations.

Commencement of limitations.

Cited in Daniels v. Daniels, 3 Cal. App. 299, 85 Pac. 134, holding that when demand notes are delivered in escrow to be delivered to payees upon death of certain person, statute commences to run upon such person's death.

Authority of president to bind corporation.

Cited in Russell v. Schade Brewing Co. 49 Wash. 367, 95 Pac. 327, holding president of corporation, actually participating in its management, has implied authority to contract with physician to attend upon injured employee.

Liability of stockholder for interest.

Cited in note (19 L.R.A.(N.S.) 429) as to whether stockholder's liability for debts of corporation includes interest.

49 L. R. A. 650, PEOPLE *ex rel.* JACKSON v. SUBURBAN R. CO. 178 Ill. 594, 53 N. E. 349.

Ultra vires as defense.

Approved in Lake Street Elev. R. Co. v. Carmichael, 82 Ill. App. 349, holding that corporation cannot plead *ultra vires* in defense of action upon guaranty of note given by employee at its request in payment of land acquired for right of way.

Cited in Mitchell v. Dakota C. Teleph. Co. 25 S. D. 417, 127 N. W. 582, hold-

ing telephone company estopped to plead that requirement of franchise of payment to city of part of receipts is ultra vires; Potter v. Calumet Electric Street R. Co. 158 Fed. 530, holding street railway company estopped to deny validity of contract with city after accepting benefits under it.

Cited in note (70 Am. St. Rep. 167, 170) on ultra vires contracts of private corporation.

Municipal power to fix rates.

Cited in Chicago Teleph. Co. v. Illinois Mfrs. Asso. 106 Ill. App. 67, holding telephone company obliged to furnish service to all its patrons alike, at rates fixed by ordinance; Charles Simon's Sons Co. v. Maryland Teleph. & Teleg. Co. 99 Md. 177, 63 L.R.A. 737, 57 Atl. 193, holding that residents of municipal corporation may enforce for their own benefit conditions in ordinance relative to telephone rates; Home Teleph. & Teleg. Co. v. Los Angeles, 155 Fed. 561, holding state's power to regulate charges for telephone service may be delegated to municipalities; Charles Simons Sons Co. v. Maryland Teleph. & Teleg. Co. 99 Md. 177, 63 L.R.A. 727, 57 Atl. 193, holding citizens of city may compel telephone company to furnish improved service at price stipulated in ordinance granting franchise; Illinois Manufacturers' Asso. v. Chicago Teleph. Co. 1 Ill. C. C. 131, holding telephone company bound to furnish metallic circuit service at rate prescribed by ordinance passed when service was by grounded circuit.

Cited in footnotes to Muncie Natural Gas Co. v. Muncie, 60 L. R. A. 822, which sustains city's power to stipulate as to maximum rates for gas; Chicago Union Traction Co. v. Chicago, 59 L. R. A. 631, which sustains city's power to prescribe compensation of horse car companies.

Jurisdiction of supreme court over mandamus.

Approved in People *ex rel.* Dickinson v. Board of Trade, 193 Ill. 587, 62 N. E. 196, holding that supreme court will not take original jurisdiction to issue writ of mandamus to compel reinstatement of member of board of trade.

Cited in People *ex rel.* Kocourek v. Chicago, 193 Ill. 571, 62 N. E. 187 (dissenting opinion), and People *ex rel.* Kocourek v. Chicago, 193 Ill. 529, 58 L. R. A. 863, 62 N. E. 179 (dissenting opinion), majority in each case dismissing petition for mandamus to compel removal of bridge across public alley, connecting two buildings, as being matter for local tribunals on ground that no public rights are involved.

Cited in note (58 L. R. A. 840) on original jurisdiction of court of last resort in mandamus case.

Petition in mandamus.

Approved in People *ex rel.* Kocourek v. Chicago, 193 Ill. 523, 58 L. R. A. 857, 62 N. E. 179, holding that summons in mandamus will be issued only upon cause shown by petition filed upon leave granted; Rowe v. People, 96 Ill. App. 441, holding verification necessary to petition for mandamus in supreme court, but as to circuit court the necessity therefor is at least doubtful.

Duties enforceable by mandamus.

Cited in State ex rel. Marion v. Marion Light & Heating Co. 174 Ind. 627, 92 N. E. 731, holding that heating company can be compelled to heat library in accordance with terms of franchise; Willcox v. Richmond Light & R. Co. 142 App. Div. 50, 128 N. Y. Supp. 266, holding that public service commission can compel railway to issue transfers required by charter; State ex rel. Ellis v. Atlantic Coast Line R. Co. 48 Fla. 128, 37 So. 652, holding mandamus lies to enforce continuing duty to observe rates fixed by state commissioners; Seymour Water Co. v. Seymour, 163 Ind. 130, 70 N. E. 514, holding water company may

be compelled by mandamus to furnish water to municipality in accordance with contract.

Cited in notes (13 L.R.A.(N.S.) 1084) on mandamus to enforce contractual duty of public-service corporation; (125 Am. St. Rep. 513) on duties, performance of which may be compelled by mandamus.

Distinguished in Chicago v. Chicago Teleph. Co. 230 Ill. 162, 13 L.R.A.(N.S.) 1088, 82 N. E. 607, 12 Ann. Cas. 109, Affirming 130 Ill. App. 457, 460, holding telephone company cannot be compelled by mandamus to file statement of gross receipts with city comptroller and pay certain percentage thereof.

Explained in People ex rel. Walker v. Aurora, E. & C. R. Co. 141 Ill. App. 89, holding private citizen not entitled to mandamus to compel railway company to stop passenger trains at certain places.

Power of municipality to control streets.

Cited in Grand Trunk Western R. Co. v. South Bend, 174 Ind. 213, 36 L.R.A. (N.S.) 854, 89 N. E. 885, holding that city may revoke authority to railroad to lay additional track in street; Roby v. Chicago, 215 Ill. 608, 74 N. E. 768, holding city cannot be enjoined from passing ordinance or making contract relative to use of streets for street railway purposes; People ex rel. Rockwell v. Chicago Teleph. Co. 245 Ill. 134, 91 N. E. 1065, holding town authorities granting telephone company license to install system in streets act in governmental, not in proprietary, capacity; East St. Louis R. Co. v. Louisville & N. R. Co. 79 C. C. A. 107, 149 Fed. 161, holding railroad and warehouse commission cannot prevent street railway from crossing steam railway when authorized by city.

Estoppel by acceptance or user.

Cited in Kerz v. Galena Water Co. 139 Ill. App. 604, holding construction placed by water company upon ordinance fixing water rates binding upon company.

49 L. R. A. 657, FROST v. CHICAGO, 178 Ill. 250, 69 Am. St. Rep. 301, 52 N. E. 869.

Police power to interfere with commerce.

Cited in Fulton v. Norteman, 60 W. Va. 566, 9 L.R.A.(N.S.) 1202, 55 S. E. 658, holding ordinance prohibiting importation of carcasses of animals and portions thereof for manufacture into fertilizer is invalid.

Cited in footnote to Arbuckle v. Blackburn, 65 L.R.A. 864, which upholds statute prohibiting the coloring, coating, or polishing of article intended for food, whereby damage or inferiority is concealed.

Cited in note (34 L.R.A.(N.S.) 652) on constitutionality of discriminations in food laws.

— Statutes relating to manufacture or sale of baking powder.

Cited in footnotes to State v. Sherod, 50 L. R. A. 660, which sustains statute requiring label stating ingredients and maker's name and residence on boxes of baking powder; State v. Layton, 62 L. R. A. 164, which sustains statutory prohibition against manufacture or sale of baking powder containing alum.

49 L. R. A. 659, ANDREWS v. ROANOKE BLDG. ASSO. & INVEST. CO. 98 Va. 445, 36 S. E. 531.

Payment upon withdrawal from building and loan association.

Approved in Eastern Bldg. & L. Asso. v. Snyder, 98 Va. 714, 37 S. E. 298, holding that withdrawing member of solvent building association has no cause of action for failure to pay claim until there are funds in treasury applicable to that

purpose; Continental Bldg. & L. Asso. v. Miller, 44 Fla. 765, 33 So. 404, holding withdrawing members may maintain bill to have receiver appointed for insolvent and mismanaged association.

Cited in Colin v. Wellford, 102 Va. 583, 102 Am. St. Rep. 859, 46 S. E. 780, holding withdrawing member of association insolvent at time of giving of notice of withdrawal is not creditor.

49 L. R. A. 661, CENTRAL STATE BANK v. SPURLIN, 111 Iowa, 187, 82 Am. St. Rep. 511, 82 N. W. 493.

Negotiability of note to trustee.

Cited in Dollar Sav. & T. Co. v. Crawford, 69 W. Va. 115, 33 L.R.A.(N.S.) 591, 70 S. E. 1089, holding that addition of "trustee" to payee's name does not affect its negotiability.

Circumstances putting purchaser of note on inquiry.

Cited in note (29 L.R.A.(N.S.) 390) on circumstances sufficient to put purchaser of negotiable paper on inquiry.

49 L. R. A. 662, STATE *ex rel.* GODARD v. JOHNSON, 61 Kan. 803, 60 Pac. 1068.

Grant of nonjudicial powers.

Cited in State *ex rel.* White v. Barker, 116 Iowa, 111, 57 L. R. A. 252, 93 Am. St. Rep. 222, 89 N. W. 204, holding statute authorizing district judges to name trustees of city water works, unconstitutional: Louisville & N. R. Co. v. Brown, 123 Fed. 948, holding Florida railroad commission not state court exempt from interference of Federal court by injunction; Western U. Teleg. Co. v. Austin, 67 Kan. 211, 72 Pac. 850, holding act extending jurisdiction of court of visitation over telegraph companies and telegraph service, void.

Cited in footnotes to Zanesville v. Zanesville Teleg. & Teleph. 52 L. R. A. 150, which sustains statute empowering probate court to direct mode of constructing telegraph or telephone line in street; *Re* Davies, 56 L. R. A. 855, which holds supreme court justice may be empowered to appoint referee to take testimony to aid in suppressing monopoly.

Cited in note (8 L.R.A.(N.S.) 530) on power of judiciary to fix rates of public-service corporations.

Confusion of branches of government.

Cited in Allen v. Burrow, 69 Kan. 815, 77 Pac. 555, 2 Ann. Cas. 539, sustaining statute creating tribunal composed of secretary of state, auditor, and attorney-general, for settlement of disputes as to nominations of political parties: Nash v. Glen Elder, 81 Kan. 451, 106 Pac. 292, holding statute empowering board of county commissioners to hear and determine application of city for authority to extend its boundaries not unconstitutional in that it confers legislative and judicial powers: Re Counties, 22 Okla. 448, 98 Pac. 557, holding legislation providing supreme court shall recommend to governor appointment of additional judge of district court and fix term is invalid; Tyson v. Washington County, 78 Neb. 216, 12 L.R.A.(N.S.) 353, 110 N. W. 634, holding courts are incompetent to decide whether proposed ditch is conducive to public health, convenience or welfare or route thereof practicable.

Creation and powers of railroad commission.

Cited in State ex rel. Taylor v. Missouri P. R. Co. 76 Kan. 474, 92 Pac. 606, holding law creating board of railroad commissioners is valid; Michigan C. R. Co. v. Michigan R. Commission, 160 Mich. 366, 125 N. W. 549, on validity of act creating railroad commission with power to fix rates.

Cited in notes (18 L.R.A.(N.S.) 714) on power of legislature to delegate to commission right to fix rates of public service corporation; (32 L.R.A.(N.S.) 644) on delegation of power to regulate carriers.

49 L. R. A. 679, FINCH v. GREGG, 126 N. C. 176, 35 S. E. 251.

Rights and liabilities of assignee of bill of lading.

Approved in Tolerton & S. Co. v. Anglo-California Bank, 112 Iowa, 708, 50 L. R. A. 779, footnote p. 777, 84 N. W. 930, denying liability of purchaser of draft with bill of lading attached, on assignor's warranty of goods; Sloan v. Carolina C. R. Co. 126 N. C. 489, 36 S. E. 21, holding that assignee of bill of lading has no cause of action against common carrier for rejection of goods by consignee permitted to inspect before delivery; Willard Mfg. Co. v. Tierney, 133 N. C. 636, 45 S. E. 1026, holding that consignee of goods takes them subject to rights of assignee of bill of lading for amount of draft attached; Searles Bros. v. Smith Grain Co. 80 Miss. 692, 32 So. 287, holding that consignee paying draft with bill of lading attached, to bank buying same, may subject proceeds to demand for damages resulting from shortage.

Cited in Cosmos Cotton Co. v. First Nat. Bank, 171 Ala. 397, 32 L.R.A. (N.S.) 1176, 54 So. 621, holding bank cashing draft, with bill of lading attached, not liable to consignee for shortage or inferiority of quality in shipment; Central Mercantile Co. v. Oklahoma State Bank, 83 Kan. 507, 33 L.R.A. (N.S.) 955, 112 Pac. 114, holding that purchaser of draft with bill of lading attached who receives payment thereof from drawee is not liable for return of portion of proceeds for defect in quality of goods; Haas v. Citizens' Bank, 144 Ala. 574, 1 L.R.A.(N.S.) 246, 113 Am. St. Rep. 61, 39 So. 129, holding buyer may recover for shortage in and damage to goods from bank which purchases drafts with bills of lading attached; Citizens' Bank v. Hass, 157 Ala. 613, 46 So. 1036 (dissenting opinion), on liability of bank purchasing draft with bill of lading attached upon seller's contract; Smith v. Williams, 117 Ga. 784, 97 Am. St. Rep. 220, 45 S. E. 394, on rights of purchaser of draft with bill of lading or other paper; Mountain City Mill Co. v. Waller, 1 Tenn. Ch. App. 644, on liability of assignee of bill of lading as regards goods shipped.

Cited in footnote to Guaranty Trust Co. v. Grotrian, 57 L. R. A. 689, which sustains drawee's right to recover back from payee, money paid on draft drawn against fictitious bill of lading.

Cited in notes (1 L.R.A.(N.S.) 242; 18 L.R.A.(N.S.) 1221, 1222; 32 L.R.A. (N.S.) 1173, 1174) on rights and liabilities of assignee of bill of lading with draft attached, as against consignee who does not get or finds goods defective; (91 Am. St. Rep. 213, 214) on liability of assignee of bill of lading with draft attached for failure of title to or defects in goods or failure of consideration; (105 Am. St. Rep. 374) on rights and liabilities of assignees of bills of lading.

Distinguished in First Nat. Bank v. Felker, 185 Fed. 683, holding that banker, to whom drafts and bills of lading are forwarded by purchaser for collection with instructions to deliver documents only on payment, is liable for conversion, where he delivers goods to consignee before payment.

Disapproved in Hall v. Keller, 64 Kan. 214, 62 L. R. A. 759, footnote p. 758, 91 Am. St. Rep. 209, 67 Pac. 518, holding neither bank purchasing draft with bill of lading attached not payees indorsing same liable to acceptor for failure of drawer's title to property shipped, and referring with approval to annotation in 49 L. R. A. 679; S. Blaidsell, Jr., Co. v. Citizens Nat. Bank, 96 Tex. 631, 62 L. R. A. 971, footnote p. 968, 97 Am. St. Rep. 944, 75 S. W. 292, holding bank purchasing draft with bill of lading attached not liable for shortage to consignee paying

same; German-American Bank v. Craig, 70 Neb. 42, 96 N. W. 1023, holding purchaser of draft with bill of lading not liable for shipper's breach of warranty; Lewis v. Small, 117 Tenn. 157, 6 L.R.A.(N.S.) 889, 119 Am. St. Rep. 994, 96 S. W. 1051, holding same and citing annotation on this point.

Overruled in Mason v. Nelson Cotton Co. 148 N. C. 495, 18 L.R.A.(N.S.) 1223, 128 Am. St. Rep. 635, 62 S. E. 625, holding purchaser of draft with bill of lading not liable to buyer of goods for seller's breach of warranty, also citing annotation on this point.

Liability of bank to payee of check drawn upon it.

Cited in Perry v. Bank of Smithfield, 131 N. C. 120, 42 S. E. 551, holding bank crediting depositor with proceeds of draft with bill of lading attached not liable to payee of check given by depositor for same goods, where deposit, when check presented, insufficient to pay it.

49 L. R. A. 684, NEAL v. CAROLINA C. R. CO. 126 N. C. 634, 36 S. E. 117.

Liability for injuring person on track.

Approved in Lea v. Durham & N. R. Co. 129 N. C. 463, 40 S. E. 212, holding railroad company not liable for killing of person standing on cross-ties in broad day light while cars being shifted.

Cited in McCall v. Southern R. Co. 129 N. C. 301, 40 S. E. 67, holding that engineer must warn persons apparently inattentive to approach of train, and stop if necessary, when it can be done by exercise of proper care; Bessent v. Southern R. Co. 132 N. C. 937, 44 S. E. 648 (distinguished in dissenting opinion), holding nonsuit properly granted where person killed while walking on track was warned of approach of train, indicated she knew of it, but failed to step out of way; Pharr v. Southern R. Co. 133 N. C. 611, 45 S. E. 1021, holding carrier not liable for killing of one stepping directly in front of approaching train, without looking to avoid danger; Exum v. Atlantic Coast Line R. Co. 154 N. C. 411, 33 L.R.A. (N.S.) 171, 70 S. E. 845, holding railroad not liable for running over employee walking along track to work; Cabe v. Southern R. Co. 155 N. C. 424, 71 S. E. 453 (dissenting opinion), on liability for running over brakeman who fell between cars of backing train; Beach v. Southern R. Co. 148 N. C. 159, 61 S. E. 664, holding railroad not liable for death of trespassers on track run over and killed by train; Free v. Southern R. Co. 83 S. C. 181, 65 S. E. 212, holding under North Carolina decisions railroad is not liable for death of employee run over while on track in yards working at his employment.

Cited in footnote to Mason v. Southern R. Co. 53 L. R. A. 913, which holds company liable for death of child on track, from failure to keep reasonable lookout.

Cited in note (31 L.R.A.(N.S.) 1037) on intoxication of persons on track as affecting applicability of doctrine of last clear chance.

Distinguished in Lassiter v. Raleigh & G. R. Co. 133 N. C. 249, 45 S. E. 570, holding it question for jury whether engine could not have been stopped in time to have prevented running over conductor not noticing its approach.

What constitutes contributory negligence.

Cited in Coley v. North Carolina R. Co. 128 N. C. 543, 57 L. R. A. 831, 39 S. E. 43 (dissenting opinion), majority holding it not negligence *per se* for engineer to use drain pipe in trying to get upon engine without grab irons, though defects known to him; Morrow v. Atlanta & C. Air Line R. Co. 134 N. C. 99, 46 S. E. 12, denying right of recovery of damages by one injured in negligently alighting from moving train; Birrell v. Great Northern R. Co. 61 Wash. 340, 112 Pac. 362, Ann. Cas. 1912 B, 1239, holding conductor negligent in walking along track

where space between ties and swamp is two and one-half feet; Stewart v. North Carolina R. Co. 136 N. C. 389, 48 S. E. 793, holding decedent guilty of contributory negligence as matter of law where he was drinking or drunk and sitting or lying upon or near track when killed by train; Morrow v. Atlanta & C. Air Line R. Co. 84 S. C. 243, 66 S. E. 186, 19 Ann. Cas. 1009, on contributory negligence.

Cited in notes (3 L.R.A.(N.S.) 197) on stepping on track in front of train running in excess of speed prescribed by ordinance as negligence; (5 L.R.A. (N.S.) 234) on effect of violation of ordinance on contributory negligence.

Submission of case to jury.

Approved in Johnson v. Atlantic & N. C. R. Co. 130 N. C. 489, 41 S. E. 794, holding action properly submitted to jury though complainant's evidence shows contributory negligence in stepping from train while moving, unless same alleged in answer and proved.

Cited in Boutten v. Wellington & P. R. Co. 128 N. C. 345, 38 S. E. 920 (dissenting opinion), majority holding action for personal injuries properly submitted to jury upon uncontradicted evidence that release was without consideration and fraudulent.

Distinguished in Ruffin v. Atlantic & N. C. R. Co. 142 N. C. 127, 55 S. E. 86, holding instruction that if jury found certain grouped facts there was no negligence properly refused where testimony was contradicted, and facts grouped did not include several phases of case.

Admissions on cross-examination.

Cited in Hygienic Plate Ice Mfg. Co. v. Raleigh & A. Air-Line R. Co. 126 N. C. 802, 36 S. E. 279 (dissenting opinion), majority holding inadmissible, evidence of fires at various times and places from sparks from other engines, though given upon cross-examination of complainant's witness.

Motion to nonsuit or demurrer to evidence.

Cited in Horton v. Seaboard Air Line R. Co. 157 N. C. 150, 72 S. E. 958, holding that court cannot grant nonsuit, where statute requires defendant to prove contributory negligence; Hollingsworth v. Skelding, 142 N. C. 252, 55 S. E. 212, holding when motion to nonsuit or demurrer to evidence is interposed matter becomes one of law as upon "case agreed."

Violation of speed ordinance as negligence.

Cited in note (5 L.R.A.(N.S.) 220) on violation of speed ordinance as negligence.

49 L. R. A. 693, PINKHAM v. LIBBY, 93 Me. 575, 45 Atl. 823.

49 L. R. A. 695, STATE v. KNOWLES, 90 Md. 646, 45 Atl. 877.

Statutes regulating medical practice, etc.

Approved in State *ex rel.* Kellogg v. Currens, 111 Wis. 441, 56 L. R. A. 257, 87 N. W. 561, sustaining statute requiring persons commencing medical practice to submit to examination, present diploma, etc., though exempting from such examination future graduates of medical colleges within state; Scholle v. State, 90 Md. 740, 50 L. R. A. 413, 46 Atl. 326, sustaining statute requiring medical practitioners to obtain license from board of examiners, though exempting surgeons of United States Army, Navy, or Marine Service, and some other classes.

Cited in Gothard v. People, 32 Colo. 14, 74 Pac. 890, upholding act requiring dentists to be examined and licensed and making presentation of diploma from accredited school prerequisite to examination; State ex rel. Milwaukee

Medical College v. Chittenden, 127 Wis. 523, 107 N. W. 500, sustaining law creating board of dental examiners and defining its authority, which included power to decide as to reputability of dental college; Ex parte McManus, 151 Cal. 338, 90 Pac. 702, sustaining act requiring architects to be examined and obtain certificate before practising; Watson v. State, 105 Md. 653, 66 Atl. 635, holding indictment for practising medicine without being registered need not state that notice of statutory provisions as to enforcement of law against so practising was sent to accused.

Cited in footnotes to Overshiner v. State, 51 L. R. A. 748, which upholds act authorizing appointment by state dental association of some of members of board of dental examiners; Noel v. People, 52 L. R. A. 287, which holds void, act giving exclusive privilege to sell patent medicines to registered pharmacists; State v. Brown, 68 L.R.A. 889, which denies right to require license to own, run, or manage a dental office from one having no intention of engaging in actual practice of dentistry.

Construction of "may" as mandatory.

Cited in Saxenmeyer v. State Bd. of Registration & Examination in Dentistry, 79 N. J. L. 429, 75 Atl. 175, holding that "may" in dental license act should not be construed as "must."

Cited in note (5 L.R.A.(N.S.) 343) on "may" in constitutional or statutory provision as mandatory.

Discretionary authority in exercise of police power.

Cited in Downs v. Swann, 111 Md. 61, 23 L.R.A.(N.S.) 742, 134 Am. St. Rep. 586, 73 Atl. 653, holding city police authorities may, by use of Bertillon system, provide themselves with means of identifying person arrested, but neither tried or convicted.

Ambiguity in wording of statute.

Cited in Sunset Teleph. & Teleg. Co. v. Pomona, 97 C. C. A. 251, 172 Fed. 839 (dissenting opinion), on use of same word with different meanings in statutes.

49 L. R. A. 698, JAMES CLARK CO. v. COLTON, 91 Md. 195, 46 Atl. 386.

Attempt to enforce liability of stockholder of bank in Strauss v. Denny, 95 Md. 691, 53 Atl. 571.

Right to prefer directors of insolvent corporation.

Cited in Nappanee Canning Co. v. Reid, M. & Co. 159 Ind. 632, 59 L. R. A. 205, footnote p. 199, 64 N. E. 1115 (dissenting opinion), majority sustaining right to prefer unsecured claims of directors and obligations on which they are liable; City Nat. Bank v. Goshen Woolen Mills Co. 35 Ind. App. 576, 69 N. E. 206, holding directors cannot prefer themselves or be preferred as creditors; Atherton v. Emerson, 199 Mass. 216, 85 N. E. 530, holding payment by officer and director in his official capacity of notes indorsed by himself constitutes preference of himself.

Presumption that officer and director knows condition of corporation's affairs.

Cited in Atherton v. Emerson, 199 Mass. 212, 85 N. E. 530, holding there is presumption of fact that officer and director knows financial condition of corporation; Tucker v. Osbourn, 101 Md. 618, 61 Atl. 321, rescinding exchange of one form of stock for another less valuable induced by untrue representations of general manager that it was for holder's benefit; Cahill v. Applegarth, 98 Md. 504, 56 Atl. 794, holding that instruction, in action against president for

deceit for falsely representing bank's condition, that he is liable if he ought to have known falsity of representations is error.

Set off in equity.

Cited in Dubreuil v. Gaither, 98 Ind. 544, 56 Atl. 965, holding equity will allow set-off on ground of insolvency of party against whom it is claimed.

Creditor's rights in assets of insolvent corporation.

Cited in Dubreuil v. Gaither, 98 Md. 544, 56 Atl. 965, holding assets of insolvent bank in hands of receiver constitute trust fund for equitable distribution among its creditors.

Propriety of equitable relief.

Cited in Woodland v. Wise, 112 Md. 39, 76 Atl. 502, holding claim against insolvent corporation for rent for unexpired term of lease of premises vacated before term expires is governed by equitable principles under Maryland law.

Definition of insolvency.

Dissenting opinion cited in Howeth v. Colbourne Bros. Co. 115 Md. 115, 80 Atl. 916, holding that insolvency is inability to pay debts in ordinary course of business.

Payment of debt by bankrupt as preference to surety.

Cited in note (18 L.R.A.(N.S.) 663) on payment of debt by bankrupt as preference to surety.

49 L. R. A. 715, CORBIN v. PHILADELPHIA, 195 Pa. 461, 78 Am. St. Rep. 825, 45 Atl. 1070.

Voluntarily incurring danger to save another's life or property.

Cited in Bracey v. Northwestern Improv. Co. 41 Mont. 346, 137 Am. St. Rep. 738, 109 Pac. 706, on negligence of miner in attempting to rescue fellow workman; Dixon v. New York, N. H. & H. R. Co. 207 Mass. 130, 92 N. E. 1030, holding that contributory negligence of driver in going to assistance of another driver struggling with frightened horse on track is question for jury; Michaels v. Chicago, B. & Q. R. Co. 146 Wis. 476, 131 N. W. 892, holding it not contributory negligence for father to go on track to save son; Whitworth v. Shreveport Belt R. Co. 112 La. 381, 65 L.R.A. 135, 36 So. 414, holding that electric lineman killed in attempt to save companion from death by reason of defectively insulated power wire was not guilty of contributory negligence, and also citing annotation with special approval; Norris v. Atlantic Coast Line R. Co. 152 N. C. 514, 27 L.R.A.(N.S.) 1074, 67 S. E. 1017, holding that the rule of contributory negligence will not be enforced against one injured in attempt to rescue another from imminent peril caused by defendant's negligence.

Cited in footnotes to West Chicago Street R. Co. v. Liderman, 52 L. R. A. 655, which holds mother attempting to rescue child from street car track, whither it had gone when she let go its hand, not *per se* guilty of negligence; Becker v. Louisville & N. R. Co. 53 L. R. A. 267, which holds boy not negligent in attempting to rescue from approaching train, girl under his escort falling on railroad bridge; Ryan v. Towar, 55 L. R. A. 310, which denies land owner's duty to make promises safe for one attempting to rescue trespassing child caught in water wheel in unused building; Chattanooga Light & P. Co. v. Hodges, 60 L. R. A. 459, which holds employee re-entering burning building to telephone fire alarm, proximate cause of his death; Saylor v. Parsons, 64 L. R. A. 542, which holds corporation not liable for injury to one received while attempt to rescue its superintendent, who had placed himself in peril; Pittsburgh, C. C. & St. L. R. Co. v. Lynch, 63 L.R.A. 504, which holds recovery for injuries sustained in effort to save life of

imperiled person not defeated by latter's contributory negligence; Whitworth v. Shreveport Belt R. Co. 65 L.R.A. 129, which holds telephone lineman not negligent in going to rescue of fellow servant who has received shock while on telephone pole, due to defective insulation of hanger connecting span wire of electric railway with trolley wire.

Cited in notes (49 L.R.A. 716) on voluntarily incurring danger to save life of another person as contributory negligence (27 L.R.A.(N.S.) 1069) on same point.

Distinguished in Huston v. Freemansburg, 9 North. Co. Rep. 361, sustaining nonsuit, where convalescent patient died from relapse from shock from blasting and from running up stairs to see how his wife was affected.

Liability of one maintaining dangerous instrumentalities.

Cited in Cook v. Conestoga Traction Co. 21 Lanc. L. Rev. 164, 9 North. Co. Rep. 201, holding that liability of railway is question for jury, where conductor fails to put boy off at certain street as requested and boy jumps off and is injured; Thompson v. Baltimore & O. R. Co. 218 Pa. 455, 19 L.R.A.(N.S.) 1170, 120 Am. St. Rep. 897, 67 Atl. 768, 11 Ann. Cas. 894 (dissenting opinion), as citing with approval a case on the liability of one who maintains dangerous instrumentalities to trespasser injured thereby.

49 L. R. A. 725, HAYWARD v. LEESON, 176 Mass. 310, 57 N. E. 656.

Appeal from decree confirming master's award of damages in East Tennessee Land Co. v. Leeson, 183 Mass. 371, 66 N. E. 427.

Cited in McEwen v. Harriman Land Co. 71 C. C. A. 163, 138 Fed. 800; Gerding v. East Tennessee Land Co. 185 Mass. 381, 70 N. E. 206,—as showing history of litigation related to citing case.

Duties and liabilities of corporation promoters.

Approved in Yeiser v. United States Board & Paper Co. 52 L. R. A. 729, footnote p. 724, 46 C. C. A. 575, 107 Fed. 348, sustaining right of corporation to secure cancelation of stock paid for out of secret profits by subscribers from sale of property to corporation; Central Trust Co. v. East Tennessee Land Co. 116 Fed. 749, holding that promoters of corporation occupy trust relation to it, and will not be permitted to make a secret profit on property which they obtained on option to purchase; Hutchinson v. Simpson, 92 App. Div. 410, 87 N. Y. Supp. 369 (dissenting opinion), majority holding promoters of corporation not liable to account at suit of stockholders for shares of stock issued to them.

Cited in Fitzpatrick v. O'Neill, 43 Mont. 563, 118 Pac. 273, Ann. Cas. 1912, C, 296, holding issuance of stock to promoters for services valid, where all stockholders agreed thereto; Simon v. Weaver, 143 Wis. 341, 127 N. W. 950, holding that complaint alleging that promoters fraudulently depleted treasury of corporation states cause of action; Weber v. Nichols, 75 N. J. Eq. 123, 75 Atl. 997, holding that stockholder cannot maintain bill to cancel stock issued to promoter for worthless patents; Hughes v. Cadena De Cobre Min. Co. 13 Ariz. 61, 108 Pac. 231, holding that gratuitous issue of stock without consideration to promoters is fraud on existing stockholders; Mason v. Carrothers, 105 Me. 401, 74 Atl. 1030, holding subsequent stockholders may maintain bill to require return of stock received as secret profits by promoters through sale of their own property to corporation; Old Dominion Copper Min. & Smelting Co. v. Bigelow, 188 Mass. 320, 108 Am. St. Rep. 479, 74 N. E. 653, holding corporation entitled to relief against promoter from sale of realty to it by latter at much above its real value without disclosure; Old Dominion Copper Min. & Smelting Co. v. Bigelow, 203 Mass. 176, 40 L.R.A.(N.S.) 331, 89 N. E. 193, holding promoter

liable to corporation for secret profits made by sale of his own property to it.

Cited in footnote to Pietsch v. Milbrath, 68 L.R.A. 945, which holds that promoters of corporation cannot escape liability to take for fraudulent profits in transferring to it property at an excessive value by limiting stock subscription to themselves until the transaction is consummated.

Cited in note (18 L.R.A.(N.S.) 1107, 1108, 1115, 1116, 1124, 1132, 1133) on duty and liability of promoters to corporation and its members.

Distinguished in Wiser v. Lawler, 189 U. S. 265, 47 L. ed. 807, 23 Sup. Ct. Rep. 624, holding owners of legal title to mines not chargeable with fraudulent statement as to title, in prospectus of corporation operating same; Stratton Massachusetts Gold Mines Co. v. Stratton, 206 Mass. 118, 92 N. E. 34, holding that entire capital stock was not wrongly issued to promoter as price of valuable mining property; Camden Land Co. v. Lewis, 101 Me. 95, 63 Atl. 523, where corporation did not seek to avoid sale nor an accounting for promoter's profits; Roosevelt v. Hamblin, 199 Mass. 135, 18 L.R.A.(N.S.) 754, 85 N. E. 98, where stockholders, being majority of incorporators, and constituting entire board of directors, transferred control to another, after organization of corporation.

Actions by receivers.

Cited in Hale v. Tyler, 104 Fed. 759, sustaining right of receiver appointed in Minnesota to enforce liability of nonresident stockholder in Federal court of another jurisdiction; Childs v. Cleaves, 95 Me. 516, 50 Atl. 714, sustaining action by receiver of Minnesota corporation to enforce liability of nonresident stockholder outside jurisdiction where appointed; Homer v. Barr Pumping Engine Co. 180 Mass. 164, 91 Am. St. Rep. 269, 61 N. E. 883, holding that receiver of corporation cannot sue in his own name on claim of corporation, outside jurisdiction of appointing tribunal, unless actually or virtually assignee of such claim; Hale v. Allison, 188 U. S. 70, 47 L. ed. 390, 23 Sup. Ct. Rep. 244, denying right of receiver, appointed in Minnesota, to sue in foreign jurisdiction to enforce double liability against nonresident stockholders; Arnold v. Searing, 78 N. J. Eq. 162, 78 Atl. 762, holding that stockholders and receiver may sue promoters in name of corporation to recover secret profits; Wolfboro Loan & Bkg. Co. v. Rollins, 195 Mass. 326, 81 N. E. 204, holding action in name of insolvent foreign corporation may be maintained by assignee appointed in foreign state upon note held by corporation; Montgomery Door & Sash Co. v. Atlantic Lumber Co. 206 Mass. 156, 92 N. E. 71, on maintenance by receiver of action in name of corporation to recover debt.

Substitution of parties by amendment.

Cited in East Tennessee Land Co. v. Leeson, 178 Mass. 206, 59 N. E. 639, holding former action continued by amendment substituting corporation for receiver as party thereto; Philadelphia & R. Coal & I. Co. v. Butler, 181 Mass. 470, 63 N. E. 949, holding that substitution of receiver for corporation in action for goods sold may be effected by amendment; Fay v. Walsh, 190 Mass. 377, 77 N. E. 44, holding amendment substituting one person for another as plaintiff may be made after verdict.

Title to property held by receivers.

Approved in City Nat. Bank v. Charles Baker Co. 180 Mass. 41, 61 N. E. 223, holding receiver of corporation cannot be taxed for money in his hands deposited in his name as receiver.

Date of assessment of damages.

Distinguished in Stewart v. Joyce, 205 Mass. 374, 91 N. E. 555, holding that damages for fraud in sale of stock should be assessed as of date of sale and transfer of stock.

Vacation of contracts between persons in fiduciary relations.

Cited in Hawkes v. Lackey, 207 Mass. 433, 93 N. E. 828, re-forming ten-year notes given by relative to elderly woman for debt due them.

49 L. R. A. 735, BUCKNAM v. BUCKNAM, 176 Mass. 229, 57 N. E. 343.

Statutes for enforcement of alimony.

Cited in McIlroy v. McIlroy, 208 Mass. 463, 94 N. E. 696, Ann. Cas. 1912, A, 934, holding that statute authorizing court to issue execution for enforcement of alimony order merely provides new method of enforcing right growing out of marriage.

49 L. R. A. 737, UNION CENT. L. INS. CO. v. BUXER, 62 Ohio St. 385, 57 N. E. 66.

Transmission of interest in insurance policy.

Annotation in Holder v. Prudential Ins. Co. 77 S. C. 302, 57 S. E. 853, holding insured cannot surrender policy without consent of beneficiaries.

Cited in note (49 L. R. A. 741) on power of insured to destroy rights of beneficiary.

Annotation in 49 L. R. A. 737, referred to particularly in Elgar v. Equitable Life Assur. Soc. 113 Wis. 93, 88 N. W. 927, denying right of recovery of grandchild upon policy "payable to children, but, if no such survive, to assured's executors, etc."

Right to paid-up policy.

Cited in footnotes to Manhattan L. Ins. Co. v. Patterson, 53 L. R. A. 378, which holds application for paid-up policy within six months after lapse for nonpayment of premium, unnecessary; Drury v. New York L. Ins. Co. 61 L. R. A. 714, which holds right to extended insurance for term earned by premiums paid not surrendered by failure to pay premium note.

Agreements or acts of insured as against beneficiary.

Cited in Daley v. Brotherhood Ry. Trainmen, 7 Ohio N. P. N. S. 239, 19 Ohio S. & C. P. Dec. 61, holding that the declarations of the deceased, not a part of the res gestæ, are not admissible against the beneficiary in an action on the policy; Sullivan v. Maroney, 76 N. J. Eq. 109, 73 Atl. 842, holding an assignment by an insured of a policy payable to her children if they survived her was not effectual to assign their interest.

Cited in note (49 L.R.A. 741) on power of insured to destroy rights of beneficiary.

Effect of premium notes providing for forfeiture of policy of not paid at maturity.

Distinguished in Marshall v. Missouri State L. Ins. Co. 148 Mo. App. 676, 129 S. W. 40, holding that the condition in a premium note that t he policy should become void if the notes were not paid at maturity, avoids the policy if the notes are not paid where the notes and policy were given at the same time as a part of the same transaction.

Waiver of default in payment of life insurance premiums.

Cited in Pete v. Woodmen of World, 5 Ohio C. C. N. S. 456, 26 Ohio C. C. 665, holding that a local secretary or clerk of the defendant order could not suspend the constitution of the order and accept an overdue assessment contrary to such constitution.

49 L. R. A. 755, A. B. FARQUHAR CO. v. NATIONAL HARROW CO. 42 C. C. A. 600, 102 Fed. 714.

Injunction against publication of claims of infringement.

Cited in Davison v. National Harrow Co. 103 Fed. 360, denying injunction

pendente lite against issuing circulars threatening suits for infringement of patent, where answer denies allegations of fraud, malice, etc., and asserts truth of matters contained in such circulars; Adriance, P. & Co. v. National Harrow Co. 58 C. C. A. 164, 121 Fed. 828, granting injunction against issuance of circulars threatening suits for infringement of patent; Edison v. Edison, Jr. Chemical Co. 128 Fed. 963, denying jurisdiction of equity to enjoin mere libel or defamation of business reputation; Electric Renovator Mfg. Co. v. Vacuum Cleaner Co. 189 Fed. 757, sustaining injunction against continuance of two years persistent sending of threatening letters and circulars to customers of alleged infringer of patent; Virtue v. Creamery Package Mfg. Co. 102 C. C. A. 413, 179 Fed. 120, holding owner of patent may in good faith modify infringers of his claims and threatened suit; Warren Featherbone Co. v. Landauer, 151 Fed. 133, denying injunction to restrain complainant in suit to enjoin infringement from issuing circulars and sending notices of commencement of suit where complainant kept within scope of bill; Dittgen v. Racine Paper Goods Co. 164 Fed. 84; Racine Paper Goods Co. v. Dittgen, 96 C. C. A. 433, 171 Fed. 633, affirming 164 Fed. 87,—holding equity will entertain suit to enjoin circulation of notices of infringement and threats of suit therefor when such acts are in bad faith; Commercial Acetylene Co. v. Avery Portable Lighting Co. 152 Fed. 646, holding complainant in suit to enjoin infringement of unadjudicated patent cannot institute multiplicity of suits against defendant's customers before decision of main suit.

Injunction against injury to business.

Cited in M. Steinert & Sons Co. v. Tagen, 207 Mass. 398, 32 L.R.A.(N.S.) 1020, 93 N. E. 584, holding that injunction will lie against bearing of placard through streets announcing pendency of strike after strike has ended.

49 L. R. A. 757, SPERRY v. FLYGARE, 80 Minn. 325, 81 Am. St. Rep. 261, 83 N. W. 177.

What constitutes local improvement.

Cited in McGee v. Hennepin County, 84 Minn. 482, 88 N. W. 6, sustaining statute providing for assessments upon shore lots for purpose of paying for local improvements in aid of navigation; Denver v. Kennedy, 33 Colo. 84, 80 Pac. 122, holding that the erection of a viaduct was a local improvement, the cost of which could be assessed against the property benefited.

Applicability of laws for assessments for local improvements to rural districts.

Cited in State ex rel. Skyllingstad v. Gunn, 92 Minn. 440, 100 N. W. 97; Swenson v. Hallock, 95 Minn. 162, 103 N. W. 895,—on the application of local assessments to rural districts.

Cited in note (40 L.R.A.(N.S.) 175) on rural highway as local improvement assessable against tributary property upon basis of special benefit.

Equality in taxes under the constitution.

Cited in State ex rel. Foot v. Bazille, 97 Minn. 18, 6 L.R.A.(N.S.) 738, 106 N. W. 93, 7 Ann. Cas. 1056, on the exemption from the equality rule in the constitution regarding taxes, of local assessments.

Distinguished in Murray v. Smith, 117 Minn. 492, 40 L.R.A.(N.S.) 176, 136 N. W. 5, holding valid, law as to highways outside cities, providing for assessment of one fourth of cost on land specially benefited.

49 L. R. A. 760, TRAVELERS' INS. CO. v. MYERS, 62 Ohio St. 529, 57 N. E. 458.

Notice to insurer of loss or injury.

Cited in Employers Liability Assur. Corp. v. Light, Heat & Power Co. 28

Ind. App. 442, 63 N. E. 54, holding question of reasonableness of notice of injury under policcy calling for immediate "notice" for court, when facts undisputed; Grimmer v. Tenement House Dept. 134 App. Div. 914, 119 N. Y. Supp. 812 (dissenting opinion), on duty of assured to give notice of accident or claim; Finley v. United States Casualty Co. 113 Tenn. 599, 83 S. W. 2, 3 Ann. Cas. 962, holding notice as provided in liability policy must be given to render insurance available; Aronson v. Frankfort Acci. & Plate Glass Ins. Co. 9 Cal. App. 478, 99 Pac. 537, holding notice of suit given nine months after accident is not given "immediately;" London Guarantee & Acci. Co. v. Siwy, 35 Ind. App. 345, 66 N. E. 481, holding "immediate" notice means notice within reasonable time; Travelers' Ins. Co. v. Nax, 73 C. C. A. 649, 142 Fed. 657, holding failure to give immediate notice not waived by insurer by letter denying liability on another ground; Remington v. Fidelity & D. Co. 27 Wash. 436, 67 Pac. 989, holding for jury, question of reasonableness of notice to guaranty company of employee's defalcation given forty-five days after discovery thereof, where bond called for immediate notice.

Cited in footnotes to Woodmen Acci. Asso. v. Byers, 55 L. R. A. 291, which holds failure to give notice of injury excused by derangement of insured; Munz v. Standard Life & Acci. Ins. Co. 62 L. R. A. 485, which holds insurer not released from liability by failure to furnish notice and proofs of death within required time by beneficiary not learning of death or of policy within such time; Deer Trail C. M. Co. v. Maryland Casualty Co. 67 L.R.A. 275, which holds notice to insurer of accident to employee eight months after occurrence not within a reasonable time.

Cited in note (38 L.R.A.(N.S.) 63) on delay in giving notice of claim under employer's indemnity policy.

Effect of agent's admissions.

Cited in footnote to Hall v. Union Cent. L. Ins. Co. 51 L. R. A. 288, which holds admissions by insurance agent after death of insured, that all premiums paid, binding on company.

Authority of agent to waive conditions of insurance policy.

Followed in Billings v. National Ins. Co. 6 Ohio C. C. N. S. 572, 27 Ohio C. C. 557, Affirming 2 Ohio N. P. N. S. 27, 14 Ohio S. & C. P. Dec. 392, holding that where the policy provided that no condition of the same could be waived except in writing, the actions of the agent cannot amount to a waiver of the express provision of the policy in regard to proofs of loss.

Cited in Walsh v. Queen Ins. Co. 6 Ohio C. C. N. S. 6, 27 Ohio C. C. 317, holding that an agent could not waive the provision of the policy that the goods were insured while located as described therein and not otherwise and a change of location without the consent of the company avoided the policy notwithstanding notice to the agent; Union Agri. Soc. v. Anchor F. Ins. Co. 9 Ohio N. P. N. S. 52, 19 Ohio S. & C. P. Dec. 663, holding that parol evidence is inadmissible to vary the conditions of an insurance policy by showing that the agent had knowledge of the condition of the insured's title when the policy was issued and that the provision of the policy would thereby be waived: Pete v. Woodman of World, 5 Ohio C. C. N. S. 456, 26 Ohio C. C. 665, holding that a local secretary or clerk of the defendant order could not suspend the constitution of the order and accept overdue assessments contrary to such constitution.

Distinguished in Kandar v. Ætna Indemnity Co. 10 Ohio C. C. N. S. 453, 30 Ohio C. C. 263, holding that while the agent may not waiver conditions of the policy after delivery, he may act for the company in construing a clause of the application so as to estop the company from denying the correctness of the con-

struction; Kehm v. German Mut. Ins. Co. 8 Ohio N. P. 545, 11 Ohio S. & C. P. Dec. 745, holding that the actions of the agent before the delivery of the policy may amount to an estoppel and prevent the insurer from denying the authority of the agent to alter conditions of the policy.

Construction of avoidance clause of policy.

Cited in Germania F. Ins. Co. v. Schild, 69 Ohio St. 140, 68 N. E. 706, holding insurance policy providing upon conditions named "this entire policy shall be void," not severable risk.

Reasonableness as question of law.

Cited in Kroll v. Close, 82 Ohio St. 197, 28 L.R.A.(N.S.) 571, 92 N. E. 29, holding finding as to reasonableness of amount expended for burial of decedent by administrator reviewable by court on facts conceded and clearly proved.

Construction of indemnity contract.

Cited in Livingston v. Fidelity & D. Co. 76 Ohio St. 264, 81 N. E. 330, holding bonding contract should receive reasonable construction to carry out presumed intention of parties expressed by language used.

49 L. R. A. 764, FOOTE v. AMERICAN PRODUCT CO. 195 Pa. 190, 78 Am. St. Rep. 806, 45 Atl. 934.

Injuries on highways by horses, etc.

Later appeal in 201 Pa. 510, 51 Atl. 364, sustaining recovery by bicyclist injured by wagon turning corner and proceeding on wrong side of road.

Cited in Simmons v. Pennsylvania R. Co. 199 Pa. 237, 48 Atl. 1070, holding violation of municipal ordinance as to period of time for keeping down gates at crossing not proximate cause of injury from fright of horse at whistle of passing locomotive; Sandy v. Swift & Co. 159 Fed. 272, holding employer of driver turning corner so suddenly as to frighten pedestrian, who is injured in attempt to escape danger, is liable; Hackett v. Alamito Sanitary Dairy Co. 90 Neb. 208, 41 L.R.A.(N.S.) 345, 133 N. W. 227, Ann. Cas. 1913 A, 829, holding it question for jury whether boy was negligent in riding bicycle between wagon and fence; Henson v. Arthur, 217 Pa. 158, 66 Atl. 256, holding "rule of the road" has no application as between driver and pedestrian injured by running into side of conveyance although conveyance was being driven on left side of street.

Cited in footnotes to Perlstein v. American Exp. Co. 52 L.R.A. 959, which holds violation of statute for turning to right shown by collision with one driving close to sidewalk on right-hand side of highway; Winter v. Harris, 54 L.R.A. 643, which holds person on left of center of full width of road in fault, though on right of center of macadamized part; Gleason v. Smith, 55 L.R.A. 622, which denies liability for injury by collision with team, to twelve-year-old boy using street as playground; Belles v. Kellner, 57 L.R.A. 627, which denies presumption of negligence from leaving gentle horse untied in street with driver only 5 to 8 feet away; Neal v. Rendall, 63 L.R.A. 668, which holds that driving on wrong side of road may be found to be proximate cause of collision with vehicle traveling in opposite direction.

Ordinance or statute as evidence.

Cited in Fane v. Philadelphia Rapid Transit Co. 228 Pa. 475, 77 Atl. 806, holding ordinance giving fire engines right of way properly excluded in action for injury to passenger in collision of engine and car; Riegert v. Thackery, 212 Pa. 90, 61 Atl. 614, holding in action for death caused by stone falling from building in process of erection ordinance designed to prevent such accidents was admissible; Snyder v. Pennsylvania R. Co. 11 Pa. Dist. R. 613, holding failure of railroad

company to perform duty imposed upon it by law is evidence of negligence but not conclusive.

Distinguished in Uhelmann v. American Ice Co. 209 Pa. 401, 58 Atl. 849, holding ordinances relating to inspection of elevators inadmissible where not violated and unconnected with specific act of negligence charged; Shaffer v. Roesch, 215 Pa. 292, 64 Atl. 511, holding ordinance requiring wagons to stop on right side of highway inadmissible in action for injury due to displacement of wagon gate at moment street car passed wagon.

Violation of road ordinance as ground for action.

Cited in note (5 L.R.A.(N.S.) 256) on violation of road ordinance as ground for private action.

49 L. R. A. 766, WYSONG v. RAMBO (Tenn. Ch.) 56 S. W. 1053.

49 L. R. A. 771, BRUSH ELECTRIC LIGHT & P. CO. v. LEFEVRE, 93 Tex. 604, 77 Am. St. Rep. 898, 57 S. W. 640.

Liability for injuries from electric wires.

Cited in Rucker v. Sherman Oil & Cotton Co. 29 Tex. Civ. App. 419, 68 S. W. 818, holding fact that persons frequently went on roof of awning admissible in action for killing of lineman coming in contact with uninsulated wire strung over roof of such awning; Ft. Worth v. Williams, 55 Tex. Civ. App. 295, 119 S. W. 137, holding telephone company liable for injury to pedestrian from falling over guy wire extending from pole to side-walk; Burnett v. Ft. Worth Light & P. Co. 102 Tex. 33, 19 L.R.A.(N.S.) 505, 112 S. W. 1040, holding no recovery can be had for death of boy trespassing on roof of building where he came in contact with wire which became charged because of violation of ordinance.

Cited in footnotes to Thomas v. Maysville Gas Co. 53 L. R. A. 147, which requires corporation sending electricity into street railway company's wires to see to their insulation; Boyd v. Portland General Electric Co. 52 L. R. A. 509, which holds want of sufficient assistance to promptly replace wires broken by severe storm not excuse, as matter of law, for delay; Boyd v. Portland General Electric Co. 57 L. R. A. 619, which holds electric light company liable for injury by wire broken during storm; Hebert v. Lake Charles Ice, Light & Waterworks Co. 64 L. R. A. 101, which holds electric light company liable for death of person in street by uninsulated wire, which burned and fell because of fall of telephone wire negligently strung above it.

Cited in notes (22 L.R.A.(N.S.) 1171) on injuries from electric wires in highway; (34 L.R.A.(N.S.) 1093) on duty of company maintaining electric wire over private property; (100 Am. St. Rep. 520) on duties and liabilities of electric corporations; (1 Brit. Rul. Cas. 800) on duty to protect traveler from electricity from wires on highway.

Liability for unapprehended injury.

Approved in Galveston, H. & S. A. R. Co. v. Kieff, 94 Tex. 338, 60 S. W. 543, denying recovery to boy thirteen years of age injured by loaded flat car being moved by hand at rate of mile an hour.

Cited in Studebaker Bros. Mfg. Co. v. Carter, 51 Tex. Civ. App. 335, 111 S. W. 1086, holding carriage repairer not liable for damage to carriage in street from runaway team; O'Brien v. Missouri, K. & T. R. Co. 36 Tex. Civ. App. 531, 82 S. W. 319, holding injury of employee by using worn out wrench left on floor of roundhouse is not result reasonably to be anticipated.

Liability for injury to trespasser.

Cited in Louthian v. Ft. Worth & D. C. R. Co. 50 Tex. Civ. App. 616, 111 S. W.

665, holding person thrown from gang plank to car, when sudden coupling was made, being there to see agent as to obtaining car for shipping cannot recover.

Alleging and proving ordinance.

Cited in International & G. N. R. Co. v. Hall, 35 Tex. Civ. App. 547, 81 S. W. 82, holding book purporting to be ordinances of city inadmissible without proof it was published by authority of city council.

49 L. R. A. 773, VICKERY v. CRAWFORD, 93 Tex. 373, 77 Am. St. Rep. 891, 55 S. W. 560.

Sheriff's liability for wrongful seizure.

Approved in Campbell v. Ulch, 24 Tex. Civ. App. 620, 60 S. W. 272, holding sheriff liable for seizure of property of third person not party to writ.

Cited in Crawford v. Thomason, 53 Tex. Civ. App. 566, 117 S. W. 181, holding sheriff liable for damages from moving house from land in controversy under void writ of sequestration.

Cited in note (95 Am. St. Rep. 120) on writ as protection to officer seizing property of third person.

49 L. R. A. 776, SUPREME COUNCIL, C. K. A. v. DENSFORD, 21 Ky. L. Rep. 1574, 56 S. W. 172.

Transmission of interest in insurance policy.

Cited in Elgar v. Equitable Life Assur. Soc. 113 Wis. 93, 88 N. W. 927, denying right of recovery of grandchild upon policy "payable to children, but, if no such survive, to assured's executors, etc.;" Elgar v. Equitable Life Assur. Soc. 113 Wis. 91, 88 N. W. 927, holding that proceeds of insurance payable to wife and, if she dies, to children, goes to son, where insured dies leaving son and grandchild; Buckler v. Supreme Council, C. K. A. 143 Ky. 620, 136 S. W. 1006, holding that insurance money goes to administrator of beneficiary where he dies without issue before insured.

Cited in note (17 L.R.A.(N.S.) 1084) on disposition of benefit fund on failure of beneficiary.

49 L. R. A. 781, *Re* TUTHILL, 163 N. Y. 133, 79 Am. St. Rep. 574, 57 N. E. 303.

Cited historically in Sanford v. Bronson, 109 App. Div. 836, 96 N. Y. Supp. 859, being an action to recover attorney's fees earned in the cited case.

Assessment of damages on condemnation.

Approved in Berridge v. Shults, 32 Misc. 445, 66 N. Y. Supp. 204, sustaining injunction *pendente lite* against construction of private road upon another's land, when damages assessed by six jurors under highway law; Beveridge v. Lewis, 137 Cal. 630, 59 L. R. A. 584, 92 Am. St. Rep. 188, 67 Pac. 1040, holding void, provision of California Constitution which denies to corporations, other than municipal, right to set off benefits against damages in actions to condemn rights of way, as being in conflict with 14th Amendment to Federal Constitution.

Liability for expense of drainage.

Cited in Billings Sugar Co. v. Fish, 40 Mont. 262, 26 L.R.A.(N.S.) 979, 106 Pac. 565, sustaining drainage law providing for construction of drains for benefit of public health and for reclamation of agricultural lands.

Cited in notes (58 L. R. A. 381) on who is liable for expense of drainage; (60 L. R. A. 162, 196) on procedure for establishment of drains and sewers.

Taking for public use.

Cited in Brown v. Gerald, 100 Me. 368, 70 L.R.A. 480, 109 Am. St. Rep. 526, 61 Atl. 785, as to what is public use; Minnesota Canal & Power Co. v. Koochich-

ing Co. 97 Minn. 447, 5 L.R.A.(N.S.) 647, 107 N. W. 405, 7 Ann. Cas. 1182, holding creation of water power plant to supply water power from wheels there is not public use; People ex rel. Bingham v. State Water Supply Commission, 70 Misc. 270, 126 N. Y. Supp. 637, holding that special act for drainage of agricultural land is void; People ex rel. Dumphy v. Wiggins, 143 App. Div. 761, 128 N. Y. Supp. 344, holding drainage law valid; Helena Power Transmission Co. v. Spratt, 35 Mont. 122, 8 L.R.A.(N.S.) 570, 88 Pac. 773, 10 Ann. Cas. 1055, holding land to be flooded through building of dam for use in generating water and electrical power to be sold to public and used for irrigation is taken for public use; State Water Supply Commission Co. v. Curtis, 192 N. Y. 330, 85 N. E. 148, holding legislature has power to authorize scheme of river improvement and regulate flow of water-courses in aid of public health and safety; State ex rel. Tacoma Industrial Co. v. White River Power Co. 39 Wash. 662, 2 L.R.A.(N.S.) 850, 82 Pac. 150, 4 Ann. Cas. 987, holding use of land in aid of development of electrical power from stream for sale to cities, railways and manufactories is not public use.

Cited in footnote to Sisson v. Buena Vista County, 70 L.R.A. 440, which holds general plan for reclamation of marsh lands of state for agricultural purposes by drainage a public purpose.

Cited in notes (66 L.R.A. 711) on constitutionality of party wall statutes; (1 L.R.A.(N.S.) 208) on taking property for irrigating or draining private lands; (31 L.R.A.(N.S.) 1118) on duty of railroad to construct bridges over public drainage ditches; (102 Am. St. Rep. 813) on use for which power of eminent domain cannot be exercised.

Judicial power over eminent domain.

Cited in notes (22 L.R.A.(N.S.) 3, 164, 165) on judicial power over eminent domain; (88 Am. St. Rep. 930, 931) on existence of public use as question for courts.

49 L. R. A. 792, SHRUM v. SIMPSON, 155 Ind. 160, 57 N. E. 708.

What constitutes partnership.

Cited in Hanthorn v. Quinn, 42 Or. 8, 69 Pac. 817, holding contract by which lessee of fishery grounds agrees to pay half of net proceeds to lessor, as rental, each bearing half cost of improvements, maintenance, and operation, not a partnership; Breinig v. Sparrow, 39 Ind. App. 461, 80 N. E. 37, holding railroad company estopped as to third person to deny partnership with individual with whom it associated in building amusement park for mutual profit.

Cited in footnote to Brandon v. Connor, 63 L. R. A. 260, which holds partnership as to third persons constituted by agreement between contractor for grading railroad and one furnishing mules and harness, to give half of net profits to latter.

Cited in note (115 Am. St. Rep. 437) on what constitutes a partnership.

49 L. R. A. 795, SOUTH BEND v. REYNOLDS, 155 Ind. 70, 57 N. E. 706.

What constitutes municipal indebtedness.

Approved in Perry County v. Gardner, 155 Ind. 170, 57 N. E. 908, holding no corporate debt incurred by employment of accountant to examine county records, when compensation to be paid by instalments out of current revenues, though constitutional limit of indebtedness already exceeded; Fidelity Trust & G. Co. v. Fowler Water Co. 113 Fed. 566, holding indebtedness for aggregate amount of hydrant rentals not created by agreement to pay same at stated times in future.

Cited in Allison v. Chester, 69 W. Va. 539, 37 L.R.A.(N.S.) 1045, 72 S. E. 472, holding that city water contract is not void because aggregate of payments will exceed debt limit; Voss v. Waterloo Water Co. 163 Ind. 84, 66 L.R.A. 101, 106

Am. St. Rep. 201, 71 N. E. 208, 2 Ann. Cas. 978, holding municipality cannot evade constitutional limitation upon its indebtedness by means of dummy corporation organized to furnish water and light.

Cited in footnote to Ramsey v. Shelbyville, 68 L.R.A. 300, which holds obligation beyond revenue for year created by ordinance obligating city to raise each year $1,000 to maintain library if it should be donated to city.

Cited in note (37 L.R.A.(N.S.) 1065, 1066, 1067, 1078, 1091) on creation of indebtedness within meaning of debt limit provisions.

Whether future rent is indebtedness.

Cited in Giles v. Dennison, 15 Okla. 67, 78 Pac. 174, holding indebtedness equal to amount of rentals for period of contract not created by contract for court house and jail, with annual rental, title ultimately to vest in county; Brown v. Schleier, 55 C. C. A. 475, 118 Fed. 986, holding instalments of rent to be earned by future occupation of demised premises are not indebtedness within statute limiting debt of national banks.

49 L. R. A. 797, ADAMS v. SHELBYVILLE, 154 Ind. 467, 77 Am. St. Rep. 484, 57 N. E. 114.

Special benefits as basis of assessment.

Followed without discussion in Schaefer v. Werling, 156 Ind. 704, 60 N. E. 149, as to constitutionality of "Barrett law."

Approved in Shank v. Smith, 157 Ind. 403, 55 L. R. A. 566, 61 N. E. 932, sustaining constitutionality of so-called "Barrett law;" Martin v. Wills, 157 Ind. 155, 60 N. E. 1021 (concurring opinion), sustaining act known as "Barrett law" and amendments thereto, providing for apportionment of costs of street improvement upon abutting lots according to frontage; Schaefer v. Werling, 188 U. S. 517, 47 L. ed. 571, 23 Sup. Ct. Rep. 449, holding decision of state court as to constitutionality of "Barrett law" binding on Federal court; Defrees v. Ferstl, 154 Ind. 696, 57 N. E. 266, dismissing injunction against construction of brick pavement when total cost thereof to be assessed to abutting property at fixed cost per front foot, where opportunity given to file objections to proposed improvement; Indianapolis v. Holt, 155 Ind. 240, 57 N. E. 966, sustaining statute providing for assessment of street improvement according to front-foot rule, as not being exclusive of right to have same made according to benefits; Leeds v. Defrees, 157 Ind. 395, 61 N. E. 930, holding that assessment will be presumed to be according to benefits derived by abutting property, in absence of proof to contrary, when collaterally attacked; McKee v. Pendleton, 154 Ind. 654, 57 N. E. 532, holding that any person affected may maintain action to enjoin assessment of total cost of street improvement to abutting property, according to front-foot rule, made regardless of special benefits; King v. Portland, 38 Or. 428, 55 L. R. A. 820, footnote p. 812, 63 Pac. 2, upholding street improvement assessment, plan of which not obviously shown to impose burdens in substantial excess of benefit; Job v. Alton, 189 Ill. 263, 82 Am. St. Rep. 448, 59 N. E. 622, sustaining statute authorizing special tax levy for sidewalk improvement though not limiting amount thereof to special benefits received; Greensburg v. Zoller, 28 Ind. App. 129, 60 N. E. 1007, holding abutting property owners bound by assessment, when failing to present grievance at time fixed in notice, unless proceedings void; Kettle v. Dallas, 35 Tex. Civ. App. 640, 80 S. W. 874, upholding legislation authorizing city to create taxing districts in providing for street improvements and to assess property according to special benefits.

Cited in French v. Barber Asphalt Paving Co. 181 U. S. 355, 45 L. ed. 894, 21 Sup. Ct. Rep. 625 (dissenting opinion), majority sustaining enforcement of

lien of tax levied upon abutting property for total cost of pavement; Taylor v. Crawfordsville, 155 Ind. 405, 58 N. E. 490, denying injunction against street improvement under provisions of so-called "Barrett law," which gives abutting property owner the right to be heard before tribunal bound to adjust all questioned assessments to basis of actual special benefits; Gorman v. State, 157 Ind. 207, 60 N. E. 1083, denying mandamus to compel board of public works to make new assessment for amount court thinks right, where assessment has been confirmed and rolls delivered to department of finance in compliance with statute similar to "Barrett law;" Deane v. Indiana Macadam & Constr. Co. 161 Ind. 376, 68 N. E. 686, holding act authorizing assessment for improvement by front-foot rule, constitutional; Hibben v. Smith, 191 U. S. 320, 48 L. ed. 199, 24 Sup. Ct. Rep. 88, holding that no Federal question arises from decision of board of town trustees as to amount of benefits resulting from improvement: Dawson v. Hipskind, 173 Ind. 223, 89 N. E. 863, holding valid act providing that special benefits of street improvement shall be conclusively determined by common council; McMillan v. Butte, 30 Mont. 225, 76 Pac. 203, holding valid, act providing that expense of street improvement be paid by assessment district according to area; Denver v. Kennedy, 33 Colo. 84, 80 Pac. 122, holding cost of viaduct properly assessed by city authorities against realty specially benefited thereby; McKee v. Pendleton, 162 Ind. 670, 69 N. E. 997, holding ordinance directing assessment for paving according to frontage not invalid when construed with statute: Voris v. Pittsburg Plate Glass Co. 163 Ind. 602, 70 N. E. 249, holding under statute special benefits of street improvements are assessed against abutting ground regardless of distance it extends back from front line though back-lying property is also liable; Klein v. Nugent Gravel Co. 162 Ind. 510, 70 N. E. 801, holding assessment for street improvement based on frontage of one side of street only is invalid; Diven v. Burlington Sav. Bank, 40 Ind. App. 680, 82 N. E. 1020, on invalidity of assessment for street improvement outside actual benefits conferred.

Cited in footnotes to Barber Asphalt Paving Co. v. French, 54 L. R. A. 492, which sustains paving assessment according to frontage; Ramsey County v. Robert P. Lewis Co. 53 L. R. A. 421, which sustains annual frontage tax on land in front of which water pipes laid: Webster v. Fargo, 56 L. R. A. 156, which sustains statute imposing entire cost of paving on abutters according to frontage; Smith v. Worcester, 59 L. R. A. 728, which holds conclusive, decision of legislature that landowners within assessment district are benefited by sewer: Sears v. Street Comrs. 62 L. R. A. 145, which authorizes consideration of benefit to abutting property from newly located passenger station in assessing cost of improving street leading thereto; Iowa Pipe & Title Co. v. Callanan, 67 L.R.A. 408, which holds void, assessment for sewer on abutting property only eight feet deep at same front foot rate as full sized lots.

Cited in notes (28 L.R.A.(N.S.) 1128, 1151, 1170, 1173, 1201, 1202) on assessments for improvements by front-foot rule: (82 Am. St. Rep. 457) on right to attack public improvement assessment by showing lack of corresponding benefit.

Distinguished in Jackson County v. State, 155 Ind. 607, 58 N. E. 1037, holding unconstitutional, statute requiring levy and collection of special tax in township in which county seat to be located, in order to provide funds for erection of public buildings: Voris v. Pittsburg Plate Glass Co. 163 Ind. 604, 70 N. E. 249, holding assessment of special benefits of street improvement to abutting lots by frontage constitutes valid assessment both upon such lots and back-lying realty; Johns v. Sheridan, 44 Ind. App. 623, 89 N. E. 899, holding that town is not

liable for extra work under statute making it liable for amount in excess of assessed benefits of sewer.

Disapproved in McGarvey v. Swan, 17 Wyo. 172, 96 Pac. 697, upholding statute providing for sewer assessments in proportion of number of square feet owned to entire area assessed.

Necessity of notice of assessment.

Cited in Cleveland, C. C. & St. L. R. Co. v. Porter, 210 U. S. 185, 52 L. ed. 1015, 28 Sup. Ct. Rep. 647, on necessity of hearing on question of special benefits; Pittsburgh, C. C. & St. L. R. Co. v. Taber, 168 Ind. 425, 77 N. E. 740, 11 Ann. Cas. 808, holding property owners are entitled to hearing on assessment for street improvement and that statutory notice is sufficient; Boyce v. Tukey, 163 Ind. 210, 70 N. E. 531, holding property owner entitled under statute to hearing upon sewer assessment before council, which is authorized to modify same.

Cited in footnote to Chicago & E. R. Co. v. Keith, 60 L. R. A. 525, which holds void, statute for construction of ditch to drain off water along railroad right of way on petition of adjoining owner, without giving company opportunity to be heard.

Construction of statutes.

Cited in State *ex rel.* Indianapolis v. Indianapolis Union R. Co. 160 Ind. 57, 60 L. R. A. 836, 66 N. E. 163, denying power of city under statute authorizing it to require railroad companies to alter grade crossings, to compel it to elevate its tracks over all streets within prescribed district: Taylor v. Patton, 160 Ind. 8, 66 N. E. 91, holding that authority given to common council to order street "graded and paved" does not authorize ordinance for grading alone.

Enforcement of lien for street improvement.

Cited in Laakmann v. Pritchard, 160 Ind. 24, 66 N. E. 153, refusing to enforce lien for street improvement where common council not shown to have made assessment required by statute; Ross v. Van Natta, 164 Ind. 559, 74 N. E. 10, holding lien for sidewalk improvement enforceable where legal and illegal elements in contract were separable.

Authority to order improvement.

Cited in McKee v. Greensburg, 160 Ind. 379, 66 N. E. 1009, holding demurrer to complaint against city for refusing to permit contractor to improve street after accepting bid, properly sustained where common council not shown to have authority to order it; Bluffton v. Miller, 33 Ind. App. 523, 70 N. E. 989, holding whether statutory authority of city to assess abutting property for street improvement has been properly exercised is jurisdictional question.

Cited in note (38 L.R.A.(N.S.) 936) on power to compel abutting property owner to improve or care for space between sidewalk and curb.

Creation of local improvement districts.

Cited in Denver v. Kennedy, 33 Colo. 84, 80 Pac. 122, holding that city can create viaduct district; Cleveland, C. C. & St. L. R. Co. v. Porter, 210 U. S. 185, 52 L. ed. 1015, 28 Sup. Ct. Rep. 647, holding paving law valid: Wolff v. Denver, 20 Colo. App. 138, 77 Pac. 364, holding authorized action of city council in fixing boundaries of sewer district not reviewable by court: Klein v. Nugent Gravel Co. 162 Ind. 510, 70 N. E. 801, holding city council cannot arbitrarily fix taxing district for street improvement other than that prescribed by statute: Spaulding v. Mott, 167 Ind. 67, 76 N. E. 620, holding under statute taxing district for road improvement was limited to single county though land in adjacent counties was within two miles of such road.

Injunction to restrain municipality.

Cited in Scott v. Laporte, 162 Ind. 60, 69 N. E. 675, holding taxpayers entitled to injunction restraining city from entering into monopolistic contract for water supply; Meyer v. Boonville, 162 Ind. 173, 70 N. E. 146, holding taxpayers may enjoin carrying out of invalid ordinances relative to lighting franchise.

49 L. R. A. 826, PEARL v. WEST END STREET R. CO. 176 Mass. 177, 79 Am. St. Rep. 302, 57 N. E. 339.

Effect of obeying improper directions of physician.

Cited in footnote to Tompkins v. Pacific Mut. L. Ins. Co. 62 L.R.A. 489, which holds medical adviser of accident insurance company a servant of the latter in making examination of injured policy-holder.

Cited in notes (49 L.R.A. 826) on obeying or disobeying physician as affecting remedy of injured person against one who injured him; (18 L.R.A.(N.S.) 642) on subsequent conduct of injured person in its relation to proximate cause, as distinguished from contributory negligence.

Distinguished in Tompkins v. Pacific Mut. L. Ins. Co. 53 W. Va. 496, 62 L. R. A. 499, footnote p. 489, 97 Am. St. Rep. 1006, 44 S. E. 439, holding insurance company liable for negligence of its physician in compulsory examination of injured policy holder.

Securing jurisdiction by service upon attorney.

Cited in Moors v. Ladenburg, 178 Mass. 276, 59 N. E. 676, holding jurisdiction over party acquired by service of injunction order upon his attorney in proceeding to restrain prosecution of attachment action.

49 L. R. A. 831, *Ex parte* MISKIMINS, 8 Wyo. 392, 58 Pac. 411.

Habeas corpus.

Cited in Bandy v. Hehn, 10 Wyo. 174, 67 Pac. 979, holding prisoner adjudged guilty of grand larceny by mere plea of guilty to charge of petit larceny, under statute providing penalty of grand larceny for second conviction of petit larceny, entitled to release on habeas corpus; Hollibaugh v. Hehn, 13 Wyo. 273, 79 Pac. 1044, holding judgment of imprisonment cannot be attacked in habeas corpus proceedings for irregularity, error or defect not affecting jurisdiction to render it; Hovey v. Sheffner, 16 Wyo. 265, 15 L.R.A.(N.S.) 230, 125 Am. St. Rep. 1037, 93 Pac. 305, 15 Ann. Cas. 318; State ex rel. Stylees v. Beaverstad, 12 N. D. 532, 97 N. W. 548,—holding jurisdictional inquiry in habeas corpus proceedings extends to power of court or magistrate to commit; Younger v. Hehn, 12 Wyo. 297, 109 Am. St. Rep. 986, 75 Pac. 443, holding court will not, in habeas corpus proceedings, consider whether mode of passing act relating to selection of trial jury invalidated it.

Cited in note (87 Am. St. Rep. 173, 181) on release of prisoner on habeas corpus after judgment and sentence.

Privilege of witness to refuse to answer questions.

Cited in People *ex rel.* Lewisohn v. O'Brien, 176 N. Y. 261, 68 N. E. 353, Affirming 81 App. Div. 60, 80 N. Y. Supp. 816, holding that witness may refuse to answer question whether he was in gambling house, although statute provides that his testimony cannot be used against him; Gaines v. State, 46 Tex. Crim. Rep. 212, 78 S. W. 1076, holding that persons under arrest upon search warrant cannot be compelled to be sworn; Rudolph v. State, 128 Wis. 232, 116 Am. St. Rep. 32, 107 N. W. 466, on compelling witness to give evidence tending to incriminate himself; Re Beer, 17 N. D. 190, 115 N. W. 672, 17 Ann. Cas. 126,

holding statute providing testimony of witness shall not be used against him is invalid because not granting immunity extensive as constitutional guaranty.

Cited in note (24 L.R.A.(N.S.) 166, 168, 169, 170) on conclusiveness of witness's statement that his answer would tend to criminate him.

Invalidity of judgments for exceeding jurisdiction.

Cited in note (111 Am. St. Rep. 949) on invalidity of judgments because of acts in excess of jurisdiction.

49 L. R. A. 859, J. THOMPSON MFG. CO. v. GUNDERSON, 106 Wis. 449, 82 N. W. 299.

Damages for breach of warranty.

Approved in J. I. Case Plow Works v. Niles & S. Co. 107 Wis. 15, 82 N. W. 568, holding that measure of damages for breach of warranty will be expense incurred in remedying defect, when it can be done at comparatively small outlay.

Cited in Archer v. Milwaukee Auto Engine & Supply Co. 144 Wis. 478, 129 N. W. 598, holding that measure of damages for breach of contract to install engine in boat is difference between value of boat as delivered and value if contract had been complied with.

Distinguished in Waupaca Electric Light & R. Co. v. Milwaukee Electric R. & Light Co. 112 Wis. 472, 88 N. W. 308, holding right to claim damages for breach of warranty as to quality and fitness not lost by vendee's delay in notifying vendor of discovery of latent defects.

Waiver of breach of contract.

Cited in Bostwick v. Mutual L. Ins. Co. 116 Wis. 400, 89 N. W. 538, holding right to repudiate policy different from that ordered, waived, as matter of law, by failure to examine it for four months after its receipt, except in case where holder assured it is the one contracted for; Bostwick v. Mutual L. Ins. Co. 116 Wis. 400, 67 L.R.A. 727, 89 N. W. 538, holding that where an insurance agent delivered a policy differing from the one contracted for, and the policy was accepted, though the differences could have been ascertained at a glance, he waives the variance by retaining the policy for several months without examining the policy; Northfield Nat. Bank v. Arndt, 132 Wis. 386, 12 L.R.A.(N.S.) 87, 112 N. W. 451, holding purchasers of stallion cannot defend against note for purchase price on ground horse furnished was not of color represented or otherwise obviously not as described.

Implied warranty of fitness.

Cited in LaCrosse Plow Co. v. Brooks, 142 Wis. 644, 126 N. W. 3, holding no implied warranty of plow's fitness for particular use is raised by statement to seller of use for which it is wanted; Logeman Bros. Co. v. R. J. Preuss Co. 131 Wis. 128, 111 N. W. 64, holding where riveting device for attachment to machine was built according to purchaser's model there was no implied warranty it would work.

Cited in notes (6 L.R.A.(N.S.) 182) on implied warranty of machinery or apparatus not in itself defective, of fitness for use under existing conditions: (15 L.R.A.(N.S.) 861) on implied warranty of fitness of particular article purchased from manufacturer or producer for particular use; (102 Am. St Rep. 618) on implied warranty of quality.

L. R. A. CASES AS AUTHORITIES.

CASES IN 50 L. R. A.

50 L. R. A. 33, MORRIS v. DODD, 110 Ga. 606, 78 Am. St. Rep. 129, 36 S. E. 83.

Life insurance as bankrupt assets.

Cited in footnotes to *Re* Scheld, 52 L. R. A. 188, which holds that policy of bankrupt passes to trustee as assets, unless cash surrender value paid or secured to trustee; Sternberg v. Levy, 53 L. R. A. 438, which sustains right as against creditors to procure with exempt wages insurance for sister and her children constituting family.

Cited in notes (4 L.R.A.(N.S.) 459) on right to subject endowment or tontine policy to claims of creditors; (16 L.R.A.(N.S.) 321) on creditor's rights as to policies having cash-surrender value; and as to insured's option to receive cash surrender value; (26 L.R.A.(N.S.) 451, 453; 30 L.R.A.(N.S.) 990) on life insurance as assets of bankrupt.

Distinguished in *Re* Slingluff, 106 Fed. 159, holding endowment policy, without surrender value, part of bankrupt's estate; Re Coleman, 69 C. C. A. 496, 136 Fed. 820, holding policy with collateral loan value and paid up insurance value part of bankrupts estate.

50 L. R. A. 47, CINCINNATI, N. O. & T. P. R. CO. v. GRAY, 41 C. C. A. 535, 101 Fed. 623.

What amendment of complaint barred by limitations.

Cited in Alabama Consol. Coal & Iron Co. v. Heald, 154 Ala. 591, 45 So. 686, holding an amendment of a complaint which pleads substantially the same facts as the original complaint, though in a different form and would operate as a bar to the original complaint does not set up a new cause of action barred by statute of limitations; Brown v. Erie R. Co. 100 C. C. A. 132, 176 Fed. 547, holding a second suit for personal injuries sustained by a railroad employee was not such a new suit as to be barred by the statute of limitations where by the same parties and for the safe injury although the negligence charged to defendant attributed to a different agent.

Cited in footnote to Love v. Southern R. Co. 55 L. R. A. 471, which sustains right to file new declaration after limitation period has elapsed, naming statutory beneficiaries in action for death.

Who are fellow servants.

Cited in Pennsylvania Co. v. Fishack, 59 C. C. A. 275, 123 Fed. 471, holding yard master fellow servant of other yard employees engaged in switching.

Cited in note (51 L. R. A. 526, 583, 605) on vice principalship considered with reference to superior rank of negligent servant.

Assumption of risk.

Cited in Mountain Copper Co. v. Van Buren, 66 C. C. A. 151, 133 Fed. 12, holding employee in mine whose work is in no way connected with timbering does not assume risks incident to improper construction thereof if not warned or where such risk was not apparent.

Duty to instruct servants.

Cited in note (26 L.R.A.(N.S.) 638) on delegability of master's duty to instruct or warn servants.

50 L. R. A. 55, *Ex parte* LORENZEN, 128 Cal. 431, 79 Am. St. Rep. 47, 61 Pac. 68.

Validity of statute regulating sale of tickets.

Cited in Re O'Neill, 41 Wash. 181, 3 L.R.A.(N.S.) 562, 83 Pac. 104, 6 Ann. Cas. 869; Samuelson v. State, 116 Tenn. 491, 15 Am. St. Rep. 805, 95 S. W. 1012,—holding statute prohibiting sale of passenger tickets below schedule rate by others than authorized agents of common carriers constitutional; Chicago v. Openheim, 229 Ill. 319, 82 N. E. 294, 11 Ann. Cas. 554; holding ordinance prohibiting sale or giving away of street car transfers valid.

Cited in footnotes to Jannin v. State, 53 L.R.A. 349, which holds void, statute against sale of railroad tickets by other than company's agent; Schubach v. McDonald, 65 L.R.A. 136, which holds that ticket broker purchasing nontransferable ticket cannot complain on being forbidden to transfer the same.

Cited in notes (78 Am. St. Rep. 267; 3 L.R.A.(N.S.) 559) on constitutionality of anti-scalping legislation; (96 Am. St. Rep. 832) on power of state to control sale and use of passenger tickets.

Reasonableness of law as test of validity.

Cited in State v. Bolden, 107 La. Ann. 119, 90 Am. St. Rep. 280, 31 So. 393, holding unreasonableness does not invalidate statute.

Construction of statutes according to intent.

Cited in Southern P. Co. v. Robinson, 132 Cal. 420, 64 Pac. 572, holding statute giving stop-over privileges to passengers, applicable only to those actually desiring to exercise them; *Ex parte* McClain, 134 Cal. 111, 54 L. R. A. 779, 86 Am. St. Rep. 243, 66 Pac. 69 (disagreed with in dissenting opinion), sustaining ordinance making mere possession of lottery ticket misdemeanor; *Re* Ah Cheung, 136 Cal. 680, 69 Pac. 492 (dissenting opinion), majority holding valid, ordinance forbidding exhibition of cards, dice, or other gambling implements in barricaded room; Southern P. Co. v. Robinson, 132 Cal. 420, 12 L.R.A.(N.S.) 504, 64 Pac. 572, holding that persons demanding stop over privileges for the purpose of being refused, but not with the intention of availing themselves of the right to stopover, were not within the meaning of the statute providing a penalty for refusing stop-over privileges.

50 L. R. A. 60, WHITE v. WAGAR, 185 Ill. 195, 57 N. E. 26.

What may be subject of forgery.

Cited in footnotes to Hickson v. State, 54 L. R. A. 327, which holds instrument requesting addressee to let bearer have a "single rig" which the signer promises to return, subject of forgery; Gordon v. Com. 57 L. R. A. 744, which holds irregular check subject of forgery, after payment, as to effect as receipt.

When certiorari issuable.

Cited in Okerlind v. Fyke, 90 Ill. App. 194, holding common-law writ of

certiorari not awardable where appeal or writ of error will lie: Denell v. Sny Island Drainage Dist. 232 Ill. 223, 83 N. E. 811, holding certiorari would lie to review drainage proceedings where the county court in its order establishing a drainage district included lands not authorized by statute to be included: County Ct. v. Pogue, 115 Ill. App. 395, holding certiorari will issue against county court to review its order calling for vote on removal of county seat, no direct remedy for review being provided: Bell v. Mattoon Waterworks & R. Co. 235 Ill. 219, 85 N. E. 214, holding circuit court could not award certiorari to review condemnation proceedings in the county court, both courts having concurrent jurisdiction in condemnation proceedings.

Cited in notes (50 L. R. A. 794) on exceptions to rule that certiorari will not lie where there is an appeal; (51 L.R.A. 34) on superintending control and supervisory jurisdiction of superior over inferior or subordinate tribunal.

Jurisdiction of justice of peace.

Cited in Rice v. Travis, 216 Ill. 257, 74 N. E. 801, holding justice of peace has no jurisdiction other than is expressly conferred by statute; Cox v. Spurgin, 210 Ill. 402, 71 N. E. 456, holding an act authorizing the issuance of execution on a judgment imposing a fine did not authorize justice to issue a transcript on the judgment as in civil cases.

Right to search warrant.

Cited in Early v. People, 117 Ill. App. 614, holding it essential to the valid issuance of a search warrant that statutory requirements be strictly followed.

Cited in note (24 Eng. Rul. Cas. 10) on authority to issue search warrant, and protection of officers acting under same.

50 L. R. A. 64, BLUE v. BEACH, 155 Ind. 121, 80 Am. St. Rep. 195, 56 N. E. 89.

Vaccination as condition of attending school.

Cited in State *ex rel.* Cox v. Board of Education, 21 Utah, 414, 60 Pac. 1013, and Glover v. Board of Education, 14 S. D. 145, 84 N. W. 761, sustaining right of board of education to exclude unvaccinated pupil from schools while smallpox prevalent; State *ex rel.* Horne v. Beil, 157 Ind. 29, 60 N. E. 672, sustaining power of board of health to require exclusion of unvaccinated children from schools; State *ex rel.* Freeman v. Zimmerman, 86 Minn. 355, 58 L. R. A. 79, footnote p. 78, 91 Am. St. Rep. 351, 90 N. W. 783, sustaining regulation, in cases of emergency, for vaccination as condition of admission to school; Osborn v. Russell, 64 Kan. 510, 68 Pac. 60, denying power in state board of health to require all persons to be successfully vaccinated before being admitted to public or private schools; Mathews v. Kalamazoo Bd. of Edu. 127 Mich. 534, 54 L. R. A. 739, 86 N. W. 1036 (dissenting opinion), majority denying power to make vaccination condition of admission to schools in absence of epidemic; Viemeister v. White, 88 App. Div. 51, 84 N. Y. Supp. 712 (concurring opinion), majority holding constitutional, statute prohibiting children from attendance at public schools without first being vaccinated: Auten v. School Board, 83 Ark. 436, 104 S. W. 130, sustaining right of school board to compel vaccination as prerequisite to school attendance; Re Biemeister, 179 N. Y. 240, 70 L.R.A. 798, 103 Am. St. Rep. 859, 72 N. E. 97, 1 Ann. Cas. 334, sustaining validity of order of health board excluding unvaccinated children from public schools; State ex rel. Milhoof v. Board of Education, 76 Ohio St. 303, 81 N. E. 568, 10 Ann. Cas. 879, sustaining statute authorizing school boards to exclude unvaccinated children from public schools; Hutchins v. Durham, 137 N. C. 70, 49 S. E. 46, 2 Ann. Cas. 340, holding provision in charter giving school board power to compel vaccination of school children is valid; State ex rel. O'Bannon v. Cole, 220 Mo. 706, 22 L.R.A.(N.S.)

988, 119 S. W. 424, sustaining power of school board to refuse admission to unvaccinated children, in time of threatened epidemic; Jacobson v. Massachusetts, 197 U. S. 33, 49 L. ed. 652, 25 Sup. Ct. Rep. 358, 3 Ann. Cas. 765, sustaining validity of statute authorizing compulsory vaccination.

Cited in footnote to Re Biemeister, 70 L.R.A. 796, which upholds statute requiring vaccination as proper requisite to attendance at public schools.

Cited in notes (49 L. ed. U. S. 643; 17 L.R.A.(N.S.) 711) on compulsory vaccination as condition of admission to public schools.

Court's power to review health regulations.

Cited in Wong Wai v. Williamson, 103 Fed. 6, holding constitutionality of health regulations open to judicial review.

What not improper delegation of legislative power.

Cited in State v. Hay, 126 N. C. 1002, 49 L. R. A. 589, 78 Am. St. Rep. 691, 35 S. E. 459, holding that legislature may authorize county and municipal authorities to require compulsory vaccination; Walker v. Towle, 156 Ind. 644, 53 L. R. A. 751, 59 N. E. 20, sustaining ordinance authorizing mayor when apprehending danger of hydrophobia to require muzzling of dogs; Isenhour v. State, 157 Ind. 522, 87 Am. St. Rep. 228, 62 N. E. 40, holding provision of pure food law that State Board of Health shall adopt measures necessary to facilitate enforcement, not delegation of legislative authority; Osborn v. Russell, 64 Kan. 510, 68 Pac. 60, raising, without deciding, question whether legislature may delegate power to require exclusion of unvaccinated pupils from schools; State ex rel. Davis v. Evans, 122 Tenn. 192, 122 S. W. 81, holding valid, statute requiring school superintendents to possess certain qualifications to be evidenced by certificate of board of education; State ex rel. J. L. Brandeis & Sons v. Melcher, 87 Neb. 365, 127 N. W. 241, holding that rule of board of education as to determination of qualifications of teachers is reasonable exercise of power to enact rules; Com. v. Pear, 183 Mass. 246, 67 L.R.A. 939, 66 N. E. 719, sustaining statute providing for compulsory vaccination of all persons over twenty-one years of age, where the board of health of any town deemed it necessary for the protection of the public health; Edwards v. Cooper, 168 Ind. 66, 79 N. E. 1047, holding appointment of board of public works to provide for or review resolutions of local sewer system valid; Southern R. Co. v. Melton, 133 Ga. 288, 65 S. E. 665, holding order of railroad commission requiring railroads to furnish cars within four days upon written order of shipper not an exercise of legislative power; Arnett v. State, 168 Ind. 185, 8 L.R.A.(N.S.) 1194, 80 N. E. 153, holding authority to board of police commissioners to fix salaries of officers not if proper delegation of legislative function; Pierce v. Doolittle, 130 Iowa, 336, 6 L.R.A.(N.S.) 145, 106 N. W. 751, holding statute providing that anyone who knowingly failed to comply with order of state board of health should be punishable as for a misdemeanor valid; State v. Briggs, 45 Or. 371, 77 Pac. 750, 2 Ann. Cas. 424, holding statute authorizing board of barber examiners to set qualifications of a barber does not confer arbitrary power to issue licenses on board; State Racing Commission v. Latonia Agri. Asso. 136 Ky. 189, 25 L.R.A. (N.S.) 912, 123 S. W. 681, holding state racing commission with power to license races and prescribe rules therefore valid police regulation.

Cited in footnotes to Schaezlein v. Cabaniss, 56 L.R.A. 733, which denies right to commissioner of labor statistics discretion to determine possibility of preventing liability to inhalation of dangerous substances in particular factories; Com. v. Pear, 67 L.R.A. 935, which sustains power of legislature to authorize health authorities of municipality to require under penalty all citizens to be vaccinated when considered necessary for the public health.

Cited in note (6 L.R.A.(N.S.) 143) on authority of legislature to penalize failure to obey health board.

Powers of health boards.

Cited in State *ex rel.* Horne v. Beil, 157 Ind. 30, 60 N. E. 672, holding that rule of board of health, properly adopted and promulgated, has force and effect of law; Com. v. Pear, 183 Mass. 246, 66 N. E. 719, holding constitutional, statute authorizing city board of health to require vaccination of all inhabitants; Monroe v. Bluffton, 31 Ind. App. 272, 67 N. E. 711, holding city liable for care of smallpox patient by one employed by physician acting in place of health officer; Kirk v. Board of Health (Kirk v. Wyfan) 83 S. C. 381, 23 L.R.A.(N.S.) 1193, 65 S. E. 387, sustaining right of city to isolate persons infected with contagious diseases; Frankfort v. Irvin, 34 Ind. App. 283, 107 Am. St. Rep. 179, 72 N. E. 652, sustaining city's contract for attendance upon patients in pest house; Anable v. Montgomery County, 34 Ind. App. 75, 107 Am. St. Rep. 173, 71 N. E. 272, holding health board has no power to erect pest house where it will be a nuisance; Brotherhood of Painters v. Barton, 46 Ind. App. 168, on act to collect accurate records of deaths, births, contagious diseases and marriages.

Cited in footnote to Wilson v. Alabama G. S. R. Co. 52 L. R. A. 357, which holds void, order of board of health against any person entering state until further order of board.

50 L. R. A. 73, STATE *ex rel.* BRUNS v. CLAUSMEIER, 154 Ind. 599, 77 Am. St. Rep. 511, 57 N. E. 541.

Suits on bond for officer's unauthorized act.

Cited in footnote to Feller v. Gates, 56 L. R. A. 630, which denies liability on bond for return of money taken by constable from execution defendant to stay execution pending appeal.

Cited in note (91 Am. St. Rep. 542) on acts for which sureties on official bonds are liable.

Right of police department to retain photograph of suspected criminal.

Cited in Owen v. Partridge, 40 Misc. 419, 82 N. Y. Supp. 248, denying right of one arrested on suspicion to injunctive relief against retention by police department of his photograph and measurements; Mabry v. Kettering, 89 Ark. 553, 117 S. W. 746, 16 Ann. Cas. 1123, denying injunctions restraining photographer from developing pictures of person accused of crime to be used by officers as means of identification; Downs v. Swann, 111 Ind. 62, 23 L.R.A.(N.S.) 743, 134 Am. St. Rep. 586, 73 Atl. 653, holding photographing and measuring by Bertillon system arrested person who is unconvicted is constitutional if it is not shown that picture will be placed in rogues gallery prior to conviction.

Cited in note (7 L.R.A.(N.S.) 275) on right to take, or retain in "rogues" gallery, picture of accused.

50 L. R. A. 75, LAND TITLE & T. CO. v. NORTHWESTERN NAT. BANK, 196 Pa. 230, 79 Am. St. Rep. 717, 46 Atl. 420.

Who bears loss on check issued or indorsed to impostor.

Approved in Land Title & T. Co. v. Northwestern Nat. Bank, 211 Pa. 213, 107 Am. St. Rep. 565, 60 Atl. 723, holding bank not liable to drawer who delivers check to person supposing him to be another whose name he has assumed also approving annotation on this point.

Cited in Hoffman v. American Exchange Nat. Bank, 2 Neb. (Unof.) 221, 96 N. W. 112, affirmed upon rehearing reported in 2 Neb. (Unof.) 224, 96

N. W. 113, holding bank paying check not liable to drawer when check was indorsed by him payable to impostor; Sherman v. Corn Exchange Bank, 91 App. Div. 86, 86 N. Y. Supp. 341, denying right of recovery upon check drawn for consideration payable to person named although that person was not one drawer had in mind, and referring particularly to annotation in 50 L.R.A. 75; Gallo v. Brooklyn Sav. Bank, 199 N. Y. 227, 32 L.R.A.(N.S.) 69, 92 N. E. 633, holding that savings bank, not being satisfied of identity of one presenting pass book, gives him check payable to order of depositor, is not liable to one cashing check; Girard Trust Co. v. Boyd, 45 Pa. Super. Ct. 297, holding that bank, which credits amount of raised check to customer's account, can recover from customer money paid to drawee; Central Nat. Bank v. National Metropolitan Bank, 31 App. D. C. 401, 17 L.R.A.(N.S.) 524, holding intermediary bank not liable to drawee bank for money paid on forged check where intermediary paid the money to person representing himself as payee on mistaken identification by a person known to the bank; Seaboard Nat. Bank v. Bank of America, 51 Misc. 108, 100 N. Y. Supp. 740, holding intent of depositor not inferred from withdrawal by an authorized person although drawee knew such person to be depositor's bookkeeper; Houser v. National Bank, 27 Pa. Super. 615, holding bank liable for payment to one who represents himself as agent of payee although same person obtained the check from depositor by same representation; Califf v. First Nat. Bank, 37 Pa. Super. Ct. 416, holding payment by bank to unauthorized agent is not binding on depositor; Snyder v. Corn Exch. Nat. Bank, 221 Pa. 611, 128 Am. St. Rep. 780, 70 Atl. 876, holding a bank is liable to a depositor for the payment of a check on a forged indorsement where the depositor has done nothing to increase the risk of the bank; Heavy v. Commercial Nat. Bank, 27 Utah, 229, 101 Am. St. Rep. 966, 75 Pac. 727, holding as between a bank who mistakenly sends a draft on a deposit to the wrong person and an innocent purchaser thereof the former was liable for the loss.

Cited in footnotes to Critten v. Chemical Nat. Bank, 57 L. R. A. 530, which holds bank paying plainly altered check to clerk of drawer without asking explanation, liable for loss from subsequent payment of similar checks: Canadian Bank of Commerce v. Bingham, 60 L. R. A. 955, which sustains drawee's right to recover amount of forged check payable to fictitious person, from one cashing same on indorsement purporting to be payee's without requiring identification: Crocker-Woolworth Nat. Bank v. Nevada Bank, 63 L.R.A. 245, which denies right of bank paying money on raised check to recover amount thereof from collecting bank merely because the evidence justifies a presumption of its reliance on the latter's representations as to the genuineness of the papers: La-Fayette v. Merchants' Bank, 68 L.R.A. 231, which sustains right of drawee paying draft on forged indorsement in ignorance of forgery on presentation bearing indorsement of collecting bank to recover back amount so paid.

Cited in notes (13 L.R.A.(N.S.) 414) on seller's mistake as to identity of vendee as affecting passing of title; (17 L.R.A.(N.S.) 514, 515; 38 L.R.A. (N.S.) 1111–1113) on who must bear loss when check or bill is issued or indorsed to impostor; (22 L.R.A.(N.S.) 499) as to when negotiable instrument is deemed payable to order of fictitious person within rule which regards such instrument as payable to bearer; (34 L.R.A.(N.S.) 1101) as to who must bear loss where check or draft negotiated upon indorsement of one bearing same name as payee or indorsee; (40 L.R.A.(N.S.) 658) on delay in giving notice of forgery as estoppel of true owner to recover against party paying paper on forged indorsement; (94 Am. St. Rep. 644, 645) on liability of one receiving payment of check through forged indorsement.

Annotation in 50 L. R. A. 75, referred to particularly in Burrows v. Western U. Teleg. Co. 86 Minn. 501, 58 L. R. A. 434, footnote p. 433, 91 Am. St. Rep. 380, 90 N. W. 1111, holding telegraph company delivering check on order by telegraph, to wrong party, liable to bona fide purchaser.

Distinguished in Tolman v. American Nat. Bank, 22 R. I. 465, 52 L. R. A. 878, footnote p. 877, 84 Am. St. Rep. 850, 48 Atl. 480, holding bank liable to maker for paying check on fraudulent indorsement by one procuring it by representing himself as another; State v. First Nat. Bank, 203 Pa. 73, 52 Atl. 13, denying bank's liability upon draft drawn payable to supposed legatee, by executor in response to forged release.

50 L. R. A. 86, KNISELY v. COTTEREL, 196 Pa. 614, 46 Atl. 861.

Necessity for uniformity in license tax.

Cited in Metropolitan L. Ins. Co. v. Paris, 138 Ky. 804, 129 S. W. 112, holding valid, ordinance imposing license on companies writing industrial insurance four times that imposed on ordinary life insurance companies; Re Lipschitz, 14 N. D. 628, 95 N. W. 157, holding tax on occupation of hawking and peddling not unequal taxation.

Cited in footnotes to Harrodsburg v. Renfro, 51 L. R. A. 897, which holds void, ordinance imposing greater license fee for sale of liquors on main street of town than elsewhere; Com. use of Titusville v. Clark, 57 L. R. A. 348, which holds void, exemption from license tax of contractors and real estate dealers, but not others, whose business less than $1,000; State v. Garbroski, 56 L. R. A. 570, which holds void, statute exempting veterans from requirement for peddling license; Rosenbloom v. State, 57 L. R. A. 922, which sustains license tax on peddlers, though venders of own products exempt.

Cited in note (46 L. ed. U. S. 569; 17 L.R.A.(N.S.) 898, 899) on grading license tax according to volume of business, or capital employed; (129 Am. St. Rep. 251, 273) on constitutional limitations on power to impose license or occupation taxes.

Local or special legislation.

Cited in *Re* Campbell, 197 Pa. 589, 47 Atl. 860, sustaining statute designating certain medical societies from which boards of examiners to be selected; Kucker v. Sunlight Oil & Gasoline Co. 230 Pa. 535, 79 Atl. 747, Ann. Cas. 1912A, 503, holding act for inspection of oils void; Com. v. Webster, 13 Pa. Dist. R. 201, holding statute prohibiting use of oleomargarine or other substance, the manufacture or sale of which is prohibited by statute, in charitable institutes is constitutional; Cornman v. Hagginbotham, 227 Pa. 553, 76 Atl. 721, on law abolishing tax collector of townships as special legislation.

Constitutional requirement as to laws amended or extended.

Cited in New Brighton v. Biddell, 14 Pa. Super. Ct. 214, sustaining act making cost of sewer assessable according to existing legislation, without re-enacting such laws.

Liability to mercantile tax.

Cited in Com. v. Bailey, B. & B. Co. 20 Pa. Super. Ct. 218, holding corporation paying bonus upon incorporation, and annual tax upon capital stock, not relieved from mercantile tax upon business done; Com. v. Pocono Mountain Ice Co. 23 Pa. Super. Ct. 269, holding ice company taking ice from own lake, storing it in building, on margin thereof, and selling it in car-load lots, not liable to pay mercantile tax imposed upon retail venders; Com. v. Eynon-Evans Mfg. Co. 48 Pa. Super. Ct. 476, holding that manufacturer of brassware selling only its own

products is not liable to mercantile tax; Com. v. Banker Bros. Co. 38 Pa. Super. Ct. 110, holding mercantile tax law applies to automobiles of one who pays cash therefor under contract to sell in certain territory.

Right of county treasurer to commissions upon state taxes.

Cited in Philadelphia v. McMichael, 208 Pa. 307, 57 Atl. 705, holding that in counties of over 150,000, county treasurer not entitled to commissions upon personal property tax paid by him into state treasury; Philadelphia v. McMichael, 12 Pa. Dist. R. 405, holding city treasurer not entitled to commissions on personal property and municipal loan tax paid by him into state treasury.

Necessity of re-enacting laws at length.

Cited in Murphy v. Hagginbothom, 25 Mortg. Co. L. Rep. 197, holding valid, act abolishing office of township tax collector and conferring his powers and duties on township treasurer.

50 L. R. A. 92, FERRY v. CAMPBELL, 110 Iowa, 290, 81 N. W. 604.

Deprivation of property without due process.

Cited in Beebe v. Magoun, 122 Iowa, 96, 101 Am. St. Rep. 259, 97 N. W. 986, holding unconstitutional, statute providing for notice only to abutter of assessment for drainage improvement, when all benefited in vicinity are subject to assessment; United States v. Heinszen, 206 U. S. 388, 51 L. ed. 1104, 27 Sup. Ct. Rep. 742, 11 Ann. Cas. 688, holding subsequent ratification by Congress of duties illegally collected is valid and no deprivation of importers property without due process of law; Wooster v. Bateman, 126 Iowa, 557, 102 N. W. 521, holding statute providing that code limiting actions on judgments should apply to judgments rendered between the dates on which two codes would take effect is uniform legislation; Hodge v. Muscatine County, 121 Iowa, 488, 67 L.R.A. 627, 104 Am. St. Rep. 304, 96 N. W. 968, holding tax on vendors of cigarettes and buildings used in their manufacture is uniform taxation.

Distinguished in Galusha v. Wendt, 114 Iowa, 607, 87 N. W. 512, upholding statute authorizing action by treasurer, without assessment, for taxes demanded on property omitted from lists; Hodge v. Muscatine County, 121 Iowa, 488, 67 L. R. A. 627, 96 N. W. 968, holding no notice necessary of imposition of specific tax upon business of selling cigarettes to one engaged therein.

Effect of amendment curing defect in inheritance tax law.

Cited in note (60 L. R. A. 565) on power to cure unconstitutional statute by amendment.

Distinguished in Herriott v. Potter, 115 Iowa, 649, 89 N. W. 91, holding succession to real estate of decedent dying intermediate unconstitutional inheritance tax law and amendment curing defect, not taxable.

Constitutionality of inheritance taxes.

Cited in Atty. Gen. v. Stone, 209 Mass. 191, 95 N. E. 395, holding inheritance tax law valid.

Cited in footnote to Billings v. People, 59 L. R. A. 807, which sustains transfer tax on lineal descendants to whom life estate given with remainder to lineal descendants, but exempting lineal descendants taking fee.

Cited in notes (33 L.R.A.(N.S.) 597; 127 Am. St. Rep. 1044, 1051, 1054) on constitutionality of inheritance taxation.

Vested interest of legatee.

Cited in *Re* Wiltsey, 122 Iowa, 428, 98 N. W. 294, holding that personal representatives of contestant of will disposing of personalty only, should be substituted in pending action upon his death.

Nature of right to take by will or inheritance.

Cited in note (9 L.R.A.(N.S.) 122) on nature of right to take by will or inheritance.

Nature of inheritance tax.

Cited in note (33 L.R.A.(N.S.) 609) on nature of inheritance tax.

Amendment of unconstitutional statutes.

Cited in Binion v. Oklahoma Gas & Electric Co. 28 Okla. 363, 114 Pac. 1096, holding that void act for taxation of public service corporations may be cured by amendment; Ross v. Wright County, 128 Iowa, 432, 1 L.R.A. 431, 104 N. W. 506, holding pending proceedings for the construction of a drainage ditch under a statute void for failure to provide notice to property owners were validated by an amendatory statute supplying the defect as to notice; People v. DeBlaay, 137 Mich. 405, 100 N. W. 598, 4 Ann. Cas. 919, holding an unconstitutional statute may be amended by its re-enactment after the elimination of the objectionable features; Keystone State Teleph. & Teleg. Co. v. Ridley Park, 28 Pa. Super. Ct. 643, on the right to amend unconstitutional statutes by the elimination of unconstitutional provision on its re-enactment.

Finality of distribution of estate.

Cited in Douglas v. Albrecht, 130 Iowa, 136, 106 N. W. 354, holding a subsequently appointed administrator could not maintain proceedings to recover assets of estate distributed by agreement among the parties entitled thereto, the estate not being indebted.

Attachment of inheritance tax to estate.

Cited in Montgomery v. Gilbertson, 134 Iowa, 294, 10 L.R.A.(N.S.) 987, 111 N. W. 964, holding an inheritance tax attached to bequests of personalty to collateral heirs while the estate was still subject to the control of the probate court at the time the law became effective so as not to be defeated by a prior unauthorized settlement and distribution; Re Wills, 142 Iowa, 259, 120 N. W. 713, holding a collateral inheritance tax is to be collected from the property owned by decedent at his death and subject thereto.

50 L. R. A. 97, MORRIS v. STOUT, 110 Iowa, 659, 78 N. W. 843.

Effect of marriage to injured female on liability for seduction.

Cited in footnote to *Re* Lewis, 63 L. R. A. 282, which holds subsequent marriage of defendant to injured female not bar to prosecution for obtaining illicit connection under promise of marriage.

Cited in note (78 Am. St. Rep. 269) on power of legislature to make it crime for man to marry woman to escape prosecution for seduction.

Uniform operation of law.

Cited in Des Moines v. Bolton, 128 Iowa, 112, 102 N. W. 1045, 5 Ann. Cas. 906, holding ordinance taxing all vehicles kept for hire but exempting those used in ordinary livery business is constitutional.

50 L. R. A. 99, JOHNSON v. NEW YORK L. INS. CO. 109 Iowa, 708, 78 N. W. 905.

Necessity of notice before forfeiting insurance policy.

Cited in McMaster v. New York L. Ins. Co. 40 C. C. A. 149, 99 Fed. 887, by Caldwell, J., dissenting, who holds statutory notice essential to forfeiture of policy by nonpayment of premium.

Cited in footnote to McQuillan v. Mutual Reserve Fund Life Asso. 56 L. R. A.

233, which holds forfeiture of policy waived by retaining payment made after default without notice of any condition affixed.

Cited in note (63 L. R. A. 863) on conflict of laws as to contracts of insurance.

Distinguished in Wilson v. Royal Union Mut. L. Ins. Co. 137 Iowa, 191, 114 N. W. 1051, holding notice of forfeiture of policy unnecessary where by its terms it is self-forfeiting without requiring company to exercise some option.

50 L. R. A. 103, DENNING v. YOUNT, 9 Kan. App. 708, 59 Pac. 1092.

Effect of repeal of statute on pending actions.

Cited in footnote to Cleveland, C. C. & St. L. R. Co. v. Wells, 58 L. R. A. 651, which sustains statute repealing act allowing penalties, made applicable to pending actions.

Effect of failure to procure license for business on validity of contracts.

Cited in footnotes to Black v. Security Mut. Life Asso. 54 L. R. A. 939, which denies right to commissions of one securing applications for insurance before license which is granted before policies issued; Citizens' State Bank v. Nore, 60 L. R. A. 737, which authorizes recovery by bona fide purchaser of note for medical services by unlicensed practitioner.

Cited in notes (117 Am. St. Rep. 507; 1 L.R.A.(N.S.) 1159) on validity of contract made in business carried on without required license.

— Contracts by unlicensed real estate agents.

Cited in Hughes v. Snell, 28 Okla. 834, 34 L.R.A.(N.S.) 1137, 115 Pac. 1105, Ann. Cas. 1912D, 374, holding that failure of real estate agent to procure license is no defense to action for commissions.

Limited in Wanker v. Tough, 79 Kan. 52, 19 L.R.A.(N.S.) 677, 98 Pac. 792, 17 Ann. Cas. 208, on strict construction of an ordinance requiring licensing business of "real estate" a contract by a real estate "agent" without license was not void.

50 L. R. A. 105, WEAVER v. TONEY, 107 Ky. 419, 54 S. W. 732.

Power of appellate courts over inferior tribunals.

Cited in Louisville & N. R. Co. v. Miller, 112 Ky. 471, 66 S. W. 5, granting writ of prohibition against punishment for contempt by inferior tribunal for alleged violation of order when act complained of was not within scope of order.

Disapproved in Curtis v. Com. 110 Ky. 855, 62 S. W. 886, by Du Relle, J., concurring, who denies court of appeals' jurisdiction over inferior tribunals by writ of prohibition, except in aid of its appellate jurisdiction.

Injunction to protect political or official rights.

Cited in Denny v. Bosworth, 113 Ky. 793, 68 S. W. 1078, holding candidates entitled to mandatory injunction compelling reinstatement by board of election commissioners of election officers arbitrarily removed; Poyntz v. Shackelford, 107 Ky. 556, 54 S. W. 855, holding injunction proper remedy to prevent interference with discharge by public officer, of official duties; Hollar v. Cornett, 144 Ky. 422, 138 S. W. 298, sustaining injunction against exercise of duties of office by persons substituted as members of board of education in place of those regularly elected; Com. v. Combs, 120 Ky. 381, 86 S. W. 697, holding mandatory injunction to prevent placing on ballot name of person nominated nearly a year prior to election is improper where suit is begun only a few days prior thereto.

Cited in note (3 L.R.A.(N.S.) 383) on interference by equity in matters preceding elections.

Power of court to issue writ of prohibition.

Cited in Jenkins v. Berry, 119 Ky. 363, 83 S. W. 594, granting writ of pro-

hibiting circuit judge from attempting to remove trustees of hospital; Rush v. Denhardt, 138 Ky. 244, 127 S. W. 785, Ann. Cas. 1912A, 1199, issuing writ prohibiting biased county judge from hearing proceedings to revoke liquor license; Keefe v. District Court, 16 Wyo. 395, 94 Pac. 459, holding a writ of prohibition would lie to prevent a court granting a change of venue in a murder case from proceeding to try the defendant for the same act on a second information pending the trial of defendant in court to which cause was transferred; Clark County v. Warner, 116 Ky. 809, 76 S. W. 828, holding prohibition would lie to prevent a county court from entertaining an application for a ferry privilege where at the time there was pending in the circuit court an appeal from an order of another county court with reference to an application made for the same privilege; Com. v. Jones, 118 Ky. 893, 82 S. W. 643, 4 Ann. Cas. 1192, holding prohibition would not lie against court in which murder was committed and the accused arrested because the decedent died in another county where the accused was also arrested but not indicted, as by statute the offense might be prosecuted in either county; State ex rel. Pulliam v. Fort, 107 Mo. App. 337, 81 S. W. 476, holding a writ of prohibition would not issue to the circuit court to prohibit it from interfering beyond its jurisdiction with a county court in reference to the licensing of dram shops.

Cited in note (111 Am. St. Rep. 962) on writ of prohibition.

Right of court to award injunctive relief.

Cited in Kelley v. Pulaski Stove Co. 127 Ky. 157, reported in 139 Ky. 709, 105 S. W. 153, holding that failure to give notice renders order of injunction void; Florida East Coast R. Co. v. Taylor, 56 Fla. 792, 47 So. 345, holding mandatory injunction would not lie to compel the building of a spur track before the final hearing in the proceedings.

Cited in note (9 L.R.A.(N.S.) 1225) on necessity of hearing before granting preliminary mandatory injunction.

Distinguished in Smith v. Miller, 122 Ky. 293, 91 S. W. 1140, holding an order of injunction restraining the circulation of theatrical programmes was not void where both parties were represented at the hearing.

50 L. R. A. 111, MURPHY v. INDEPENDENT ORDER, S. & D. OF J. 77 Miss. 830, 27 So. 624.

Effect on benefit certificate of failure of subordinate lodge to remit dues.

Cited in Brown v. Supreme Court, I. O. F. 34 Misc. 560, 70 N. Y. Supp. 397, and Bragaw v. Supreme Lodge, K. & L. of H. 128 N. C. 360, 54 L. R. A. 605, footnote p. 602, 38 S. E. 905, holding standing of certificate holders not affected by failure of financial secretary of subordinate lodge to forward assessments to grand lodge.

Agency; person designated to receive payments.

Cited in National Mut. Bldg. & L. Asso. v. Brahan, 80 Miss. 429, 57 L. R. A. 798, 31 So. 840, and Shannon v. Georgia State Bldg. & L. Asso. 78 Miss. 975, 57 L. R. A. 805, 84 Am. St. Rep. 657, 30 So. 51, holding local secretary and treasurer of building and loan association not agent of borrower.

Subordinate lodge as the agent of the grand lodge.

Cited in Bruley v. The Royal League, 3 Ill. C. C. 347, holding subordinate lodge as the agent of the grand lodge might waive a forfeiture resulting from a violation of the by-laws; Kelly v. Ancient Order of Hibernians L. Ins. Fund, 113 Minn. 359, 129 N. W. 846, holding that division secretary is agent of mutual benefit association for purpose of making and submitting proofs of death; Trotter

v. Grand Lodge, I. L. H. 132 Iowa, 526, 7 L.R.A.(N.S.) 575, 109 N. W. 1099, 11 Ann. Cas. 533, denying right of fraternal benefit association to insist on forfeiture for delinquent payment of dues where it is shown that subordinate lodge habitually allowed the same degree of delinquency; Mitchell v. Leech, 69 S. C. 421, 66 L.R.A. 723, 104 Am. St. Rep. 811, 48 S. E. 290, holding because of the existence of the relation of principal and agent, a grand lodge was liable for injuries received by a member in the course of his initiation by the members of a subordinate lodge; Johanson v. Grand Lodge A. O. U. W. 31 Utah, 50, 86 Pac. 494, holding the subordinate lodge of a mutual benefit society and its financier are the agents of the grand lodge so as to bind grand lodge where member is carried for several months without payment of dues.

Cited in footnote to Mitchell v. Leech, 66 L.R.A. 723, which holds local lodges of mutual benefit society agents of supreme camp for whose acts latter is responsible.

Construction of rules of benefit society.

Cited in Morgan v. Independent Order S. & D. J. 90 Miss 872, 44 So. 791, holding by laws of a fraternal benefit association were to be liberally construed in favor of the insured.

Necessity of affirmative action to terminate rights for nonpayment of dues.

Cited in Haynes v. Masonic Ben. Asso. 98 Ark. 424, 136 S. W. 187, Ann. Cas. 1912D, 697, holding that member failing to pay dues at prescribed time becomes delinquent, without notice, where neither statute or by-law requires notice.

Cited in note (17 L.R.A.(N.S.) 248) on necessity of affirmative action to terminate rights of member in mutual benefit society for nonpayment of dues.

50 L. R. A. 118, STATE *ex rel.* McLAUREN v. McDANIEL, 78 Miss. 1, 84 Am. St. Rep. 618, 27 So. 994.

Arrest without warrant.

Cited in footnote to McCullough v. Greenfield, 62 L. R. A. 906, which holds that possession by officer of a warrant will not justify an arrest of accused by police department of other town under direction by telephone by officer holding warrant.

Acts for which sureties on official bonds are liable.

Cited in note (91 Am. St. Rep. 576) on acts for which sureties on official bonds are liable.

50 L. R. A. 120, CLAPP v. WILDER, 176 Mass. 332, 57 N. E. 692.

Restriction in deed as to building line.

Cited in Wilson v. Massachusetts Institute, 188 Mass. 582, 75 N. E. 128, holding restriction as to building line created by statute in providing ground for educational institute is binding on that institution.

Cited in footnotes to Ewertsen v. Gerstenberg, 51 L.R.A. 310, which denies injunction against encroachment by building on space reserved for court yard by common plat of lots; Welch v. Austin, 68 L.R.A. 189, which holds that provision in deed that the building to be erected on the granted premises shall correspond to building on adjoining property cannot prolong duration of restriction beyond existence of house so built.

Cited in notes (60 L.R.A. 764) on transferability of a right of entry for condition broken; (3 L.R.A.(N.S.) 744) as to when provision in conveyance as to erection of building or other structure regarded as condition subsequent.

Distinguished in Welch v. Austin, 187 Mass. 258, 68 L.R.A. 190, 72 N. E. 972, holding restriction in deed as to building line is not a mere personal covenant.

Creation of conditions.

Cited in Brennan v. Brennan, 185 Mass. 561, 102 Am. St. Rep. 363, 71 N. E. 80, holding the devise of residue of estate to an heir "provided" he take care of testatrix while she lived was a devise upon a condition precedent; Ball v. Milliken, 31 R. I. 40, 37 L.R.A.(N.S.) 629, 76 Atl. 789, Ann. Cas. 1912B, 30, on provision for reconveyance on breach of restriction in deed as condition.

Cited in footnote to Houston v. Zahm, 65 L.R.A. 799, which holds that easement of way cannot be imposed on land by one who has not at the time acquired title thereto, although he undertakes to do so as part of the consideration of another tract conveyed to him.

Cited in note (79 Am. St. Rep. 767) on what words create condition subsequent.

Burden of proving creation of servitude by implication.

Cited in Lipsky v. Heller, 199 Mass. 317, 85 N. E. 453, holding in an action to restrain defendants from extending their building over an open court the burden was upon plaintiff to show a servitude had been created appurtenant over such court in their favor by implication.

Technical language in instruments.

Cited in Green County v. Quinlan, 211 U. S. 594, 53 L. ed. 342, 29 Sup. Ct. Rep. 162, disregarding the technical meaning of the word "condition" as used in a vote of a subscription to stock of a corporation; Worcester v. Worcester Consol. Street R. Co. 192 Mass. 113, 78 N. E. 222, holding the word "restrictions" as used in connection with a grant of an interest in real estate is in a sense analogous to "conditions."

Right of grantee to enforce restrictive covenants.

Cited in Berryman v. Hotel Savoy Co. 160 Cal. 566, 37 L.R.A.(N.S.) 8, 117 Pac. 677, holding that covenant in deed of parcel of tract stated to run with land, and requiring covenantor to construct building certain distance from lines, cannot be enforced by purchaser of adjoining lot.

Cited in note (37 L.R.A.(N.S.) 624) on right of grantee to enforce restrictive covenants in prior conveyances by his grantor.

50 L. R. A. 127, RICHARDSON v. DANVERS, 176 Mass. 413, 79 Am. St. Rep. 320, 57 N. E. 688.

Safety of highway for bicyclists.

Approved in Fox v. Clark, 25 R. I. 517, 65 L.R.A. 235, 57 Atl. 305, 1 Ann. Cas. 548, denying liability of city for injury to bicyclist caused by defective roadway where defect could not have caused injury to one traveling by cart or carriage.

Cited in Kenny v. Ipswich, 178 Mass. 373, 59 N. E. 1007, raising, without deciding, to what extent highway must be made safe and convenient for bicyclist; Overhouser v. American Cereal Co. 118 Iowa, 420, 92 N. W. 74, recognizing no liability on city's part, more than to keep street in reasonably safe condition for traveling with horses and carriages; Rust v. Essex, 182 Mass. 314, 65 N. E. 397, holding road reasonably safe for ordinary travel not defective because not fit for bicycle travel; Hendry v. North Hampton, 72 N. H. 355, 64 L. R. A. 72, footnote p. 70, 101 Am. St. Rep. 681, 56 Atl. 922, holding town liable to bicyclist for injuries caused by defect making highway unsuitable for ordinary travel; Spring v. Williamstown, 186 Mass. 480, 71 N. E. 949, holding where plaintiff fell into

stream because approach to bridge was unguarded the fact that he was riding a bicycle does not preclude his recovery.

Cited in footnotes to Prather v. Spokane, 59 L.R.A. 346, which requires city constructing bicycle path along side of street to make it reasonably safe; Hendry v. North Hampton, 64 L.R.A. 70, which holds town liable for injury to bicyclist, due to defect making highway unsuitable for ordinary travel; Fox v. Clarke, 65 L.R.A. 234, which holds bicyclist entitled to recover for injuries due to defects in highway rendering it unsafe for ordinary purposes of travel.

Cited in notes (20 L.R.A.(N.S.) 756) on liability of municipality to bicyclists for defects or obstructions in streets; (23 L.R.A.(N.S.) 544) on duty to make streets and highways safe for bicycles.

Disapproved in Molway v. Chicago, 239 Ill. 489, 23 L.R.A.(N.S.) 545, 88 N. E. 485, 16 Ann. Cas. 424, holding city bound to keep its streets reasonably safe for bicycle travel.

Vehicles included within meaning of term carriage.

Cited in Doherty v. Ayer, 197 Mass. 244, 14 L.R.A.(N.S.) 817, 125 Am. St. Rep. 355, 83 N. E. 677, holding an automobile is not a carriage within meaning of statutes requiring safe maintenance of highways for travelers with horses and carriages; Diocese of Trenton v. Toman, 74 N. J. Eq. 712, 70 Atl. 606, holding an automobile a carriage within the meaning of a covenant in a deed reserving a strip of land for a carriage way; Baker v. Fall River, 187 Mass. 56, 72 N. E. 336, considering but not deciding whether an automobile was a carriage within the meaning of an act requiring that roads be kept reasonably safe for travelers with their horses and carriages.

50 L. R. A. 128, HEWITT v. REED CITY, 124 Mich. 6, 83 Am. St. Rep. 309, 82 N. W. 616.

Vacation of award for misconduct of arbitrators.

Cited in note (138 Am. St. Rep. 644) on vacation of award for misconduct of arbitrators.

50 L. R. A. 129, SHINGLEMEYER v. WRIGHT, 124 Mich. 230, 80 N. W. 887.

Privileged communications.

Cited in Flynn v. Boglarsky, 164 Mich. 517, 32 L.R.A.(N.S.) 742, 129 N. W. 674, holding that petition to police magistrate, charging misconduct by occupants of dwelling, is privileged; Wells v. Toogood, 165 Mich. 680, 131 N. W. 124, holding that statements by defendant relating to crime, made to deputy sheriff are privileged: Mueller v. Radenbaugh, 79 Kan. 307, 99 Pac. 612, holding a conversation with a sheriff charging a person with a crime in an honest effort to recover stolen property and discover the guilty parties is privileged; Gowan v. Smith, 157 Mich. 450, 122 N. W. 286, holding complaints of private citizens made to police department of law violations are privileged; Schultz v. Strauss, 127 Wis. 331, 106 N. W. 1066, 7 Ann. Cas. 528, holding statements made by a witness before the grand jury and to the district attorney during an investigation of an offense charged to plaintiff were privileged; People v. Pratt, 133 Mich. 134, 67 L.R.A. 923, 94 N. W. 752 (dissenting opinion), denying that a confession made to a judge in his rooms where accused had gone to him for advice was privileged.

Cited in notes (4 L.R.A.(N.S.) 149) on privilege of informal communication with respect to criminal charge; (104 Am. St. Rep. 124) on what libelous statements are privileged.

Distinguished in Schultz v. Guldenstein, 144 Mich. 639, 108 N. W. 96, holding

it a question of fact for the jury to determine whether a statement by defendant to plaintiff's husband that plaintiff was a thief was privileged where it appeared that plaintiff and husband heard defendant had made the statement and the husband went to him and made inquiry.

Inadmissibility of privileged statements to show malice.

Cited in Lauder v. Jones, 13 N. D. 554, 101 N. W. 907, holding a statement made upon a privileged occasion was not evidence that it was made with malice.

Presumption of correctness of statements of fact in brief.

Cited in Territory ex rel. Clancy v. Bernalillo County, 13 N. M. 93, 79 Pac. 709, holding statement of fact in brief of appellant, undisputed by appellee is presumed correct.

Publication by recipient's making libelous letter known to another.

Cited in note (15 L.R.A.(N.S.) 1141) on publication by recipient's making libelous letter known to another.

50 L. R. A. 134, IVES v. EDISON, 124 Mich. 402, 83 Am. St. Rep. 329, 83 N. W. 120.

Injunction to restrain violation of easement.

Cited in St. Louis Safe Deposit & Sav. Bank v. Kennett, 101 Mo. App. 390, 74 S. W. 474, sustaining injunction restraining maintenance of smoke-stack in violation of covenants: Tolsma v. James E. Scripps Corp. 153 Mich. 17, 116 N. W. 622, holding injunction will issue to restrain violation of easement although violation thereof is alleged to be beneficial to complainant and injunction will cause more damage to defendant than its refusal will cause plaintiff; Flitcraft v. Sylvan Beach Resort Co. 157 Mich. 85, 121 N. W. 278, sustaining injunction preventing lot owner, whose lot at time of purchase was equipped with a cesspool, from running pipe over adjoining lots to sewer where no necessity was shown.

Cited in footnote to Allen v. Stowell, 68 L.R.A. 223, which sustains right to mandatory injunction to compel removal of dams wrongfully diverting water onto plaintiff's property so as to destroy trees and cut gulches.

50 L. R. A. 140, SALTER v. SUTHERLAND, 123 Mich. 225, 81 N. W. 1070.

Motion to amend judgment granted in 125 Mich. 662, 85 N. W. 112.

Interest of administrator in property on hands not assets of the estate.

Cited in Probate Ct. v. Williams, 30 R. I. 161, 73 Atl. 382, 19 Ann. Cas. 554, denying bondsmen's liability in regard to funds coming into administrator's hands which are not assets of the estate, although he charges them to himself in his report.

50 L. R. A. 142, CLARKSBURG ELECTRIC LIGHT CO. v. CLARKSBURG, 47 W. Va. 739, 35 S. E. 994.

Franchise granted to corporation not fully organized.

Cited in Chicago Teleph. Co. v. Northwestern Teleph. Co. 199 Ill. 345, 65 N. E. 329, Affirming 100 Ill. App. 63, sustaining ordinance granting privileges to corporation not fully organized at time of its introduction, but completed before its passage.

Privilege of using streets as contract.

Cited in footnote to Westport v. Mulholland, 53 L. R. A. 442, which holds road on which street car tracks is laid under authority of county, subject, on inclusion in city limits, to ordinance against tearing up streets.

Franchise conferring exclusive rights.

Cited in Franklin Trust Co. v. Peninsular Pure Water Co. 89 C. C. A. 49, 161 Fed. 858, holding grant of franchise for construction of waterworks system and use of streets thereunder will not be construed as exclusive in absence of express words to that effect; Rogers Park Water Co. v. Chicago, 131 Ill. App. 52, holding a city would not be prohibited from supplying water from its own mains to a village annexed to it which prior to its annexation granted a franchise to a private corporation to construct and maintain a water works system; Gadsden v. Mitchell, 145 Ala. 159, 6 L.R.A.(N.S.) 781, 117 Am. St. Rep. 20, 40 So. 557, holding that part of contract of city with private corporation conferring the exclusive right to construct a waterworks system was unconstitutional and not enforceable.

Impairment of charter rights.

Cited in New Orleans Gaslight Co. v. Drainage Comm. 111 La. 843, 35 So. 929, on the rights conferred by charter on corporation not being subject to change or destruction, without proper compensation under the power of eminent domain; Curwensville v. Huntingdon & C. Teleph. Co. 33 Pa. Co. Ct. 438, 16 Pa. Dist. R. 604, holding an act making provision for the imposition of a license tax on wires and poles of a telephone company to be paid to municipal corporations was not unconstitutional as an interference with the rights conferred by ordinance; Bluefield Waterwork & Improv. Co. v. Bluefield, 69 W. Va. 8, 33 L.R.A.(N.S.) 764, 70 S. E. 772, holding that city, in absence of delegation thereof, has no power to regulate rates of water company.

Limitations on corporate power of contracting.

Cited in Herald v. Board of Education, 65 W. Va. 774, 31 L.R.A.(N.S.) 588, 65 S. E. 102, holding bill would lie at instance of taxpayers to annul a lease by a board of education of a school house lot for production of oil and gas.

State court decisions binding on federal courts.

Cited in note (40 L.R.A.(N.S.) 395) on questions of state law as to which state court decisions must be followed in actions originating in, or removed to, Federal courts.

50 L. R. A. 153, GRANEY v. ST. LOUIS, I. M. & S. R. CO. 157 Mo. 666, 57 S. W. 276.

Sufficiency of evidence to support verdict.

Cited in Rigby v. St. Louis Transit Co. 153 Mo. App. 336, 133 S. W. 110, holding that where there is substantial evidence to sustain verdict for party to whom new trial was granted, verdict will not be reinstated on appeal; Fitzjohn v. St. Louis Transit Co. 183 Mo. 78, 81 S. W. 907, holding supreme court will not interfer with allowance by trial court of new trial where there is substantial evidence to support its order; Seeger v. St. Louis Silver Co. 193 Mo. 408, 91 S. W. 1030, holding order for a new trial would not be reversed unless it appears that no verdict could be rendered in favor of the party granted a new trial.

Distinguished in Harper v. Western U. Teleg. Co. 92 Mo. App. 310, holding slight preponderance of prevailing party's evidence no ground for reversal.

Contributory negligence of children.

Cited in Walker v. Wabash R. Co. 193 Mo. 482, 92 S. W. 83, holding it contributory negligence as a matter of law for boy with good eye sight and hearing who knew it was about train time and from which direction train came to drive upon track without looking to see if train was coming; McGee v. Wabash R. Co. 214 Mo. 548, 114 S. W. 33, sustaining nonsuit where boy thirteen without looking or

listening walked in front of train and was killed where he appeared an ordinarily intelligent boy; Deschner v. St. Louis & M. River R. Co. 200 Mo. 326, 98 S. W. 737, holding question of contributory negligence of boy who failed to look to see if another car was coming after passing of one must be sent to the jury where boy was not shown to have the prudence of a grown man; Herdt v. Koenig, 137 Mo. App. 604, 119 S. W. 56, holding boy of ten and half years who knew fence on brink of stone quarry was rotten and had been several times warned away and whipped for leaning against it was guilty of contributory negligence as a matter of law.

Cited in footnote to Gleason v. Smith, 55 L. R. A. 622, which denies liability for injury by collision with team, to twelve-year-old boy using street as playground.

Distinguished in Moeller v. United R. Co. 133 Mo. App. 76, 112 S. W. 714, holding it for jury whether it constitutes contributory negligence for a boy of twelve to alight from moving street car.

Admissibility of expert testimony.

Cited in Metropolitan L. Ins. Co. v. Wagner, 50 Tex. Civ. App. 240, 109 S. W. 1120, holding expert who viewed body shortly after death cannot give his opinion drawn from the manner in which wounds were inflicted that deceased was a suicide.

Distinguished in Wood v. Metropolitan Street R. Co. 181 Mo. 454, 81 S. W. 152, holding the testimony of a medical expert as to whether certain injuries caused the neurasthenia which developed subsequently, was admissible.

Admissibility of non-expert testimony.

Distinguished in Standley v. Atchison, T. & S. F. R. Co. 121 Mo. App. 543, 97 S. W. 244, holding nonexpert witness may give his opinion of physical facts which cannot be accurately described to jury as they really exist, where he has personal knowledge of such facts; Krueger v. Brenham Furniture Mfg Co. 38 Tex. Civ. App. 401, 85 S. W. 1156, holding evidence of nonexpert of tests taken is his presence after the accident was admissible first.

Qualification as expert witness.

Cited in Fuchs v. St. Louis, 167 Mo. 645, 57 L. R. A. 144, 67 S. W. 610, holding that mining engineer who never investigated sewer ventilation, cannot testify as to practicability of method never tested by practice or experiment; State v. Bell, 212 Mo. 125, 111 S. W. 24, holding the opinion of a physician who refused to testify as an expert on insanity was not admissible on that subject where no evidence of his treatment of patients for insanity; State v. Bell, 212 Mo. 125, 111 S. W. 24; Keyes-Marshall Bros. Livery Co. v. St. Louis & H. R. Co. 105 Mo. App. 561, 80 S. W. 53,—holding opinion of expert as to what was the matter with horses based on what he heard at trial only is inadmissible.

Expert evidence as to disputed fact.

Cited in State v. Palmer, 161 Mo. 174, 61 S. W. 651, holding that expert cannot testify as to whether defendant could distinguish right from wrong.

Liability for injury not reasonably to be anticipated.

Cited in Rogers v. Meyerson Printing Co. 103 Mo. App. 689, 78 S. W. 79, holding negligence of defendant in not providing bars for window near stairway landing, through which minor employee fell, question for jury; Foley v. McMahon, 114 Mo. App. 445, 90 S. W. 113, holding defendant not liable for injury to his driver where unknown to driver he repaired harness with wire which broke and in stopping to repair it driver's foot was crushed by sudden starting of mules; Strode v. Columbia Box Co. 124 Mo. App. 522, 101 S. W. 1099, denying liability

of manufacturer for injury caused by breaking of belting which ran on unguarded pulleys one secured to ceiling and used to drive machinery on floor above; Dean v. Kansas City St. L. & C. R. Co. 199 Mo. 403, 97 S. W. 910, holding risk of coal flying from heaped up tender moving at great speed over uneven track is not one of the risks assumed by sectionman.

Liability for injuries by suction of train.

Cited in note (31 L.R.A.(N.S.) 983) on liability for injuries by suction from negligent operation of trains to persons on adjoining property or highway.

Effect of contributory negligence on violation of ordinance.

Cited in note (5 L.R.A.(N.S.) 233) on effect of contributory negligence on liability for violation of railroad ordinance.

50 L. R. A. 160, EDWARDS v. LAMB, 69 N. H. 599, 45 Atl. 480.

Degree of care required from one assuming performance of act.

Cited in Pittsfield Cottonwear Mfg. Co. v. Pittsfield Shoe Co. 71 N. H. 533, 60 L. R. A. 121, 53 Atl. 807, holding one undertaking management of heating plant under legal obligation to exercise ordinary care and skill; Cunningham v. C. R. Pease House Furnishing Co. 74 N. H. 437, 20 L.R.A.(N.S.) 238, 124 Am. St. Rep. 979, 69 Atl. 120, holding person who sold stove polish representing it as safe to use on hot stove liable for negligence although he did not know his representation to be false.

Cited in footnote to Niven v. Boland, 52 L. R. A. 786, which denies liability of physician for signing in good faith certificate necessary to commit to hospital for dipsomaniacs.

Cited in note (93 Am. St. Rep. 845) on liability of persons communicating contagious or infectious disease to others.

Distinguished in Dustin v. Curtis, 74 N. H. 269, 11 L.R.A.(N.S.) 509, 67 Atl. 220, 13 Ann. Cas. 169, denying landlord's liability for injuries caused by falling plaster where landlord had not undertaken to do the repairing.

Liability of physicians for malpractice.

Cited in note (93 Am. St. Rep. 669) on liability of physicians and surgeons for negligence and malpractice.

50 L. R. A. 161, KING v. CHICAGO, M. & ST. P. R. CO. 80 Minn. 83, 81 Am. St. Rep. 238, 82 N. W. 1113.

Number of causes of action arising out of injury to person and property.

Cited in Foss v. Whitehouse, 94 Me. 498, 48 Atl. 109, holding action to recover money paid to effect release from unlawful imprisonment precludes action in tort for damages; White v. Rio Grande Western R. Co. 25 Utah, 365, 71 Pac. 593, majority holding action for death maintainable in either county when deceased was injured in one county and died in another from injury, and referring particularly to annotation in 50 L.R.A. 161; Kimball v. Louisville & N. R. Co. 94 Miss. 405, 48 So. 230; Ochs v. Public Service R. Co. 80 N. J. L. 150, 77 Atl. 533,—holding that judgment for damages to horse and wagon in car collision is bar to action for personal injuries in same accident; H. W. Wilson Co. v. A. B. Farnham & Co. 97 Minn. 157, 106 N. W. 342, holding that a cause of action cannot be split up into several suits, and a judgment on a cause of action which is entire and indivisible, is final although it may have been put partially presented.

Cited in note (36 L.R.A.(N.S.) 240) on injury to person and property at same time as constituting more than one cause of action.

Disapproved in Reilly v. Sicilian Asphalt Paving Co. 170 N. Y. 43, 57 L.R.A.

177, 88 Am. St. Rep. 636, 62 N. E. 772, holding judgment for injury to vehicle through defect in highway no bar to action for personal injury.

50 L. R. A. 168, RUSTAD v. BISHOP, 80 Minn. 497, 81 Am. St. Rep. 282, 83 N. W. 449.

Validity of successive garnishments of wages.

Cited in footnote to Siever v. Union P. R. Co. 61 L. R. A. 319, which sustains right to injunction against prosecuting multiplicity of garnishment proceedings for exempt wages.

Cited in note (86 Am. St. Rep. 403) on abuse of lawful process as to exempt property.

Exemption of wages.

Cited in note (102 Am. St. Rep. 102, 103) on exemption of wages, salaries and earnings.

50 L. R. A. 170, FERGUS FALLS v. FERGUS FALLS HOTEL CO. 80 Minn. 165, 81 Am. St. Rep. 249, 83 N. W. 54.

Estoppel.

Cited in Hunt v. Hauser Malting Co. 90 Minn. 285, 96 N. W. 85, holding corporation having received dividends upon stock investments with knowledge of its stockholders estopped to set up *ultra vires* in action to enforce stockholder's liability.

Expenditure of public moneys for private purpose.

Cited in Castner v. Minneapolis, 92 Minn. 86, 99 N. W. 361, 1 Ann. Cas. 934, holding that the legislature is powerless to authorize the expenditure of public funds by a municipal subdivision of the state, except for a public purpose.

Ultra vires contracts with municipalities.

Cited in Bell v. Kirkland, 102 Minn. 222, 13 L.R.A.(N.S.) 797, 120 Am. St. Rep. 62, 113 N. W. 271, holding that where a contract with a municipal corporation is ultra vires because the power to make it had been irregularly exercised the contract would not be held absolutely void as ultra vires; White v. Chatfield, 116 Minn. 377, 133 N. W. 962, holding that city and town may join in building city and town hall.

50 L. R. A. 175, TUSCALOOSA ICE MFG. CO. v. WILLIAMS, 127 Ala. 110, 85 Am. St. Rep. 125, 28 So. 669.

Combinations in restraint of trade.

Cited in Fullington v. Kyle Lumber Co. 139 Ala. 246, 35 So. 852, holding void, agreement to pay owner of saw-mill one-half of rental for ten years in consideration of owner not operating same, and of his not permitting another mill to be erected or operated on premises; Smith v. Webb, — Ala. —, 40 L.R.A.(N.S.) 1193, 58 So. 913, holding valid, contract by liveryman, on selling business, not to engage in same business in same city; Arctic Ice Co. v. Franklin Electric & Ice Co. 145 Ky. 37, 139 S. W. 1080, holding void, agreement of one ice plant to sell its entire output to another; Arnold v. Jones Cotton Co. 152 Ala. 506, 12 L.R.A.(N.S.) 154, 44 So. 662, holding contract between two purchasers of cotton in same locality whereby they agree to pay a percentage on all cotton purchased by the other in such locality, and to give each other the option of making particular purchases was void; Stewart v. Stearns & C. Lumber Co. 56 Fla. 592, 24 L.R.A.(N.S.) 658, 48 So. 19, holding agreement of saw mill company that it will cause all its employees to purchase their supplies of certain company so as to prevent any

competition is void; Clemons v. Meadows, 123 Ky. 183, 6 L.R.A.(N.S.) 851, 124 Am. St. Rep. 339, 94 S. W. 13, holding agreement of one hotel keeper to keep his hotel closed, as a hotel, for three years in consideration of a specified monthly payment is void; Webb Press Co. v. Bierce, 116 La. 912, 41 So. 203, holding a contract not to engage in business in a certain locality entered into with another also contemplating engaging in business there was void as being in restraint of trade; Territory v. Long Bell Lumber Co. 22 Okla. 906, 99 Pac. 911, holding attempt to monopolize the business of buying and selling lumber in a certain district is unlawful; Harris v. Theus, 149 Ala. 136, 10 L.R.A.(N.S.) 208, 123 Am. St. Rep. 17, 43 So. 131, sustaining agreement not to enter turpentine business for ten years made by person ancillary to sale of pine lands.

Cited in footnotes to Cummings v. Union Blue Stone Co. 52 L. R. A. 262, which holds void, agreement by persons controlling 90 per cent of sale of blue stone to sell through common agent and maintain agreed prices; John D. Park & Sons Co. v. National Wholesale Druggists' Asso. 62 L. R. A. 632, which sustains plan by which manufacturers of proprietary medicines shall sell at fixed prices with rebate only to concerns which can be relied on to maintain price decided upon; Slaughter v. Thacker Coal & Coke Co. 65 L.R.A. 343, which holds void contract by different coal mining companies giving exclusive right to sell entire output at uniform prices to corporation organized as their regular sales agent.

Cited in note (6 L.R.A.(N.S.) 848) on validity of stipulation not to engage in particular business, not ancillary to lawful contract.

Distinguished in Turner v. Abbott, 116 Tenn. 730, 6 L.R.A.(N.S.) 897, 94 S. W. 64, 8 Ann. Cas. 150, holding agreement of dentist to enter into competition with his employer in a certain place in consideration of employment for a certain number of years, at the expiration of such period is not void; Barrone v. Moseley Bros. 144 Ky. 701, 139 S. W. 869, upholding agreement to sell certain laundry machinery and abandon, within prescribed territory, class of business done with such machinery.

50 L. R. A. 180, SCHUCHART v. SCHUCHART, 61 Kan. 597, 78 Am. St. Rep. 342, 60 Pac. 311.

Cohabitation unlawfully begun as proof of marriage.

Cited in footnotes to Barker v. Valentine, 51 L. R. A. 787, which holds cohabitation after removal of impediment to marriage, a lawful marriage; University of Michigan v. McGuckin, 57 L. R. A. 917, which holds lawful marriage shown between persons whose cohabitation originally meretricious, by continued cohabitation after disability removed and birth of children baptized as legitimate; Eaton v. Eaton, 60 L. R. A. 605, which holds marriage consummated by cohabitation with intent to sustain relation of husband and wife after removal of impediment existing when marriage first contracted.

Cited in notes (124 Am. St. Rep. 117; 3 L.R.A.(N.S.) 245) on effect of removal of impediment to marriage after cohabitation begun.

Proof of common law marriage.

Cited in Tyner v. Schoonover, 79 Kan. 575, 100 Pac. 478, holding evidence of cohabitation, acknowledgment of the marriage and general repute admissible to prove common law marriage.

Presumption of validity of marriage.

Cited in John v. St. Joseph Terminal R. Co. 203 Mo. 407, 101 S. W. 641, holding in action by widow for death of husband where it appears that deceased had formerly married burden is on defendant to prove illegality of second marriage; Maier v. Brock, 222 Mo. 88, 133 Am. St. Rep. 513, 120 S. W. 1167, 17 Ann. Cas.

513, holding where a second marriage is shown the presumption is that the former marriage was dissolved by divorce.

50 L. R. A. 182, MORRIS v. UNION NAT. BANK, 13 S. D. 329, 83 N. W. 252.

50 L. R. A. 184, McCARTHY v. SPEED, 11 S. D. 362, 12 S. D. 7, 77 N. W. 590, 80 N. W. 135.

Writ of error dismissed for want of jurisdiction, in 181 U. S. 269, 45 L. ed. 855, 21 Sup. Ct. Rep. 613.

Lodes or veins within placer claims.

Cited in note (50 L. R. A. 295) on lodes or veins within placer claims.

Relocation of mining claim by cotenant.

Cited in Yarwood v. Johnson, 29 Wash. 661, 70 Pac. 123, holding that relocation by one cotenant inures to benefit of his cotenants; Stevens v. Grand Cent. Min. Co. 67 C. C. A. 284, 133 Fed. 30, holding relocation by cotenant accrues to interest of all original locators although stranger joined in relocation.

Cited in notes (91 Am. St. Rep. 860, 861; 68 L.R.A. 842) on relocation by cotenant of mining claim as abandoned or forfeited.

Effect of failure of application for mining patent to prove citizenship.

Cited in Sherlock v. Leighton, 9 Wyo. 309, 63 Pac. 580, holding failure of defendant in adverse suit as to mining claim to prove citizenship does not authorize judgment in adversary's favor.

Forfeiture of location of mining claim.

Cited in Madison v. Octave Oil Co. 154 Cal. 773, 99 Pac. 176, holding original locator does not forfeit his location by mere failure to complete the annual work required by statute where the rights of a relocator are not concerned.

Validity of location of mining claim.

Cited in McPherson v. Julius, 17 S. D. 124, 95 N. W. 428, holding the location of a mining claim is of no validity until a discovery is made within the lines thereof and outside the lines of any other valid existing location.

Cited in note (7 L.R.A.(N.S.) 820) on necessity of discovery to validity of location of mining claim.

Resulting trust in mining claims.

Cited in Hardin v. Hardin, 26 S. D. 613, 129 N. W. 108, holding that where person, pursuant to oral agreement with others to locate mining claims, locates claim, person in whose name title is taken holds it in trust for all.

Estoppel of locators to claim want of discovery.

Cited in note (139 Am. St. Rep. 162) on estoppel of locators to claim that no discovery was made.

Protest by co-owner against application for mining patent.

Cited in note (4 L.R.A.(N.S.) 1127) on duty and right of excluded co-owner to file adverse or protest against application for mining patent.

Review of errors.

Cited in MacGregor v. Pierce, 17 S. D. 55, 95 N. W. 281, holding errors of law preserved upon exceptions noted in the judgment roll at trial of case are reviewable.

50 L. R. A. 191, FITTERER v. CRAWFORD, 157 Mo. 51, 57 S. W. 532.

What constitutes purely public charity.

Cited in Farmers & M. Bank v. Robinson, 96 Mo. App. 392, 70 S. W. 372, holding gift for perpetual support of Christian minister for church, charitable;

State ex rel. Spillers v. Johnson, 214 Mo. 662, 21 L.R.A.(N.S.) 174, 113 S. W. 1083, holding a private military boarding school exempt although the head instructor and his family live therein.

Cited in footnote to Gray Street Infirmary v. Louisville, 55 L. R. A. 270, which denies exemption of infirmary maintained by proprietors of medical college.

Distinguished in Plattsmouth Lodge No. 6, A. F. & A. M. v. Cass County, 79 Neb. 466, 113 N. W. 167, holding property of lodge organized solely for philanthropic purposes although restricted to aiding its members and families is a charity.

Exemptions from taxation of property used for public purposes.

Distinguished in State ex rel. Hammer v. Macgurn, 187 Mo. 242, 86 S. W. 138, 2 Ann. Cas. 808; holding lots merely leased to school board for school purposes are not exempt from taxation as the property of the lessor.

Construction of statutory exemptions from taxation.

Cited in Trenton v. Humel, 134 Mo. App. 600, 114 S. W. 1131; State ex rel. Mt. Nora Cemetery Asso. v. Casey, 210 Mo. 248, 109 S. W. 1,—holding statutory exemptions from taxation are to be strictly construed.

Effect on exemption from taxation of using property for revenue.

Cited in Adelphia Lodge No. 38, K. of P. v. Crawford, 157 Mo. 358, 57 S. W. 1020, holding property of lodge of Knights of Pythias, used by other lodges as tenants, not exempt from taxation; North St. Louis Gymnastic Soc. v. Hagerman, 232 Mo. 703, 135 S. W. 42, holding that renting a part of educational society's building for store and saloon does not destroy exemption; Gymnastic Asso. v. Milwaukee, 129 Wis. 436, 109 N. W. 109, holding educational institution that rented part of its building as a saloon and part as a barber shop, the whole being indivisible was not exempt from taxation.

Cited in footnotes to Protestant Episcopal Church v. Prioleau, 57 L. R. A. 606, which holds exempt, church parsonage rented, the rent being used to procure other residence for parson; Young Men's Christian Asso. v. Douglas County, 52 L. R. A. 123, which denies exemption to part of Y. M. C. A. building rented for business purposes.

Cited in note (16 L.R.A.(N.S.) 836, 839, 844, 845) on effect of devotion of property otherwise nontaxable to purposes of particular society.

50 L. R. A. 195, STATE v. BEE PUB. CO. 60 Neb. 282. 83 Am. St. Rep. 531, 83 N. W. 204.

Followed without special discussion in contempt proceedings against editor-in-chief, in State v. Rosewater, 60 Neb. 439, 83 N. W. 353.

Right of public to criticize opinions of courts.

Cited in State Bd. of Law Examiners v. Hart, 104 Minn. 116, 17 L.R.A.(N.S.) 591, 116 N. W. 212, 15 Ann. Cas. 197, holding the right of criticism of opinions of courts exists in the public, they being public property; Re Egan, 24 S. D. 324, 123 N. W. 478, holding that vilification of judges by attorney is ground for disbarment.

Cited in footnote to Ex parte Green, 66 L.R.A. 727, which holds criticism of manner in which trials are conducted without referring to particular case in court not punishable as contempt.

Cited in notes (68 L.R.A. 257) on statement with respect to ended cause as contempt; (21 L.R.A.(N.S.) 907) on offense of attempt to influence officers of court.

Judicial knowledge of pending litigation.

Distinguished in State ex rel. Baker Lodge No. 97, A. F. & A. M. v. Sieber, 49

Or. 5, 88 Pac. 313, holding statutory affidavit of contempt tenders issue only upon the contempt pleaded and is not aided by the courts judicial notice of its injunction proceedings against which other contempts are sought to be proved.

50 L. R. A. 199, SEBECK v. PLATTDEUTSCHE VOLKSFEST VEREIN, 64 N. J. L. 624, 81 Am. St. Rep. 512, 46 Atl. 631.

Liability for injury to frequenter of public resort.

Cited in Thornton v. Maine State Agri. Soc. 97 Me. 114, 94 Am. St. Rep. 488, 53 Atl. 979, holding agricultural association holding fair liable for injury to one within approach to grounds, from stray bullet fired in shooting gallery therein; Texas State Fair v. Marti, 30 Tex. Civ. App. 134, 69 S. W. 432, holding State Fair Association bound to use ordinary care to see that seats erected by exhibitor are reasonably safe; Texas State Fair v. Brittain, 56 C. C. A. 502, 118 Fed. 716, holding State Fair Association, advertising exhibition by independent exhibitor, liable for injury resulting from negligence of exhibitor in constructing seats; Reisman v. Public Service Corp. 82 N. J. L. 466, 38 L.R.A.(N.S.) 923, 81 Atl. 838, holding owner of amusement park not liable for injury from fireworks set off by fireworks company; Stickel v. Riverview Sharpshooters Park Co. 250 Ill. 455, 34 L.R.A.(N.S.) 660, 95 N. E. 445, holding it duty of owner of amusement park to see that attractions operated by concessioners are safe; Turgeon v. Connecticut Co. 84 Conn. 541, 80 Atl. 714, holding that owner of amusement park is not relieved from liability by lease of miniature railway to independent contractor; Larkin v. Saltair Beach Co. 30 Utah, 100, 3 L.R.A.(N.S.) 987, 116 Am. St. Rep. 818, 83 Pac. 686, 8 Ann. Cas. 977, holding owner of bathing resort liable for failure to reasonably protect patrons from drowning; Williams v. Mineral City Park Asso. 128 Iowa, 38, 1 L.R.A.(N.S.) 431, 111 Am. St. Rep. 184, 102 N. W. 783, 5 Ann. Cas. 924, denying liability of owner of grand stand for injury to spectator caused by band player sitting on elevator stand letting fall a bottle of beer from which he had been drinking; Brown v. Batchellor, 29 R. I. 121, 69 Atl. 295, on the duty owed by owner of public amusement resort to frequenters to protect them from injury.

Cited in footnote to Mastad v. Swedish Brethren, 53 L. R. A. 803, which holds proprietor of place of amusement required to use reasonable care to protect other patrons from assaults by one rendered disorderly by liquor sold.

Cited in notes (1 L.R.A.(N.S.) 429) on negligence of proprietor of place of entertainment, injuring visitor; (3 L.R.A.(N.S.) 1134) on liability of one maintaining place of public amusement for safety of patrons; (100 Am. St. Rep. 196) on right to recover for negligence in absence of privity in case of invitation to use dangerous property.

Liability for independent contractor's negligence.

Cited in Thomas v. Springer, 134 App. Div. 643, 119 N. Y. Supp. 460, denying liability of owner of theatre for injury to spectator by operator of spot light letting a slide fall where operator was in the employ of theatrical troupe that had rented the theatre.

Cited in footnotes to Boomer v. Wilbur, 53 L. R. A. 172, which denies owner's liability for injury by fall of bricks through negligence of independent contractor repairing chimney; Peerless Mfg. Co. v. Bagley, 53 L. R. A. 285, which holds landlord liable for independent contractor's negligence in putting in automatic fire extinguisher; Hoff v. Shockley, 64 L. R. A. 538, which holds property owner not liable for injuries to traveler by obstructions placed in street without danger signals by independent contractor for construction of building.

50 L. R. A. 201, NEW YORK, N. H. & H. R. CO. v. BAKER, 39 C. C. A. 237, 98 Fed. 694.

Nonliability for acts of governmental authority.

Cited in Farmers' Loan & T. Co. v. Northern P. R. Co. 112 Fed. 830, denying carrier's liability for delay in transporting goods detained by collector of port as contraband of war; Lewis v. New York & H. R. Co. 162 N. Y. 227, 56 N. E. 540, denying railroad's liability to abutter for damages from construction by state, of viaduct in street, accruing before railroad company's use of same.

50 L. R. A. 204, SEARS v. GRAND LODGE, A. O. U. W. 163 N. Y. 374, 57 N. E. 618.

Merits of claim as affecting right to enforce settlement.

Cited in Kine v. Farrell, 71 App. Div. 221, 75 N. Y. Supp. 542, holding that merits of claim will not be considered in enforcing rights voluntarily given in settlement; Minehan v. Hill, 144 App. Div. 858, 129 N. Y. Supp. 873, upholding agreement by sole heir after ancestor's death to divide estate with person to whom ancestor had agreed to leave all his property; Kent v. Standard Oil Co. 138 App. Div. 503, 122 N. Y. Supp. 1047, striking out allegations of negligence and limitations in complaint for breach of contract of employment in consideration of release of claim for injuries; New York L. Ins. Co. v. Chittenden, 134 Iowa, 618, 11 L.R.A.(N.S.) 237, 120 Am. St. Rep. 444, 112 N. W. 96, 13 Ann. Cas. 408, holding life insurance company bound by settlement made to avoid litigation on policy where insured had been absent over seven years and he later returned alive.

Cited in notes (11 L.R.A.(N.S.) 234) on right of insurer to recover payment made under erroneous supposition of insured's death; (25 L.R.A.(N.S.) 284, 285, 301) on void, invalid, or unfounded claim as subject of valid compromise.

50 L. R. A. 206, LEFROIS v. MONROE COUNTY, 162 N. Y. 563, 57 N. E. 185.

Municipal liability for acts done in governmental capacity.

Cited in Hall v. Oyster Bay, 61 App. Div. 512, 70 N. Y. Supp. 710, denying town's liability to its tenant for occupying grounds with public bridge; Brown v. New York, 32 Misc. 573, 66 N. Y. Supp. 382, denying city's liability to pupil injured through defect in school building; Moest v. Buffalo, 116 App. Div. 662, 101 N. Y. Supp. 996, holding the city and the county were not liable for the death of a person due to the negligent operation of an elevator in the city hall and court house, the elevator operator being appointed by the board of trustees having charge of the building; Wilcox v. Rochester, 190 N. Y. 142, 17 L.R.A.(N.S.) 744, 82 N. E. 1119, 13 Ann. Cas. 759, holding that the city is not liable for the injury to a person by negligence in the operation of the elevator in the city police station; Noble v. Hahnemann Hospital, 112 App. Div. 666, 98 N. Y. Supp. 605, holding that a hospital which under agreement, took charge of the ambulance service of the city, was not liable for the negligence of its ambulance driver in answering a call from the city police.

Cited in note (34 L.R.A.(N.S.) 461) on municipal liability for injury to property from maintenance of prison.

Distinguished in Southeast v. New York, 96 App. Div. 602, 89 N. Y. Supp. 630, holding that a city was liable for damages caused by water held by its dam, flooding surrounding roads, though the dam was maintained for the purpose of furnishing water to its inhabitants, which was a governmental duty.

Municipal liability for discharge of sewage.

Cited in footnote to Pearce v. Gibson County, 55 L. R. A. 477, which denies right of county to discharge water closets of courthouse on adjoining owner's land.

50 L. R. A. 209, CALHOUN GOLD MIN. CO. v. AJAX GOLD MIN. CO. 27 Colo. 1, 83 Am. St. Rep. 17, 59 Pac. 607.

Affirmed in 182 U. S. 499, 45 L. ed. 1200, 21 Sup. Ct. Rep. 885.

Right to follow dip beyond surface lines of location.

Cited in note (53 L. R. A. 501) on right to follow vein or lode on dip beyond surface lines of location.

Rights under tunnel-site location.

Cited in note (53 L. R. A. 794) on rights under tunnel-site location.

Lode claims.

Cited in Clipper Min. Co. v. Eli Min. & Land Co. 29 Colo. 385, 64 L. R. A. 211, 93 Am. St. Rep. 89, 68 Pac. 286, holding lode claim not previously discovered cannot be located within boundaries of placer claim: Hoban v. Boyer, 37 Colo. 186, 85 Pac. 837, holding that if the defendant can show that the plaintiff's location was made upon a prior subsisting location, it is a bar to the plaintiff's recovery.

Rights in veins.

Cited in footnote to St. Louis Min. & Mill. Co. v. Montana Min. Co. 56 L. R. A. 725, which holds secondary vein crossing common side line at angle with apex partly in each claim, exclusively within older claim.

Stare decisis.

Cited in Colorado Seminary v. Arapahoe County, 30 Colo. 509, 71 Pac. 410, holding maxim *stare decisis* not absolute bar to re-examination of questions previously decided; People ex rel. Atty. Gen. v. Cassiday, 50 Colo. 528, 117 Pac. 357, holding that rule of stare decisis will not prevent review of decision radically unsound; Diamond Plate Glass Co. v. Knote, 38 Ind. App. 25, 77 N. E. 954, holding that where the Appellate court had determined that a contract for drilling a gas well, ran only from year to year, and subsequently decided to the contrary, the rule of stare decisis did not require the court to follow the first decision, where it was not shown that any rights were based on such decision.

Location of mining claim.

Cited in note (7 L.R.A.(N.S.) 768) on location of mining claim.

Reservations in patents.

Cited in Hough v. Porter, 51 Or. 388, 98 Pac. 1083, on reservations in patents.

50 L. R. A. 224, AGUA PURA CO. v. LAS VEGAS, 10 N. M. 6, 60 Pac. 208.

Jurisdiction of equity to prevent invasion of franchise.

Cited in Bessemer v. Bessemer City Waterworks, 152 Ala. 403, 44 So. 663, holding that a court of equity has jurisdiction to protect a vested franchise from unlawful invasion, upon the ground of irreparable injury, or such injury that it could not be adequately compensated in law; Los Angeles City Water Co. v. Los Angeles, 103 Fed. 716, holding that a water company was entitled to an injunction to prevent the enforcement of a city ordinance reducing its water rates in impairment of a contract, and subjecting the company and its officers to prosecutions for its violation.

Powers of municipal boards.

Cited in Harris v. Kill, 108 Ill. App. 309, holding that municipal bodies have only such powers as are expressly given to it or as a result by fair implication from the powers granted.

Cited in note (61 L.R.A. 63, 99, 100, 102, 103) on establishment and regulation of municipal water supply.

Distinguished in Chase v. Boulder County, 37 Colo. 274, 86 Pac. 1011, 11 Ann. Cas. 483, holding that the board of county commissioners could not employ a person to discover and report property omitted from taxation.

Counter-claims.

Distinguished in Western Loan & Sav. Co. v. Smith, 12 Idaho, 104, 85 Pac. 1084, holding that if the defendant wished to deny the superiority of the plaintiff's lien, he must deny it by answer, and set out his lien by way of cross-complaint.

50 L. R. A. 235, ANDERSON v. PORTLAND FLOURING MILLS CO. 37 Or. 483, 82 Am. St. Rep. 771, 60 Pac. 839.

Negotiability of warehouse receipts.

Cited in Adamson v. Frazier, 40 Or. 276, 66 Pac. 810, holding that indorsement of warehouse receipt effects transfer of property; Lewis v. First Nat. Bank, 46 Or. 188, 78 Pac. 990, holding that the property deposited in a warehouse is represented by the receipt an assignment of which transfers the property itself; Roy v. Northern P. R. Co. 42 Wash. 579, 6 L.R.A.(N.S.) 305, 85 Pac. 53, 7 Ann. Cas. 728, on the negotiability of bills of lading.

50 L. R. A. 240, BREWER v. HORST-LACHMUND CO. 127 Cal. 643, 60 Pac. 418.

Contracts by telegraph.

Cited in Leesley Bros. v. A. Rebori Fruit Co. 162 Mo. App. 203, 144 S. W. 138, holding that valid contract under statute of frauds may be made by telegrams.

Cited in note (110 Am. St. Rep. 748, 751, 760, 761) on contracts by telegraph.

Sufficiency of memorandum under statute of frauds.

Cited in footnote to Charlton v. Columbia Real Estate Co. 69 L.R.A. 394, which holds statute of frauds satisfied by previous memorandum of agreement for lease and a signed but undelivered lease which taken together show a completed argeement upon the terms of a lease.

Parol evidence to connect parts of writings.

Cited in Nickerson v. Weld, 204 Mass. 356, 90 N. E. 589, holding parol evidence admissible to connect a memorandum of sale of land, and a restriction referred to in the memorandum; Cobb v. Glenn Boom & Lumber Co. 57 W. Va. 54, 110 Am. St. Rep. 734, 49 S. E. 1005, holding parol evidence admissible to connect parts of contract for the sale of land, contained in different writings.

Acceptance of offer binding when same is mailed.

Distinguished in Lucas v. Western U. Teleg. Co. 131 Iowa, 673, 6 L.R.A.(N.S.) 1019, 109 N. W. 191, holding that where the offer was made by letter and the acceptor accepted by telegraph, the acceptance was not binding until the message was actually received.

Sufficiency of description.

Cited in Carr v. Howell, 154 Cal. 377, 97 Pac. 885, holding that a description in an agreement to sell land, as "56 x 155 to an alley on the east side of Broadway between Sixth and Seventh streets" in a certain city, was sufficient, where parol evidence showed that it was intended to cover the lot the party had agreed to purchase, and could cover no other.

50 L. R. A. 254, WHITHED v. ST. ANTHONY & D. ELEVATOR CO. 9 N. D. 224, 81 Am. St. Rep. 562, 83 N. W. 238.

What is rent.

Cited in Kendall v. Uland, 83 Neb. 529, 120 N. W. 152, holding that rent is

a certain yearly profit arising out of lands and tenements corporeal as a compensation for the use thereof, and may be paid in money, services, or in products of the soil.

Effect of landlord's reserving title to crop.

Cited in Bidgood v. Monarch Elevator Co. 9 N. D. 629, 81 Am. St. Rep. 604, 84 N. W. 561, holding that tenant's mortgage on crop under lease reserving title in landlord does not attach as lien until division of specific grain.

Rights of purchaser at mortgage foreclosure sale.

Cited in Little v. Worner, 11 N. D. 384, 92 N. W. 456, on the rights of the purchasers at a mortgage foreclosure sale.

50 L. R. A. 262, ST. ANTHONY & D. ELEVATOR CO. v. SOUCIE, 9 N. D. 346, 83 N. W. 212.

Remedy against illegal tax.

Cited in Schaffner v. Young, 10 N. D. 253, 86 N. W. 733, holding that existence of legal remedy precludes issuing injunction against sale of personal property to satisfy illegal tax; Minneapolis, St. P. & S. Ste. M. R. Co. v. Dickey County, 11 N. D. 113, 90 N. W. 260, holding that where the plaintiff has an adequate remedy at law and could thereby have prevented a multiplicity of suits and any seizure of property, a court of equity will not interfere to prevent the collection of taxes.

— Recovery of sums paid for illegal tax.

Cited in Chicago & N. W. R. Co. v. Rolfson, 23 S. D. 408, 122 N. W. 343, holding that illegal personal property tax can be recovered back; C. & J. Michel Brewing Co. v. State, 19 S. D. 310, 70 L.R.A. 914, footnote p. 911, 103 N. W. 40, holding that a payment of a tax by a nonresident liquor dealer was not involuntary and made under duress so that he could recover the same, where paid because required by the state officers as a condition precedent to his doing business within the state, without subjecting himself to liability to the penalties prescribed by the statute.

Cited in note (94 Am. St. Rep. 429) on recovery back of voluntary payment.

50 L. R. A. 266, MINNEAPOLIS & N. ELEVATOR CO. v. TRAILL COUNTY, 9 N. D. 213, 82 N. W. 727.

Corporate taxation.

Cited in note (60 L. R. A. 341, 358) on constitutional equality in the United States in relation to corporate taxation.

Taxation of property in control of agent.

Cited in Pioneer Fuel Co. v. Molloy, 131 Mich. 469, 91 N. W. 750, holding that agent is personally liable for tax on property of nonresident under his control, so that nonresident's property cannot be seized therefor.

50 L. R. A. 273, JANNEY v. MINNEAPOLIS INDUSTRIAL EXPOSITION, 79 Minn. 488, 82 N. W. 984.

Validity of director's purchase of corporate property.

Cited in Klein v. Funk, 82 Minn. 7, 84 N. W. 460, holding purchase of property by directors to injury of corporation or creditors, voidable; Taylor v. Mitchell, 80 Minn. 496, 83 N. W. 418, holding mortgage by directors of insolvent corporation to secure themselves as creditors, invalid.

Right of insolvent corporation to prefer directors.

Cited in City Nat. Bank v. Goshen Woolen Mills Co. 35 Ind. App. 576, 69

N. E. 206, holding that director creditors of insolvent corporation cannot prefer themselves.

50 L. R. A. 277, BROWN v. CUMBERLAND TELEPH. & TELEG. CO. 104 Tenn. 56, 78 Am. St. Rep. 906, 55 S. W. 155.

Recovery for mental suffering for failure to deliver telegram.

Cited in Western U. Teleg. Co. v. Potts, 120 Tenn. 43, 19 L.R.A.(N.S.) 480, 127 Am. St. Rep. 991, 113 S. W. 789, holding that damages for mental pain and suffering may be recovered for a delay in the delivery of a telegram.

Right of addressee of telegram to sue for delay.

Cited in note (30 L.R.A.(N.S.) 1146) on right of addressee of telegram to sue for delay in delivery where conduct of recipient is unaffected by delay.

50 L. R. A. 279, MOORE v. STRICKLING, 46 W. Va. 515, 33 S. E. 274.

Summary removal of public officers.

Cited in Hartigan v. West Virginia University, 49 W. Va. 25, 38 S. E. 698, holding notice and hearing not required upon removal of professor by regents of State University; State ex rel. Kirby v. Henderson, 145 Iowa, 664, 124 N. W. 767, Ann. Cas. 1912A, 1286, holding that mayor is not entitled to jury trial on proceedings for removal from office.

Cited in footnote to State ex rel. Mial v. Ellington, 65 L.R.A. 697, which sustains right of legislature to deprive of office during term one appointed to legislative office for definite term.

— As civil proceedings.

Approved in Skeen v. Craig, 31 Utah, 25, 86 Pac. 487, holding that proceedings to remove a public official from office is a civil action.

Public office as property.

Cited in State *ex rel.* Maxwell v. Crumbaugh, 26 Tex. Civ. App. 526, 63 S. W. 925, holding public office not property within constitutional provision that no one shall be deprived of property without due process of law; Mial v. Ellington, 134 N. C. 151, 65 L. R. A. 705, footnote p. 697, 46 S. E. 961, holding that one appointed for definite time to legislative office has no vested property interest therein of which legislature cannot deprive him.

50 L. R. A. 284, STATE, USE OF BURT v. ALLEN, 48 W. Va. 154, 86 Am. St. Rep. 29, 35 S. E. 990.

Who are residents.

Cited in Atkinson v. Washington & J. College, 54 W. Va. 47, 46 S. E. 253, holding that a resident and inhabitant are synonomous terms within the meaning of the statute relating to notices and service of process, and that a person may have an actual residence in one state while domiciled in another; Brown v. Beckwith, 58 W. Va. 142, 1 L.R.A.(N.S.) 781, 112 Am. St. Rep. 955, 51 S. E. 977, holding that a person becomes a non-resident within the meaning of the attachment laws, when he delivers his property for shipment without the state, with the intention of changing his residence.

Cited in note (1 L.R.A.(N.S.) 779) as to when nonresidence of person intending to leave permanently begins.

Disapproved in Grimestad v. Lofgren, 105 Minn. 290, 17 L.R.A.(N.S.) 993, 127 Am. St. Rep. 566, 117 N. W. 515, holding that a debtor who has sold all his nonexempt property and was moving his exempt property from the state with the intention of changing his residence, was still a resident of the state

so that the property was still exempt from attachment while on its way out of the state.

Acts for which sureties on official bonds are liable.

Cited in note (91 Am. St. Rep. 528, 579) on acts for which sureties on official bonds are liable.

50 L. R. A. 289, MT. ROSA MIN., MILL. & LAND CO. v. PALMER, 26 Colo. 56, 77 Am. St. Rep. 245, 56 Pac. 176.

Location of lode claims within placer claims.

Cited in footnote to Clipper Min. Co. v. Eli Min. & Land Co. 64 L.R.A. 209, which holds that no valid title to a lode claim can be initiated by entry on placer location to prospect for unknown lodes unless the placer owner has abandoned his claim, waives the trespass or is estopped to complain thereof.

Cited in notes (7 L.R.A.(N.S.) 768) on location of mining claim; (139 Am. St. Rep. 158) on discovery of mineral in mining claims and rights of locators prior thereto.

Distinguished in Clipper Min. Co. v. Eli Min. & Land Co. 29 Colo. 384, 64 L. R. A. 211, 68 Pac. 286, holding that lode claim not previously discovered cannot be located within boundaries of placer claim.

50 L. R. A. 298, KRUEGER v. WISCONSIN TELEPH. CO. 106 Wis. 96, 81 N. W. 1041.

Order denying motion to dissolve injunction against removal of pole after acquisition by telephone company of right by condemnation proceedings for construction of lines, reversed in Wisconsin Teleph. Co. v. Krueger, 115 Wis. 153, 90 N. W. 458, it appearing that act provided for exception of pending proceedings.

Effect of grant of right to use streets.

Cited in State *ex rel.* Wisconsin Teleph. Co. v. Sheboygan, 114 Wis. 507, 90 N. W. 441, and State *ex rel.* Wisconsin Teleph. Co. v. Sheboygan, 111 Wis. 32, 86 N. W. 657, holding that city cannot deprive telephone company of right to construct line in streets; Younkin v. Milwaukee Light, Heat & Traction Co. 112 Wis. 21, 87 N. W. 861, and Linden Land Co. v. Milwaukee Electric R. & Light Co. 107 Wis. 512, 83 N. W. 851, holding rights of abutting owners unaffected by statute authorizing use of streets, with municipal consent, by street railroads carrying freight; State *ex rel.* Rose v. Superior Court Co. of Milwaukee County, 105 Wis. 674, 48 L. R. A. 828, 81 N. W. 1046, holding municipal grant of street railway franchise confers rights only as against the public; Lange v. La Crosse & E. R. Co. 118 Wis. 562, 95 N. W. 952, denying right of street railway company, having authority from city, to construct tracks in street without consent of abutters owning fee to center.

What constitutes an additional burden upon the streets.

Cited in Younkin v. Milwaukee Light, Heat & Traction Co. 120 Wis. 483, 98 N. W. 215, holding that an interurban electric railway is an additional burden upon the streets over which it operates.

Cited in note (106 Am. St. Rep. 261, 264) on what are additional servitudes in highways.

Telephone poles as additional burden on highway.

Cited in Donovan v. Allert, 11 N. D. 294, 58 L. R. A. 779, footnote p. 775, 95 Am. St. Rep. 720, 91 N. W. 441, holding telephone poles and wires in street additional burden; Bronson v. Albion Teleph. Co. 67 Neb. 115, 60 L.R.A. 428, 93 N. W. 201, holding poles and wires permanently and exclusively occupy-

ing portion of street, an additional burden; De Kalb County Teleph. Co. v. Dutton, 228 Ill. 185, 10 L.R.A.(N.S.) 1061, 81 N. E. 838, 10 Ann. Cas. 464, holding that telephone poles upon a street are an additional servitude though the city uses them for its police and fire alarm systems at the same time; McCann v. Johnson County Teleph. Co. 69 Kan. 225, 66 L.R.A. 180, 76 Pac. 870, 2 Ann. Cas. 156 (dissenting opinion), majority holding that a telephone line is not an additional servitude upon a rural highway.

Cited in footnote to French v. Robb, 57 L. R. A. 956, which holds right to maintain as against owner of soil, poles and wires rightfully placed in street to light it, not lost by wrongfully using for private lighting.

Distinguished in La Crosse City R. Co. v. Higbee, 107 Wis. 391, 51 L.R.A. 925, 83 N. W. 701, holding trolley-wire pole not additional burden on fee; Maxwell v. Central Dist. & Printing Teleg. Co. 51 W. Va. 123, 41 S. E. 125, denying right of abutter to enjoin erection of telephone pole in street until damages paid or secured.

Disapproved in Frazier v. East Tennessee Teleph. Co. 115 Tenn. 419, 3 L.R.A. (N.S.) 325, 112 Am. St. Rep. 856, 90 S. W. 620, 5 Ann. Cas. 838, holding that telephone poles are not an additional servitude upon the streets.

Injunction against continuing trespass on street.

Cited in Donovan v. Allert, 11 N. D. 299, 58 L. R. A. 781, 95 Am. St. Rep. 720, 91 N. W. 441, sustaining abutter's right to enjoin erection of telephone pole in street until compensation made; Younkin v. Milwaukee Light, Heat & Traction Co. 112 Wis. 21, 87 N. W. 861, holding that abutters may enjoin unlawful use of street by railroad; Milwaukee Boiler Co. v. Wadhams Oil & Grease Co. 126 Wis. 37, 105 N. W. 312, holding that an obstruction of a public alley which will interfere with the use of the alley by the public and materially with the use of the same by the plaintiff as an abutting lot owner in the carrying on of a business, entitles him to an injunction to abate the obstruction.

50 L. R. A. 305, METZGER v. HOCHREIN, 107 Wis. 267, 81 Am. St. Rep. 841, 83 N. W. 308.

Immateriality of motive for doing lawful act.

Cited in Sullivan v. Collins, 107 Wis. 299, 83 N. W. 310, holding instruction that if action was oppressively brought jury should find for defendant, improper; Marshfield Land & Lumber Co. v. John Week Lumber Co. 108 Wis. 275, 84 N. W. 434, sustaining owner's right to maliciously revoke license to use private road; Huber v. Merkel, 117 Wis. 363, 62 L. R. A. 593, 98 Am. St. Rep. 933, 94 N. W. 354, sustaining landowner's right to sink well and maliciously waste water therefrom notwithstanding injurious effect on neighboring wells; Madden v. Kinney, 116 Wis. 569, 93 N. W. 535, holding allegations of improper motive immaterial as to act of school board in selecting text-books, when board has discretionary power to select them; Loehr v. Dickson, 141 Wis. 335, 30 L.R.A.(N.S.) 496, 124 N. W. 293, holding that a malicious intent to injure cannot transpose a lawful act into a tort; Jones v. Williams, 56 Wash. 594, 106 Pac. 166, holding that the erection of a spite building is not a wrongful act and a nuisance where the same enhances the value, usefulness and enjoyment of the land.

Cited in footnote to Horan v. Byrnes, 62 L. R. A. 602, which sustains statute forbidding erection of boundary fence more than 5 feet high for the sole purpose of annoying adjoining owner.

Cited in notes (62 L.R.A. 685) on effect of bad motive to make actionable what would otherwise not be; (118 Am. St. Rep. 870) on intent and malice as

elements of liability for private nuisance: (25 Eng. Rul. Cas. 83) on liability for wilfully and intentionally harming another in exercise of a legal right.

— Erection of high-board fence.

Cited in Russell v. State, 32 Ind. App. 245, 69 N. E. 482, holding that the erection of a fence twelve feet high, upon one's own property, though done maliciously, does not constitute an actionable wrong, though it shuts off the view of the neighbor, and the light and air: Dixon v. Messer, 136 Ill. App. 494, holding that the motion of the party building the fence has nothing to do with the right to build the same, or the legality of its maintenance; Koblegard v. Hale, 60 W. Va. 42, 116 Am. St. Rep. 868, 53 S. E. 793, 9 Ann. Cas. 732, on the immateriality of motive in the erection of a high board fence.

Cited in note (107 Am. St. Rep. 232) on erection of spite fence.

Right to use one's property to the detriment of another's.

Cited in Gowen v. O'Hara, 15 Pa. Dist. R. 757, holding that the maintenance of an open air hospital for consumptives was not per se a nuisance but was not proper under the building restrictions and would be enjoined.

Cited in note (123 Am. St. Rep. 572) on duty and liability of land owners to adjoining proprietors.

50 L. R. A. 307, HARRINGTON v. PIER, 105 Wis. 485, 76 Am. St. Rep. 922, 82 N. W. 345.

What constitutes a charitable use.

Cited in Maxcy v. Oshkosh, 144 Wis. 250, 31 L.R.A.(N.S.) 792, 128 N. W. 899, holding that public charitable trust is created by devise for erection of memorial manual training school; Hopkins v. Crassley, 132 Mich. 617, 96 N. W. 499, holding that upon the dissolution of a firemen's relief association, the appropriation of a fund for the maintenance of a bed in each of the hospitals in the city, for firemen, and other similar funds, was a charitable trust, and could not be enforced in Michigan; Cathedral of St. John v. Denver, 37 Colo. 384, 86 Pac. 1021, holding that land and buildings donated for charitable purposes and used as a home for consumptives, is exempt from taxation as a charitable institution.

Definiteness of charitable gifts.

Cited in Hood v. Dorer, 107 Wis. 152, 82 N. W. 546 (distinguished in dissenting opinion), sustaining testamentary provision for fund for benefit of superannuated preachers of certain sect; Haynes v. Carr, 70 N. H. 482, 49 Atl. 638, sustaining charitable gift, income to be expended for benefit of poor and destitute and for charitable and educational purposes in state; Smith v. Gardiner, 36 App. D. C. 487, upholding bequest to cardinal and arch-bishop of specified city for use of church; Kavanaugh's Will, 143 Wis. 98, 28 L.R.A.(N.S.) 474, 126 N. W. 672, holding that bequest for masses for specified purposes, to be used under direction of specified persons is valid; Klupert v. Vrieland, 142 Iowa, 445, 121 N. W. 34, holding that a bequest to the poor of Voorst, Gelderland, Netherlands, is definite enough where it is shown that the municipality of Voorst has several charitable institutions, which may be selected by the trustees; Re Nilson's Estate, 81 Neb. 821, 116 N. W. 971, holding a bequest to a church congregation of a parish in Norway of which the testator was a native, for the benefit of needy servant girls, and widows and orphans of deceased sailors who are not a public charge, and appointing certain persons trustees, was a valid certain, charitable trust; Kronshage v. Varrell, 120 Wis. 163, 97 N. W. 928, holding that a bequest to trustees for the benefit of those made destitute by the actions

of the elements, by the destruction of life and property by storms, floods, fires, etc., was a charity to the public generally, and was not void for want of definite beneficiaries; Tincher v. Arnold, 7 L.R.A.(N.S.) 479, 77 C. C. A. 649, 147 Fed. 675, 8 Ann. Cas. 917, on the same point; Kavanaugh's Will, 143 Wis. 98, 28 L.R.A.(N.S.) 473, 126 N. W. 673, holding that a bequest for masses for the repose of the souls of designated persons and of the testator to be said according to times and places designated by the testator, is good as a charitable gift.

Cited in footnotes to Woman's Foreign Missionary Soc. v. Mitchell, 53 L. R. A. 711, which holds legacy to Board of Managers of Foreign Missionary Society of M. E. Church properly paid to Woman's Foreign Missionary Society; Thompson v. Brown, 62 L. R. A. 398, which upholds devise of fund for distribution by executor "to poor in his discretion."

Cited in note (14 L.R.A.(N.S.) 54, 56, 58, 60, 63, 67, 77, 85, 104, 116, 117, 149) on enforcement of general bequest for charity or religion.

Judicial construction of charitable trust.

Cited in Re Sacrison, — N. D. —, 26 L.R.A.(N.S.) 733, 123 N. W. 518, holding that charitable trusts being highly-favored, a liberal construction will be adopted to render them effectual; Lewis v. Gaillard, 61 Fla. 844, 56 So. 281, holding that change of name and change to college for women only will not defeat testamentary gift to educational institution; Troutman v. De Boissiere Odd Fellows' Orphans Home, 66 Kan. 30, 5 L.R.A.(N.S.) 714, 71 Pac. 286, on the judicial defeat of the purposes of a charitable trust.

Power of court to enforce trust created by will.

Cited in McWilliams v. Gough, 116 Wis. 584, 93 N. W. 550, recognizing equitable power of court to supervise trust created by will for which trustees do not qualify; Grant v. Saunders, 121 Iowa, 88, 100 Am. St. Rep. 310, 95 N. W. 411, sustaining court's power to appoint trustee of trust created by will for benefit of poor, in case of failure of trustee named by testator to act.

Cited in footnote to Gladding v. St. Matthew's Church, 65 L.R.A. 225, which holds that legacy to a particular church will not be administered cy pres after termination of its existence in behalf of deaf mutes for whose benefit the church was.

Application of statutes against perpetuities.

Cited in McWilliams v. Gough, 116 Wis. 580, 93 N. W. 550, holding trust in personal property not within statute of uses and trusts, created by will devising land to trustees to be converted into money for distribution to ultimate beneficiaries; Troutman v. De Boissiere Odd Fellows' Orphans' Home, 66 Kan. 30, 71 Pac. 286 (dissenting opinion), majority holding void, as not gift for public charity, and therefore violation of statute against perpetuities, deed of trust of land for maintenance of orphans of members of secret society.

Discussed and explained in Danforth v. Oshkosh, 119 Wis. 267, 97 N. W. 258, holding that statute against perpetuities applies to grants for charitable purposes save for the express exceptions.

Equitable conversion.

Cited in Becker v. Chester, 115 Wis. 118, 91 N. W. 87, holding that equitable conversion takes place, in absence of express direction therefor in will, when necessary in order to carry out provisions of will; Hutchings v. Davis, 68 Ohio St. 174, 67 N. E. 251, holding equitable conversion created by direction of testator to sell realty and blend proceeds with personalty for distribution according to directions; Benner v. Mauer, 133 Wis. 329, 113 N. W. 663, holding that the doctrine of equitable conversion applies where the will by express or necessary

implication directs that the estate consisting of realty, be administered and distributed in the form of money; Llewellyn v. Llewellyn, 122 Mo. App. 474, 99 S. W. 809, holding that the doctrine of equitable conversion applied where the testator directed that his executor should sell his undivided interest in certain lands, and loan the proceeds and pay the interest to the widow until a certain time, when it should all be divided among the children; Whitfield v. Thompson, 85 Miss. 758, 38 So. 113, holding that a direction to the executors to sell the lands bequeathed to the children, if it was deemed compatible with the interest of the children, and to pay them one half the proceeds of the sale, and invest the rest for their benefit, did not require the executors to sell so as to bring in the doctrine of equitable conversion; Martin v. Moore, 49 Wash. 292, 94 Pac. 1087, holding that where the will directed that certain lots be sold and the proceeds invested by the executor to form a fund for his child when he became of age, the title to the lots never vested in the child but in the executor so that he had power to sell.

Cited in note (20 L.R.A.(N.S.) 120) as to when there is such a failure of testator's purpose as to preclude equitable conversion.

Distinguished in Geiger v. Bitzer, 80 Ohio St. 85, 22 L.R.A.(N.S.) 292, 88 N. E. 134, 17 Ann. Cas. 151, holding that the doctrine of conversion does not apply in ascertaining the share of the wife, where the husband dies intestate or without making provisions for his wife.

Effect of revocation of bequest.

Cited in Lawrence v. Barber, 116 Wis. 308, 93 N. W. 30, recognizing that mere revocation of bequest does not justify implication of gift of that share to other beneficiaries.

What is the residue of an estate.

Cited in Re Bradley, 123 Wis. 188, 101 N. W. 393, 3 Ann. Cas. 716, holding that the residue of an estate is that which remains after satisfying the widow's paramount claims thereon, and debts of the estate.

Stare decisis.

Cited in Lonstorf v. Lonstorf, 118 Wis. 161, 95 N. W. 961, holding that established rules of law should be followed unless founded on *obiter dictum* or already rendered uncertain by conflicting decisions; Hall v. Madison, 128 Wis. 148, 107 N. W. 31 (dissenting opinion), on the application of the doctrine of stare decisis.

50 L. R. A. 324, SLOCUM v. HEAD, 105 Wis. 432, 81 N. W. 673.

Effect of attempt to organize corporation.

Cited in Franke v. Mann, 106 Wis. 127, 48 L. R. A. 859, 81 N. W. 1014, holding corporation *de facto* effected by bona fide attempt to comply with law, and assertion of right to act as such.

Cited in note (118 Am. St. Rep. 259) on what constitutes a corporation de facto.

Estoppel to deny corporate existence.

Cited in Gilman v. Druse, 111 Wis. 408, 87 N. W. 557, and Clausen v. Head, 110 Wis. 407, 84 Am. St. Rep. 933, 85 N. W. 1028, holding dealing with association as corporation fixes its status as corporation as to such transaction; Citizens Bank v. Jones, 117 Wis. 453, 94 N. W. 329, holding mortgagors, who give mortgage to mortgagee as a corporation, estopped to afterward question its corporate existence at time of such execution.

50 L. R. A. 327, SEGNITZ v. GARDEN CITY BKG. & T. CO. 107 Wis. 171, 81 Am. St. Rep. 830, 83 N. W. 327.

Who are persons within the meaning of statutes.

Cited in Barry v. Minahan, 127 Wis. 578, 107 N. W. 488, holding that where the wife loaned money to the husband, to be repaid upon demand, and she died before the demand was made, and afterward the husband died, her estate was a person within the meaning of the statute providing that all persons not presenting their claims within a certain time should be barred.

Corporations as "persons."

Cited in State *ex rel.* Atty. Gen. v. Portage City Water Co. 107 Wis. 451, 83 N. W. 697, holding corporation within statute authorizing proceedings against "person" unlawfully exercising franchise.

Effect of national bankruptcy law upon state statute.

Cited in Duryea v. Muse, 117 Wis. 404, 94 N. W. 365, holding state statutes merely controlling and enforcing making of common-law assignments, not *ipso facto* suspended by Federal bankrupt law.

Extra-territorial effect of bankruptcy laws.

Cited in Adams v. Hartzell, 18 N. D. 228, 119 N. W. 635, holding that assignment for creditors does not convey title to realty in another state; Disconto Gesellschaft v. Umbreit, 127 Wis. 663, 15 L.R.A.(N.S.) 1049, 115 Am. St. Rep. 1063, 106 N. W. 821, on the extraterritorial effect of bankruptcy laws.

Cited in note (65 L.R.A. 353, 355) on transfer of property out of state by bankruptcy or insolvency proceedings or assignment for creditors.

50 L. R. A. 330, NEWPORT v. HORTON, 22 R. I. 196, 47 Atl. 312.

Commission as state board.

Cited in *Re* Newport Police Commission, 22 R. I. 655, 49 Atl. 36, holding board of police commissioners within statute providing that attorney general shall act as legal adviser of all state boards; State ex rel. Gerry v. Edwards, 42 Mont. 144, 32 L.R.A.(N.S.) 1080, 111 Pac. 734, Ann. Cas. 1912A, 1063, holding that board of park commissioners to be appointed by governor is not corporate authority of city within constitutional provision that legislature shall tax city; Gainer v. Dunn, 29 R. I. 234, 69 Atl. 336, holding that the board of canvassers and registration of the city of Providence, R. I., is a state board.

Legislative interference with municipal government.

Cited in Redell v. Moores, 63 Neb. 230, 55 L. R. A. 745, footnote p. 740, 88 N. W. 243, sustaining statute creating board of fire and police commissioners for certain cities to be appointed by governor; State *ex rel.* White v. Barker, 116 Iowa, 107, 57 L. R. A. 251, footnote p. 244, 98 Am. St. Rep. 222, 89 N. W. 204, denying power of legislature to take management of water supply system from appointees of city; Wiggin v. Manchester, 72 N. H. 573, 58 Atl. 522, sustaining legislative power to give police commissioners appointed by governor control over station house provided by municipality for police purposes; Horton v. Newport, 27 R. I. 285, 1 L.R.A.(N.S.) 516, 61 Atl. 759, 8 Ann. Cas. 1097, holding that a statute authorizing the governor to appoint a board of police commissioners for the city of Newport, is constitutional; Wulf v. Kansas City, 77 Kan. 371, 94 Pac. 207, sustaining statute creating park boards with power to levy taxes and issue bonds; Ex parte Paducah, 125 Ky. 519, 101 S. W. 898, sustaining statute fixing the number of policemen in cities of the second class; Davidson v. Hine, 151 Mich. 308, 15 L.R.A.(N.S.) 583, 123 Am. St. Rep. 267, 115 N. W. 246, 14 Ann. Cas. 352 (dissenting opinion), majority holding that a statute

providing for a committee of public safety to control the fire department and the police of certain cities was invalid; Adams v. Kuykendall, 83 Miss. 592, 35 So. 830, sustaining statute providing for a state revenue agent to supervise the action of the municipal and county taxing officers, though it applied to cities operating under a special charter; Brown v. Galveston, 97 Tex. 14, 75 S. W. 488, holding that a statute which gave power to the governor to appoint three members of a board of five, to constitute the governing body of the city, was constitutional; Ex parte Anderson, 46 Tex. Crim. Rep. 395, 81 S. W. 973; Ex parte Lewis, dissenting opinions in 45 Tex Crim. Rep. 35; 108 Am. St. Rep. 929, 73 S. W. 811; Ex parte Corliss, 16 N. D. 507, 114 N. W. 962,—on interference with local self-government.

Cited in footnotes to O'Connor v. Fond du Lac, 53 L. R. A. 831, which holds void, statute for establishing police board in cities of certain class with power to appoint all police officers; State *ex rel.* Geake v. Fox, 56 L. R. A. 893, which holds void, statute authorizing governor to appoint for city board having control of fire department, fire alarms, etc.; Lexington v. Thompson, 57 L. R. A. 775, which denies power of legislature to fix salaries of city firemen; Com. *ex rel.* Elkin v. Moir, 53 L. R. A. 837, which sustains statute providing system of government for cities; Americus v. Perry, 57 L. R. A. 230, which sustains act creating board of police commissioners, naming first members of board and setting forth their powers and mode of choosing successors; People ex rel. Metropolitan Street R. Co. v. State Bd. of Tax Comrs. 63 L.R.A. 884, which holds right of local self government not violated by recognition for tax purposes of distinct property in special corporate franchises and imposing duty of assessing tax upon state officers.

Cited in note (1 L.R.A.(N.S.) 513) on right of local self-government; legislative regulation of municipal officers.

50 L. R. A. 339, STATE v. FOSTER, 22 R. I. 163, 46 Atl. 833.

Right of courts to consider expediency or wisdom of statute.

Cited in footnote to Com. ex rel. Elkin v. Moir, 53 L.R.A. 837, which holds wisdom, propriety, justice, or motive for passage not to be considered in determining validity of statute for government of cities.

Limit of amount of license fees.

Cited in footnote to Stull v. De Mattos, 51 L. R. A. 892, which sustains license tax of $25 per day on sales of merchandise at auction.

Cited in note (35 L.R.A.(N.S.) 1074, 1076) on validity of license tax on peddlers so high as to be prohibitory.

Validity of license tax on occupations.

Cited in State v. Feingold, 77 Conn. 333, 59 Atl. 211, sustaining statute providing for the licensing of itinerant venders, and requiring them to deposit $500 with the State Treasurer to be surrendered upon the expiration of the license; Fairfield v. Shallenberger, 135 Iowa, 619, 113 N. W. 459, sustaining statute imposing a license tax of $50 a year upon itinerant physicians.

Cited in footnotes to Price v. People, 55 L. R. A. 588, which sustains license fee on employment agencies; Rosenbloom v. State, 57 L. R. A. 923, which sustains license tax on peddlers, though venders of own products exempt.

Cited in note (129 Am. St. Rep. 268) on constitutional limitations on power to impose license or occupation taxes.

Cruel or unusual punishments.

Cited in footnotes to Storti v. Com. 52 L. R. A. 520, which holds execution by

electricity not cruel or unusual punishment; Territory v. Ketchum, 55 L. R. A. 90, which sustains death penalty for assault on train with intent to commit felony.

Mistake of law as a defense.

Cited in Skeen v. Craig, 31 Utah, 34, 86 Pac. 487, holding that a mistake of law in charging and accepting illegal fees by a public official, is not defense to an action to remove him.

50 L. R. A. 345, KARASEK v. PEIER, 22 Wash. 419, 61 Pac. 33.

Restraining building spite structures.

Cited in Jones v. Williams, 56 Wash. 593, 106 Pac. 166, holding that the building of a house which would enhance the value, usefulness, and enjoyment, would not be enjoined because of the motives of the person building it.

Constitutional requirement that statute embrace single subject expressed in title.

Cited in note (55 L. R. A. 846, 851) on power of legislature to enact a code or compilation of laws or amend many or undesignated sections thereof by a single statute.

Liability for maliciously erecting fence.

Cited in Horan v. Byrnes, 72 N. H. 96, 62 L. R. A. 603, footnote p. 602, 101 Am. St. Rep. 670, 54 Atl. 945, sustaining statute forbidding erection of boundary fence more than 5 feet high for sole purpose of annoying adjoining owner.

Cited in footnotes to Metzger v. Hochrein, 50 L.R.A. 305, which sustains right to maliciously erect unsightly high board fence on own property obstructing neighbor's light, air and view; Horan v. Byrnes, 62 L.R.A. 602, which upholds statute forbidding erection of boundary fence more than 5 feet high.

Cited in notes (62 L. R. A. 686) on effect of bad motive to render actionable what would otherwise not be; (123 Am. St. Rep. 573) on erection of spite fences.

Distinguished in Dixon v. Messer, 136 Ill. App. 495, holding that the motive in building a fence can not affect the right to build it or the legality of its maintenance.

Restrictive statute for protection of property.

Cited in Questions and Answers (Opinion of Justices), 103 Me. 512, 19 L.R.A. (N.S.) 426, 69 Atl. 627, 13 Ann. Cas. 745, holding that the legislature had power to restrict and regulate the cutting of trees upon wild or uncultivated lands for the purpose of preventing or diminishing injurious drouths and freshets, and to protect the natural source of springs, and to prevent rapid erosion of the land, etc.

Police power.

Cited in Tacoma v. Boutelle, 61 Wash. 444, 112 Pac. 661, holding valid, ordinance relating to frequency of street car service.

50 L. R. A. 350, *Re* ROHRER, 22 Wash. 151, 60 Pac. 122.

Sufficiency of acknowledgment of paternity of child.

Cited in Pederson v. Christofferson, 97 Minn. 500, 106 N. W. 958, holding that the instrument acknowledging the paternity of the child need not be a separate one, and made for that express purpose, but it is sufficient if made in any writing, signed by the party, in the presence of a competent witness, and specifically acknowledges that he is the father of the child; Moen v. Moen, 16 S. D. 218, 92 N. W. 13, holding that if the acts constituting the acknowledg-

ment are in themselves such as the statute prescribes they confer the right to inherit in the state where the land is situated without reference to the intent with which they were performed.

50 L. R. A. 351, BON HOMME COUNTY v. BERNDT, 13 S. D. 309, 83 N. W. 333.

Reaffirmed on second appeal in 15 S. D. 495, 90 N. W. 147.

Liability of lunatic's estate or relatives for his maintenance.

Cited in footnote to Waldron v. Davis, 66 L.R.A. 591, which holds services in caring for, nursing, and ministering to health and comfort of lunatic necessaries for which recovery can be had against her or her estate; Richardson v. Stuesser, 69 L.R.A. 829, which denies husband's liability for support of his wife at an insane asylum to which she has been removed by due process of law.

Cited in note (24 L.R.A.(N.S.) 295) on power of state to impose liability for maintenance of person committed to insane asylum upon his estates or relatives.

Class legislation.

Cited in Re Watson, 17 S. D. 498, 97 N. W. 463, 2 Ann. Cas. 321, holding that a statute imposing a license upon peddlers dealing in goods, wares, and merchandise, except nursery stock, agricultural products, etc., was not unconstitutional as granting to any citizen immunities and privileges not given equally to all.

50 L. R. A. 354, CARTER v. SOUTHERN R. CO. 111 Ga. 38, 36 S. E. 308.

Rights of shipper.

Cited in Atlantic & B. R. Co. v. Howard Supply Co. 125 Ga. 482, 54 S. E. 530, holding that the carrier can excuse delivery to a person wrongfully designated as the consignor, of the receipt for the goods, only by showing that the person to whom it was delivered was the true owner of the freight and asserted his title before delivery could be made to the consignee.

— To action for injury to goods.

Followed in Georgia Southern & F. R. Co. v. Marchman, 121 Ga. 239, 48 S. E. 961, holding that the agent of the owner of the goods may maintain an action against the railroad company for injuries to the goods if he made the contract for their transportation in his own name.

Approved in Atlantic Coast Line R. Co. v. Partridge, 58 Fla. 160, 50 So. 634, holding that a bailee may sue a carrier for any damages occasioned by negligence in the transportation and delivery of the goods.

Cited in Central R. Co. v. Murphey, 116 Ga. 870, 60 L. R. A. 821, 43 S. E. 265, sustaining action by shipper for damage to goods shipped although he is not owner thereof; Southern R. Co. v. Miko, 136 Ga. 273, 36 L.R.A.(N.S.) 71, 71 S. E. 241, holding that consignee cannot maintain against carrier action for damage to goods in transit; Northern Commercial Co. v. Lindblom, 89 C. C. A. 230, 162 Fed. 253; Ross v. Chicago, R. I. & P. R. Co. 119 Mo. App. 294, 95 S. W. 977; Southern R. Co. v. Maddox, 7 Ga. App. 650, 67 S. E. 838,—holding that the consignor has a right of action for injury to, or the non-delivery of the goods; Southern R. Co. v. Johnson, 2 Ga. App. 39, 58 S. E. 333, holding same, though he be only a bailee; Edgerton v. Chicago, R. I. & P. R. Co. 240 Ill. 315, 88 N. E. 808, holding same, where the shipper was the agent for the sale of the goods; Atlantic Coast Line R. Co. v. Meinhard, S. & Co. 133 Ga. 684, 66 S. E. 897, on the rights of the consignor to maintain action for loss of freight.

Agent's right of action on contract in own name.

Cited in note (1 L.R.A.(N.S.) 303) on agent's right of action on contract in own name.

50 L. R. A. 356, STONE v. MINTER, 111 Ga. 45, 36 S. E. 321.

Confidential communications to attorney.

Cited in Tucker v. Murphey, 114 Ga. 666, 40 S. E. 836, holding attorney acquiring knowledge as such cannot thereafter represent adverse interests; Harkless v. Smith, 115 Ga. 352, 41 S. E. 634, holding admissible, evidence by attorney in regard to deed drawn by him, when relation of attorney and client did not exist between him and maker; Turner v. Turner, 123 Ga. 12, 107 Am. St. Rep. 76, 50 S. E. 969, holding that where the main employment of an attorney was to make a loan, the relation was that of principal and agent and not attorney and client so that the attorney was a competent witness as to matters which came to his knowledge pending the negotiation of the loan.

Cited in footnote to Koeber v. Somers, 52 L. R. A. 512, which holds conversation authorizing attorney to compromise action not privileged.

Parol evidence of consideration of deed.

Cited in Harkless v. Smith, 115 Ga. 352, 41 S. E. 634, sustaining parol evidence as to true consideration of deed; Hester v. Gairdner, 128 Ga. 535, 58 S. E. 165, holding that where a deed was given to secure an existing debt and the deed expressed a certain amount as the consideration, and there was nothing to show the indebtedness secured, it was competent to show by parol evidence that it was given to secure the amount expressed as the consideration; Bashinski v. Swint, 133 Ga. 41, 65 S. E. 152, holding that parol evidence is admissible to show the consideration for a deed, absolute in form, and to show that it was intended only as security.

Cited in note (25 L.R.A.(N.S.) 1202) on parol evidence as to consideration of deed.

50 L. R. A. 361, HERTZ v. ABRAHAMS, 110 Ga. 707, 36 S. E. 409.

When testator's intention governs.

Cited in Lester v. Stephens, 113 Ga. 499, 39 S. E. 109, holding that intention of testator in creating illegal trust must yield to rules of law; Crowley v. Kendrick, 122 Ga. 188, 50 S. E. 41, 2 Ann. Cas. 643, holding that a devise to A. for life with remainder to his children does not constitute a devise to a grandchild of A. where A. had a child living at the time the will was made.

Law governing construction of will.

Cited in Crawford v. Clark, 110 Ga. 730, 36 S. E. 404, holding will construable according to law existing at testator's death.

Estates tail.

Cited in Sumpter v. Carter, 115 Ga. 896, 60 L. R. A. 276, footnote p. 274, 42 S. E. 324, holding children of testator's daughter surviving widow entitled to share with mother in remainder interest, under devise to widow for life with remainder to children, the daughters' shares going to them "and their children;" Lamb v. Medsker, 35 Ind. App. 667, 74 N. E. 1012, holding that a grant to a person and his wife, and to the survivor of them, and to the legitimate heirs of the grantee if he should have any, and in case of none such lawful issue, to be considered as a part of the estate of the grantee's father, created as estate tail in the grantee which became a fee under the statute.

Cited in footnote to Gannon v. Albright, 67 L.R.A. 97, which holds devise

to designated persons and "their heirs and assigns forever," not cut down to fee tail by subsequent declaration that the share of one dying without issue should go over to others.

Cited in notes (3 L.R.A.(N.S.) 1146) on validity of devise over on indefinite cessation of first taker's lineal descendants; (25 Eng. Rul. Cas. 642) on estates tail.

Distinguished in Kinard v. Hale, 128 Ga. 486, 57 S. E. 761, holding that under the statute a devise to J. in fee simple and in case he should die without leaving any child or children, the same to revert to the estate to go equally to the living legal representatives of the estate, was a valid limitation.

50 L. R. A. 371, McKAY v. BARNETT, 21 Utah, 239, 60 Pac. 1100.

Construction of contracts.

Cited in T. M. Sinclair & Co. v. National Surety Co. 132 Iowa, 557, 107 N. W. 184, holding that a contract should be construed if possible to give effect to each and every provision thereof.

Right of school teachers to pay during absence.

Cited in note (38 L.R.A.(N.S.) 513) on right of school teachers to pay during absence.

50 L. R. A. 378, *Re* BUCHANAN, 129 Cal. 330, 61 Pac. 1120.

What constitutes insanity.

Cited in People v. Zeigler, 142 Cal. 340, 75 Pac. 1090, by Beatty, C. J., dissenting opinion, who recognizes as species of insanity, predisposition to violent outbursts of insane fury, although ordinarily in possession of memory and reasoning faculties.

Insanity as a defense in criminal actions.

Cited in People v. Willard, 150 Cal. 554, 89 Pac. 124, holding that a person may be partially insane, or be insane upon one or several subjects, and for that reason be a proper person for confinement in the insane asylum, but still be responsible for a criminal act committed by him; People v. Kirby, 15 Cal. App. 268, 114 Pac. 794, holding that insanity which demands that person be confined in asylum does not bar prosecution for felony.

Habeas corpus for release of lunatic.

Cited in Wagner v. White, 38 App. D. C. 559, holding that writ of habeas corpus will lie to compel production of insane prisoner before court to determine his restoration to sanity.

50 L. R. A. 381, LOUISVILLE & N. R. CO. v. WEAVER, 108 Ky. 392, 56 S. W. 674.

Status of person on train by employee's permission.

Cited in Palmer Transfer Co. v. Smith, 137 Ky. 322, 29 L.R.A.(N.S.) 322, 136 Am. St. Rep. 295, 125 S. W. 725, holding that owner of bus is liable for injury to boy, invited to ride by driver.

Cited in footnote to Mendenhall v. Atchison, T. & S. F. R. Co. 61 L. R. A. 120, which holds one riding on platform of baggage car at direction of brakeman to whom money paid, not a passenger.

Cited in note (37 L.R.A.(N.S.) 420) on liability of railroad to person wrongfully on train by collusion with employee.

Railroad employees or officers as passengers.

Cited in Simmons v. Oregon R. Co. 41 Or. 164, 69 Pac. 440, holding employee,

traveling on own time and business, although on ticket received on account of employment, passenger; Harris v. City & E. G. R. Co. 69 W. Va. 66, — L.R.A. (N.S.) —, 70 S. E. 859, Ann. Cas. 1912D, 59, holding that powerhouse ash hauler is passenger when riding to work on pass; Dayton Coal & I. Co. v. Dodd, 37 L.R.A.(N.S.) 463, 110 C. C. A. 395, 188 Fed. 606, holding that miner gratuitously carried by mine owner to work on his private railroad is not passenger; Hebert v. Portland R. Co. 103 Me. 322, 125 Am. St. Rep. 297, 69 Atl. 266, 13 Ann. Cas. 886, holding that employee riding to work is passenger, where he pays his fare in coupons part of wages; Indianapolis Traction & Terminal Co. v. Romans, 40 Ind. App. 196, 79 N. E. 1068, holding that the person being in the employ of the railroad, and was riding home on the defendant's car on a ticket given him in accordance with the custom of the company though not called for the contract of employment, and was riding the same as other passengers, was a passenger; Haas v. St. Louis & Suburban R. Co. 111 Mo. App. 710, 90 S. W. 1155, holding that a laborer employed to work upon the tracks of the defendant company, was a passenger while riding on an employee's free pass to the place where he was to work.

Cited in footnotes to Whitney v. New York, N. H. & H. R. Co. 50 L. R. A. 615, which holds void, conditions in employee's pass given in pursuance of contract by which he assumes risk of carrier's negligence; Chattanooga Rapid Transit Co. v. Venable, 51 L. R. A. 886, which holds nightwatchman at depot getting on train to announce readiness to resume duty, a passenger; Dickinson v. West End Street R. Co. 52 L. R. A. 326, which holds street railway employee riding gratuitously not fellow servant of motorman; Peterson v. Seattle Traction Co. 53 L. R. A. 586, which holds member of construction gang riding home on ticket after day's work, not fellow servant of those operating car; Sanderson v. Panther Lumber Co. 55 L. R. A. 908, which holds foreman of lumber camp riding on log train to and from camp, fellow servant of persons operating train; Travelers' Ins. Co. v. Austin, 59 L. R. A. 107, which holds railroad paymaster traveling on company's business from station to station, not a passenger within meaning of accident policy.

Cited in note (19 L.R.A.(N.S.) 718) on employee of railroad or street railway as a passenger while being carried to or from work.

Relationship of servant on off hours.

Cited in note (12 L.R.A.(N.S.) 858) on existence of relationship where servant goes on master's premises at other than hours of actual labor.

Presumption of negligence.

Cited in Southern R. Co. v. Lee, 30 Ky. L. Rep. 1360, 10 L.R.A.(N.S.) 838, 101 S. W. 307, holding that in the absence of evidence of gross negligence, punitive damages for such negligence can not be recovered, since the presumption that an injury to a passenger is caused by the negligence of the carrier, does not apply to this degree of negligence.

50 L. R. A. 383, NELSON v. STATE BOARD OF HEALTH, 108 Ky. 769, 57 S. W. 501.

What is practice of medicine.

Approved in Gaither v. Lindsey, 37 Tex. Civ. App. 151, 83 S. W. 225, on osteopathy being included within the statute regulating the practice of medicine.

Cited in Hayden v. State, 81 Miss. 299, 95 Am. St. Rep. 471, 33 So. 653, holding osteopath not practitioner of medicine within statute forbidding practice of medicine without license; People use of State Bd. of Health v. Gordon, 96 Ill. App. 458, holding magnetic healer not engaged in practice of medicine within meaning

of statute regulating practice of medicine; State v. McKnight, 131 N. C. 721, 59 L. R. A. 189, footnote p. 187, 42 S. E. 580, holding license unnecessary to practice of osteopathy; State v. Smith, 233 Mo. 262, 33 L.R.A.(N.S.) 186, 135 S. W. 465, holding that chiropractic is within statute requiring license; State v. Johnson, 84 Kan. 424, 41 L.R.A.(N.S.) 544, 114 Pac. 390 (dissenting opinion), on whether chiropractic is within term "medicine"; Bennett v. Ware, 4 Ga. App. 300, 61 S. E. 546, holding that one who professes "to cure the sick by placing his hands upon the affected portion and by exerting the divine powers given direct from the Lord" is not engaged in the practice of medicine; State v. Edmunds, 127 Iowa, 338, 101 N. W. 431, holding that a person attempting to cure diseases by dieting his patients, and exercises, was engaged in the practice of medicine; Territory v. Newman, 13 N. M. 108, 68 L.R.A. 787, 79 Pac. 813 (dissenting opinion), on what constitutes the practice of medicine.

Cited in footnotes to Little v. State, 51 L. R. A. 717, which holds practice of osteopathy practice of medicine; Bragg v. State, 58 L. R. A. 925, which requires license for practice of osteopathy; State v. Gravett, 55 L. R. A. 791, which holds void, statute discriminating against osteopathists; State v. Biggs, 64 L.R.A. 140, which denies right to compel a license as for practice of medicine and surgery from treating disease by baths, physical culture, manipulation of muscles, bones, spine and solar plexus, and advice as to diet; State v. Yegge, 69 L.R.A. 504, which holds license required of ophthalmologist who prefixes letters "Dr." on sign and on notices in which he undertakes to correct certain diseased conditions by fitting glasses to eyes.

Cited in note (98 Am. St. Rep. 744, 745) on practice of osteopathy.

Distinguished in People v. Gordon, 194 Ill. 569, 88 Am. St. Rep. 165, 62 N. E. 858, holding one attempting to heal disease by treatment osteopathic in nature, practising medicine within meaning of statute regulating practice of medicine; State v. Heath, 125 Iowa, 590, 101 N. W. 429, holding that under the state statutes, one who professed to heal the sick by a method known as the "magnetic treatment," was engaged in the practice of medicine, and should have procured a license.

Disapproved in People v. Allcutt, 117 App. Div. 551, 102 N. Y. Supp. 678, holding that one who held himself out as a doctor, and who attempted to cure diseases by prescribing diet and conduct and remedies, but using no medicine, and also by manipulating with the fingers, was engaged in the practice of medicine.

Right of state to regulate practice of professions.

Cited in Hodgen v. Com. 142 Ky. 724, 135 S. W. 311, holding that legislature has authority to regulate practice of dentistry and to prescribe qualifications of those who engage in profession; Webster v. State Bd. of Health, 130 Ky. 197, 113 S. W. 415, holding valid a statute regulating the practice of medicine, by requiring an examination and certificate from the state board of health.

Cited in note (80 Am. St. Rep. 234) on powers as to medical examinations which may be delegated to boards of health.

— Exceptions as to persons already in the profession.

Cited in Com. v. Ward, 136 Ky. 154, 123 S. W. 673, holding valid statutes requiring an examination and registration of barbers in certain cities, but that the act should not apply to barbers who had been engaged in barbering for three years prior to the taking effect of the act.

Enjoining commission of illegal acts by public official.

Cited in State ex rel. Ladd v. District Ct. 17 N. D. 294, 15 L.R.A.(N.S.) 335,

115 N. W. 675, holding that the legality of the acts of the pure food commissioner, in exceeding the powers conferred upon him, may be tested in an action to enjoin him from the commission of the acts alleged to be without authority; Hall v. Dunn, 52 Or. 481, 25 L.R.A.(N.S.) 197, 97 Pac. 811, holding that a saloon keeper could sue to enjoin the county officers from prohibiting the sale of intoxicating liquors, where the enforcement of the law pending the decision as to its validity would work irreparable injury.

50 L. R. A. 388, JONES v. ADAMS, 37 Or. 473, 82 Am. St. Rep. 766, 59 Pac. 811. Affirmed on rehearing in 37 Or. 476, 62 Pac. 16.

Mortgage of chattels not in existence.

Cited in footnote to Battle Creek Valley Bank v. First Nat. Bank, 56 L. R. A. 124, which holds provision in mortgage giving mortgagee lien on increase thereafter begotten, agreement only for lien.

Title of purchaser at mortgage foreclosure sale, to growing crops.

Cited in Nichols v. Lappin, 105 Mo. App. 406, 79 S. W. 995, holding that independently of statute, one who plants a crop upon land after judgment of foreclosure, but before sale, loses the crop if the foreclosure sale occurs while it is standing.

Passing of crops by conveyance of land.

Cited in note (131 Am. St. Rep. 619) on passing of crops by deed, devise, or descent of lands.

50 L. R. A. 389, BRAND v. MULTNOMAH COUNTY, 38 Or. 79, 84 Am. St. Rep. 772, 60 Pac. 390, 62 Pac. 209.

Approach to bridge as additional servitude.

Cited in De Lucca v. North Little Rock, 142 Fed. 603, holding that the construction of a viaduct the whole width of the streets is not an additional servitude.

Cited in footnote to Boston & A. R. Co. v. Worcester, 55 L. R. A. 623, which holds use of railroad location outside of tracks for approach of highway bridge over tracks to abolish grade crossing not new easement on right of way.

Cited in note (106 Am. St. Rep. 234, 265) on what are additional servitudes in highways.

Right of abutting property owner to damages for change of grade of a street.

Cited in Sauer v. New York, 206 U. S. 544, 51 L. ed. 1181, 27 Sup. Ct. Rep. 686, holding that the abutting property owners were not entitled to damages for the erection of an iron viaduct in the street to connect it with other streets, where the same amounted to a change in grade of the street; Mead v. Portland, 200 U. S. 163, 50 L. ed. 420, 26 Sup. Ct. Rep. 171, Affirming 45 Or. 7, 76 Pac. 347, holding that the change of the grade of a street may be made by lawful authority, without liability to abutting owners for consequential damages, and that the power to grade is not exhausted by one exercise; Giaconi v. Astoria, 60 Or. 29, 37 L.R.A.(N.S.) 1155, 118 Pac. 180, holding city not liable for injury to private property by sliding thereon of soft earth by dumping of earth on unstable foundation at sloping bottom of gulch crossing highway.

50 L. R. A. 397, LEVYEAU v. CLEMENTS, 175 Mass. 376, 56 N. E. 735.

Restrictions of use of personal property.

Cited in note (55 L. R. A. 639) on right of purchaser of personal property to sell or use it free from restrictions affecting it in hands of vendor.

Acts of artist in excess of authority.

Cited in Klug v. Sheriffs, 129 Wis. 472, 7 L.R.A.(N.S.) 365, 116 Am. St. Rep. 967, 109 N. W. 656, 9 Ann. Cas. 1013, holding that where the defendant left two photographs with a painter to aid him in painting portrait of the former's wife, and after completing one, and without the consent or authority of the former, the painter painted a second, which was delivered to the defendant, the painter could not recover its value.

50 L. R. A. 401, CHICORA FERTILIZER CO. v. DUNAN, 91 Md. 144, 46 Atl. 347.

Part payment of claim as a sufficient consideration for release of same.

Cited in Chicago, R. I. & P. R. Co. v. Brown, 70 Neb. 700, 97 N. W. 1038, holding, that the uncertainty as to which of two parties is liable for a certain debt, is a sufficient consideration for a settlement between one of them and the creditor, whereby the latter accepts a part of the debt in full discharge thereof; Bandman v. Finn, 185 N. Y. 513, 12 L.R.A.(N.S.) 1136, 78 N. E. 175, holding that an agreement whereby a former agreement was surrendered and the valid claim thereunder released for a less sum, was a valid and binding agreement, though not executed.

Part payment by third person as consideration for release of judgment.

Cited in footnote to Marshall v. Bullard, 54 L. R. A. 862, which holds third person's part payment of judgment, sufficient consideration for release of balance.

What constitutes accord and satisfaction.

Cited in footnotes to Engbretson v. Seiberling, 64 L. R. A. 75, which holds that acceptance of part of amount due from insolvent may operate as satisfaction of entire debt; Harrison v. Henderson, 62 L. R. A. 760, which holds mere payment of amount denominated "balance" upon account rendered and retention thereof by creditor, not accord and satisfaction; Dreyfus v. Roberts, 69 L.R.A. 823, which holds debt discharged by payment of less than is due on full execution of agreement to that effect evidenced by written receipt in full satisfaction.

Cited in note (11 L.R.A.(N.S.) 1018, 1026) on part payment as consideration for discharge of liquidated and undisputed debt.

Specific performance of contract.

Approved in Thistle Mills Co. v. Bone, 92 Md. 58, 48 Atl. 37, holding that specific performance will not be decreed when inequitable or will operate as a fraud on others.

Cited in Bell v. Pitman, 143 Ky. 524, 35 L.R.A.(N.S.) 822, 136 S. W. 1026, holding that contract by holder of note to sell it to maker at discount is valid and on his attempt to enforce payment of note in full, maker may set off his damages represented by agreed discount; Gunther Brewing Co. v. Brywczynski, 107 Md. 701, 69 Atl. 514, holding that the mere existence of a valid contract is not sufficient to entitle the plaintiff to specific performance, but the contract must be free from any suspicion of its bona fides, and it must be made under circumstances which favorably commend it to the court.

Distinguished in Moore v. Putts, 110 Md. 496, 73 Atl. 149, holding that a contract obtained through duress or fraud would not be enforced.

Duty of purchaser to disclose value of mortgage to mortgagee.

Cited in footnote to Opie v. Pacific Invest. Co. 56 L. R. A. 778, which denies duty of indorser of note secured by mortgage to disclose to mortgagee knowledge as to value of mortgage which he attempts to buy for third person.

What constitutes sufficient tender.

Cited in Snook v. Munday, 96 Md. 517, 54 Atl. 77, holding payment into court

of sum more than sufficient to pay debt, interest, and costs, after unsuccessful attempt to ascertain exact amount, sufficient tender, in bill by surety for subrogation.

50 L. R. A. 411, SCHOLLE v. STATE, 90 Md. 729, 46 Atl. 326.

Validity of statute requiring examination of physician.

Approved in Parks v. State, 159 Ind. 228, 59 L. R. A. 197, 64 N. E. 862, holding statute requiring license to practise medicine not void for unjust and arbitrary classification because it exempts licensed physicians of other states whose practice extends into the state.

Cited in State v. Marble, 72 Ohio St. 38, 70 L.R.A. 840, 106 Am. St. Rep. 570, 73 N. E. 1063, 2 Ann. Cas. 898, holding that the statute was not invalid because it provided for the practice of osteopathy in the state but did not make provisions for the practice of Christian science.

Cited in footnote to Ex parte Gerino, 66 L.R.A. 249, which sustains validity of statute fixing standard of preparation required of applicants for license to practice medicine, though under provisions of law such standard may vary from time to time and may be fixed by requirements which schools teaching particular system of medicine require of their pupils.

Exemption from statute requiring license to practise medicine.

Cited in Watson v. State, 105 Md. 657, 66 Atl. 635, sustaining statute providing for the registration of physicians, but exempted those who had been practising in the state prior to a certain date and who had treated a certain number of patients within the year preceding such date.

Cited in footnotes to State v. Bair, 51 L. R. A. 776, which sustains statute requiring examination before state board of examiners physicians who have not practised for five years, nor hold certificate from medical school, before practising medicine; State *ex rel.* Kellogg v. Currans, 56 L. R. A. 253, which sustains requirement of examination of graduate of foreign medical college not required of graduates of college in state.

Distinguished in Ex parte Whitley, 144 Cal. 176, 77 Pac. 879, 1 Ann. Cas. 13, holding that a statute providing that graduates of high schools, dental colleges, and those who have served an apprenticeship of four years with licensed practitioners and dentists from other states, to practice dentistry after examination by the state board was constitutional.

Delegation of state powers.

Cited in State ex rel. Davis v. Evans, 122 Tenn. 192, 122 S. W. 81, holding valid, statute requiring superintendents to possess qualifications to be evidenced by certificate of board of education; Downs v. Swann, 111 Md. 61, 23 L.R.A. (N.S.) 742, 134 Am. St. Rep. 586, 73 Atl. 653, holding that since the state may delegate its police power to subordinate boards and commissions, and the reasonable and just exercise of it by them will be upheld, the police commission could require measurement under the Bertillon system of persons accused of crime.

Cited in note (6 L.R.A.(N.S.) 433) on membership in association as condition of right to transact business.

Validity of act making examiners exclusive judges as to competency.

Cited in footnote to Harmon v. State, 58 L. R. A. 618, which holds void, act making various distinct examiners exclusive judges as to competency of applicants for license as steam engineers.

Validity of act authorizing revocation of license for unprofessional conduct.

Cited in footnote to Mathews v. Murphy, 54 L. R. A. 415, which holds void, statute authorizing state health board to revoke physician's license for unprofessional conduct without fixing standard.

Exclusive privilege to sell patent medicine.

Cited in footnote to Noel v. People, 52 L. R. A. 287, which holds void, act giving exclusive privilege to sell patent medicines to registered pharmacists.

50 L. R. A. 415, *Re* LENTZ, 65 N. J. L. 134, 46 Atl. 761.

Disbarment of attorneys.

Cited in *Re* Duncan, 64 S. C. 483, 42 S. E. 433, refusing to disbar attorney for placing client's money in bank in own name and checking it out for own use, when able to replace it at any time.

Cited in footnotes to Re Evans, 53 L. R. A. 952, which authorizes disbarment of attorney for champerty; People ex rel. Deneen v. Gilmore, 69 L.R.A. 701, which holds that license to practice law secured by fraudulent concealment of a conviction of embezzling funds from client in another state will be revoked.

Cited in note (19 L.R.A.(N.S.) 417) on disbarment or suspension of attorney for withholding client's money or property.

Distinguished in People *ex rel.* Colorado Bar Asso. v. Webster, 31 Colo. 46, 71 Pac. 1116, disbarring attorney for failing to pay over client's money, and attempting to conceal fact of its collection.

50 L. R. A. 417, SOFIELD v. GUGGENHEIM SMELTING CO. 64 N. J. L. 605, 46 Atl. 711.

Who are fellow servants.

Annotation cited in Westphal v. Chester Traction Co. 11 Del. Co. Rep. 525, holding that watchman at car barns, riding on front platform, is fellow-servant of motorman; Peterson v. New York, N. H. & H. R. Co. 77 Conn. 355, 59 Atl. 502, holding a subforeman in charge of a transfer table for cars was a fellow servant with an employee engaged in unloading cars; Atchison & E. Bridge Co. v. Miller, 71 Kan. 37, 1 L.R.A.(N.S.) 694, 80 Pac. 18, considering who are fellow-servants.

Cited in footnotes to Louisville & N. R. Co. v. Stuber, 54 L. R. A. 696, which holds foreman of railroad water supply riding on engine fellow servant of engineer; Smith v. Erie R. Co. 59 L. R. A. 302, which holds track inspectors not fellow servants of trainmen; Louisville & N. R. Co. v. Lowe, 65 L.R.A. 122, which holds engine hostler not fellow servant of car inspector; Louisville & N. R. Co. v. Dillard, 69 L.R.A. 746, which holds conductor of passenger train a fellow servant of a brakeman of freight train with which former train collides.

Cited in notes (20 L.R.A.(N.S.) 354) on operatives employed in industrial plant, as fellow servants of employees on private railroad in connection therewith; (30 L.R.A.(N.S.) 48) as to who are fellow servants of linemen; (37 L.R.A. (N.S.) 250) on relation and status of railroad employee as affected by pass; (48 L. ed. U. S. 1007) on railway telegraph operators as fellow servants of railway trainmen.

Vice principalship considered with reference to superior rank or character of act.

Approved in Kelly v. New Haven S. B. Co. 74 Conn. 347, 57 L. R. A. 496, 92 Am. St. Rep. 220, 50 Atl. 871, holding owner of vessel not liable for injuries to an employee resulting from neglect of mate to use fender provided to aid in docking,

although employee works under immediate orders of mate; Southern Indiana R. Co. v. Harrell, 161 Ind. 698, 63 L. R. A. 466, 68 N. E. 262, holding that foreman of bridge construction gang in directing raising of derrick at time when by swinging against train, it injures employee, does not in that act represent master.

Cited in notes (54 L. R. A. 37, 50, 108, 133) on vice principalship as determined with reference to character of act which caused injury; (51 L. R. A. 539, 608, 615) on vice principalship considered with reference to superior rank of negligent servant.

Duty of employer to explain cause of injury.

Cited in footnote to Spees v. Boggs, 52 L. R. A. 933, which holds employer not bound to explain cause of elevator injuring employee.

Injuries caused by act of fellow servant.

Cited in Fraser v. Smith & K. Co. 136 Ga. 18, 70 S. E. 792, holding master not liable for injury to servant from negligence of fellow-servant in substituting improper appliance for safe one furnished by master; Knapp v. Voorhis, 78 N. J. L. 510, 74 Atl. 440, holding master not liable for injury to servant from slipping of brackets not securely attached by fellow-servant; O'Brien v. Traynor, 69 N. J. L. 241, 55 Atl. 307, on master not being liable for the negligent acts of a servant causing injury to a fellow-servant; Young v. Federal Match Co. 76 N. J. L. 117, 69 Atl. 500, holding defendant company was not liable for injuries to a servant through the negligence of a fellow servant in the performance of a duty imposed upon him; Kennedy v. Netherlands American Steam Nav. Co. 76 N. J. L. 622, 72 Atl. 382, holding defendant company was not liable for the death of a coal shoveler who it was alleged came to his death by falling through a hatchway because of insufficient light, where it appeared the light would have been sufficient but for the act of a fellow employee partially covering the opening through which it came.

Cited in footnotes to Towne v. United Electric G. & P. Co. 70 L.R.A. 214, which holds corporation maintaining poles to support electric wires which furnishes ordinary pike poles in good condition for handling such poles not liable for injury to employee caused by fellow servant's use of dull pike pole in taking down pole.

50 L. R. A. 468, PROUD v. PHILADELPHIA & R. R. CO. 64 N. J. L. 702, 46 Atl. 710.

Liability of carrier for unsafe condition of cars and premises.

Cited in Murphy v. North Jersey Street R. Co. 81 N. J. L. 709, 35 L.R.A. (N.S.) 594, 80 Atl. 331, holding railroad liable for injury to passenger from slipping on ice on car steps; Stanford v. Chester Traction Co. 11 Del. Co. Rep. 243, holding that presumption of negligence does not arise from proof of presence of banana peel on car floor; Vancleve v. St. Louis, M. & S. E. R. Co. 107 Mo. App. 103, 80 S. W. 706, holding defendant company was not liable for injuries received by a passenger who slipped on muddy steps when alighting from train, such mud having accumulated during the trip; Fitch v. Central R. Co. 74 N. J. L. 137, 64 Atl. 992, holding defendant company was not liable for injuries received by a passenger by reason of the icy condition of the platform where during the night there had been a storm of freezing rain and sleet.

Cited in note (39 L.R.A.(N.S.) 419) on duty of carrier to keep car steps free from slippery substances other than snow and ice.

50 L. R. A. 470, McILLHENNY v. WILMINGTON, 127 N. C. 146, 37 S. E. 187.

Liability of state or municipality for torts or negligence.

Cited in Moody v. State Prison, 128 N. C. 16, 53 L. R. A. 856, 38 S. E. 131, holding state not liable for injuries to prison guard caused by breaking of ladder; Levin v. Burlington, 129 N. C. 189, 55 L. R. A. 398, footnote p. 396, 39 S. E. 822, denying city's liability for officer's arrest and quarantine of one who has passed night in house containing smallpox patient; Williams v. Greenville, 130 N. C. 97, 57 L. R. A. 208, 89 Am. St. Rep. 860, 40 S. E. 977, holding liability of city for permitting drainage ditch to become obstructed and foul limited to injury to property and not inclusive of injury by sickness or death; Jones v. Madison County, 135 N. C. 224, 47 S. E. 753, as to distinction between municipalities as governmental agencies exempt from liability, and as business agencies of people subject to liability; Gregg v. Hatcher, 94 Ark. 58, 27 L.R.A.(N.S.) 140, 125 S. W. 1007, 21 Ann. Cas. 982, holding that neither city or mayor is liable in damages for impounding animal under ordinance; Clark v. Atlantic City, 180 Fed. 602; Brevard Light & P. Co. v. Light & Water Comrs. 151 N. C. 560, 66 S. E. 569,—on liability of city for torts or negligence as depending on whether the acts or omissions were administrative or governmental in nature; Jones v. Madison County, 137 N. C. 606, 50 S. E. 291 (dissenting opinion), on governmental agencies as not being subject to suit except by legislative permission; Hull v. Roxboro, 142 N. C. 456, 12 L.R.A.(N.S.) 640, 55 S. E. 351, holding defendant town was not liable for damage sustained by plaintiff because of the presence of a nuisance on adjoining premises by reason of the failure of the town officials to suppress; Metz v. Asheville, 150 N. C. 749, 22 L.R.A.(N.S.) 943, 64 S. E. 881, holding defendant city was not liable for death of plaintiff's intestate from typhoid fever communicated by the condition of a stream into which a public sewer maintained under the city charter entered; Fisher v. New Bern, 140 N. C. 511, 5 L.R.A.(N.S.) 544, 111 Am. St. Rep. 857, 53 S. E. 342, holding defendant city authorized to operate an electric light plant was liable for the death of plaintiff's intestate because of the failure of employees to repair a broken live wire of which condition they had knowledge.

Cited in footnote to Wilson v. Mitchell, 65 L.R.A. 158, which holds that municipality cannot ratify act of waterworks superintendent in wrongfully connecting well with city water mains so as to become liable for water taken from the well.

Cited in note (12 L.R.A.(N.S.) 538) on municipal liability for torts of police officers.

50 L. R. A. 473, STATE v. HILL, 126 N. C. 1139, 36 S. E. 326.

Exclusive privilege to collect and remove garbage.

Cited in Iler v. Ross, 64 Neb. 722, 57 L. R. A. 900, footnote p. 895, 97 Am. St. Rep. 676, 90 N. W. 869, denying right of city to grant monopoly by contract for removal of ashes and garbage.

Cited in notes (21 L.R.A.(N.S.) 832) on power of municipality to grant exclusive right for removal of substances inimical to health; (50 L. ed. U. S. 205; 97 Am. St. Rep. 688) on power of cities to create monopolies for removal of garbage and noxious substances.

50 L. R. A. 476, NEWBERN v. McCANN, 105 Tenn. 159, 58 S. W. 114.

Violation of Sunday closing.

Cited in Martin v. State, 112 Tenn. 585, 79 S. W. 131, holding under a statute forbidding any person to keep open on Sunday any place where liquors are

sold or dispensed, a barkeeper entering for the purpose of replenishing the refrigerator with ice and allowing the porter to enter to perform his duties, was properly convicted.

Reasonableness of regulations.

Cited in Richmond v. Model Steam Laundry, 111 Va. 761, 69 S. E. 932, holding void, ordinance giving council arbitrary power to grant or refuse permit for erection of furnaces and engines.

— Of liquor traffic.

Cited in Gorrell v. Newport, 1 Tenn. Ch. App. 130, on the reasonableness of restrictions on the sale of intoxicating liquors.

50 L. R. A. 478, AUSTIN v. STATE, 101 Tenn. 563, 70 Am. St. Rep. 703, 48 S. W. 305.

Cigarettes as articles of commerce.

Followed in Blaufield v. State, 103 Tenn. 602, 53 S. W. 1090, holding cigarettes not legitimate articles of commerce within the protection of Federal Constitution.

Who engaged in interstate commerce so as to be exempt from license tax.

Cited in Kimmell v. State, 104 Tenn. 187, 56 S. W. 854, holding agent of nonresident principal not protected from license tax by commerce clause of Federal Constitution where original package is broken by him and articles delivered to different purchasers; Croy v. Obion County (Croy v. Epperson) 104 Tenn. 528, 51 L. R. A. 255, 78 Am. St. Rep. 931, 58 S. W. 235, holding one who takes orders in his own name for articles sent him from another state in single package from which he delivers separate articles to his customers not engaged in interstate commerce so as to be exempt from license tax; Cook v. Marshall County, 119 Iowa, 388, 93 N. W. 372, holding pasteboard boxes, containing 10 cigarettes, delivered in large numbers to express company for shipment to retailer to be sold in that form by him not "original packages" within meaning of interstate commerce clause of Federal Constitution; Loverin & B. Co. v. Tansil, 118 Tenn. 722, 102 S. W. 77, holding a foreign corporation is engaged in local business so as to be subject to a privilege tax as a merchant where an agent takes orders in state and the goods are sent to him in bulk, he sorting them out, delivering and receiving the purchase price.

Implied repeal of statute.

Approved in Blaufield v. State, 103 Tenn. 601, 53 S. W. 1090, holding that act imposing tax on privilege of selling cigarettes does not impliedly repeal statute prohibiting sale of cigarettes under a penalty.

Benefit of doubt when constitutionality of statute challenged.

Approved in State *ex rel.* Astor v. Schlitz Brewing Co. 104 Tenn. 740, 78 Am. St. Rep. 941, 59 S. W. 1033, holding act tried for unconstitutionality entitled to benefit of every reasonable doubt.

Validity of ordinance requiring license for sale of cigarettes.

Cited in footnote to Gundling v. Chicago, 48 L. R. A. 230, which sustains ordinance requiring license for sale of cigarettes.

Validity of statute requiring employer to redeem coupons in cash.

Approved in Harbison v. Knoxville Iron Co. 103 Tenn. 441, 56 L. R. A. 320, 76 Am. St. Rep. 682, 53 S. W. 955, upholding statute requiring employers paying employees in coupons or other evidences of indebtedness to redeem same in money at face value if presented on any regular pay day.

Partial invalidity of statute.

Cited in State ex rel. Cates v. Standard Oil Co. 120 Tenn. 150, 110 S. W. 565; Standard Oil Co. v. State, 117 Tenn. 645, 10 L.R.A.(N.S.) 1022, 100 S. W. 705,—on the validity of statutes regulating intrastate commerce although containing clauses attempting to regulate interstate commerce; Malone v. Williams, 118 Tenn. 439, 121 Am. S. Rep. 1002, 103 S. W. 798, holding the unconstitutionality of parts of statute render the whole of it void where so numerous and important that it appears that the act would not have been passed but for their presence.

What constitutes original package.

Cited in Re Agnew, 89 Neb. 310, 35 L.R.A.(N.S.) 839, 131 N. W. 817, Ann. Cas. 1912C, 676, holding that original package is that delivered by importer to carrier and retaining its form and contents until received by consignee.

Cited in note (39 L.R.A.(N.S.) 1052, 1053) on what constitutes original or unbroken package.

Acts which legislature may declare criminal.

Cited in note (78 Am. St. Rep. 251) on acts which legislature may declare criminal.

50 L. R. A. 483, O'REILLY v. KELLY, 22 R. I. 151, 84 Am. St. Rep. 833, 46 Atl. 681.

Liability of estate of decedent for funeral expenses.

Cited in Hildebrand v. Kinney, 172 Ind. 457, 87 N. E. 832, 19 Ann. Cas. 788, on a decedent's estate as being liable for the reasonable expenses of the funeral and burial.

Cited in note (28 L.R.A.(N.S.) 573, 575) on items and amounts allowable as funeral expenses against deceased's estate.

50 L. R. A. 485, MORTON v. MACON, 111 Ga. 162, 36 S. E. 627.

Validity of license tax.

Cited in Savannah v. Cooper, 131 Ga. 678, 63 S. E. 138, enjoining the enforcement of ordinance where the charge made upon the agents of packing houses selling fresh meats was excessive and discriminating as between the packers and others selling fresh meats; Miller v. Shropshire, 124 Ga. 832, 53 S. E. 335, 4 Ann. Cas. 574, on necessity that license taxes be not prohibitory or excessive in nature; State ex rel. Lisso v. Red River Parish, 116 La. 772, 41 So. 85, holding that delegation of power to tax is not necessarily delegation of power to tax so excessively as to in effect prohibit; Atlanta Postal Teleg-Cable Co. v. Savannah, 133 Ga. 72, 65 S. E. 184; Jones v. Stewart, 117 Ga. 980, 44 S. E. 879,—on same point.

Cited in footnotes to Price v. People, 55 L. R. A. 588, which sustains license fee on employment agencies; Stull v. De Mattos, 51 L. R. A. 892, which sustains license tax of $25 per day on sales of merchandise at auction.

Cited in notes (25 L.R.A.(N.S.) 583) on validity of license upon business of lending money as affected by amount of fee; (129 Am. St. Rep. 260, 264) on constitutional limitations on power to impose license or occupation taxes.

Distinguished in Augusta v. Clark, 124 Ga. 259, 52 S. E. 881, upholding a tax on money lenders where there was no claim that it was excessive.

50 L. R. A. 488, CHICAGO G. W. R. CO. v. FIRST M. E. CHURCH, 42 C. C. A. 178, 102 Fed. 85.

Nuisance incident to lawful or authorized business.

Cited in Exley v. Southern Cotton Oil Co. 151 Fed. 103; Over v. Dehne, 38 Ind. App. 433, 75 N. E. 664,—on a nuisance not being excused by the fact that it arises from a business in itself lawful; Perrin v. Crescent City Stockyard & Slaughter-House Co. 119 La. 98, 43 So. 938, 12 Ann. Cas. 903, holding a property owner suffering damages from the maintenance of a rendering establishment in the neighborhood because of the odors therefrom may have its maintenance enjoined; Thomason v. Seaboard Air Line R. Co. 142 N. C. 311, 55 S. E. 198, holding plaintiff might maintain an action for damages caused by the maintenance of a coal-chute on a lot adjoining his premises.

Cited in footnotes to Sullivan v. Jones & L. Steel Co. 66 L.R.A. 712, which holds that manufacturer of pig iron will be enjoined from changing manner of operating furnaces if result is to cast ore dust on neighboring residential property in such quantity as to destroy homes or other property there situated; Wade v. Miller, 69 L.R.A. 820, which holds characteristic noises and odors from chicken house and yard maintained in cleanly manner not a nuisance.

Legislative authority for nuisance.

Cited in notes (70 L.R.A. 591) on presumption that commission of nuisance was not by statutory authority; (1 L.R.A.(N.S.) 51, 116) on effect of legislative authority upon liability for private nuisance.

Rights of railroad in streets.

Cited in Staton v. Atlantic Coast Line R. Co. 147 N. C. 446, 17 L.R.A.(N.S.) 958, 61 S. E. 455, on the extent to which a railway may make use of public streets.

Liability of railroad for injury to adjacent property.

Cited in Church of Jesus Christ, L. D. S. v. Oregon Short Line R. Co. 36 Utah, 249, 23 L.R.A.(N.S.) 865, 140 Am. St. Rep. 819, 103 Pac. 243, holding that operation of trains is not a damaging of church within constitutional provision for compensation; Kuhl v. St. Bernard Rendering & Fertilizing Co. 117 La. 90, 41 So. 361, holding the use of a street even though authorized which causes an injury to abutting owners by reason of the way in which used will give a cause of action for damages; Louisville & N. Terminal Co. v. Lellyett, 114 Tenn. 396, 1 L.R.A.(N.S.) 84, 85 S. W. 881, on the liability of railroad corporations for injury to adjacent property by reason of the location and operation of a road.

Cited in note (36 L.R.A.(N.S.) 689, 692, 758) on abutter's right to compensation for railroads in streets.

Distinguished in Church of Jesus Christ, L. D. S. v. Oregon Short Line R. Co. 36 Utah, 249, 23 L.R.A.(N.S.) 865, 103 Pac. 243, holding railroad company in the rightful operation of its road is not liable in damages because of interference with the services of a religious body in the neighborhood.

Right of railroad to obstruct stream.

Approved in Northern P. R. Co. v. United States, 59 L. R. A. 87, 44 C. C. A. 137, 104 Fed. 693, holding right to obstruct navigable stream by upheaval of plastic clay, caused by pressure of railroad embankment near river, not granted by act of Congress authorizing construction of the road.

Injunction against noise.

Cited in footnotes to Hill v. McBurney Oil & Fertilizer Co. 52 L. R. A. 399, which authorizes injunction against blowing of factory whistle at unreasonable

hours in populous community; Froelicher v. Oswald Iron Works, 64 L. R. A. 228, which sustains right to injunction against construction of boilers and tanks and hammering of sheet iron in open air; Redd v. Edna Cotton Mills, 67 L.R.A. 983, which holds that blowing of factory whistle will not be enjoined until fact of nuisance has been established.

Amendment as to parties plaintiff.

Cited in Reardon v. Balaklala Consol. Copper Co. 193 Fed. 194, allowing name of father of decedent in complaint for wrongful death to be changed to name of father as administrator.

50 L. R. A. 493, PEOPLE *ex rel.* VALENTINE v. COOLIDGE, 124 Mich. 664, 83 Am. St. Rep. 352, 83 N. W. 594.

Unconstitutional class legislation.

Cited in Toney v. State, 141 Ala. 124, 67 L.R.A. 287, 109 Am. St. Rep. 23, 37 So. 332, 3 Ann. Cas. 319, holding a statute making it a misdemeanor for a person to violate a labor contract and make a similar contract with another, is unconstitutional; State v. Ramseyer, 73 N. H. 36, 58 Atl. 958, 6 Ann. Cas. 445, holding unconstitutional a statute designed to prohibit the use of trading stamps by merchants; Maclam v. Marquette, 148 Mich. 486, 111 N. W. 1079, holding a charter exempting a city from liability for damages caused by the obstruction of sidewalks is not unconstitutional as class legislation.

Cited in note (129 Am. St. Rep. 253) on classification discriminatory in effect in license laws.

Disapproved in Musco v. United Surety Co. 132 App. Div. 305, 117 N. Y. Supp. 21, holding a statute requiring person engaged in the business of receiving money for transmission to foreign countries to execute a bond to secure the transmission of the money was not unconstitutional.

50 L. R. A. 495, WRIGHT v. BIG RAPIDS DOOR & BLIND MFG. CO. 124 Mich. 91, 82 N. W. 829.

Liability for acts of independent contractor.

Approved in Lenderink v. Rockford, 135 Mich. 533, 98 N. W. 4, holding defendant village which had let a contract for the construction of a sewer was not liable for injuries received by an employee of the independent contractor.

Cited in Hoff v. Shockley, 122 Iowa, 725, 64 L. R. A. 541, 101 Am. St. Rep. 289, 98 N. W. 573, holding property owner not liable for injuries to traveler from negligent placing of obstruction in street by independent contractor; Burns v. Michigan Paint Co. 152 Mich. 615, 16 L.R.A.(N.S.) 818, 116 N. W. 182, holding defendant who employed a licensed expressman to do his delivering is not liable for injuries received by plaintiff through the negligence of the expressman; Larsen v. Home Teleph. Co. 164 Mich. 315, 129 N. W. 894 (dissenting opinion), on liability of telephone company for negligence of electric construction company in piling poles near track.

50 L. R. A. 498, HOPKINS v. ADEY, 92 Md. 1, 48 Atl. 41.

50 L. R. A. 501, RYAN v. McLANE, 91 Md. 175, 80 Am. St. Rep. 438, 46 Atl. 340.

Admissions by demurrer.

Cited in Van Dyke v. Norfolk S. R. Co. 112 Va. 848, 72 S. E. 659, holding that demurrer admits facts, but not conclusions of law from facts.

Specific performance of contract.

Cited in Schmidt v. Pritchard, 135 Iowa, 249, 112 N. W. 801, holding that equity will enforce issuance of additional stock to those entitled thereto, though

it will carry control of corporation; Bernier v. Griscom-Spencer Co. 161 Fed. 442, holding that one seeking specific performance of contract to deliver corporate stock must show some reason why the legal remedy is not adequate; Maryland Teleph. & Teleg. Co. v. Chas. Simons Sons Co. 103 Md. 141, 115 Am. St. Rep. 346, 63 Atl. 314, on specific performance as not an absolute right but an equitable remedy to be applied in the sound discretion of the court.

Annotation cited in Turley v. Thomas, 31 Nev. 197, 135 Am. St. Rep. 667, 101 Pac. 568, holding that contract for sale of stock will be enforced, where stock has no market value and action for damages would be inadequate.

Cited in notes (5 L.R.A.(N.S.) 1194; 31 L.R.A.(N.S.) 491, 492, 497; 135 Am. St. Rep. 691, 695) on specific performance of contracts for sale of corporate stock; (16 L.R.A.(N.S.) 1137) on validity of agreements to control voting power of stock; (128 Am. St. Rep. 384) on refusal of specific performance of valid contract for other reason than that property is of particular class.

50 L. R. A. 517, *Re* McCULLOUGH, 186 Ill. 15, 57 N. E. 837.

50 L. R. A. 519, *Re* DAY, 181 Ill. 73, 54 N. E. 646.

Class legislation.

Cited in Crane v. Chicago & W. I. R. Co. 233 Ill. 264, 84 N. E. 222 (dissenting opinion), denying the constitutionality of a proviso prohibiting the bringing of an action for a death by wrongful act occurring without the state.

Cited in footnote to Noel v. People, 52 L. R. A. 287, which holds void, act giving exclusive privilege to sell patent medicines to registered pharmacists.

Powers inherent in courts.

Cited in People ex rel. Chicago Bar Asso. v. Amos, 246 Ill. 301, 138 Am. St. Rep. 239, 92 N. E. 857, holding that court has power to determine for what cause attorney shall be disbarred; Stein v. Meyers, 253 Ill. 215, 97 N. E. 295 (dissenting opinion), on power of court to make rules; Re License to Practice Law, 67 W. Va. 217, 67 S. E. 597, holding that court may refuse license to practice law, where it is shown that applicant has not requisite good moral character; State v. Mosher, 128 Iowa, 86, 103 N. W. 105, 5 Ann. Cas. 984, on the power of the courts to pass upon the qualifications of candidates for admission to the bar; Re Thatcher, 80 Ohio St. 654, 89 N. E. 39, holding the disbarment of attorney is judicial act; State ex rel. Schneider v. Cunningham, 39 Mont. 173, 101 Pac. 962, holding the discretion of the supreme court on the fixing of the salary of its stenographer could not be reversed by the auditing board under an appropriation of sums named or much thereof as may be necessary.

Power of legislature to annul rule of court.

Approved in Jordan v. Andrus, 26 Mont. 43, 91 Am. St. Rep. 396, 66 Pac. 502, holding legislature without power to annul rule of court requiring transcripts to be printed, by statute permitting them to be typewritten.

Disapproved in Re Applicants for License, 143 N. C. 13, 10 L.R.A.(N.S.) 295, 55 S. E. 635, 10 Ann. Cas. 187, holding legislature has right to establish qualifications and regulations for admission to the bar.

When statutes operate retrospectively.

Cited in Cleary v. Hoobler, 207 Ill. 100, 69 N. E. 967, holding retrospective operation of statute not allowed in absence of unequivocal language so directing; Brennan v. Electric Installation Co. 120 Ill. App. 470, on where statute will be construed to operate retroactively.

Construction of proviso in enactment.

Cited in Burke v. Snively, 208 Ill. 341, 70 N. E. 327, recognizing that proviso can have no potency to enlarge scope of enactment; Stephen v. Illinois C. R. Co. 128 Ill. App. 102; Pittsburgh, C. C. & St. L. R. Co. v. Railroad Commission, 171 Ind. 211, 86 N. E. 328; Hackett v. Chicago C. R. Co. 235 Ill. 123, 85 N. E. 320,—on the effect to be given a proviso in the construction of a statute.

Power of legislature to prescribe qualifications of attorneys.

Cited in Hanson v. Grattan, 84 Kan. 846, 34 L.R.A.(N.S.) 242, 115 Pac. 646, holding that power to admit applicants to practice of law is judicial and not legislative.

Cited in note (10 L.R.A.(N.S.) 290) on power of legislature to prescribe qualifications of attorneys.

50 L. R. A. 532, MOSES v. UNITED STATES, 16 App. D. C. 428.

Power to declare acts nuisances.

Followed in Bradley v. District of Columbia, 20 App. D. C. 171, as to right of Congress to declare emission of smoke a nuisance.

Cited in Re Jones, 4 Okla. Crim. Rep. 78, 31 L.R.A.(N.S.) 551, 140 Am. St. Rep. 655, 109 Pac. 570, holding that legislature can declare billiard halls and bowling alleys nuisances; Bowers v. Indianapolis, 169 Ind. 110, 81 N. E. 1097, 13 Ann. Cas. 1198, holding valid a municipal ordinance providing that the emission of dense black or grey smoke from factories and quasi public buildings should constitute a nuisance; State v. Tower, 185 Mo. 92, 68 L.R.A. 406, 84 S. W. 10, holding to same effect.

Cited in footnotes to Laugrel v. Bushnell, 58 L. R. A. 266, which sustains city's power to denounce conclusively as nuisances, those which are such *per se*, or as to which there may be honest differences of opinion; State v. Tower, 68 L.R.A. 402, which holds judicial province not invaded by legislative declaration that emission of dense smoke into open air in specified cities is a nuisance.

Cited in note (18 L.R.A.(N.S.) 158) on municipal control over smoke as public nuisance.

Right of owner or purchaser to remove carcass.

Cited in Campbell v. District of Columbia, 19 App. D. C. 137, holding that owner of dead animal may sell carcass and purchaser has right to remove same in air-tight wagon before it becomes a nuisance.

Presumption as to information of Congress before legislating.

Approved in Dupont v. District of Columbia, 20 App. D. C. 486, holding that it will be presumed Congress was fully informed as to probable danger to health from careless deposit of garbage before legislating upon subject.

Extent of prohibition intended.

Cited in Bradley v. District of Columbia, 20 App. D. C. 172, holding act of Congress of February 2, 1899, not designed to prohibit the emission of smoke, only so far as the adoption of smoke-consuming or other devices can secure such prevention.

Testimony whether smoke emitted occasioned injury or discomfort.

Approved in Sinclair v. District of Columbia, 20 App. Div. 340, holding in prosecution under act of Congress of February 2, 1899, testimony whether smoke emitted could under any circumstances occasion material injury, inconvenience, or discomfort to the public, properly excluded.

Enjoining replacing hitching posts removed as nuisance.

Cited in footnote to Mercer County v. Harrodsburg, 56 L. R. A. 583, which authorizes city to enjoin replacing of hitching posts removed as nuisances.

Owner's liability for nuisance created by tenant.

Cited in footnote to Louisville & N. Terminal Co. v. Jacobs, 61 L. R. A. 188, which holds that construction of roundhouse for housing engines does not render owner liable for nuisance created by tenant's improper manner of using.

Indictment for bunco steering.

Cited in footnote to Haughn v. State, 59 L. R. A. 789, which holds following statutory language in indictment for bunco steering, insufficient.

Equal protection of laws.

Cited in Lappin v. District of Columbia, 22 App. D. C. 76, conceding that 14th Amendment prohibiting any state from denying equal protection of laws to those within its jurisdiction does not extend to authority exercised by United States.

Lawful exercise of the police power.

Cited in Rochester v. Macauley-Fien Mill. Co. 199 N. Y. 212, 32 L.R.A.(N.S.) 558, 92 N. E. 641, upholding smoke ordinance; State v. Chicago, M. & St. P. R. Co. 114 Minn. 127, 33 L.R.A.(N.S.) 497, 130 N. W. 545, Ann. Cas. 1912B, 1030, upholding ordinance prohibiting use of soft coal by switch engines; Barnes v. District of Columbia, 24 App. D. C. 461, holding a police regulation requiring vehicles in streets to be placed in places designated by the police is not void as unreasonable; Kuchler v. Weaver, 23 Okla. 438, 100 Pac. 915, 18 Ann. Cas. 162, holding valid an act prohibiting the maintenance of a slaughter house within one half miles of the corporate limits of a city of the first class.

Cited in footnote to St. Paul v. Haugbro, 66 L.R.A. 441, which upholds ordinance prohibiting emission of dense smoke within city limits.

Opinion as to effect of smoke.

Cited in Glucose Ref. Co. v. Chicago, 138 Fed. 215, on the effect of the issuance of dense smoke as being a matter of common knowledge.

50 L. R. A. 538, MUTUAL RESERVE FUND LIFE ASSO. v. BOYER, 62 Kan. 31, 61 Pac. 387.

Revocability of consent as to service of process.

Approved in Magoffin v. Mutual Reserve Fund Life Asso. 87 Minn. 262, 94 Am. St. Rep. 699, 91 N. W. 1115, holding stipulation made by foreign insurance company that processes in actions against it may be served on insurance commissioner irrevocable as to liability growing out of policy issued while stipulation in force.

Service of process on foreign corporation.

Approved in J. B. Watkins Land Mortg. Co. v. Elliott, 62 Kan. 292, 84 Am. St. Rep. 385, 62 Pac. 1004, holding that corporation of one state not doing business in another cannot be subjected to suit in such state by the service of summons on one of its officers casually found therein.

Cited in footnote to Buie v. Chicago, R. I. & P. R. Co. 55 L. R. A. 861, which authorizes service of railroad company by serving in other state officers of company organized to construct extension of system.

Cited in note (47 L. ed. U. S. 989) on service on state officer as service on foreign corporations.

Leaving summons at residence as personal service.

Approved in Atchison County v. Challiss, 65 Kan. 181, 69 Pac. 173, holding service made by leaving summons at usual place of residence of defendant sufficient personal service.

50 L. R. A. 542, GREENLEAF v. GERALD, 94 Me. 91, 80 Am. St. Rep. 377, 46 Atl. 799.

Misrepresentations on sale of books.

Cited in note (22 L.R.A.(N.S.) 1210) on what representations afford ground for rescinding sale of books or defense to action for price.

50 L. R. A. 544, STATE v. SNOWMAN, 94 Me. 99, 80 Am. St. Rep. 380, 46 Atl. 815.

Validity of game laws.

Cited in People v. Booth Fisheries Co. 253 Ill. 429, 97 N. E. 837, upholding provision of fish and game law prohibiting sale of certain fish; State v. Hume, 52 Or. 6, 95 Pac. 808, holding valid an act making it unlawful to engage in the business of canning salmon without a license; Harper v. Galloway, 58 Fla. 261, 26 L.R.A.(N.S.) 797, 51 So. 226, 19 Ann. Cas. 235; Hornbeke v. White, 20 Colo. App. 24, 76 Pac. 926,—on it being within the power of state to enact legislation necessary to the protection of game; State v. Peabody, 103 Me. 330, 69 Atl. 273; Sherwood v. Stephens, 13 Idaho, 404, 90 Pac. 345,—on it being within police power of state to enact legislation for the protection of game and fish.

Cited in footnotes to Smith v. State, 51 L.R.A. 404, which sustains statute prohibiting possession of quail during closed season; State v. Mallory, 67 L.R.A. 773, denying right of state to forbid nonresident landowner to take fish and game on his property within the state.

Cited in note (60 L. R. A. 500) on right to fish.

Judicial recognition of business of hunter's guide.

Cited in Re Mullen, 140 Fed. 206, exempting the canoe of a bankrupt who is a professional guide, as a tool of his occupation because of the status of a guide as recognized by the courts of the state.

50 L. R. A. 548, NEWMAN v. FREITAS, 129 Cal. 283, 61 Pac. 907.

Validity of agreements in aid of divorce.

Cited in Donaldson v. Eaton, 136 Iowa, 655, 14 L.R.A.(N.S.) 1171, 125 Am. St. Rep. 275, 114 N. W. 19, holding a contract by attorney to procure the annulment of his client's marriage is void; Grannis v. San Francisco, 146 Cal. 252, 106 Am. St. Rep. 23, 79 Pac. 891, holding it was not competent for parties to divorce proceedings to waive a legislative restriction on the power of the court to enter a final decree of divorce; Pereira v. Pereira, 156 Cal. 5, 23 L.R.A.(N.S.) 883, 134 Am. St. Rep. 107, 103 Pac. 488, holding void as against public policy on agreement that in case of future delinquency on his part giving her grounds for divorce he would give her a specific sum in settlement and satisfaction of her property rights.

Agreement to give solicitor share of alimony.

Cited in footnote to Lynde v. Lynde, 58 L. R. A. 471, which holds void, agreement by wife to give solicitor share of alimony for services in securing it.

Cited in note (33 L.R.A.(N.S.) 1074, 1075) on validity of agreement to pay attorney percentage of alimony.

Legislative regulation of practice in divorce proceedings.

Cited in Deyoe v. Mendocino County Super. Ct. 140 Cal. 483, 98 Am. St. Rep. 73, 74 Pac. 28, sustaining legislation regulating practice of courts of justice in regard to entry of final judgment in divorce cases.

Equity as prerequisite to specific performance.

Cited in Cummings v. Roeth, 10 Cal. App. 152, 101 Pac. 434, affirming refusal

to decree the specific performance of a contract to convey land where the court found that the consideration expressed was entirely inadequate; Stewart v. Smith, 6 Cal. App. 159, 91 Pac. 667; Marsh v. Lott, 8 Cal. App. 392, 97 Pac. 163,—on fairness as prerequisite to enforcement of specific performance.

Dower in encumbered real estate.

Cited in Land v. Shipp, 100 Va. 340, 41 S. E. 742, holding that where purchaser of equity of redemption pays debt secured by prior trust deed in which wife joined, latter not entitled to dower in entire tract but only in surplus.

Cited as dictum in Hoy v. Varner, 100 Va. 604, 42 S. E. 690, holding wife giving deed of trust with husband of real estate for payment of his debts, entitled to dower only in surplus after satisfaction of lien of deed of trust.

Validity of contracts for contingent fees.

Cited in footnote to Dorr v. Camden, 65 L.R.A. 348, which holds that contract for contingent fee must, in order to be sustained, be shown to have been entered into by the client after full knowledge of the facts and circumstances justifying such contract.

Cited in note (83 Am. St. Rep. 177) on validity of contracts between attorneys and clients for contingent fees.

50 L. R. A. 552, OVERHISER v. MUTUAL L. INS. CO. 63 Ohio St. 77, 81 Am. St. Rep. 612, 57 N. E. 965.

Divorce as affecting right to insurance on life of spouse.

Cited in White v. Brotherhood of American Yeoman, 124 Iowa, 294, 66 L.R.A. 164, 104 Am. St. Rep. 323, 99 N. W. 1071, 2 Ann. Cas. 350, holding where the beneficiary was described as being the wife of the insured, her subsequent divorce would not affect a right to recover where no change of beneficiary; Schmidt v. Hauer, 139 Iowa, 533, 111 N. W. 966, holding same notwithstanding by-law that beneficiary must be related to insured.

Cited in footnote to White v. Brotherhood of American Yeoman, 66 L.R.A. 164, which holds rights of wife in benefit certificate on husband's life made payable to her by name not terminated by divorce.

Cited in notes (128 Am. St. Rep. 316) on effect of divorce on rights of husband or wife as beneficiary; (3 L.R.A.(N.S.) 478; 128 Am. St. Rep. 316) on same point; (33 L.R.A.(N.S.) 816) as to who takes under gift to "husband," "wife," or "widow."

Distinguished in Brotherhood R. Trainmen v. Taylor, 9 Ohio C. C. N. S. 24, 29 Ohio C. C. 178, where it was held that the divorce of the beneficiary of a certificate of beneficial insurance precluded her recovery thereunder.

50 L. R. A. 555, GRAND RAPIDS F. INS. CO. v. FINN, 60 Ohio St. 513, 71 Am. St. Rep. 736, 54 N. E. 545.

Appraisement of loss as condition precedent to action on insurance policy.

Followed in German Ins. Co. v. Kistner, 5 Ohio C. C. N. S. 166, 26 Ohio C. C. 571, holding under similar policy appraisal and award were not condition precedent to right of action on policy.

Cited in Amusement Syndicate Co. v. Prussian Nat. Ins. Co. 85 Kan. 373, 116 Pac. 620, holding that action on policy cannot be defeated by showing that no arbitration had been had, where neither party demanded arbitration.

Cited in note (15 L.R.A.(N.S.) 1068) on arbitration as condition precedent to action on insurance policy.

Overruled in Graham v. German American Ins. Co. 75 Ohio St. 400, 15 L.R.A.

(N.S.) 1055, 79 N. E. 930, 9 Ann. Cas. 79, holding provision on a policy of fire insurance for appraisement of damages before a suit for the recovery of any claim by insured is a condition precedent.

Pleading of condition precedent.

Cited in Kehm v. German Mut. Ins. Co. 8 Ohio N. P. 548, 11 Ohio S. & C. P. Dec. 752, holding conditions which provide that insurance policy would be void or inoperative or which should relieve insurer from total or partial liability upon doing of some act were not available as matters of defense unless pleaded.

Cited as overruled in Mullins Co. v. Jacob Freund Roofing Co. 5 Ohio N. P. N. S. 5, 17 Ohio S. & C. P. Dec. 746, holding provision in contract for payment for windows specified therein should be made upon presentation of architect's certificate that windows were furnished in accordance with contract was condition precedent to action for payment which must be pleaded or legal excuse shown for not so doing.

50 L. R. A. 560, LAND v. SHIPP, 98 Va. 284, 36 S. E. 391.

50 L. R. A. 564, TREVETT v. PRISON ASSO. 98 Va. 332, 81 Am. St. Rep. 727, 36 S. E. 373.

Liability of state or United States to action in tort.

Cited in footnotes to Moody v. State's Prison, 53 L. R. A. 855, which denies liability of state to prison guard injured by defective ladder; Overholser v. National Home For Disabled Volunteer Soldiers, 62 L. R. A. 937, which holds national home for disabled soldiers a part of United States government not subject to action sounding in tort.

Cited in note (35 L.R.A.(N.S.) 243) on immunity of state institutions from suit.

Riparian rights.

Cited in People v. Hulbert, 131 Mich. 167, 64 L. R. A. 272, 100 Am. St. Rep. 588, 91 N. W. 211, holding that upper riparian owner cannot through police power be denied right to bathe in lake, because municipality takes water supply therefrom; Shoffner v. Sutherland, 111 Va. 299, 68 S. E. 996, sustaining injunction, at instance of lower riparian owner, against casting of sawdust into stream; Day v. Louisville Coal & Coke Co. 60 W. Va. 31, 10 L.R.A.(N.S.) 171, 53 S. E. 776, holding coal company casting refuse into stream is liable to a riparian owner on whose land such refuse is deposited to its injury.

Cited in notes (84 Am. St. Rep. 914, 916, 918) on extent of municipal right to pollute waters; (107 Am. St. Rep. 237) on fouling of water used for domestic purposes by discharge of sewage.

Charities exempt from tort liability.

Distinguished in Abston v. Waldon Academy, 118 Tenn. 35, 11 L.R.A.(N.S.) 1182, 102 S. W. 351, holding defendant academy a charitable institution organized, for the education of negro children was not liable for injuries to inmates by reason of a failure to provide fire escapes as required by law.

50 L. R. A. 568, COM. *ex rel.* ELKIN v. GRIEST, 196 Pa. 396, 46 Atl. 505.

Statutory requirement as directory.

Approved in Walker v. Edmonds, 197 Pa. 648, 47 Atl. 867, holding statutory requirement that school building tax be levied before July 1 directory and that the levy may be made thereafter; Com. *ex rel.* Smith v. Reno, 25 Pa. Co. Ct. 445, holding requirement that one elected justice of the peace file his acceptance with prothonotary within thirty days directory.

Veto power as including right to cut down item.

Cited in Com. *ex rel.* Elkin v. Barnett, 199 Pa. 192, 55 L. R. A. 894, 48 Atl. 976 (dissenting opinion), majority holding constitutional power to veto separate items in appropriation bill includes power to cut down item.

Necessity of governor's approval of legislative acts.

Cited in Russ v. Com. 210 Pa. 551, 1 L.R.A.(N.S.) 413, 105 Am. St. Rep. 825, 60 Atl. 169, on the governor's approval as necessary only to legislative action which is binding upon the state.

— Proposed constitutional amendments.

Cited in Warfield v. Vandiver, 101 Md. 118, 60 Atl. 538, 4 Ann. Cas. 692, holding a bill proposing amendments to constitution does not require the approval of the governor.

Necessity of submission of proposed constitutional amendment to electors.

Cited in Carton v. Secretary of State, 151 Mich. 382, 115 N. W. 429 (dissenting opinion), on whether necessary to submit a proposed constitutional amendment to the electors.

— Regularity of submission.

Cited in McConaughy v. Secretary of State, 106 Minn. 402, 119 N. W. 408, holding courts have jurisdiction to determine whether a proposed constitutional amendment was properly submitted to the people; Re Constitutional Amendments, 36 Pa. Co. Ct. 383, on the sufficiency of publication of proposed amendments to constitution.

Force and effect of constitution.

Cited in Com. ex rel. Atty. Gen. v. Mathues, 210 Pa. 393, 59 Atl. 961, on the unlimited power of the people except as restricted by self-imposed constitutional provisions.

Construction of constitutional provisions.

Cited in Re Judicial Salaries Act, 13 Pa. Dist. R. 114, holding that all provisions of the constitution are of equal solemnity and dignity and must be construed as such without giving any single clause the overwhelming supremacy which would result from reading it into other clauses wholly unrelated; Com. ex rel. Atty. Gen. v. State Treasurer, 29 Pa. Co. Ct. 564, 13 Pa. Dist. R. 242, holding that general constitutional provisions should not be read into specific provisions so as to alter the latter which can be construed alone.

When mandamus lies.

Cited in Norris v. Cross, 25 Okla. 318, 105 Pac. 1000, holding that secretary of state may be compelled by mandamus to hear protests against referendum petitions.

50 L. R. A. 577, PINNEY v. PROVIDENCE LOAN & INVEST. CO. 106 Wis. 396, 80 Am. St. Rep. 41, 82 N. W. 308.

Service of process on foreign corporation or nonresident.

Cited in Southern R. Co. v. Simon, 184 Fed. 962, holding that service on secretary of state under statute is insufficient service on foreign corporation, where secretary made no effort to notify corporation; State v. St. Mary's Franco-American Petroleum Co. 58 W. Va. 115, 1 L.R.A.(N.S.) 564, 112 Am. St. Rep. 951, 51 S. E. 865, 6 Ann. Cas. 38 (dissenting opinion), on the sufficiency of service of process on corporations.

Cited in footnotes to Abbeville Electric Light & P. Co. v. Western Electrical Supply Co. 55 L. R. A. 146, which authorizes service on traveling salesman of

foreign corporation sent to investigate controversy out of which cause of action arose; Cabanne v. Graf, 59 L. R. A. 735, which holds void, act authorizing service, in personal action against nonresident, on agent in charge of business in state without seizure of property.

Cited in notes (59 L.R.A. 138, 162, 163, 168, 178) on conflict of laws on subject of divorce; (1 L.R.A.(N.S.) 560) on compelling designation of person upon whom process may be served as a condition of right of foreign corporation to do business; (18 L.R.A.(N.S.) 653) on extraterritorial effect of decree of divorce rendered upon constructive service; (23 L.R.A.(N.S.) 1136) as to whether jurisdiction of suit for specific performance of land contract within territorial jurisdiction may rest upon constructive service upon nonresident; (37 L.R.A. (N.S.) 1164) on service of notice in proceedings to revive judgment; (85 Am. St. Rep. 928) on power of state to prescribe mode of serving process on foreign corporations; (47 L. ed. U. S. 989) on service on state officer as service on foreign corporations.

Service essential to jurisdiction in personam.

Annotation cited in D'Autremont v. Anderson (D'Autremont v. Gaylord) 104 Minn. 167, 17 L.R.A.(N.S.) 237, 124 Am. St. Rep. 615, 116 N. W. 357, 15 Ann. Cas. 114, holding the acquirement of jurisdiction over the subject matter of a suit did not authorize the court to adjudicate the rights of the parties in the absence of personal service of process; First Nat. Bank v. Eastman, 144 Cal. 492, 103 Am. St. Rep. 95, 77 Pac. 1043, 1 Ann. Cas. 626, on service of process by publication as not being a sufficient basis for a judgment in personam against a nonresident; Clearwater Mercantile Co. v. Roberts, Johnson, Rand Shoe Co. 51 Fla. 179, 4 L.R.A.(N.S.) 119, 120 Am. St. Rep. 153, 40 So. 436; Nelson v. Chicago, B. & Q. R. Co. 225 Ill. 210, 8 L.R.A.(N.S.) 1192, 116 Am. St. Rep. 133, 80 N. E. 109.—on right of court to render a personal judgment upon constructive service of process.

Cited in footnote to Silver Camp Min. Co. v. Dickert, 67 L.R.A. 940, which holds jurisdiction to compel nonresident to perform contract to convey land within state not conferred by service by publication.

Cited in notes (69 L.R.A. 676) on ability to grant decree in personam criterion of jurisdiction of equity over suits affecting realty in another state or country; (35 L.R.A.(N.S.) 312, 313) on validity and effect, as against defendant not personally served within state, of judgment in personam against joint debtors.

Right to execution against property of nonresident.

Cited in footnote to Kemper-Thomas Paper Co. v. Shyer, 58 L. R. A. 173, which denies right to execution against other property in state for unpaid part of judgment against nonresident served by attachment and publication.

Service essential to due process of law.

Cited in notes (4 L.R.A.(N.S.) 118) on validity of statutes authorizing constructive or substituted service on domestic corporation, (35 L.R.A.(N.S.) 292, 293) on constructive or substituted service on resident as due process; (35 L.R.A.(N.S.) 1060) on right to probate will on service by publication.

50 L. R. A. 600, KOHL v. BEACH, 107 Wis. 409, 81 Am. St. Rep. 849, 83 N. W. 657.

Payment to one not in possession of evidence of indebtedness.

Approved in Spence v. Pieper, 107 Wis. 456, 83 N. W. 660, holding mortgagor not entitled to have payments credited on mortgage where he made them to one

not in possession of the security, without asking to have the papers produced or indorsements made in his presence.

Cited in Hoffmaster v. Black, 78 Ohio St. 6, 21 L.R.A.(N.S.) 54, 125 Am. St. Rep. 679, 84 N. E. 423, 14 Ann. Cas. 877, holding the payment on a debt to one not having possession of the securities evidencing the debt does not raise a presumption of agency in such person to receive payment; Loizeaux v. Fremder, 123 Wis. 198, 101 N. W. 423, on possession of evidence of the debt as being the sole evidence of authority to collect; Bautz v. Adams, 131 Wis. 157, 120 Am. St. Rep. 1030, 111 N. W. 69; Marling v. Nommensen (Marling v. Milwaukee Realty Co.) 127 Wis. 367, 5 L.R.A.(N.S.) 413, 115 Am. St. Rep. 1017, 106 N. W. 844, 7 Ann. Cas. 364,—on the necessity that payment of debt be made to holder of securities evidencing the debt.

Cited in footnote to Harrison Nat. Bank v. Austin, 59 L. R. A. 294, which holds nonpossession of evidences of indebtedness by one to whom debt paid not conclusive as to authority.

Cited in note (23 L.R.A.(N.S.) 422) on effect of agent's nonpossession of security upon question of authority to receive payment.

Authority from agent to subagent.

Cited in Puffer v. Welch, 144 Wis. 511, 129 N. W. 525, Ann. Cas. 1912A, 1120, on authority of agent, granted option to secure commissions, to create other agents of seller by assigning to them undivided interests in option.

50 L. R. A. 605, *Re* FIXEN, 42 C. C. A. 354, 102 Fed. 295.

What constitutes preference.

Approved in *Re* Arndt, 104 Fed. 235, holding payments made by bankrupt to creditor within four months constitute preferences although creditor was not aware of debtor's insolvency and gave him further credit on strength of payment; *Re* Sagor, 57 C. C. A. 414, 121 Fed. 660, holding payments upon running account, when sales were thereafter made and final result was to increase indebtedness, not preferential transfer.

Cited in footnote to Re George M. Hill Co. 66 L.R.A. 68, which holds forbidden transfer not effected by bank's appropriation of balance of bankrupt's deposit account in payment of his indebtedness to it after knowledge of bankruptcy.

— Intent.

Cited in Re Bloch, 74 C. C. A. 250, 142 Fed. 676, holding an intention to prefer is not necessary to the creation of a preference by a bankrupt; Lynch v. Bronson, 80 Conn. 571, 69 Atl. 538, on the intention of the debtor as not being material in the determination of whether a preference had been created.

Cited in note (15 L.R.A.(N.S.) 374) on validity of transfer to secure preexisting debt within four months of bankruptcy, in absence of any fraudulent intent on part of debtor, or of reasonable cause on part of creditor to believe it a preference.

Surrender of preferential payments.

Approved in *Re* Keller, 109 Fed. 129; *Re* Seckler, 106 Fed. 485; *Re* Bashline, 109 Fed. 966; Dickinson v. Security Bank, 49 C. C. A. 85, 110 Fed. 354; Mills v. Lewis, 49 C. C. A. 132, 110 Fed. 513; Pirie v. Chicago Title & T. Co. 182 U. S. 455, 45 L. ed. 1180, 21 Sup. Ct. Rep. 906,—holding that creditors receiving payments without knowledge of debtor's insolvency within four months before latter's petition in bankruptcy is filed must surrender such preferential payments to secure allowance of their claims.

Cited in Kahn v. Cone Export & Commission Co. 53 C. C. A. 93, 115 Fed. 291

(dissenting opinion), majority holding creditor who surrenders preferential payments on account entitled to deduct therefrom new credits which he has extended; Clendening v. Red River Valley Nat. Bank, 12 N. D. 58, 94 N. W. 901, holding decision of a referee in bankruptcy allowing claim implied that certain included offsets were lawful and not preferential.

Right of creditor retaining preferential payment to share in surplus.

Distinguished in *Re* Morton, 118 Fed. 910, holding creditors electing to retain preferential payments entitled to share in surplus of estate remaining after payment of unpreferred creditors in full.

Effect of adjudication of bankruptcy upon illegal preference.

Cited in footnote to Tatman v. Humphrey, 63 L. R. A. 738, which holds that unlawful preference secured by permitting holder of unrecorded mortgage to take possession after mortgagor's insolvency may be defeated by institution of bankruptcy proceedings.

"Transfer" of property in bankruptcy.

Cited in Wright v. Cotten, 140 N. C. 5, 52 S. E. 141, holding a payment of money a "transfer" of property within the meaning of the bankrupt act.

50 L. R. A. 609, AMERICAN WASHBOARD CO. v. SAGINAW MFG. CO. 43 C. C. A. 233, 103 Fed. 281.

Right to exclusive use of trademark.

Approved in Thomas G. Plant Co. v. May Co. 44 C. C. A. 536, 105 Fed. 378, holding shoe manufacturer entitled to exclusive use of name "Queen" to distinguish his goods from others; Welsbach Light Co. v. Adam, 107 Fed. 465, holding manufacturer of "Yusea" gas mantle entitled to enjoin use of earlier invented but subsequently registered trademark U. C. A. to designate similar article; Daviess County Distilling Co. v. Martinoni, 117 Fed. 188, holding one designating whisky as "Kentucky Club" cannot maintain action for unfair competition against one using name "Kentucky Club Bourbon" where neither misrepresentation nor loss of sales is shown.

Cited in Illinois Match Co. v. Broomall, 34 App. D. C. 429, holding the one first adopting and using a mark on his goods is entitled to register it as a trademark although another had first selected the mark with an intention of using; Lowe Bros. Co. v. Toledo Varnish Co. 94 C. C. A. 83, 168 Fed. 628, holding the words "High Standard" as applied to goods was not subject to appropriation as a trademark; American Wire Co. v. Kohlman, 158 Fed. 832, holding the phrase the "American Wine Company" could not be exclusively appropriated as a tradename; Trinidad Asphalt Mfg. Co. v. Standard Paint Co. 90 C. C. A. 195, 163 Fed. 979, holding the word "Ruberoid" was not subject to appropriation as a trademark for the name of a roofing having a rubberlike appearance, it being merely a mispelling of "Rubberoid."

Cited in notes (85 Am. St. Rep. 98, 112) on what words or phrases may constitute a valid trademark; (25 Eng. Rul. Cas. 221, 223) on infringement of trademark.

Unfair use.

Cited in Edward Hilker Mop Co. v. United States Mop Co. 112 C. C. A. 176, 191 Fed. 618, holding that similarity of circulars sent to agents which would deceive purchasers will not constitute unfair competition, where such circulars are not intended or likely to be given to purchasers; A. J. Reach Co. v. Simmons Hardware Co. 155 Mo. App. 427, 135 S. W. 503, holding that baseball manufacturer, having exclusive privilege of supplying balls to American League cannot

enjoin rival from using words "Official American League;" Rathbone, S. & Co. v. Champion Steel Range Co. 37 L.R.A.(N.S.) 262, 110 C. C. A. 596, 189 Fed. 31, holding that placing on market of stove design of which is copied from rival cannot be restrained as unfair competition, where design is recent and public is not deceived; Fonotipia Limited v. Bradley, 171 Fed. 963, holding the sale of copies of disk records, of vocal and instrumental music secured by the complainants at great expense might be enjoined.

50 L. R. A. 615, WHITNEY v. NEW YORK, N. H. & H. R. CO. 43 C. C. A. 19, 102 Fed. 850.

Grounds available in support of directed verdict.

Approved in Currier v. Dartmouth College, 54 C. C. A. 433, 117 Fed. 47, holding all the grounds brought out on motion to direct verdict available in its support on writ of error.

Railroad paymaster as passenger.

Cited in footnote to Traveler's Ins. Co. v. Austin, 59 L. R. A. 107, which holds railroad paymaster traveling on company's business from station to station, not a passenger within meaning of accident policy.

Who is fellow servant.

Cited in Simmons v. Oregon R. Co. 41 Or. 164, 69 Pac. 440, holding employee riding upon own time and business, although upon ticket given by reason of employment, passenger; Willmarth v. Cardoza, 27 L.R.A.(N.S.) 378, 99 C. C. A. 475, 176 Fed. 4, holding an employee who had quit work for the day but who had returned to get his coat was a fellow servant with one whose negligence caused his injury.

Cited in footnotes to Dickinson v. West End Street R. Co. 52 L. R. A. 326, which holds street railway employee riding gratuitously not fellow servant of motorman; Peterson v. Seattle Traction Co. 53 L. R. A. 586, which holds member of construction gang riding home on ticket after day's work, not fellow servant of those operating car; Sanderson v. Panther Lumber Co. 55 L. R. A. 908, which holds foreman of lumber camp riding on log train to and from camp, fellow servant of persons operating train.

Stipulation in pass releasing carrier from liability.

Cited in Duncan v. Maine C. R. Co. 113 Fed. 513, holding that one injured while riding on free pass cannot recover for injuries sustained where the pass was granted on condition that he assume all risk of accident.

Cited in footnotes to Payne v. Terre Haute & I. R. Co. 56 L.R.A. 472, which sustains stipulation in pass releasing carrier from liability for negligence; McNeill v. Durham & C. R. Co. 67 L.R.A. 227, which holds that acceptance of free transportation which carrier is prohibited under penalty from granting does not prevent a recovery for injuries due to carrier's negligence.

Cited in note (37 L.R.A.(N.S.) 237, 251) on validity of stipulation in pass limiting carrier's liability.

Proof of negligence.

Cited in footnote to Crary v. Lehigh Valley R. Co. 59 L. R. A. 815, which requires proof of negligence causing injury to passenger using excursion ticket by which he assumes risk of accident.

Assumption of obvious risk.

Cited in Volk v. B. F. Sturtevant Co. 43 C. C. A. 528, 104 Fed. 278, holding that servant employed to clean out elevator well assumes obvious risk of injury from descending car.

Railroad employees as passengers.

Cited in Indianapolis Traction & Terminal Co. v. Romans, 40 Ind. App. 197, 79 N. E. 1068, holding an employee of street railway company riding home from work on a pass issued by the company was a passenger.

Cited in note (23 L.R.A.(N.S.) 956) on existence of relationship while servant is riding to and from work.

Distinguished in Dayton Coal & Iron Co. v. Dodd, 37 L.R.A.(N.S.) 462, 110 C. C. A. 395, 188 Fed. 605, holding miners, being gratuitously carried to work on mine owner's private railroad, are not passengers.

Burden of proof where passenger is injured.

Cited in Southern P. Co. v. Cavin, 75 C. C. A. 350, 144 Fed. 351, on why the burden of proof on carrier to show the performance of its duty where passenger in the exercise of due care is injured.

50 L. R. A. 620, LOUISVILLE & N. R. CO. v. MARBURY LUMBER CO. 125 Ala. 237, 28 So. 438.

General allegation of negligence.

Followed in Postal Teleg. Cable Co. v. Jones, 133 Ala. 226, 32 So. 500; Alabama G. S. R. Co. v. Hall, 133 Ala. 366, 32 So. 259, and Alabama G. S. R. Co. v. Clark, 136 Ala. 461, 34 So. 917,—as to sufficiency of general allegations of negligence.

Cited in Overton v. Bush, 2 Ala. App. 626, 56 So. 852; Louisville & N. R. Co. v. Holland, 164 Ala. 79, 137 Am. St. Rep. 25, 51 So. 365; Southern R. Co. v. Crawford, 164 Ala. 181, 51 So. 340,—holding it unnecessary to define the quo modo of negligence; Lacy-Buck Iron Co. v. Holmes, 164 Ala. 102, 51 So. 236, holding that complaint for injury from negligence of engineer in starting train without warning must allege duty of engineer to give warning; Alabama G. S. R. Co. v. Demoville, 167 Ala. 298, 52 So. 406, on sufficiency of allegation of negligence; Birmingham R. Light & P. Co. v. Livingston, 144 Ala. 315, 39 So. 374; Birmingham R. Light & P. Co. v. Jones, 146 Ala. 283, 41 So. 146; Louisville & N. R. Co. v. Higginbotham, 153 Ala. 341, 44 So. 872; Birmingham R. Light & P. Co. v. Hinton, 141 Ala. 611, 37 So. 635,—holding averments of negligence in complaint were sufficient; Alabama G. S. R. Co. v. Planters' Warehouse & Commission Co. 153 Ala. 261, 45 So. 82; Birmingham R. Light & P. Co. v. Martin, 148 Ala. 13, 42 So. 618,—holding same where defendant charged with negligently causing destruction of plaintiff's property by fire; Southern R. Co. v. Arnold, 162 Ala. 574, 50 So. 293; Southern R. Co. v. Stewart, 153 Ala. 137, 45 So. 51,—holding general averments of negligence sufficient where a duty shown; Alabama G. S. R. Co. v. Brock, 161 Ala. 355, 49 So. 453, holding general allegation of negligence on part of employees of railroad causing injury to an employee was sufficient; Gray Eagle Coal Co. v. Lewis, 161 Ala. 418, 49 So. 859, holding a general averment of defendant's failure to supply plaintiff with a safe place to work was sufficient; Mobile, J. & K. C. R. Co. v. Bromberg, 141 Ala. 280, 37 So. 395, holding in an action for negligent killing of an employee it is not necessary that the complaint aver in detail the quo modo by which defendant's omission resulted in death of plaintiff's intestate; Selma Street & Suburban R. Co. v. Campbell, 158 Ala. 445, 48 So. 378, on the sufficiency of averments of negligence on part of railroad employees.

Cited in note (59 L. R. A. 236) on sufficiency of general allegations of negligence.

Averment of duty.

Approved in Postal Teleg. Cable Co. v. Hulsey, 132 Ala. 451, 31 So. 527, holding

when facts out of which a duty arose are averred it is sufficient without averring the legal conclusion that the duty existed.

Cited in Wells v. Gallagher, 144 Ala. 367, 3 L.R.A.(N.S.) 762, 113 Am. St. Rep. 50, 39 So. 747, holding in action for damages for negligence a complaint is sufficient if it alleges a duty owed by defendant or states facts from which a duty will be implied; Williamson Iron Co. v. McQueen, 144 Ala. 271, 40 So. 306; Tutwiler Coal, Coke & I. Co. v. Farrington, 144 Ala. 165, 39 So. 898,— holding averments of master's breach of duty were sufficient.

Presumption of negligence from communication of fire.

Approved in Alabama G. S. R. Co. v. Taylor, 129 Ala. 246, 29 So. 673, and Louisville & N. R. Co. v. Marbury Lumber Co. 132 Ala. 524, 90 Am. St. Rep. 917, 32 So. 745, holding communication of fire from engine presumed to have been the result of railroad company's negligence and casts upon it the burden of showing ordinary care; Alabama G. S. R. Co. v. Johnston, 128 Ala. 297, 29 So. 771, and Tinney v. Central R. Co. 129 Ala. 526, 30 So. 623, holding fact that fire was communicated to building from engine raises prima facie presumption of negligence in operation of train or equipment and condition of engine.

Cited in Southern R. Co. v. Johnson, 141 Ala. 578, 37 So. 919, holding facts are shown from which the jury may conclude that a fire originated as alleged the burden is on the defendant to show a proper handling of train and proper equipment of engine; Horton v. Louisville & N. R. Co. 161 Ala. 113, 49 So. 423, holding where it was shown that an engine was emitting sparks of unusual size and quantity, the burden was on the railroad to show proper construction and equipment and that it was properly handled; Alabama G. S. R. Co. v. Sanders, 145 Ala. 457, 40 So. 402, holding an instruction that if the jury believed from the evidence that a spark arrester was deficient and not of the best and safest kind used and that just prior to the discovery of the fire sparks of unusual size were emitted from the engine, a prima facie case of negligence was made out, was correct; Osburn v. Oregon R. & Nav. Co. 15 Idaho, 485, 19 L.R.A.(N.S.) 745, 98 Pac. 627, 16 Ann. Cas. 870, on evidence necessary to create the presumption that a fire set on plaintiff's premises was due to the negligence of defendant in the operation of its trains.

Cited in note (5 L.R.A.(N.S.) 100) on presumption of negligence from setting of fire by locomotive as necessarily making negligence question for jury.

— How rebutted.

Cited in Continental Ins. Co. v. Chicago & N. W. R. Co. 97 Minn. 469, 5 L.R.A.(N.S.) 105, 107 N. W. 548, holding proof of the proper construction, equipment and operation of a locomotive may rebut the presumption that the fire was set from the locomotive was negligent; Chenoweth v. Southern P. Co. 53 Or. 115, 99 Pac. 86, on proof of proper construction, equipment and management of locomotive as rebutting presumption of negligence in the setting of a fire.

Distance to which fire sent as showing defective equipment.

Approved in Alabama G. S. R. Co. v. Taylor, 129 Ala. 246, 29 So. 673, holding distance to which fire is communicated from engine does not of itself show engine was not well equipped with spark arrester.

Duty to adjoining owners.

Cited in Southern R. Co. v. Darwin, 156 Ala. 317, 130 Am. St. Rep. 94, 47 So. 314, on the duty owed by railroad to abutting owners with reference to precautions to be taken against communicating fire; Louisville & N. R. Co. v. Short, 110 Tenn. 718, 77 S. W. 936, holding no duty on the part of property

owner to presume future negligence on the part of adjoining owners and guard against it.

Contributory negligence.

Cited in Louisville & N. R. Co. v. Sullivan Timber Co. 138 Ala. 397, 35 So. 327, holding that failure of owner to sweep sidewalk free of dry grass as required by ordinance, will not prevent recovery for loss by fire from railroad company's negligence, in absence of notice; Wyatt v. Seaboard Air Line R. Co. 156 N. C. 314, 72 S. E. 383, holding that failure to repair buildings will not preclude recovery for their destruction by fire from locomotive; Ide v. Boston & M. R. Co. 83 Vt. 78, 74 Atl. 401, on contributory negligence of owner in maintaining blacksmith shop in delapidated condition, so that it caught fire from sparks from engine; Louisville & N. R. Co. v. Smith, 163 Ala. 153, 50 So. 241, on right to plead the defense of contributory negligence in an action for negligently setting fires.

Cited in footnote to Kansas City, Ft. S. & M. R. Co. v. Blaker, 64 L. R. A. 81, which holds placing structure on railroad right of way with company's consent not contributory negligence preventing recovery for burning of other property by fire spreading therefrom.

Cited in note (12 L.R.A.(N.S.) 626, 627) on duty of abutter to prevent accumulation of combustibles near railway.

Distinguished in Sullivan Timber Co. v. Louisville & N. R. Co. 163 Ala. 131, 50 So. 941, holding in action for the destruction of property by fire set by defendant's locomotive a plea as a defense that plaintiff was negligent in allowing inflammable material thrown near his premises by defendant's servants to remain was not demurrable.

Affirmative charge.

Cited in Harris v. Nashville C. & St. L. R. Co. 153 Ala. 156, 14 L.R.A.(N.S.) 265, 44 So. 962, on the proper charge where evidence is uncontradicted; Southern R. Co. v. Dickens, 161 Ala. 151, 49 So. 766, holding court did not err in refusing to give an affirmative charge for defendant where evidence that defendant had allowed inflammable matter to accumulate on right of way from which it was alleged the fire was communicated to plaintiff's land; Farley v. Mobile & O. R. Co. 149 Ala. 560, 42 So. 747, holding where defendant showed by uncontradicted proof that engine was properly equipped and handled and as proof of emission of large or unusual quantity of sparks, a general charge for defendant was proper.

Refusing requested instructions.

Cited in Louisville & N. R. Co. v. Sherrill, 152 Ala. 218, 44 So. 631, holding instructions were properly refused, which were argumentative in nature, ignored evidence and invaded the province of the jury.

50 L. R. A. 628, KYLE v. PERFECTION MATTRESS CO. 127 Ala. 39, 85 Am. St. Rep. 78, 28 So. 545.

Injunction against infringement of trademark.

Cited in note (1 L.R.A.(N.S.) 721) on right of purchaser of trademark to enjoin its infringement.

50 L. R. A. 632, BOWIE v. BIRMINGHAM R. & ELECTRIC CO. 125 Ala. 397, 82 Am. St. Rep. 247, 27 So. 1016.

Regulations as to seating of passengers.

Cited in McLain v. St. Louis & G. R. Co. 131 Mo. App. 737, 111 S. W. 835,

on carrier having power to make reasonable rules and regulations for the seating of passengers.

— Separation of races.

Cited in Patterson v. Taylor, 51 Fla. 285, 40 So. 493, holding an ordinance might properly provide for the separation of the white and colored races in street cars, the method of separation to be left to the discretion of the carrier; Hart v. State, 100 Md. 602, 60 Atl. 457, holding a statute might properly require a carrier within the state to provide for the separate accommodation of white and colored persons.

Cited in notes (11 L.R.A.(N.S.) 268) on right of carrier to separate passengers on account of race; (54 L. ed. U. S. 936) on right of carrier, independent of statute, to separate passengers on account of race.

50 L. R. A. 636, TRINITY M. E. CHURCH v. HARRIS, 73 Conn. 216, 47 Atl. 116.

Conclusiveness of decisions of ecclesiastical tribunals.

Cited in Ramsey v. Hicks, 174 Ind. 446, 30 L.R.A.(N.S.) 673, 91 N. E. 344, holding that decision of proper church tribunal that it has jurisdiction to form union with another church is binding on courts: Committee of Missions v. Pacific Synod, 157 Cal. 128, 106 Pac. 395, holding that decision of general assembly of church that plan of union had been constitutionally adopted is conclusive on courts; Wallace v. Hughes, 131 Ky. 480, 115 S. W. 684, holding where a schism occurs in a church body the civil courts will award the property in accordance with the decrees of the church tribunals: Poynter v. Phelps, 129 Ky. 393, 24 L.R.A.(N.S.) 735, 111 S. W. 699; Boyles v. Roberts, 222 Mo. 728, 121 S. W. 805 (dissenting opinion); Mack v. Kime, 129 Ga. 19, 24 L.R.A.(N.S.) 686, 58 S. E. 184,—on the conclusiveness of the decisions of ecclesiastical tribunals on the civil courts.

Cited in notes (24 L.R.A.(N.S.) 713) on litigation growing out of schism in religious society; (100 Am. St. Rep. 735) on jurisdiction of civil courts over church controversies.

50 L. R. A. 641, KETCHAM v. McNAMARA, 72 Conn. 709, 46 Atl. 641.

Right of trustee in bankruptcy to examine trustee in insolvency as to assets.

Approved in *Re* Pursell, 114 Fed. 371, holding trustee in bankruptcy entitled to examine trustee in insolvency, appointed more than four months prior to the institution of the bankruptcy proceedings, as to the disposition of the assets.

Bankruptcy act as superseding state insolvency laws.

Cited in Potts v. Smith Mfg. Co. 25 Pa. Super. Ct. 209, holding the insolvency acts were suspended by the existence of the federal bankruptcy act: Jacobs v. E. Bement's Sons, 161 Mich. 426, 126 N. W. 1043 (dissenting opinion), on suspension of state insolvency laws while bankruptcy law is in force.

50 L. R. A. 644, HODGSON v. ST. PAUL PLOW CO. 78 Minn. 172, 80 N. W. 956.

50 L. R. A. 656, STATE *ex rel.* ST. PAUL v. MINNESOTA TRANSFER R. CO. 80 Minn. 108, 83 N. W. 32.

Followed without discussion in State ex rel. Faribault v. Wisconsin, M. & P. R. Co. 98 Minn. 536, 108 N. W. 822.

Compulsory maintainance of bridge over tracks by railroad company.

Cited in State ex rel. Minneapolis v. St. Paul, M. & M. R. Co. 98 Minn. 394,

120 Am. St. Rep. 581, 108 N. W. 261, 8 Ann. Cas. 1047, holding that a bridge over a railway track was a safety device so that under the police power the state could compel them to be erected.

Mandamus to compel railroad to perform duties.

Cited in State ex rel. St. Paul v. St. Paul City R. Co. 117 Minn. 322, 135 N. W. 976, sustaining mandamus to compel railway to construct new lines required by ordinance.

To keep its tracks safe at street crossings.

Approved in Chicago, I. & L. R. Co. v. State, 158 Ind. 194, 63 N. E. 224, holding that mandamus to compel railroad company to restore highway should direct particularly what should be done.

Cited in Vandalia R. Co. v. State, 166 Ind. 226, 117 Am. St. Rep. 370, 76 N. E. 980, holding that mandamus will lie to compel a railroad company to plank the street crossings, where required to do so by statute.

Validity of surrender of power by public corporation.

Cited in Joseph v. Joseph Waterworks Co. 57 Or. 591, 111 Pac. 864, holding that city cannot grant perpetual franchise to water company; State ex rel. Duluth v. Northern P. R. Co. 98 Minn. 431, 108 N. W. 269, holding that a contract whereby a railroad company was relieved from the necessity of maintaining a viaduct over its tracks was ultra vires and void; Bell v. Kirkland, 102 Minn. 218, 13 L.R.A.(N.S.) 796, 120 Am. St. Rep. 621, 113 N. W. 271, on the use and meaning of the term ultra vires; New York C. & H. R. R. Co. v. New York, 142 App. Div. 591, 127 N. Y. Supp. 513, holding that city of New York could not compel N. Y. Central Railroad to remove its tracks from streets.

Notice of power of officers of municipal corporation to contract.

Cited in F. C. Austin Mfg. Co. v. Twin Brooks Twp. 16 S. D. 132, 91 N. W. 470, holding that those parties dealing with town supervisors must see to it that they are acting within the scope of the powers conferred upon them.

Appeal from order in proceedings for mandamus.

Cited in State ex rel. Jackson County v. McKellar, 92 Minn. 245, 99 N. W. 807, holding that an order denying a motion in a mandamus case that the peremptory writ issue is not appealable.

Estoppel of municipality to contest illegal claims.

Cited in note (137 Am. St. Rep. 376) on estoppel of county or municipal corporation to contest illegal claims or expenditures.

50 L. R. A. 660, STATE v. SHEROD, 80 Minn. 446, 81 Am. St. Rep. 268, 83 N. W. 417.

Prohibition against alum in baking powder.

Cited in footnote to State v. Layton, 62 L. R. A. 163, which sustains statutory prohibition against manufacture or sale of baking powder containing alum.

Police regulations.

Cited in State ex rel. Young v. Standard Oil Co. 111 Minn. 97, 126 N. W. 527, holding valid, statute forbidding discriminations in prices of petroleum or by-products.

Cited in footnote to Arbuckle v. Blackburn, 65 L.R.A. 864, which upholds statute prohibiting the coloring, coating, or polishing of article intended for food, whereby damage or inferiority is concealed.

Cited in note (40 L.R.A.(N.S.) 877) on police regulations as to branding or labeling articles of commerce.

50 L. R. A. 663, FOX v. HICKS, 81 Minn. 197, 83 N. W. 538.

What constitutes vested legacy.

Cited in Brookhouse v. Pray, 92 Minn. 453, 100 N. W. 235, holding in the absence of other provisions in a will expressing a contrary intent, a legacy payable at a specific time in the future is not contingent and rests immediately.

50 L. R. A. 667, STATE *ex rel.* RAILROAD & W. COMMISSION v. UNITED STATES EXP. CO. 81 Minn. 87, 83 Am. St. Rep. 366, 83 N. W. 465.

Shares in joint stock company as personalty.

Cited in footnote to *Re* Jones, 60 L. R. A. 476, which holds shares in joint stock company owning real estate only, personalty in applying transfer tax law.

Appeal in mandamus proceeding.

Cited in State ex rel. Jackson County v. McKellar, 92 Minn. 245, 99 N. W. 807, as to the correct procedure.

50 L. R. A. 669, HAHN v. BETTINGEN, 81 Minn. 91, 83 N. W. 467.

Damages for breach of promise to marry.

Approved in Trammell v. Vaughan, 158 Mo. 224, 51 L. R. A. 857, footnote p. 854, 81 Am. St. Rep. 302, 59 S. W. 79, holding woman who breaks contract of marriage in order to marry another man not entitled to recover from latter for his breach of promise damages growing out of her wrongful act in breaking her promise to marry former.

Consideration of point not made in brief.

Cited in Potts v. St. Paul Athletic Park Asso. 84 Minn. 219, 87 N. W. 604, holding point not made in brief of counsel but urged on oral argument need not be considered; Scott v. Hay, 90 Minn. 307, 97 N. W. 106, holding assignments of error not discussed by counsel, not entitled to court's specific attention; Atwood v Lammers, 97 Minn. 216, 106 N. W. 310; Peterson v. Red Wing, 101 Minn. 65, 111 N. W. 840; Price v. Washington L. Ins. Co. 92 Minn. 253, 99 N. W. 810,—holding they will not be considered.

50 L. R. A. 670, DUN v. WEINTRAUB, 111 Ga. 416, 36 S. E. 803.

Communication by commercial agency as privileged.

Cited in footnote to Douglass v. Daisley, 57 L. R. A. 475, which denies privilege, as matter of law, to communication by commercial agency that assignor to secure indorser had made assignment for creditors.

Cited in note (2 Brit. Rul. Cas. 220) on report of mercantile agency as privileged.

50 L. R. A. 673, CENTRAL R. CO. v. LIPPMAN, 110 Ga. 665, 36 S. E. 202.

Limitation of carrier's liability.

Approved in Southern R. Co. v. Watson, 110 Ga. 686, 36 S. E. 209, holding that carrier of passengers cannot by notice or express contract limit his obligation to exercise extraordinary diligence for care of his passengers; Yazoo & M. Valley R. Co. v. Humphrey, 83 Miss. 733, 36 So. 154, holding that passenger voluntarily traveling on mixed train assumes inconveniences and risks reasonably incident thereto.

Cited in Augusta R. & Electric Co. v. Smith, 121 Ga. 31, 48 S. E. 681, holding defendant company liable for the death of a passenger in a collision although he was riding on the platform in violations of the rules though with the knowledge of the conductor; Southern Exp. Co. v. Hanaw, 134 Ga. 449, 67 S. E. 944, on right of carrier to limit liability.

Cited in footnotes to Richmond v. Southern P. Co. 57 L. R. A. 616, which holds unenforceable, agreement by purchaser of mileage ticket at reduced rate not to hold carrier liable for injury on freight train; Crary v. Lehigh Valley R. Co. 59 L. R. A. 815, which requires proof of negligence causing injury to passenger using excursion ticket by which passenger assumes risk of accident.

Distinguished in Holly v. Southern R. Co. 119 Ga. 771, 47 S. E. 188, holding a person accepting a pass which exempted the railroad from all liability for injuries or loss of property cannot recover the value of baggage lost while traveling on the pass.

Ejection of passenger.

Approved in Southern R. Co. v. Howard, 111 Ga. 842, 36 S. E. 213, holding that passenger cannot recover for ejection from train where time limit imposed on his ticket by reasonable regulation of the company had expired; Central R. Co. v. Almand, 116 Ga. 781, 43 S. E. 67, holding one riding on freight train on ticket granting railroad company immunity for injuries, not precluded from recovery for wrongful expulsion, because such agreement for immunity is void.

50 L. R. A. 680, PHINIZY v. GUERNSEY, 111 Ga. 346, 78 Am. St. Rep. 217, 36 S. E. 796.

Vendee's right to have insurance applied in restoring property.

Cited in footnote to Naquin v. Texas Sav. & Real Estate Invest. Asso. 58 L. R. A. 711, which sustains vendee's right to have insurance money applied in restoring property, instead of reducing unmatured indebtedness.

Specific performance of land contract.

Approved in Walker v. Edmundson, 111 Ga. 458, 36 S. E. 800, holding that purchaser of land can enforce specific performance although there is a deficiency in the number of acres, where the contract provides for the payment of a fixed price per acre.

Cited in Mims v. Jones, 135 Ga. 545, 69 S. E. 824, holding that fact that vendor only has bond for title to land will not defect specific performance; Eppstein v. Kuhn, 225 Ill. 125, 10 L.R.A.(N.S.) 125, 80 N. E. 80, holding in an action by vendee for the specific performance of a contract to convey property where the vendor is unable to convey free of incumbrances the vendee may have a deduction from the purchase price to the amount of the depreciation; Sutton v. Davis, 143 N. C. 481, 55 S. E. 844, on right of vendee to specific performance of contract with compensation for defects.

Interest in land contract as real or personal property.

Cited in note (57 L. R. A. 650) on nature of interest of vendor or vendee in land contract as real or personal property.

Injury to property pending transfer.

Cited in Cropper v. Brown, 76 N. J. Eq. 422, 139 Am. St. Rep. 770, 74 Atl. 987, holding that loss by burning of building between execution of contract to purchase by purchaser at sheriff's sale and confirmation of sale falls on purchaser; Bowdle v. Jencks, 18 S. D. 94, 99 N. W. 98, on a loss occurring before the completion of a contract as falling on the vendor; Bright v. Hanover F. Ins. Co. 48 Wash. 63, 92 Pac. 779, holding where pending the completion of the conditions for delivery while the conveyance was in escrow, the property was destroyed the loss falls on the vendor.

Cited in note (27 L.R.A.(N.S.) 234) as to who must bear loss from destruction or deterioration of realty before contract of sale completely performed by transfer of title.

— Enforcement of contract pro tanto.

Disapproved in Hawkes v. Kehoe, 193 Mass. 424, 10 L.R.A.(N.S.) 128, 79 N. E. 766, 9 Ann. Cas. 1053, holding no action would lie for the breach of a contract to convey land, of the value of which was partly in the buildings where the buildings are destroyed without the fault of either party.

— Method of determining amount of abatement.

Cited in Smith v. Pilcher, 130 Ga. 353, 60 S. E. 1000, holding that where a vendee sets up the destruction of a house which was part of consideration for note and tenders what he considers the diminished value of the property a finding "for the tender" and fixing a value for the house at less than the difference does not cover the issue.

50 L. R. A. 685, WILLIAMS v. FEARS, 110 Ga. 584, 35 S. E. 699.

Affirmed in 179 U. S. 270, 45 L. ed. 186, 21 Sup. Ct. Rep. 128.

Who subject to license tax on emigrant agent.

Cited in Varner v. State, 110 Ga. 596, 36 S. E. 93, and Woodson v. State, 114 Ga. 847, 40 S. E. 1013, holding one charged with soliciting or procuring emigrants without payment of license cannot be convicted where he simply procured laborers to leave the state temporarily with no intention of abandoning their residence; Theus v. State, 114 Ga. 54, 39 S. E. 913, holding one who being in state incidentally employs laborers to work for him beyond limits of state not subject to tax imposed upon emigrant agents.

License tax on employment agencies.

Cited in footnote to Price v. People, 55 L. R. A. 588, which sustains license fee on employment agencies.

Cited in notes (2 L.R.A.(N.S.) 860) on police power to license employment agencies; (129 Am. St. Rep. 282) on constitutional limitations on power to impose license or occupation taxes on employment and emigrant agents.

Validity of exemption from license tax.

Cited in footnote to Com. use of Titusville v. Clark, 57 L. R. A. 348, which holds void, exemption from license tax of contractors and real-estate dealers, but not others, whose business less than $1,000.

What is interference with regulation of interstate commerce.

Cited in Central R. Co. v. Murphey, 116 Ga. 870, 60 L. R. A. 821, 43 S. E. 265, holding statute providing for tracing of lost or damaged freight not regulation of interstate commerce beyond power of state; Augusta v. Augusta & A. R. Co. 130 Ga. 817, 124 Am. St. Rep. 197, 61 S. E. 992, denying right of city to lay a tax on an electric railroad company doing an interstate business and which has permission to enter city over track of local street railroad.

50 L. R. A. 691, BRADLEY v. STATE, 111 Ga. 168, 78 Am. St. Rep. 157, 36 S. E. 630.

Right of courts to punish for contempt.

Approved in Smith v. Speed, 11 Okla. 113, 55 L. R. A. 407, footnote p. 402, 66 Pac. 511, holding legislature without power to deprive court of right to punish for contempt or to authorize change of judge or jury trial; Nichols v. Superior Ct. Judge, 130 Mich. 196, 89 N. W. 691, holding that superior court of Grand Rapids established by legislature by virtue of power conferred by Constitution has same power to punish for contempt as circuit courts established by Constitution.

Cited in note (117 Am. St. Rep. 951, 959, 960, 961) on courts, tribunals and persons authorized to punish contempts.

Determination of embezzling officers' ability to restore fund.

Cited in Tindall v. Westcott, 113 Ga. 1134, 55 L. R. A. 230, 39 S. E. 450, holding whether receiver able to restore fund intrusted to his keeping as officer of court and misappropriated is question which may be determined by judge, and need not be submitted to jury.

Proceedings to collect costs not criminal case.

Cited in State v. Steele, 112 Ga. 42, 37 S. E. 174, holding proceeding to enforce by execution against property judgment for costs against prosecutor in criminal action not criminal case.

Criminal contempt.

Cited in Hurley v. Com. 188 Mass. 447, 74 N. E. 677, 3 Ann. Cas. 757, holding that an offer to bribe jury so as to influence their decision in a certain cause constitutes a criminal contempt.

50 L. R. A. 694, SOUTHERN BELL TELEPH. & TELEG. CO. v. CASSIN, 111 Ga. 575, 36 S. E. 881.

Nature of action for wrongful death.

Dissenting opinion cited in Atlantic, V. & W. R. Co. Co. v. McDilda, 125 Ga. 470, 114 Am. St. Rep. 240, 54 S. E. 140, holding that an action for wrongful death is in the nature of a suit for a penalty but cannot be strictly so classed for the purpose of applying the four year statute of limitations.

Survival of cause of action for negligent injury.

Cited in King v. Southern R. Co. 126 Ga. 798, 8 L.R.A.(N.S.) 546, 55 S. E. 965, holding a cause of action for the negligent injury of a child did not survive to the mother where the father died without bringing an action; Peebles v. Charleston & W. C. R. Co. 7 Ga. App. 281, 66 S. E. 953, holding no action would lie to an administrator to recover for the wrongful death of his intestate's son, where no action was commenced by intestate during his life; Rountree v. Adams Exp. Co. 91 C. C. A. 186, 165 Fed. 156, on the survival of causes of action for negligent injury; Louisville R. Co. v. Raymond (Louisville R. Co. v. Taylor) 135 Ky. 747, 27 L.R.A.(N.S.) 180, 123 S. W. 281, on the survival of a cause of action where death results from negligent injuries.

— Where injured person has released damages.

Cited in Bruns v. Welte, 126 Ill. App. 546; Mooney v. Chicago, 239 Ill. 423, 88 N. E. 194,—holding a cause of action would not lie to an administrator for the negligent injury of his intestate where the intestate had released claims for damages; Thompson v. Ft. Worth & R. G. R. Co. 97 Tex. 593, 80 S. W. 990, 1 Ann. Cas. 231; Strode v. St. Louis Transit Co. 197 Mo. 632, 95 S. W. 851, 7 Ann. Cas. 1084,—holding where a husband executed a release for damages from his negligent injury a cause of action did not survive to the wife and children on his death from such injuries.

Cited in note (27 L.R.A.(N.S.) 176) on settlement by injured person of claim against tort feasor as precluding action for resulting death.

50 L. R. A. 714, DIX v. SMITH, 9 Okla. 124, 60 Pac. 303.

Estoppel to enforce lien.

Cited in footnote to Kirchman v. Standard Coal Co. 52 L. R. A. 318, which holds lienor not estopped to enforce lien by mistaken statement of its payment without knowledge of other person's intention to buy property.

Cited in notes (20 L.R.A.(N.S.) 260) on attempt to enforce lien under clause in lease giving landlord lien as election preventing enforcement as chattel

mortgage; (35 L.R.A.(N.S.) 349) on lienor joining in mortgage as waiver of his lien.

Payment of chattel mortgage by attaching creditor.

Distinguished in Greenville Nat. Bank v. Evans-Snyder-Buel Co. 9 Okla. 380, 60 Pac. 249, holding attaching creditor need not pay chattel mortgage executed on property located without the state, but subsequently brought into it.

Attachment as waiver or release of lien.

Cited in Crismon v. Barse Livestock Commission Co. 17 Okla. 121, 87 Pac. 876, holding a statutory lien for pasturing cattle is released by attaching them for the amount of the debt; Mueller v. Renkes, 31 Mont. 106, 77 Pac. 512, on waiver or release of mortgage lien by attachment; Stein v. McAuley, 147 Iowa, 632, 27 L.R.A.(N.S.) 694, 140 Am. St. Rep. 332, 125 N. W. 336, holding that an attachment of the property does not waive the lien of a chattel mortgage, especially where the attachment was dismissed.

Cited in note (24 L.R.A.(N.S.) 490) on waiver of chattel mortgage lien by attachment or execution.

Disapproved in First Nat. Bank v. Johnson, 68 Neb. 642, 94 N. W. 837, 4 Ann. Cas. 485, denying that a mortgagee waived his lien by causing an attachment of the mortgaged property.

50 L. R. A. 722, NORFOLK & W. R. CO. v. OLD DOMINION BAGGAGE TRANSFER CO. 99 Va. 111, 37 S. E. 784.

Discrimination between hackmen.

Cited in Hedding v. Gallagher, 72 N. H. 394, 64 L. R. A. 821, footnote p. 811, 54 Atl. 225, which sustains right of railroad company to give to one teamster exclusive right to enter railroad property to solicit privilege of carrying baggage and passengers; Oregon Short Line R. Co. v. Davidson, 33 Utah, 376, 16 L.R.A. (N.S.) 783, 94 Pac. 10, 14 Ann. Cas. 489; State ex rel. Sheets v. Union Depot Co. 71 Ohio St. 391, 68 L.R.A. 797, 73 N. E. 633, 2 Ann. Cas. 186,—affirming right of union depot company to grant exclusive privilege to have hacks stand in a certain portion of the depot grounds.

Cited in footnotes to Boston & A. R. Co. v. Brown, 52 L. R. A. 418, which holds driver of public carriage entering railroad grounds to get passenger ordering carriage, a trespasser on soliciting other passengers; Pennsylvania Co. v. Chicago, 53 L. R. A. 223, which denies carrier's power to prevent others than lessee occupying hack stands in street; Donovan v. Pennsylvania Co. 61 L. R. A. 140, which sustains carrier's power to give exclusive right to solicit patrons within station to one hackman; Hedding v. Gallagher, 64 L.R.A. 811, which sustains right of railroad company to give exclusive right to one teamster to enter on its grounds, if reasonable requirements of passengers are fully met; State ex rel. Sheets v. Union Depot Co. 68 L.R.A. 793, which sustains right of union depot company to grant transfer company exclusive right to use specified part of depot grounds for hacks and vehicles and soliciting patronage of passengers.

Cited in notes (8 L.R.A.(N.S.) 1027) on injunction for unlawful discrimination by railroad against hack driver; (16 L.R.A.(N.S.) 780) on right to discriminate between solicitors of patronage at depots, wharves, etc.

Compulsory service of common carriers.

Cited in Memphis News Pub. Co. v. Southern R. Co. 110 Tenn. 706, 63 L. R. A. 155, 75 S. W. 941, denying right of railroad company to carry on regular train newspapers of certain publishing house only, excluding other newspaper publishers from its use.

Construction of adopted statute.

Cited in Norfolk & W. R. Co. v. Cheatwood, 103 Va. 367, 49 S. E. 489, adopting the construction of an employer's liability law given it by the courts of the state from which adopted; Chesapeake & O. R. Co. v. Beasley, 104 Va. 801, 3 L.R.A.(N.S.) 190, 52 S. E. 566 (dissenting opinion), on the construction of a statute adopted from another state.

50 L. R. A. 725, GREENVILLE v. KEMMIS, 58 S. C. 427, 36 S. E. 727.

Power of city to pass ordinance prohibiting act forbidden by state law.

Approved in Abbeville v. Leopard, 61 S. C. 106, 39 S. E. 248, holding city may pass ordinance forbidding carrying of concealed weapon although such act is an offense under state laws.

Cited in Ex parte Simmons, 5 Okla. Crim. Rep. 431, 115 Pac. 380, holding that prohibition law does not prevent cities from enacting ordinances prohibiting sale of intoxicating liquors; Anderson v. Seligman, 85 S. C. 19, 67 S. E. 13, holding valid, ordinance against gambling, also crime by statute; State v. Sanders, 68 S. C. 195, 47 S. E. 55, holding a party might be convicted for the keeping a bawdy house both under a municipal ordinance and the general laws of state.

Cited in footnotes to Ogden v. Madison, 55 L. R. A. 506, which sustains city's power to impose penalty for keeping house of ill fame though misdemeanor under state statute; Judy v. Lashley, 57 L. R. A. 414, which denies power to make punishable by city ordinance, carrying of deadly weapons made punishable by state law.

Cited in notes (1 L.R.A.(N.S.) 384) on power of municipality to legislate on subjects covered by state laws; (78 Am. St. Rep. 272; 17 L.R.A.(N.S.) 66) on power of municipality to punish act also an offense under state law.

House or residence within meaning of statutes.

Cited in footnotes to State v. Chauvet, 51 L. R. A. 630, which holds covered wagon moving from place to place a house within prohibition against houses of ill fame; Hipp v. State, 62 L. R. A. 973, which holds tent occupied by divorced man and child, residence, within statute punishing gaming except when occurring at private residence.

50 L. R. A. 729, ILLINOIS C. R. CO. v. SOUTHERN SEATING & CABINET CO. 104 Tenn. 568, 78 Am. St. Rep. 933, 58 S. W. 303.

Carrier's liability for destruction of property.

Cited in footnote to Courteen v. Kanawha Despatch, 55 L. R. A. 182, which denies carrier's liability for accidental destruction of property while in warehouse on pier awaiting arrival of vessel of connecting carrier.

Damages for loss of use of article.

Approved in Livermore Foundry & Mach. Co. v. Union Storage & Compress Co. 105 Tenn. 206, 58 S. W. 270, 53 L. R. A. 488, holding that measure of damages for furnishing imperfect cylinder for cotton compress, which caused loss of the use of the compress for the entire season, may include the value of its use.

Cited in Chisholm & M. Mfg. Co. v. United States Canopy Co. 111 Tenn. 216, 77 S. W. 1062, on the recovery of realizable profits as the measure of damages for a breach of contract to supply essential part for articles to be manufactured and sold.

Liquidated damages.

Approved in Sun Printing & Pub. Asso. v. Moore, 183 U. S. 667, 46 L. ed. 380,

22 Sup. Ct. Rep. 240, holding stipulation to pay agreed value of vessel as liquidated damages in event of failure to return vessel conclusive in absence of fraud or mistake; Coal Creek Min. & Mfg. Co. v. Tennessee Coal, Iron & R. Co. 106 Tenn. 678, 62 S. W. 162, holding clause in lease providing that lessee shall annually mine specified quantity of coal and pay a certain royalty per bushel or a sum equivalent thereto if such quantity is not mined, agreement to pay liquidated rent or royalty.

Cited in notes (28 L.R.A.(N.S.) 22) on interest on unliquidated damages; (108 Am. St. Rep. 51, 56) on agreements purporting to liquidate damages.

Limitation of carrier's liability to own line.

Cited in Atlantic Coast Line R. Co. v. Richardson, 121 Tenn. 464, 117 S. W. 496, holding initial carrier liable for damages resulting from violation of instructions as to routing; Eckles v. Mo. Pac. R. Co. 112 Mo. App. 253, 19 S. W. 723, holding a receiving carrier liable where he changes the routing of the goods and damages results, although there is a clause in contract exempting from liability in hands of connecting carriers; Hoffman v. Delaware, L. & W. R. Co. 39 Pa. Super. Ct. 56, on ineffective exemptions in contract of carriage from loss beyond the line of the forwarder.

Cited in footnotes to Taffe v. Oregon R. & Nav. Co. 58 L. R. A. 187, which denies initial carrier's liability under bill of lading beyond own line; Union State Bank v. Fremont, E. & M. Valley R. Co. 59 L. R. A. 939, which sustains initial carrier's right to limit liability to own line; Kansas City F. S. & M. R. Co. v. Washington, 69 L.R.A. 65, which holds initial carrier checking baggage to destination on through ticket liable for loss on connecting line.

Cited in notes (31 L.R.A.(N.S.) 81, 88) on liability of connecting carrier for loss beyond own line; (88 Am. St. Rep. 102) on limitation of carrier's liability to own line in bills of lading.

Liability of carrier for delay in delivery.

Cited in Illinois C. R. Co. v. Nelson, 139 Ky. 458, 97 S. W. 757, holding that cotton seed meal and hulls are not of such character as to put railroad on notice that their prompt delivery is necessary to avoid loss on cattle being fed by shipper; St. Louis & S. F. R. Co. v. Gaba, 78 Kan. 436, 97 Pac. 435, holding a shipper who has incurred liability by reason of the relay of carrier in delivering goods may recover where the carrier had notice of what would be the effect of its delay; Illinois C. R. Co. v. Johnson, 116 Tenn. 633, 94 S. W. 600, holding in an action for damages resulting from the delay of a carrier in delivering freight, the special damages recoverable must have been contemplated by both parties at the time of making the contract.

Cited in footnote to St. Louis, I. M. & S. R. Co. v. Collidge, 67 L.R.A. 555, which holds that delay by initial carrier in transporting goods liable to injury by climate renders it liable for damage to goods delivered to consignee in damaged condition, unless it shows that such delay did not produce the injury in whole or part, notwithstanding delay of connecting carrier.

Effect of deviation on carrier's rights and liabilities.

Cited in notes (35 L.R.A.(N.S.) 1050) on deviation as affecting carrier's right to avail itself of special contract; (2 Brit. Rul. Cas. 617) on effect of deviation upon carrier's rights and liabilities.

Recovery by obligee of damages paid third person.

Cited in note (18 L.R.A.(N.S.) 576) on right to recover on breach of contract, damages which obligee was compelled to pay third person in consequence.

50 L. R. A. 733, CLIFFORD v. HALL COUNTY, 60 Neb. 506, 83 N. W. 661.

Possession as agent as authorizing action for conversion.

Cited in footnote to Mitchell v. Georgia & A. R. Co. 51 L. R. A. 622, which holds that possession of property as agent does not authorize action for its conversion.

Title to books distributed to officials.

Cited in footnote to Marsh v. Stonebraker, 65 L.R.A. 607, which holds title and ownership of statutes, under act providing for distribution to members of legislature and state officers, not vested in a particular officer to whom they are to be delivered.

50 L. R. A. 734, CHICAGO GENERAL R. CO. v. CHICAGO CITY R. CO. 186 Ill. 219, 57 N. E. 822.

Testing validity of ordinance or contract collaterally.

Approved in Chicago Teleph. Co. v. Northwestern Teleph. Co. 199 Ill. 347, 65 N. E. 329, holding that validity of ordinance making grant to corporation and which has become a contract by acceptance and action thereon cannot be questioned by one not party thereto; Chicago & S. S. Rapid Transit R. Co. v. Northern Trust Co. 90 Ill. App. 484, holding construction of ordinance determinable in direct proceeding; Ross v. Sayler, 104 Ill. App. 24, holding that question whether contract with promoters for sale of stock was an abuse of corporate power may be raised in direct proceeding on behalf of the people, but not collaterally by corporation or its assignees.

Questioning power of corporation collaterally.

Approved in Rector v. Hartford Deposit Co. 190 Ill. 389, 60 N. E. 528, holding that question whether power of corporation to construct buildings and own real estate has been abused cannot be raised in defense of action for rent.

Cited in Roberts v. Terre Haute Electric Co. 37 Ind. App. 668, 76 N. E. 323, holding in an action for personal injuries the right of defendant company to carry freight over its lines cannot be questioned.

Private objection to public wrong.

Distinguished in McArdle v. Chicago City R. Co. 141 Ill. App. 65, holding a right of action for the unlawful maintenance of a nuisance is not affected by the fact that the nuisance is used in connection with the railroad business.

What are public nuisances.

Cited in note (107 Am. St. Rep. 248) on change in motive power of street railway as public nuisance.

50 L. R. A. 737, SMITH v. DENIFF, 23 Mont. 65, 24 Mont. 20, 81 Am. St. Rep. 408, 57 Pac. 557, 60 Pac. 398.

Failure of counsel to comply with rules as to briefs.

Cited in Matusevitz v. Hughes, 26 Mont. 214, 66 Pac. 939, affirming order appealed from when counsel failed to comply with rule concerning statement of case in brief; Conklin v. Cullen, 25 Mont. 31, 63 Pac. 686, sustaining dismissal of appeal for counsel's failure to comply with rules regarding statement of case in brief; Kranich v. Helena Consol. Water Co. 26 Mont. 383, 68 Pac. 408, affirming judgment appealed from where counsel failed to comply with rule concerning statement in brief; T. C. Power & Bro. v. Stocking, 26 Mont. 480, 68 Pac. 857, holding that failure to comply with rules as to statement of case in briefs precludes hearing of appeal on merits.

Right to appropriate the use of waters.

Cited in Willey v. Decker, 11 Wyo. 514, 100 Am. St. Rep. 939, 73 Pac. 210,

on the appropriation of water rights in public lands; Seaward v. Pacific Livestock Co. 49 Or. 162, 88 Pac. 963, on the right of appropriation of water rights by trespassers; Winters v. United States, 74 C. C. A. 666, 143 Fed. 747, holding grantees of public lands outside a reservation could not acquire an exclusive appropriation of waters of a river which had been impliedly reserved for the benefits of the Indians of the reservation by treaties with them; Prentice v. McKay, 38 Mont. 117, 98 Pac. 1081, denying the right to make an appropriation of water right on the land of a private owner without condemnation proceedings.

Cited in note (102 Am. St. Rep. 832) on exercise of power of eminent domain for irrigation purposes.

Right of appropriator or riparian owner to use water.

Cited in Rickey Land & Cattle Co. v. Wood, 81 C. C. A. 207, 152 Fed. 14, on the rights acquired by an appropriator of waters; Sayre v. Johnson, 33 Mont. 20, 81 Pac. 389, holding an appropriator of water may use it upon leased land; Miles v. Butte Electric & Power Co. 32 Mont. 67, 79 Pac. 549, on when right of action exists for the diversion of waters of a stream; Hays v. Buzard, 31 Mont. 81, 77 Pac. 423, denying that because water has been appropriated to a particular purpose that it cannot be applied to some other purpose.

Cited in footnotes to Crawford Co. v. Hall, 60 L. R. A. 889, which holds right to use water acquired by appropriation superior to that of subsequent riparian proprietor; Crawford Co. v. Hall, 60 L. R. A. 889, which denies riparian owner's right to use water for irrigation of nonriparian lands; Salt Lake City v. Salt Lake City Water & Electrical Power Co. 61 L. R. A. 649, which denies prior appropriator's right to complain of noninjurious use by upper proprietor.

Cited in notes (65 L.R.A. 410) on transfer of right to use water for irrigation; (67 L.R.A. 842) on right to improve navigability of stream; (6 L.R.A. (N.S.) 258) on effect of constitutional provision asserting title to navigable water upon vested riparian rights; (37 L.R.A.(N.S.) 307) on right of government to divert water without compensation to riparian owner.

Appurtenance.

Cited in footnote to Forrest v. Vanderbilt, 52 L. R. A. 473, which holds naphtha launch not appurtenance of yacht with which used as tender.

Water rights, what may constitute.

Cited in Helena v. Rogan, 26 Mont. 474, 68 Pac. 798, defining what may constitute a water right; Colusa Min. & Smelting Co. v. Barnard, 28 Mont. 14, 72 Pac. 45, on water rights as capable of existence separate and apart from the title to land.

50 L. R. A. 747, FARM INVEST. CO. v. CARPENTER, 9 Wyo. 110, 87 Am. St. Rep. 918, 61 Pac. 258.

Conferring judicial powers on commissioners and boards.

Followed in Crawford Co. v. Hathaway (Crawford Co. v. Hall) 67 Neb. 366, 60 L.R.A. 906, 108 Am. St. Rep. 647, 93 N. W. 781, holding duties of state board of irrigation administrative and its creation therefore not unconstitutional as conferring judicial powers on executive officers.

Cited in Montezuma Canal Co. v. Smithville Canal Co. 218 U. S. 385, 54 L. ed. 1080, 31 Sup. Ct. Rep. 67, holding that court may appoint water commissioner to distribute waters of river among irrigation canals; Straw v. Harris, 54 Or. 432, 103 Pac. 777, holding a delegation of power by legislature to county court to declare the incorporation of a port is ministerial in nature and valid; State ex rel. Hamilton v. Grant, 14 Wyo. 61, 113 Am. St. Rep. 982, 82 Pac. 2,

holding a superintendent of water division is not a judicial officer within the meaning of the constitution.

Cited in footnote to State *ex rel.* Ellis v. Thorne, 55 L. R. A. 956, which sustains statute for appointing commissioners by circuit judge to review and correct apportionment of state and county taxes.

Establishment of doctrine of prior appropriation in Wyoming.

Cited in Willey v. Decker, 11 Wyo. 519, 100 Am. St. Rep. 939, 73 Pac. 210, recognizing that the doctrine of prior appropriation of water has been established in Wyoming by reason of imperative necessity.

Conclusiveness of proceedings to adjudicate water rights.

Cited in Speer v. Stephenson, 16 Idaho, 722, 102 Pac. 365, holding the action of the state engineer in refusing to cancel a water permit is subject to review in the district court; Farm Invest. Co. v. Gallup, 13 Wyo. 29, 76 Pac. 917, on the conclusiveness of an adjudication of the board of control of water rights; Farmers Canal Co. v. Frank, 72 Neb. 152, 100 N. W. 286, holding a decision of the board of control as to the priority of water rights is not subject to attack in a collateral action.

Distinguished in Crippen v. X. Y. Irrig. Ditch Co. 32 Colo. 456, 76 Pac. 794, on when proceedings to adjudicate priorities of water rights is res judicata to interested parties.

Jurisdiction of courts in the adjudication of water rights.

Cited in Taylor v. Hulett, 15 Idaho, 271, 19 L.R.A.(N.S.) 539, 97 Pac. 37, holding state court in ascertaining and protecting property rights in water appropriations within the state may inquire into rights and priorities on the same stream higher up and beyond the state line.

— Pleading.

Cited in Hough v. Porter, 51 Or. 373, 95 Pac. 732, holding a complaint in an action to determine irrigation rights which charges interference with plaintiffs right by one defendant and that other defendants claim rights, the nature of which are unknown to plaintiff but inferior to his rights is sufficient.

What may constitute an appropriation of water rights.

Cited in Morris v. Bean, 146 Fed. 429, on what an appropriation of water rights may consist in.

Questions properly before appellate court for review.

Cited in Jenkins v. Cheyenne, 12 Wyo. 80, 73 Pac. 758, holding the question of whether plaintiff's petition states a cause of action is not properly reserved for the decision of the supreme court; Smith v. Healy, 12 Wyo. 222, 75 Pac. 430, holding supreme court has no jurisdiction of an order certifying questions to it for decision without stating the questions.

Res judicata.

Cited in footnote to Allred v. Smith, 65 L.R.A. 924, which holds judgment in action quasi in rem binding on the parties only.

50 L. R. A. 762, BOOTH v. PEOPLE, 186 Ill. 43, 78 Am. St. Rep. 229, 57 N. E. 798.

Constitutionality of police regulation affecting classes.

Cited in Bailey v. People, 190 Ill. 33, 54 L. R. A. 840, 83 Am. St. Rep. 116, 60 N. E. 98, holding that police power will not justify restriction of number of persons which lodging-house keepers alone may permit to occupy same room during one night; Price v. People, 193 Ill. 118, 55 L.R.A. 590, 86 Am. St. Rep. 306, 61 N. E. 844, holding that license fee for purpose of raising revenue may be laid

on employment agencies in the absence of constitutional prohibition thereof; People v. Elerding, 254 Ill. 583, 40 L.R.A.(N.S.) 896, 98 N. E. 982, holding valid, statute limiting hours of labor of women in hotels to ten: W. C. Ritchie & Co. v. Wayman, 244 Ill. 519, 27 L.R.A.(N.S.) 998, 91 N. E. 695: Withey v. Bloem, 163 Mich. 427, 35 L.R.A.(N.S.) 633, 128 N. W. 913, holding valid, limitation of working hours of women in manufacturing and mercantile establishments; Christy v. Elliott, 216 Ill. 40, 1 L.R.A.(N.S.) 226, 108 Am. St. Rep. 196, 74 N. E. 1035, 3 Ann. Cas. 487, holding an act regulating the speed of automobiles and imposing certain duties in the driving of them is a constitutional exercise of the police power; Chicago v. Bowman Dairy Co. 234 Ill. 298, 17 L.R.A. (N.S.) 686, 123 Am. St. Rep. 100, 84 N. E. 913, 14 Ann. Cas. 700, holding an ordinance regulating the capacity of milk bottles was a valid exercise of police power: W. C. Ritchie & Co. v. Wayman, 244 Ill. 519, 27 L.R.A.(N.S.) 998, 91 N. E. 695, holding act limiting the working hours of women in mechanical establishments and factories was a valid exercise of police power; State v. McGinnis, 138 N. C. 727, 51 S. E. 50, holding an act forbidding the operation of a "bucket shop" was a valid exercise of the police power: North American Cold Storage Co. v. Chicago, 151 Fed. 123, holding a municipal ordinance providing for the inspection of food products kept for sale was a valid police regulation; Wilson v. Edwards, 32 Pa. Super. Ct. 305, holding an act regulating the sale of a stock of merchandise in bulk was not invalid as class legislation; Pelouze v. Slaughter, 241 Ill. 227, 89 N. E. 259, on the subject of gaming as being under legislative control in the exercise of the police power; People v. Steele, 231 Ill. 346, 14 L.R.A.(N.S.) 366, 121 Am. St. Rep. 321, 83 N. E. 236, holding act the purpose of which was to prevent the "scalping" of theater tickets was not a constitutional exercise of the police power.

Cited in note (104 Am. St. Rep. 658) on municipal regulations of street railways for protection of public.

— Determination of propriety of police regulations.

Cited in Belleville v. St. Clair County Turnp. Co. 234 Ill. 437, 17 L.R.A. (N.S.) 1077, 84 N. E. 1049, on the determination of what are the subjects of the police power and what are reasonable regulations thereunder as being for the courts; Kirk v. Board of Health (Kirk v. Wyman) 83 S. C. 387, 23 L.R.A. (N.S.) 1195, 65 S. E. 387 (dissenting opinion), on the power of courts to declare invalid a police regulation.

Cited in note (123 Am. St. Rep. 36) on test of validity of municipal ordinance as denying equal protection of the laws.

Prohibition against options to buy or sell at future time.

Followed in Weare Commission Co. v. People, 209 Ill. 546, 70 N. E. 1076, affirming 111 Ill. App. 121, sustaining statute prohibiting dealing in margins.

Affirmed in 184 U. S. 425, 46 L. ed. 623, 22 Sup. Ct. Rep. 425, holding prohibition against options to buy or sell commodities at future time not invasion of liberty.

What constitutes option within statute.

Cited in Woods v. Bates, 126 Ill. App. 185, holding an offer to contract for the sale of grain to be delivered at a certain time, with an agreement to leave the offer open for a certain time constituted an option contract within the meaning of the criminal code: Ware v. Pearsons, 98 C. C. A. 364, 173 Fed. 881, holding "puts and calls" within the prohibition of a wagering statute.

50 L. R. A. 765, BEST BREWING CO. v. KLASSEN, 185 Ill. 37, 76 Am. St. Rep. 26, 57 N. E. 20.

Powers of corporations.

Cited in Cerny v. Jednota Cesky Dam, 146 Ill. App. 522, on corporations as limited to the purpose or object expressed in their charters; Sturdevant Bros. & Co. v. Farmers' & M. Bank, 69 Neb. 238, 95 N. W. 819, on the extent of the contractual powers of a corporation.

— To execute bond or guaranty.

Approved in Bailey v. Farmers Nat. Bank, 97 Ill. App. 71, holding national bank without authority to execute bond in replevin suit not liable thereon; Central Lumber Co. v. Kelter, 201 Ill. 507, 66 N. E. 543, holding that corporation carrying on lumber business has implied power, for purpose of making a sale, to execute a bond for faithful performance of a building contract.

Cited in Midland Teleph. Co. v. National Teleg. News Co. 236 Ill. 481, 86 N. E. 107, holding a guarantee by a corporation of the payment of rent under a lease taken out by stockholders of a business not foreign to the business of the corporation was not ultra vires and void; Chicago & M. Teleg. Co. v. Type Teleg. Co. 137 Ill. App. 156, holding a guaranty by a telegraph company of a lease by another telegraph company to others is not ultra vires where the undertaking is in reality an original one; Robert Gair Co. v. Columbia Rice Packing Co. 124 La. 202, 50 So. 8, holding a corporation formed for the operation of a rice mill had no power to guarantee the contracts of an independent corporation organized by stockholders of the former to engage in the business of packing rice which it bought from the rice mill; Re S. P. Smith Lumber Co. 132 Fed. 621, holding the act of a corporation organized for the purpose of buying and selling lumber and building materials, in guarantying the performance of a building contract is ultra vires and void.

Distinguished in Timm v. Grand Rapids Brewing Co. 160 Mich. 373, 27 L.R.A. (N.S.) 189, 125 N. W. 357, holding the act of a brewing company in giving a bond to secure sureties on a liquor dealer's bond of one of its customers was not ultra vires.

— To loan money.

Cited in Leigh v. American Brake-Beam Co. 205 Ill. 152, 68 N. E. 713, denying power of corporation created to manufacture and sell railroad supplies to loan corporate funds; Kraft v. West Side Brewery Co. 219 Ill. 206, 76 N. E. 372, Affirming 121 Ill. App. 372, holding brewing company might make a loan for the erection of a building in which by virtue of a contract only their beer shall be sold.

Estoppel to dispute validity of contract.

Approved in Kelley, M. & Co. v. O'Brien Varnish Co. 90 Ill. App. 293, holding corporation which in excess of its powers has executed appeal bond as surety not estopped to plead *ultra vires*, because appellant derived benefit from the appeal by delay; Fritze v. Equitable Bldg. & L. Soc. 186 Ill. 199, 57 N. E. 873, holding that corporation may set up defense of *ultra vires* although it has had the benefit of full performance of the contract where contract was prohibited by statute and against public policy; Farson v. Fogg, 205 Ill. 343, 68 N. E. 755, holding street railway company having received benefit of *ultra vires* contract made with private owner without city's consent, to pave street, not thereby estopped to set up *ultra vires* to bill for specific performance; Lurton v. Jacksonville Loan & Bldg. Asso. 187 Ill. 143, 58 N. E. 218, holding borrower from loan association estopped to dispute validity of note and mortgage because there was no competitive bidding.

Cited in McCartney v. Supreme Tent K. M. 132 Ill. App. 21; Fraternal Tribunes v. Steele, 114 Ill. App. 201,—on estoppel of corporation to plead ultra vires acts.

Distinguished in Huber v. Merkel, 117 Wis. 369, 62 L.R.A. 596, 94 N. W. 354, holding issuance of certificate by fraternal insurance company to member after election but before initiation not *ultra vires* act.

Liability of corporation for money received in excess of its powers.

Approved in Brennan v. Gallagher, 199 Ill. 211, 65 N. E. 227, holding loan association which in excess of its powers has received money on deposit under contract not *malum in se* or *malum prohibitum* liable in action for money had and received.

Questioning power of corporation collaterally.

Approved in Rector v. Hartford Deposit Co. 190 Ill. 389, 60 N. E. 528, holding that question whether power of corporation to construct buildings and own real estate has been abused cannot be raised in defense of action for rent.

Cited in Imperial Bldg. Co. v. Chicago Open Bd. of Trade, 238 Ill. 112, 87 N. E. 167, holding a lessee as a defense to a judgment for rent may deny the legal existence of the corporation where no law authorizing its organization.

Ratification of illegal transactions.

Cited in Hinsey v. Supreme Lodge, K. P. 138 Ill. App. 273, on transactions in themselves illegal, being incapable of ratification.

50 L. R. A. 768, MANUFACTURERS' GAS & OIL CO. v. INDIANA NATURAL GAS & OIL CO. 155 Ind. 461, 57 N. E. 912.

Enjoining artificial device to increase flow of gas.

Approved in Manufacturers Gas & Oil Co. v. Indiana Natural Gas & Oil Co. 156 Ind. 682, 60 N. E. 1080, holding that use of appliances to unnaturally stimulate the flow of natural gas may be enjoined by one sustaining special injury; Richmond Natural Gas Co. v. Enterprise Natural Gas Co. 31 Ind. App. 231, 66 N. E. 782, refusing to enjoin use of compressors and pumps when it does not appear that they increase natural flow of gas.

Cited in Ilo Oil Co. v. Indiana Natural Gas & Oil Co. 174 Ind. 636, 30 L.R.A. (N.S.) 1059, 92 N. E. 1, refusing injunction against pumping of gas wells in favor of adjoining owner, where latter has been guilty of similar acts.

Cited in footnote to Louisville Gas Co. v. Kentucky Heating Co. 70 L.R.A. 558, which sustains right to injunction against drawing natural gas from natural reservoir utilized for supplying inhabitants of city merely for purpose of wasting it and injuring those utilizing same.

Distinguished in Huber v. Merkel, 117 Wis. 369, 62 L.R.A. 596, 94 N. W. 354, sustaining landowner's right to wastefully use percolating water through well regardless of effect upon neighboring wells, and notwithstanding malicious intent.

Nature of property in natural gas.

Followed in Federal Oil Co. v. Western Oil Co. 57 C. C. A. 429, 121 Fed. 675, refusing specific performance of oil and gas lease for want of mutuality, where lessee was not obligated to make well, and lease was determinable only at his option.

Cited in Manufacturers Gas & Oil Co. v. Indiana Natural Gas & Oil Co. 155 Ind. 545, 53 L. R. A. 134, 58 N. E. 706, holding natural gas reduced to possession a commercial commodity, and that a statute prohibiting its transportation out of the state is unconstitutional; Andrews v. Andrews, 31 Ind. App. 191, 67 N. E. 461, recognizing that natural gas may become property of adjoining landowner by

being reduced to possession by him through well on his land; Louisville Gas Co. v. Kentucky Heating Co. 117 Ky. 78, 70 L.R.A. 561, 111 Am. St. Rep. 226, 77 S. W. 368, 4 Ann. Cas. 355, affirming right of one having an interest in a natural gas supply to enjoin a waste thereof by another having an interest therein.

Distinguished in Consumers' Gas Trust Co. v. American Plate Glass Co. 162 Ind. 396, 68 N. E. 1020, denying right of a proprietor of land over which a railroad has a right of way to enjoin a third corporation from drilling for oil on such right of way.

Public restriction of private property rights.

Cited in Opinion of Justices, 103 Me. 512, 19 L.R.A.(N.S.) 426, 69 Atl. 627, 13 Ann. Cas. 745, on statutes restricting the use of property within the exercise of the police power.

Cited in note (23 L.R.A.(N.S.) 438) on constitutionality of statutes to prevent waste of subterranean water, gas, or oil.

50 L. R. A. 774, WELCH v. UNION CENT. L. INS. CO. 108 Iowa, 224, 78 N. W. 853.

Estoppel of company by medical examiner's certificate.

Approved in Weimer v. Economic Life Asso. 108 Iowa, 453, 79 N. W. 123, holding that insurance company which has investigated and declared the condition of assured to be such as required by it cannot set up infirmities of which it knew, or might have known, where its examiner was not deceived.

Explained in Wood v. Farmer's Life Asso. 121 Iowa, 47, 95 N. W. 226, holding insurance company estopped to defend suit on policy by proof that assured was not in condition stated in application, by favorable report of medical examiner, in absence of proof of fraud in assured.

Incontestable clause as covering false answers.

Cited in footnote to Murray v. State Mut. Life Assur. Co. 53 L. R. A. 742, which holds false answers in application covered by incontestable clause.

Validity of provisions for incontestability.

Cited in Reagan v. Union Mut. L. Ins. Co. 189 Mass. 557, 2 L.R.A.(N.S.) 823, 109 Am. St. Rep. 659, 76 N. E. 217, 4 Ann. Cas. 362, on how provision that policy shall be incontestable from the date of issue for any cause except nonpayment of premiums, affects the validity of the policy.

Proof of falsity of representations.

Cited in Langdeau v. John Hancock Mut. L. Ins. Co. 194 Mass. 67, 18 L.R.A. (N.S.) 1194, 80 N. E. 452, holding in an action on a life insurance policy where the issue was the falsity of representations as to sobriety by the insured, the falsity thereof might be established by proof of habits of drunkenness.

Cited in note (2 L.R.A.(N.S.) 821) on validity of provision making policy incontestable from date.

Statements by assured outside of application as evidence against beneficiary.

Cited in note (11 L.R.A.(N.S.) 94) on statements by assured outside of application as evidence against beneficiary.

50 L. R. A. 777, TOLERTON & S. CO. v. ANGLO-CALIFORNIA BANK, 112 Iowa, 706, 84 N. W. 930.

Liability of purchaser of draft with bill of lading attached.

Cited in Hall v. Keller, 64 Kan. 214, 62 L. R. A. 759, footnote p. 758, 91 Am. St. Rep. 209, 67 Pac. 518, holding neither bank purchasing draft with bill of

lading attached nor payees indorsing same, liable to acceptor for failure of drawer's title to property shipped, S. Blaisdell, Jr. Co. v. Citizens' Nat. Bank, 96 Tex. 634, 62 L. R. A. 973, footnote p. 968, 97 Am. St. Rep. 944, 75 S. W. 292, denying responsibility of bank purchasing draft, with bill of lading attached, to consignee paying draft, where bill of lading proves fraudulent; Commerce Mill. & Grain Co. v. Morris, 27 Tex. Civ. App. 555, 65 S. W. 1118, holding bank receiving for collection draft with bill of lading for car of wheat attached, not liable on warranty that wheat should be as contracted for; Cosmos Cotton Co. v. First Nat. Bank, 171 Ala. 397, 32 L.R.A.(N.S.) 1176, 54 So. 621, holding bank, cashing draft with bill of lading attached, not liable to consignee for shortage or inferiority of quality of shipment: Lewis v. Small, 117 Tenn. 153, 6 L.R.A.(N.S.) 890, 119 Am. St. Rep. 994, 96 S. W. 1051; Mason v. A. E. Nelson Cotton Co. 148 N. C. 500, 18 L.R.A.(N.S.) 1225, 128 Am. St. Rep. 635, 62 S. E. 625,—holding one discounting a draft with a bill of lading attached, made for the purchase price of goods is not liable for a breach of contract between consignor and consignee.

Cited in notes (1 L.R.A.(N.S.) 243) on rights and liabilities of assignee of bill of lading with draft attached as against consignee who does not get or finds goods defective; (91 Am. St. Rep. 213, 215) on liability of assignee of bill of lading with draft attached for failure of title to or defects in goods or failure of consideration; (105 Am. St. Rep. 346) on rights and liabilities of assignees of bills of lading.

Disapproved in Haas v. Citizens' Bank, 144 Ala. 571, 1 L.R.A.(N.S.) 245, 113 Am. St. Rep. 61, 39 So. 129, holding a transfer of a bill of lading who is an assignee of the draft for the purchase price is not relieved from liability under the original contract of shipment because of his ownership of the draft for the purchase price.

Effect of attaching draft to bill of lading.

Cited in Citizens' Bank v. Hass, 157 Ala. 614, 46 So. 1036 (dissenting opinion), on a bill of lading as being collateral security for the discounted draft.

50 L. R. A. 780, THOMSON v. SMITH, 111 Iowa, 718, 82 Am. St. Rep. 541, 83 N. W. 789.

What are fixtures.

Cited in West v. Farmers' Mut. Ins. Co. 117 Iowa, 151, 90 N. W. 523, holding fixtures, furnace and hot-water boiler placed in house: Peoria Stone & Marble Works v. Sinclair, 146 Iowa, 59, 124 N. W. 772, holding machinery to be fixture: State Security Bank v. Hoskins, 130 Iowa, 342, 8 L.R.A.(N.S.) 382, 106 N. W. 764, holding a gasolene engine set on a solid stone foundation in a permanent building and used in connection with the use of the building passes by a conveyance of the realty with appurtenances: McCrillis v. Cole, 25 R. I. 161, 105 Am. St. Rep. 875, 55 Atl. 196, holding an engine bought under condition that title should not pass until paid for, which was placed by the vendee in a mill leased by him under a contract with lessor that it was to be part of the realty as to the vendor was a fixture; Gartland v. Hickman, 56 W. Va. 85, 67 L.R.A. 700, 49 S. E. 14, on the determination of whether an article becomes a fixture.

Cited in footnotes to Murray v. Bender, 63 L.R.A. 783, which holds that chairs, stage, stage fixtures, and drop curtain annexed to theater by owner of majority of stock of corporation having title to building, without agreement that they shall remain his personal property, pass as fixtures on execution sale of building; Giddings v. Freedley, 65 L.R.A. 327, which holds main belt trans-

mitting power from an engine so annexed to building as to be real estate, to machinery in mill, real estate.

Cited in note (84 Am. St. Rep. 897, 898) on fixtures retaining by agreement the character of personal property.

Rights of seller of fixtures as against purchaser of realty.

Cited in note (1 Brit. Rul. Cas. 669) on rights of seller of fixtures retaining title or lien, as against purchasers or encumbrancers of realty.

When property is appurtenant to realty.

Cited in Shaffer Bros. v. Chernyk, 130 Iowa, 689, 107 N. W. 801, holding a workshop used in connection with a homestead is appurtenant thereto within the meaning of a homestead exemption statute; Rahm v. Domayer, 137 Iowa, 20, 15 L.R.A.(N.S.) 728, 114 N. W. 546, holding materials fitted for and bought for the purpose of completing a building passed with a sale of the realty.

50 L. R. A. 783, KANSAS CITY v. ORR, 62 Kan. 61, 61 Pac. 397.

Liability of city for injury from defective streets.

Cited in Eskildsen v. Seattle, 29 Wash. 589, 70 Pac. 64, holding city liable for injury to child whose foot was caught in opening between rails of railroad track and planking; Dallas v. Concordia, 84 Kan. 737, 115 Pac. 558, holding city liable for injury to person falling in unguarded cellarway in alley.

Cited in footnotes to Teagar v. Flemingsburg, 53 L.R.A. 792, which holds mere building of step in sidewalk not negligence rendering city liable for injury to pedestrians; Harden v. Jackson, 66 L.R.A. 986, which holds plank sidewalk not so unsafe as to render city liable to one falling thereon because his cane goes through, although the edges of planks have become so decayed as not to withstand pressure of cane.

Cited in notes (103 Am. St. Rep. 263; 20 L.R.A.(N.S.) 749, 750) on liability of municipality for defects or obstructions in streets; (21 L.R.A.(N.S.) 670) on contributory negligence as affecting municipal liability for defects and obstructions in streets.

Violation of ordinance as affecting recovery for injury.

Cited in Newbury v. Luke, 68 N. J. L. 192, 52 Atl. 625, holding no defense to action for overdriving horse, fact that horse was hired to defendant on Sunday in violation of Sunday law; Smith v. Marion Fruit Jar & Bottle Co. 84 Kan. 553, 114 Pac. 845, holding that consent of father to employment of son in factory is not bar to recovery for his negligent death.

Cited in footnote to Little v. Southern R. Co. 66 L.R.A. 509, which denies employer's liability for injury to employee proximately caused by his violation of a penal statute or municipal ordinance although employer directed such violation.

Cited in note (36 L.R.A.(N.S.) 549) on violation of Sunday law as defense to action for personal injuries.

50 L. R. A. 787, STATE *ex rel.* HAMILTON v. GUINOTTE, 156 Mo. 513, 57 S. W. 281.

Right of executor after judgment sustaining will.

Approved in Carroll v. Reid, 158 Mo. 321, 59 S. W. 69, holding executor named in contested will not entitled to control of estate as against administrator *pendente lite* of judgment sustaining will, where appeal has been taken to supreme court.

Jurisdiction of probate court pending appeal.

Cited in Ryans v. Boogher, 169 Mo. 685, 69 S. W. 1048, holding probate court without jurisdiction to render judgment pending appeal to supreme court.

Review by certiorari.

Cited in State ex rel. Powell v. Shocklee, 237 Mo. 468, 141 S. W. 614, holding that order of county court removing county seat cannot be reviewed by writ of certiorari; State ex rel. Sanks v. Johnson, 138 Mo. App. 314, 121 S. W. 780, on certiorari as being the proper remedy to restrain officials from acting in excess of their jurisdiction; Fry v. Armstrong, 109 Mo. App. 485, 84 S. W. 1001, holding certiorari would not lie to review a judgment rendered by a justice of the peace within less than ten days from service of summons there being a remedy by appeal; State ex rel. Arnold v. Lichta, 130 Mo. App. 290, 109 S. W. 825, holding certiorari would lie to review the action of a county court in revoking a license to keep a dramshop.

Cited in footnote to People *ex rel.* Smith v. Hoffman, 54 L. R. A. 597, which holds military examining board, a judicial body whose determination reviewable by certiorari.

Cited in note (53 L. ed. U. S. 716) on certiorari from Federal Supreme Court to circuit courts of appeals.

When adequate remedy at law.

Cited in Mendenhall v. School Dist. No. 83, 76 Kan. 177, 90 Pac. 773, on what will constitute such an adequate remedy at law as to preclude proceedings in equity.

Conclusiveness of verdict.

Approved in Hamburger v. Rinkel, 164 Mo. 404, 64 S. W. 104, holding supreme court concluded by verdict sustaining testator's mental capacity where it is based on ample evidence and the issue was fairly submitted under appropriate instruction.

Review of verdict or judgment.

Approved in Crossan v. Crossan, 169 Mo. 637, 70 S. W. 136, holding that supreme court will set aside verdict in will contest where there is no evidence to sustain it, but will not weigh the evidence when competent to sustain verdict; Hubbard v. Fuchs, 164 Mo. 430, 64 S. W. 98, holding that in absence of evidence to justify judgment the supreme court will interfere although no declarations of law were asked.

Cited in Roberts v. Bartlett, 190 Mo. 695, 89 S. W. 858, on a will contest, being an action at law, as not subject to reversal because jury found against weight of evidence; Archambault v. Blanchard, 198 Mo. 426, 95 S. W. 834; Knapp v. St. Louis Trust Co. 199 Mo. 663, 98 S. W. 70; Winn v. Grier, 217 Mo. 447, 117 S. W. 48; Sayre v. Princeton University, 192 Mo. 120, 90 S. W. 787,—on power of supreme court to examine the record to see if there is testimony to support the verdict in a will contest before it.

Status of executor pending contest of will.

Cited in Good Samaritan Hospital v. Mississippi Valley Trust Co. 137 Mo. App. 183, 117 S. W. 637, holding pending a contest of a will an executor is not liable to a legatee for interest on the legacy on account of his failure to pay it when properly payable.

Disapproved in Steen v. Springfield, 91 Ark. 78, 120 S. W. 408, holding a statutory provision for the appointment of a temporary administrator does not contemplate the removal of executor pending contest of the will.

Nature of proceedings to contest validity of will.

Cited in Bradford v. Blossom, 207 Mo. 228, 105 S. W. 289, on proceedings to contest the validity of a will as being proceedings in rem.

Minor as party.

Cited in Robertson v. Brown, 187 Mo. 461, 106 Am. St. Rep. 485, 86 S. W. 187, as not discussing the necessity of making a minor a party to a suit.

50 L. R. A. 798, STATE *ex rel.* KANSAS & T. COAL R. CO. v. SHELTON, 154 Mo. 670, 55 S. W. 1008.

Certiorari.

Cited in Collier v. Chester, P. & Ste. G. R. Co. 158 Mo. App. 256, 138 S. W. 660, holding that common law writ of certiorari brings up for review only matters of record; State ex rel. Iba v. Mosman, 231 Mo. 482, 133 S. W. 38, holding that scope of review of record brought up by certiorari is not limited entirely to question of jurisdiction; State ex rel. Kiel v. Riechmann, 239 Mo. 112, 142 S. W. 304, holding that writ of certiorari will not lie against political committee; Baker v. Newton, 22 Okla. 663, 98 Pac. 931; Fry v. Armstrong, 109 Mo. App. 485, 84 S. W. 1001,—on when certiorari will lie; State ex rel. Bentley v. Reynolds, 190 Mo. 589, 89 S. W. 877, holding certiorari would not lie to review the ministerial acts of a ministerial official; State ex rel. Kelley v. Wooten, 139 Mo. App. 236, 122 S. W. 1103, on certiorari as not lying to correct errors in the exercise of rightful jurisdiction; State ex rel. Applegate v. Taylor, 224 Mo. 490, 123 S. W. 892, holding certiorari would not lie to review the findings of a county court as to the sufficiency of a petition; State ex rel. Arnold v. Lichta, 130 Mo. App. 290, 109 S. W. 825, holding certiorari would lie to review the action of a county court in revoking the license of a dramshop.

Remedy by appeal or writ of error as bar to certiorari.

Limited in State *ex rel.* Hamilton v. Guinotte, 156 Mo. 526, 50 L. R. A. 794, 57 S. W. 281, holding remedy by appeal or writ of error not sufficient to bar certiorari unless it is adequate to meet the necessities of the case.

50 L. R. A. 808, DIETZMAN v. MULLIN, 108 Ky. 610, 94 Am. St. Rep. 390, 57 S. W. 247.

Wife's right of action for alienating husband's affections.

Cited in Dodge v. Rush, 28 App. D. C. 152, 8 Ann. Cas. 671, on wife as having a right of action for the alienation of husband's affections; King v. Hanson, 13 N. D. 97, 99 N. W. 1085; Nolin v. Pearson, 191 Mass. 290, 4 L.R.A.(N.S.) 649, 114 Am. St. Rep. 605, 77 N. E. 890, 6 Ann. Cas. 658,—holding right of action existed for the alienation of the affections of husband by carnally knowing him.

Cited in footnotes to Wolf v. Frank, 52 L. R. A. 102, and Betser v. Betser, 52 L. R. A. 630, which sustain wife's right of action for alienating husband's affections.

50 L. R. A. 810, MOODY v. TRIMBLE, 109 Ky. 139, 58 S. W. 504.

Conclusiveness on courts of decision of political committee.

Cited in Davis v. Hambrick, 109 Ky. 283, 51 L. R. A. 673, footnote p. 671, 58 S. W. 779, holding decision of state central committee between bodies claiming to be executive committee of county conclusive on courts; Atty. Gen. v. Barry, 74 N. H. 354, 68 Atl. 192, holding that court cannot review decision of state committee as to membership of local executive committee; Boggess v. Buxton, 67 W. Va. 687, — L.R.A.(N.S.) —, 69 S. E. 367, 21 Ann. Cas. 289, holding that court cannot review decision of convention as to claims of two contesting coun-

ty executive committees; Farra v. State Bd. of Agriculture, 138 Ky. 351, 128 S. W. 79, holding that court cannot interfere with action of state industrial institute in seating delegates; Com. v. Combs, 120 Ky. 377, 86 S. W. 697; State ex rel. Cook v. Houser, 122 Wis. 585, 100 N. W. 964; State ex rel. Garn v. Marshall County, 167 Ind. 291, 78 N. E. 1016 (dissenting opinion), on the conclusiveness of the decisions of political conventions on the courts; State ex rel. Buttz v. Lindahl, 11 N. D. 328, 91 N. W. 950; Beasly v. Adams, 118 Ky. 701, 82 S. W. 249,—holding the decision of a party committee as to who is the regular party nominee is final; Allen v. Burrow, 69 Kan. 818, 77 Pac. 555, 2 Ann. Cas. 539, on the finality of the determination of a contest board provided for by statute as which of two persons is the regular nominee of a political party.

50 L. R. A. 813, LOUISVILLE R. CO. v. FOSTER, 108 Ky. 748, 57 S. W. 480.

Nuisance in the exercise of a legal right.

Cited in Missouri, K. & T. R. Co. v. Anderson, 36 Tex. Civ. App. 132, 81 S. W. 781, on the fact that a business is a lawful one as being no defense when it constitutes a nuisance.

— Manner of exercise.

Cited in footnotes to Louisville & N. Terminal Co. v. Jacobs, 61 L.R.A. 188, which holds construction of roundhouse for housing engines does not render owner liable for nuisance created by tenant's improper manner of using; Sullivan v. Jones & L. Steel Co. 66 L.R.A. 712, which holds that manufacturer of pig iron will be enjoined from changing manner of operating furnaces if result is to cast ore dust on neighboring residential property in such quantity as to destroy homes or other property there situated.

— Unusual emission of smoke.

Cited in footnotes to Jenkins v. Pennsylvania R. Co. 57 L.R.A. 309, which sustains right to more than nominal damages for emission of smoke from locomotives denser than required.

— Noise.

Cited in footnote to Froelicher v. Oswald Iron Works, 64 L. R. A. 228, which sustains right to injunction against construction of boilers and tanks and hammering of sheet iron in open air.

— Railroad in street.

Cited in Stein v. Chesapeake & O. R. Co. 132 Ky. 333, 116 S. W. 733, on when building of railroad in street will entitle abutting owners to compensation.

Cited in footnote to Smith v. St. Paul M. & M. R. Co. 70 L.R.A. 1018, which denies liability to make compensation for injuries to neighboring property as necessary result of skilful operation of railroad caused by usual noises, fumes, and odors attendant thereon.

Cited in notes (17 L.R.A.(N.S.) 1055) on smoke, noise, etc., incident to ordinary operation of railroad as a "damaging" of property within constitutional provision for compensation; (25 L.R.A.(N.S.) 1266, 1268) on right of abutter to damages for special injuries where street railway not considered additional burden; (36 L.R.A.(N.S.)781) on abutter's right to compensation for railroads in streets.

50 L. R. A. 816, WILLIAMS v. POPE MFG. CO. 52 La. Ann. 1417, 78 Am. St. Rep. 390, 27 So. 851.

Conflict of laws as to matrimonial property.

Cited in notes (57 L. R. A. 357, 358) on conflict of laws as to matrimonial property; (64 L. R. A. 828) on conflict of laws as to sales of personal property.

Right of mother to sue for negligent injuries to child.

Cited in footnote to McGarr v. National & P. Worsted Mills, 60 L. R. A. 122, which holds mother caring for family entitled to sue for loss from negligent injuries to minor child.

Proper parties to action for personal injuries to a married woman.

Cited in Martin v. Derenbecker, 116 La. 498, 40 So. 849, on husband as formerly being the one to maintain an action for personal injuries to the wife.

Maintenance of action by nonresident.

Cited in Patton v. Continental Casualty Co. 119 Tenn. 372, 104 S. W. 305, affirming right of nonresident to sue a foreign corporation legally doing business in state on a policy of insurance written outside of state on an insured dying outside of state.

Joinder of plaintiffs in slander action.

Cited in Madere v. Alexandre, 126 La. 346, 52 So. 535, holding that two persons joined in one slander may join in suit based on slander.

Jurisdiction of foreign corporations.

Cited in note (85 Am. St. Rep. 922) on jurisdiction of foreign corporations.

50 L. R. A. 827, MADDEN v. JACOBS, 52 La. Ann. 2107, 28 So. 225.

50 L. R. A. 828, PACKHAM v. GERMAN F. INS. CO. 91 Md. 515, 80 Am. St. Rep. 461, 46 Atl. 1066.

Compromise of claim for negligent destruction of property by fire.

Approved in Svea Assur. Co. v. Packham, 92 Md. 472, 52 L. R. A. 96, footnote p. 95, 48 Atl. 359, holding that settlement of suit brought by insured against party causing loss of insured property when made with approval of majority of companies interested cannot be complained of by others which refused to come into suit.

Cited in Brown v. Vermont Mut. F. Ins. Co. 83 Vt. 163, 29 L.R.A.(N.S.) 701, 74 Atl. 1061, holding that insured does not release liability of insurer by settling with railroad, causing burning of property, for amount representing difference between value of property and insurance.

Cited in note (29 L.R.A.(N.S.) 701) as to effect of discharge of person primarily liable for loss, or of contractual provision giving him benefit of insurance, upon insured's right of action against insurer.

Right of insurer after abandonment of vessel to recover for loss of prospective earnings.

Cited in footnote to Mason v. Marine Ins. Co. 54 L. R. A. 700, which holds insurer receiving abandonment of vessel injured by collision entitled to recovery for loss of prospective earnings recovered.

Right of insurer to subrogation.

Cited in Haldeman v. Dublin Mut. Ins. & Protective Co. 32 Pa. Co. Ct. 25, 16 Pa. Dist. R. 62, on rights of insurer to be subrogated to rights of insured.

Cited in footnote to New Hampshire F. Ins. Co. v. National L. Ins. Co. 57 L. R. A. 692, which denies right of insurer, subrogated to mortgagee's claims against mortgagor, to insist on charging mortgagee, retaining more than its share from other policy, with amount paid to mortgagor.

Cited in note (99 Am. St. Rep. 504) on right of insurer to subrogation.

50 L. R. A. 833, CLINTON v. NORFOLK MUT. F. INS. CO. 176 Mass. 486, 79 Am. St. Rep. 325, 57 N. E. 998.

Avoidance of policy by sale of property on execution.

Approved in Stuart v. Reliance Ins. Co. 179 Mass. 438, 60 N. E. 929, holding sale of property on execution not such a sale as to avoid fire insurance policy so long as there is a right of redemption.

50 L. R. A. 836, PEWAUKEE v. SAVOY, 103 Wis. 271, 74 Am. St. Rep. 859, 79 N. W. 436.

Cited in Pewaukee v. Wisconsin Lakes Ice & Cartage Co. 110 Wis. 67, 85 N. W. 660, in statement of facts.

Title to bed of lake.

Approved in Illinois Steel Co. v. Bilot, 109 Wis. 427, 83 Am. St. Rep. 905, 84 N. W. 855, holding that title to bed of lake is in state in trust for public use, and a patent covering any of such lands is ineffectual to pass title thereto; Atty. Gen. *ex rel.* Askew v. Smith, 109 Wis. 539, 85 N. W. 512, holding that title to bed of meandered lake navigable in fact is in the state in trust for public use, and the state cannot convey it away for private uses nor can it abdicate the trust.

Right of state to take ice.

Approved in Rossmiller v. State, 114 Wis. 186, 58 L. R. A. 99, 91 Am. St. Rep. 910, 89 N. W. 839, holding unconstitutional statute imposing license tax upon persons cutting ice formed upon navigable lakes or waters, the beneficial use of such waters being vested in the people.

Right to maintenance of dam.

Cited in Kray v. Muggli, 77 Minn. 242, 79 N. W. 1064 (dissenting opinion), majority holding riparian owners not entitled to have dam maintained for their benefit after mill owner has abandoned the water power and sold to other owners right to reclaim their flooded lands; Marshall Ice Co. v. La Plant, 136 Iowa, 634, 12 L.R.A.(N.S.) 1079, 111 N. W. 1016, holding persons purchasing land from the owner of a mill dam adjacent thereto, the maintenance of which is necessary to their business, acquire an easement in a right to its maintenance.

Cited in footnote to DeWitt v. Bissell, 69 L.R.A. 933, which denies right of owner of property bordering on mill pond to enjoin owner of dam and water privilege from drawing water down to natural level when necessary for utilization of the power.

Rights of public in artificial body of water.

Cited in Lathrop v. Racine, 119 Wis. 467, 97 N. W. 192, sustaining same rights of abutters in artificial channel of portion of river as they would have in natural watercourse.

Cited in notes (16 L.R.A.(N.S.) 280) on conversion of artificial into natural water course; (17 L.R.A.(N.S.) 945) on reciprocal easements as to artificial water rights; (126 Am. St. Rep. 731) on public rights in artificial condition of navigable waters.

Distinguished in Albert Lea v. Nielsen, 80 Minn. 105, 81 Am. St. Rep. 242, 82 N. W. 1104, holding body of water raised by artificial means does not become public, where title to bed is not in state.

Power of legislature to authorize drainage of lake.

Approved in Priewe v. Wisconsin State Land & Improv. Co. 103 Wis. 550, 74 Am. St. Rep. 904, 79 N. W. 780, holding legislature without power under guise

of promoting public health to authorize private person to drain navigable lake receiving therefor land within meander line.

Rights acquired by prescription.

Approved in Diana Shooting Club v. Lamoreux, 114 Wis. 55, 91 Am. St. Rep. 898, 89 N. W. 880, holding former owner cannot object to maintenance of artificial lake or artificial level of lake where such condition is allowed to exist adversely for the full statutory period.

Cited in Chippewa Falls v. Hopkins, 109 Wis. 616, 85 N. W. 553, holding twenty years' user sufficient to establish highway; Re Shepard Drainage Dist. 140 Wis. 330, 122 N. W. 775, on an artificial condition of navigability as becoming by lapse of time a natural condition.

Cited in note (76 Am. St. Rep. 485) on adverse possession of lakes.

Necessity of preliminary notice to action for encroachment.

Cited in Wauwatosa v. Dreutzer, 116 Wis. 120, 92 N. W. 551, sustaining right of municipal corporation to equitable action for mandatory injunction restraining continuance of encroachment without preliminary order for its removal.

Protection of rights of public in navigable waters.

Cited in Milwaukee v. Gimbel Bros. 130 Wis. 34, 110 N. W. 7, affirming right of city to maintain a suit in equity to prevent the obstruction of a navigable river; Re Horicon Drainage Dist. 136 Wis. 232, 116 N. W. 12, holding courts would take action to prevent the impairment of a navigable body of water.

Rights of riparian owners on navigable waters.

Cited in McCloskey v. Pacific Coast Co. 22 L.R.A.(N.S.) 679, 87 C. C. A. 568, 160 Fed. 800, holding a riparian owner might enjoin the erection of structures on tide lands in front of his property which would interfere with his right of access.

Cited in notes (22 L.R.A.) 675) as to whether one is a riparian or littoral owner, whose property abuts on highway bordering on navigable water; (127 Am. St. Rep. 43) on relative rights of state and riparian owners in navigable waters.

Title to submerged lands.

Cited in Conneaut Lake Ice Co. v. Quigley, 225 Pa. 611, 74 Atl. 648, on submerged lands within the state as belonging to the state in trust for public use.

Public rights in highway running to navigable waters.

Cited in Cake v. Sunbury Borough, 43 Pa. Super. Ct. 106, holding that road, dedicated to navigable stream, runs to water, though it has only been worked to top of bank.

50 L. R. A. 847, *Re* LUTZ, 157 Mo. 439, 57 S. W. 1018.

Legacies as charge on land.

Approved in Stuart v. Robinson, 80 Miss. 297, 92 Am. St. Rep. 603, 31 So. 903, holding legacies chargeable on testator's land where there is no personalty out of which to pay them.

Construction of wills.

Cited in Meiners v. Meiners, 179 Mo. 625, 78 S. W. 795, holding that testator's intention must be deduced from will alone after evidence of conditions under which it was made; Brown v. Tuschoff, 235 Mo. 456, 138 S. W. 497, holding that extraneous evidence is not admissible to alter plain terms of will when used in their ordinary and usual sense.

50 L. R. A. 850, HOLWERSON v. ST. LOUIS & SUBURBAN R. CO. 157 Mo. 216, 57 S. W. 770.

Contributory negligence as defense.

Approved in J. F. Conrad Grocer Co. v. St. Louis & Suburban R. Co. 89 Mo. App. 543, holding contributory negligence of one injured by street car will defeat recovery in absence of wantonness or intentional wrong on part of railway employee; Moore v. Lindell R. Co. 176 Mo. 544, 75 S. W. 672, holding that contributory negligence of injured party prevents recovery in absence of recklessness of motorman; Fanning v. St. Louis Transit Co. 103 Mo. App. 158, 78 S. W. 62, denying recovery to one injured by street car, who was contributorily negligent, notwithstanding concurrent negligence of motorman; Barrie v. St. Louis Transit Co. 102 Mo. App. 92, 76 S. W. 706, holding that party negligently driving upon track so near car that motorman could not stop it in time to avoid injury, cannot recover; Sepetowski v. St. Louis Transit Co. 102 Mo. App. 124, 76 S. W. 693, holding that party whose negligence directly contributed to injury from street car cannot recover when motorman exercised due care.

Cited in Southern P. R. Co. v. Svendsen, 13 Ariz. 118, 108 Pac. 262, holding that contributory negligence is no defense, where injury is result of wilful and wanton conduct of defendant; Anderson v. Minneapolis, St. P. & S. St. M. R. Co. 103 Minn. 232, 14 L.R.A.(N.S.) 891, 114 N. W. 1123 (dissenting opinion), on the contributory negligence of plaintiff as precluding a recovery where it occurs after a discovery where the danger due to plaintiff's negligence; Senf v. St. Louis & S. R. Co. 112 Mo. App. 84, 86 S. W. 887; Wallack v. St. Louis Transit Co. 123 Mo. App. 167, 100 S. W. 496; Murphy v. Wabash R. Co. 228 Mo. 80, 128 S. W. 481,—considering when contributory negligence of plaintiff may preclude a recovery for injuries due to defendant's negligence; Boyd v. St. Louis Transit Co. 108 Mo. App. 305, 83 S. W. 287, on contributory negligence of plaintiff as no defense to action for injuries due to defendant's wanton negligence.

Last clear chance.

Cited in Baxter v. St. Louis Transit Co. 103 Mo. App. 607, 78 S. W. 70, holding street railway company liable for injury caused by stret car striking rear of wagon when motorman had last chance to avoid injury, notwithstanding injured party's negligence: Flack v. Metropolitan Street R. Co. 162 Mo. App. 661, 145 S. W. 110, holding railway liable, when motorman should have seen peril of driver of automobile in time to have prevented injury.

Cited in notes (55 L.R.A.(N.S.) 451, 452) on doctrine of last clear chance; (7 L.R.A.(N.S.) 136) on doctrine of last clear chance as affected by question of concurrent negligence; (21 L.R.A.(N.S.) 440, 442) as to whether wantonness or wilfulness may be predicated of omission of a duty before discovery of person in peril on track.

Degree of care of motormen.

Cited in Southern Electric R. Co. v. Hageman, 57 C. C. A. 358, 121 Fed. 272 (dissenting opinion), majority holding motorman bound to exercise same degree of care to avoid injuring people as they are to avoid injury from cars.

Imputed negligence.

Approved in J. F. Conrad Grocer Co. v. St. Louis & Suburban R. Co. 89 Mo. App. 541, holding contributory negligence of employee who heedlessly drove upon track in front of car imputable to employer, who recover for loss of horse, wagon, and harness.

Liability of street railway for injury due to defect in pavement.

Cited in footnote to Fielders v. North Jersey Street R. Co. 59 L.R.A. 455, which denies liability of street railway company for injury by defect in pavement between tracks.

Whether negligence contributory as question for jury.

Approved in Rice v. Wabash R. Co. 92 Mo. App. 41, holdng erroneous, charge leaving it to jury to say whether plaintiff guilty of negligence materially contributing to his injury.

Cited in Waechter v. St. Louis & M. River R. Co. 113 Mo. App. 279, 88 S. W. 147, holding contributory negligence of plaintiff a question for the jury where he was caught between a car he was attempting to board and an approaching car which he was unable to see because of a crowd.

Personal right of action under penal law.

Cited in Casey v. St. Louis Transit Co. 116 Mo. App. 251, 91 S. W. 419, on right of action as not conferred by a penal statute giving cumulative damages for injuries due to negligence.

Cited in footnotes to Duval v. Atlantic Coast Line R. Co. 65 L.R.A. 722, which holds railroad company's violation of contract with municipality as to speed of trains evidence of negligence; Frontier Steam Laundry Co. v. Connolly, 68 L.R.A. 425, which holds owner's failure to comply with ordinance requiring fire-proof shutters on brick buildings not such negligence as to render him liable for destruction by fire communicated through unprotected windows of goods in his possession as bailee.

Cited in note (5 L.R.A.(N.S.) 248, 267) on violation of police ordinance as ground for private action.

— Under ordinance as to care of streets.

Not followed in Gebhardt v. St. Louis Transit Co. 97 Mo. App. 379, 71 N. W. 448, holding ordinance as to care of persons in charge of streets, police regulation conferring right of action upon one injured in consequence of violation thereof.

Overruled in Sluder v. St. Louis Transit Co. 188 Mo. 135, 5 L.R.A.(N.S.) 236, 88 S. W. 648, holding a cause of action might arise to a person injured by reason of defendants' failure to obey an ordinance requiring motorman to keep a vigilant watch for approaching pedestrians.

Liability of carrier for concurring negligence.

Cited in Pinkerton v. Missouri P. R. Co. 117 Mo. App. 291, 93 S. W. 849, on the liability of carrier whose negligence concurs with an act of God in causing damage; Ross v. Metropolitan Street R. Co. 113 Mo. App. 605, 88 S. W. 144, as repudiating the doctrine of comparative negligence.

— For injury to persons on tracks.

Cited in Wilkerson v. St. Louis & S. F. R. Co. 140 Mo. App. 316, 124 S. W. 543, holding defendant company were not liable where a brakeman sent out to flag a train was killed by it where the trainmen had no grounds for anticipating the presence of anyone at that point and no proof that the train might have been stopped in time after the discovery of decedent's presence.

Distinguished in Fearons v. Kansas City Elev. R. Co. 180 Mo. 229, 79 S. W. 394, holding it a question for the jury whether the operators in charge of a street car were in the exercise of reasonable care when they struck a man walking in a tunnel which with the knowledge of defendant had been used as a foot path.

Duty of traveller at railroad crossing.

Cited in Sims v. St. Louis & S. R. Co. 116 Mo. App. 579, 92 S. W. 909; Fel-

lenz v. St. Louis & S. R. Co. 106 Mo. App. 163, 80 S. W. 49,—holding plaintiff injured in a collision with a street car at a crossing cannot recover where he might have seen the car approaching but drove upon the track without looking.

— Right to rely on railroad's performance of its statutory duty.

Distinguished in Elliott v. Chicago & A. R. Co. 105 Mo. App. 533, 80 S. W. 270, holding a traveller approaching a railroad crossing has a right to rely on the performance of a statutory duty to sound a whistle or wring a bell.

Recovery of exemplary damages.

Cited in Otto Kuehne Preserving Co. v. Allen, 78 C. C. A. 418, 148 Fed. 668, 8 Ann. Cas. 746, holding mere allegations that defendants' negligence was gross is not sufficient to authorize a recovery of exemplary damages.

Instruction on issues presented.

Cited in Mitchell v. Chicago & A. R. Co. 108 Mo. App. 151, 83 S. W. 289, holding an instruction to find for plaintiff if the injury was due to the negligence of defendant while plaintiff in performance of duty is erroneous where an allegation that plaintiff was in the performance of a duty or that while in its performance defendants' negligent act caused the injury.

Liability for negligence.

Cited in Moffatt Commission Co. v. Union P. R. Co. 113 Mo. App. 547, 88 S. W. 117, on the necessity that an injury be the natural and probable consequence of defendant's negligence.

50 L. R. A. 862, HAINES v. ATLANTIC CITY R. CO. 65 N. J. L. 27, 46 Atl. 595.

Duty of railroads as to operation of gates at crossings.

Cited in note (33 L.R.A.(N.S.) 993) on duty of railroads as to operation of safety gates at crossings.

L. R. A. CASES AS AUTHORITIES.

CASES IN 51 L. R. A.

51 L.R.A. 33, STATE EX REL. FOURTH NAT. BANK v. JOHNSON, 103 Wis. 591, 79 N. W. 1081.

Alternative writ made peremptory in 105 Wis. 176, 83 N. W. 320.

Superintending control over inferior courts.

Approved in State ex rel. Milwaukee v. Ludwig, 106 Wis. 230, 82 N. W. 158, on infrequency of occurrence of grounds calling for an exercise of supreme court's power of control.

Cited in State ex rel. Umbreit v. Helino, 136 Wis. 437, 118 N. W. 158, holding that the prerogative authority of superintending control applies as well to criminal as to civil cases; State ex rel. Cooper v. Brazee, 139 Wis. 541, 121 N. W. 247; Raleigh v. First Judicial Dist. Ct. 24 Mont. 310, 81 Am. St. Rep. 431, 61 Pac. 991,—on supervisory control over inferior courts, generally, by supreme court; State ex rel. Umbreit v. Helmes, 136 Wis. 436, 118 N. W. 158, holding that supreme court has power to compel circuit court in a proper case to proceed with trial in criminal case when it refuses to do so and wrongfully quashes indictment upon which accused is brought to trial, before a jury is impaneled and sworn; State ex rel. McGovern v. Williams, 136 Wis. 4, 20 L.R.A.(N.S.) 947, 116 N. W. 225, holding that a refusal by circuit court to properly determine a preliminary proceeding and go on with the main proceedings is a breach of duty which may be compelled to be executed by this court though by circuit court's own wrongful act it has raised formal obstacles to further proceedings.

Annotation cited in Pettit v. Lewis, 84 Kan. 640, 114 Pac. 1071, holding that grant of original jurisdiction to supreme court in quo warranto, mandamus and habeas corpus comprehends authority to exercise superintending control over inferior courts.

Cited in footnote to Ex parte Coxe, 61 L.R.A. 734, which holds that writ of error does not lie from Florida supreme court to review judgment by individual justice thereof in habeas corpus proceeding.

Cited in note (20 L.R.A.(N.S.) 942), on superintending control over inferior tribunals.

— Nature of the prerogative.

Cited in State ex rel. Whiteside v. First Judicial Dist. Ct. 24 Mont. 559, 63 Pac. 395, holding that the constitutional provision on supervisory control over

inferior courts, confers a power on superior court entirely separate from its ordinary appellate powers.

— Invoking the jurisdiction.

Cited in Seiler v. State, 112 Wis. 299, 87 N. W. 1072, holding that the extraordinary jurisdiction of supreme court by exercise of original writs, cannot be invoked in the mere administration of a statute; Deuster v. Zillmer, 119 Wis. 409, 97 N. W. 31, holding that a justices' judgment cannot be vacated on mere motion by appellate court in absence of statute even though such court has superintending control of the justice court.

— Manner of exercise.

Annotation approved in Home Sav. & T. Co. v. District Ct. 121 Iowa, 10, 95 N. W. 522, holding that supreme court has jurisdiction to review a summary remedy provided by statute which fails to provide for an appeal and not in accordance with the course of the common law; Carter v. Louisiana Purchase Exposition Co. 124 Mo. App. 539, 102 S. W. 6, refusing to confine the exercise of superintending control to writs of prohibition, mandamus and certiorari.

— Prohibition.

Followed in State ex rel. Tewalt v. Pollard, 112 Wis. 234, 87 N. W. 1107, holding that where an adequate remedy is open in circuit court under its power of superintending control, the supreme court will refuse to assume jurisdiction to issue a writ of prohibition.

Cited in Re Pierce-Arrow Motor Car Co. 143 Wis. 285, denying writ of prohibition to restrain prosecution of action on ground that summons had not been properly served on petitioner; State ex rel. Mau v. Ausherman, 11 Wyo. 426, 72 Pac. 200, holding that supreme court is vested by constitution with jurisdiction in proper cases to issue writs of prohibition to restrain action of inferior courts in excess of their jurisdiction and also citing annotation to same point; State ex rel. Pulliam v. Fort, 107 Mo. App. 337, 81 S. W. 476, denying prohibition preventing circuit court from prohibiting county court from acting on a dram shop license, since a license is a mere privilege and not a right.

Annotation approved in State ex rel. Tewalt v. Pollard, 112 Wis. 236, 87 N. W. 1107, holding that circuit court has power to issue writ of prohibition though the constitutional provision giving such court superintending control over inferior courts does not expressly mention the writs to be used.

Cited in footnotes to State ex rel. Scharnikow v. Hogan, 51 L.R.A. 958, which holds common law office of writ of prohibition not so enlarged by statute as to reach proceedings not of a judicial character; Hargis v. Parker, 69 L.R.A. 270, which upholds jurisdiction of supreme court to intervene by writ of prohibition to stay inferior court from proceeding out of its jurisdiction.

— Certiorari.

Cited in State ex rel. Gaster v. Whitcher, 117 Wis. 672, 98 Am. St. Rep. 968, 94 N. W. 787, holding certiorari to lie to determine whether court commissioner, in habeas corpus action, committed jurisdictional error in deciding that examining magistrate did not commit a jurisdictional error in holding accused for trial; People ex rel. Wilson Bros. v. Court of Appeals, 28 Colo. 446, 65 Pac. 42, on review by certiorari of appeal courts' determination of a question within its jurisdiction and also approving annotation on same point; State ex rel. Fuller v. Circuit Ct. 108 Wis. 79, 83 N. W. 1115, holding certiorari the proper remedy to review an order setting aside a judgment of foreclosure, entered after expiration of term in which judgment was rendered such order not being appealable nor coming under statute providing appeal from certain orders; Re Mielke, 120 Wis. 503, 98 N. W. 245, quashing a writ of certiorari

to county court issued by this court to review grant by a petition to have statutory proceedings of commitment for insanity declared void; State ex rel. Milwaukee Medical College v. Chittenden, 127 Wis. 510, 107 N. W. 500, holding that certiorari can not be made use of in circuit courts for the purpose of obtaining a second trial on the merits.

— Mandamus.

Cited in Hill v. Superior Ct. 15 Cal. App. 313, 114 Pac. 805, granting mandamus to compel trial court to proceed with trial of election contest; State ex rel. Mitchell v. Johnson, 105 Wis. 93, 80 N. W. 1104, holding that mandamus will lie to compel dismissal of complaint for statutory cause where the duty is plain and the only other remedy is by burdensome and expensive trial; State ex rel. Milwaukee Electric R. & Light Co. v. Circuit Ct. 134 Wis. 304, 114 N. W. 455, holding that a circuit judge will not be compelled by mandamus to grant a change of venue, where a number of questions are involved in the application there for each of which raise a question in the mind of the judge as to the rights thereunder; State ex rel. Milwaukee Electric R. & Light Co. v. Rock County, 133 Wis. 444, 113 N. W. 722, holding only one action to have been started by two services of same summons and complaint, and that as a consequence mandamus will not lie to compel dismissal of process started by the first service; Baun v. Campbell, 137 Wis. 405, 119 N. W. 112, holding that mandamus will not issue to correct justices' docket where petition fails to show any prejudice except costs and disbursements in justice court.

Cited in footnote to Re Barber Asphalt Pav. Co. 67 L.R.A. 761, which holds that circuit court of appeals may issue mandamus to compel circuit court judge to vacate stay of proceedings, adjudicate controversy and enforce judgment in case of a claim by nonresident against a city.

Cited in note (37 L.R.A.(N.S.) 392) on mandamus to compel removal or remand of case.

Extraordinary remedies in place of appeal.

Cited in State ex rel. Reynolds v. Graves, 66 Neb. 23, 92 N. W. 144, allowing writ of mandamus to compel district judge to vacate an injunction granted by him without authority or jurisdiction where the ordinary remedy is inadequate; State ex rel. Milwaukee v. Ludwig, 106 Wis. 235, 82 N. W. 158, refusing mandamus to prevent superior court from substituting a plaintiff in place of one who withdrew and from refusing a discontinuance, where if such action was erroneous it could be reviewed by supreme court on appeal; State ex rel. Umbreit v. Helms, 136 Wis. 436, 118 N. W. 158, holding that act of circuit court in quashing complaint does not call for an exercise of the power of superintending control, in view of the nature of the offense and the facility with which future prosecution may be had should it appear necessary; State ex rel. Oshkosh, A. & B. W. R. Co. v. Burnell, 104 Wis. 251, 80 N. W. 460, denying mandamus to compel issuance of writ of assistance pending appeal where important public questions were presented on appeal and appellant had given sufficient undertakings to protect relator until question be decided on appeal; State ex rel. Meggett v. O'Neill, 104 Wis. 230, 80 N. W. 447, quashing certiorari to review commitment for contempt where relator refused to appeal, the proceedings being civil he merely making two motions for vacation.

Cited in note (50 L.R.A. 793) on exceptions to rule that certiorari will not lie where there is an appeal.

Occasion for exercise of original jurisdiction.

Cited in State ex rel. Render v. Goff, 129 Wis. 675, 9 L.R.A.(N.S.) 919, 109

N. W. 628, holding that supreme court will not exercise original jurisdiction by prerogative writ of injunction to restrain the placing of a certain name on a ballot, it being merely a question of private interest.

Propriety of mandamus.

Cited in State ex rel. Kurath v. Ludwig, 146 Wis. 389, 132 N. W. 130, holding that mandamus is proper remedy to compel trial court to enter judgment in accordance with decree of appellate court; State ex rel. Kustermann v. Board of Canvassers, 145 Wis. 317, 130 N. W. 489, refusing mandamus requiring board of state canvassers to reconvene, determine and certify that petitioner was elected as representative in Congress; Butler v. Printing Comrs. (Butler v. Darst) 68 W. Va. 501, 38 L.R.A.(N.S.) 667, 70 S. E. 119, (dissenting opinion), on mandamus to compel commissioners of printing to award lowest bidder contract for state binding; Re Court of Honor, 109 Wis. 627, 85 N. W. 497, refusing mandamus where the primary right to be vindicated is private even though a state official is concerned as a party and the question involved is in some respects public and though delay and even irreparable loss occur to the private person interested; State ex rel. Burg v. Milwaukee Medical College, 128 Wis. 13, 3 L.R.A.(N.S.) 1118, 116 Am. St. Rep. 21, 106 N. W. 116, 8 Ann. Cas. 407, holding that mandamus will not lie to compel a private college to issue its diploma to a student, its liability resting entirely on contract.

Cited in note (125 Am. St. Rep. 498) on duties, performance of which may be compelled by mandamus.

— To compel exercise of discretion.

Cited in State ex rel. Wagner v. Dahl, 140 Wis. 307, 122 N. W. 748, holding that mandamus will issue to compel performance of discretionary duty but it cannot cause such duty to be performed in any particular way or manner; State ex rel. Coffey v. Chittenden, 112 Wis. 574, 88 N. W. 587, holding that mandamus will lie to cause a board to determine a question but it cannot issue to influence or control such decision unless such decision under known facts could go but one way properly; Dillon v. Bare, 60 W. Va. 488, 56 S. E. 390, holding that the remedy by mandamus to compel execution of discretionary power in good faith cannot be barred by a mere pretense of such execution; State ex rel. Court of Honor v. Giljohann, 111 Wis. 387, 87 N. W. 245, refusing mandamus to compel insurance commissioner to perform a discretionary duty of inspection prior to issuance of a license permitting foreign company to do business.

Judicial discretion.

Cited in Collins v. Janesville, 117 Wis. 424, 94 N. W. 309, holding that refusal to grant a new trial on the grounds that evidence was clearly against the verdict is not a violation of a judicial duty, the judge having discretion to grant or refuse, where he could properly do either.

51 L. R. A. 71, STATE EX REL. NEW ORLEANS v. DISTRICT CT. 52 La. Ann. 1275, 27 So. 697.

Appeal from order granting injunction on the merits, 105 La. 153, 29 So. 355.

Appeal from order taxing costs in injunction proceedings, 109 La. 699, 33 So. 735.

Superintending control of inferior courts.

Cited in State ex rel. Umbreit v. Helms, 136 Wis. 440, 118 N. W. 158, holding that the quashing of a valid indictment and refusal to proceed with the case

where the duty to do so is plain, the refusal clear, the result prejudicial and other remedy utterly inadequate presents occasion for exercise of power of superintending control.

Cited in note (20 L.R.A.(N.S.) 947) on superintending control over inferior tribunals.

— Manner of exercise.

Cited in People ex rel. Wilson Bros. v. Court of Appeals, 28 Colo. 446, 65 Pac. 42, on review by certiorari of appeal court's determination of a question within its jurisdiction and also approving annotations on same point; State ex rel. Rogers v. Parsons, 119 La. 957, 44 So. 795, holding mandamus to issue where judge has on the merits refused to compel district attorney to bring an intrusion into office suit, and the remedy by appeal would be too slow.

Mandamus to compel dissolution of injunction.

Cited in Union Sawmill Co. v. Summit Lumber Co. 119 La. 318, 44 So. 28, on grounds for mandamus to compel court to dissolve injunction on application and furnishing of bond.

51 L. R. A. 95, STATE EX REL. MONETT MILL. CO. v. NEVILLE, 157 Mo. 386, 57 S. W. 1012.

Superintending control of Supreme Court.

Cited in People ex rel. Wilson Bros. v. Court of Appeals, 28 Colo. 446, 65 Pac. 42, on review by certiorari of appeal court's determination of a question within its jurisdiction and also approving annotation on same point.

Reinstatement of case erroneously dismissed.

Cited in State ex rel. Chicago, R. I. & P. R. Co. v. Smith, 172 Mo. 460, 72 S. W. 692, holding that supreme court under its power of superintending control has power to compel court of appeals by mandamus to reinstate and decide an appeal which it erroneously dismissed.

51 L. R. A. 105, PEOPLE EX REL. GREEN v. COURT OF APPEALS, 27 Colo. 405, 61 Pac. 592.

Superintending control over inferior courts.

Cited in State ex rel. Whiteside v. First Judicial Dist. Ct. 24 Mont. 559, 63 Pac. 395, holding that the constitutional provision for superintending control over inferior courts by supreme court confers a power on supreme court entirely separate and independent of any other power, to meet exigencies with which the ordinary appellate powers cannot cope; People ex rel. Hagerman v. Court of Appeals, 32 Colo. 151, 75 Pac. 407, holding that failure of court of appeals to consider facts alleged to be material to the issues or misapprehension of facts and grievous misstatement of them do not alone call for an exercise of power of superintending control of supreme court.

Distinguished in Ingersoll v. Court of Appeals, 27 Colo. 410, 61 Pac. 594, holding supreme court without jurisdiction to review action of court of appeals in passing upon sufficiency of a record before it.

— Manner of exercise.

Cited in People ex rel. Wilson Bros. v. Court of Appeals, 28 Colo. 446, 65 Pac. 42, on review by certiorari of court of appeal's determination of a question within its jurisdiction and also approving annotation on same point.

Judgment in conflict with prior decisions of Supreme Court.

Cited in People ex rel. Livingston v. Court of Appeals, 27 Colo. 412, 61 Pac. 594, holding certiorari not to issue to review judgment of court of appeals on the

grounds that supreme court decisions had been ignored in arriving at the judgment where the judgment was in fact based on peculiar facts not found in the former cases; People ex rel. Wilson Bros. v. Court of Appeals, 28 Colo. 443, 65 Pac. 42, holding that certiorari will not issue to review determination of court of appeals on a question within jurisdiction though erroneous, where it has not refused to be guided by decisions laid down by supreme court in former cases; People ex rel. Hagerman v. Court of Appeals, 32 Colo. 151, 75 Pac. 407, decision of court of appeals under the facts not so in conflict with former decisions of supreme court as to render it reviewable by certiorari.

Effect of correctness or incorrectness of decision on jurisdiction.

Cited in People ex rel. Salomon v. Court of Appeals, 30 Colo. 11, 69 Pac. 606, holding court of appeals not without its jurisdiction in deciding whether a collateral question is within the issues raised and the decision one way or another does not affect the jurisdiction justifying issuance of certiorari.

Writ of error to review habeas corpus.

Cited in Martin v. District Court, 37 Colo. 113, 119 Am. St. Rep. 262, 86 Pac. 82, on writ of error to review a judgment of an inferior court determining the custody of an infant; Missouri, K. & T. R. Co. v. Taylor, 74 Kan. 483, 85 Pac. 528, holding that an appeal will lie in the appellate court from habeas corpus judgment in district court determining the rights to custody of a child.

Extraordinary remedies.

Cited in Carter v. Louisiana Purchase Exposition Co. 124 Mo. App. 538, 102 S. W. 6, holding that circuit court can after filing of transcript compel justice of peace to correct judgment record erroneously copied by his clerk, such compulsion going only to the performance of a ministerial duty.

51 L. R. A. 112, LEHMAN v. GUNN, 124 Ala. 213, 82 Am. St. Rep. 159, 27 So. 475.

Later appeal in 154 Ala. 370, 45 So. 620.

Creditor's rights in life insurance paid for by insolvent.

Cited in Bailey v. Wood, 202 Mass. 571, 89 N. E. 149, holding under statute that money paid out as premiums on life insurance for benefit of third person, by insolvent is money paid in fraud of creditors irrespective of the question whether or not the third person be his wife; York v. Flaherty, 210 Mass. 40, 96 N. E. 53, holding that administrator of insured in action commenced a year after his death can recover from widow premiums paid by insured for last six years while insolvent.

Cited in footnotes to Re Scheld, 52 L.R.A. 188, which holds that policy of bankrupt passes to trustee as assets, unless cash surrender value paid or secured to trustee; Sternberg v. Levy, 53 L.R.A. 438, which sustains right as against creditors to procure with exempt wages, insurance for sister and her children, constituting family; Williams v. Donough, 56 L.R.A. 766, which holds void, statute exempting proceeds of fraternal benefit certificate from liability for debts.

Cited in note (119 Am. St. Rep. 556) on presumption that voluntary conveyance is in fraud of creditors.

51 L. R. A. 115, BRITTON v. ELECTION COMRS. 129 Cal. 337, 61 Pac. 1115.

Primary elections as a public function.

Cited in Bradley v. Voorsanger, 143 Cal. 215, 76 Pac. 1031, on injunction by

taxpayer to restrain election commissioners from spending public money on elections held under primary election law.

— Regulation of primary elections.

Cited in State v. Cole, 156 N. C. 622, 72 S. E. 221, holding that statute regulating primary elections is valid; Riter v. Douglass, 32 Nev. 416, 109 Pac. 444, holding that legislature has inherent right to enact primary election law; Ledgerwood v. Pitts, 122 Tenn. 602, 125 S. W. 1036, upholding primary election law excluding from its benefits political parties casting less than ten per cent of vote at preceding general election; Katz v. Fitzgerald, 152 Cal. 436, 93 Pac. 112, holding constitutional a provision requiring that the operation of the primary election law extend only to those parties that polled at least three per cent of the total vote.

Cited in note (22 L.R.A.(N.S.) 1144) on constitutionality of primary election law discriminating as to parties.

— Right to vote.

Cited in Healey v. Wipf, 22 S. D. 348, 117 N. W. 521, holding that primary election law is not void as improper infringement on elective franchise; State ex rel. McGrael v. Phelps, 144 Wis. 16, 35 L.R.A.(N.S.) 360, 128 N. W. 1041, holding that primary election law does not materially impair right to vote; Ladd v. Holmes, 40 Or. 180, 91 Am. St. Rep. 457, 66 Pac. 714, holding that a primary election is one authorized by law within meaning of provision of constitution providing for right to vote in elections authorized by law.

— Restriction of voters to their own party.

Cited in Morrow v. Wipf, 22 S. D. 154, 115 N. W. 1121, holding valid, primary election law requiring voter to swear that he is member of party whose ticket he requests to vote; State ex rel. McCue v. Blaisdell, 18 N. D. 73, 24 L.R.A. (N.S.) 474, 138 Am. St. Rep. 741, 118 N. W. 141 (dissenting opinion), on validity of primary election law permitting voter to name delegates to convention of party of which he is not member; Rouse v. Thompson, 228 Ill. 564, 81 N. E. 1109 (dissenting opinion), on constitutionality of primary laws relating to restriction of voters to their own tickets; Schostag v. Cator, 151 Cal. 603, 91 Pac. 502, holding election provision requiring voter at time of registration to declare his party affiliation not in conflict with nor unconstitutional because of an enactment providing further tests as to party connection as condition to registration by the respective parties.

Cited in note (22 L.R.A.(N.S.) 1137) on constitutionality of primary election law, destructive of parties.

Questioned in Ladd v. Holmes, 40 Ore. 187, 91 Am. St. Rep. 457, 66 Pac. 714, holding that the providing of a test to ascertain party affiliation of person registering at primaries is a legislative function and not within power of respective parties.

Right to become a candidate.

Cited in Johnson v. Grand Forks County, 16 N. D. 373, 125 Am. St. Rep. 662, 113 N. W. 1071, holding unconstitutional a law requiring a payment of fee to have candidates name printed on ballot, as being an additionl qualification unreasonably imposed and not checking corruption and fraud.

Distinguished in Ex parte Gerino, 143 Cal. 416, 66 L.R.A. 253, 77 Pac. 166, where the law in question does not deal with political rights held by citizens generally but merely to right of membership to a board of medical examiners.

— Restrictions as to name on ballot.

Cited in State ex rel. Shepard v. Superior Ct. 60 Wash. 380, 140 Am. St. Rep.

925, 111 Pac. 233, upholding provision that no candidate's name shall appear more than once on ballot; Murphy v. Curry, 137 Cal. 486, 59 L.R.A. 99, 70 Pac. 461, holding unconstitutional the law preventing the name of a nominee of more than one party from appearing more than once on the official ticket and under the name of one party only leaving such place to be filled by words "no nomination" in tickets of other party nominating.

Cited in footnote to State ex rel. McCarthy v. Moore, 59 L.R.A. 447, which sustains prohibition against placing on official ballot, name of unsuccessful candidate for party nomination at primary election.

Right of free assemblage.

Distinguished in State ex rel. Van Alstine v. Fear, 142 Wis. 337, 125 N. W. 961, where the primary law merely denied to political parties the right to hold conventions for nomination of their own candidates and compelled such nominations to be made at primaries.

51 L. R. A. 121, DENVER & R. G. R. CO. v. SPENCER, 27 Colo. 313, 61 Pac. 606.

Duty of carrier.

Distinguished in Farrier v. Colorado Springs Rapid Transit R. Co. 42 Colo. 336, 126 Am. St. Rep. 158, 95 Pac. 294, where injury was caused by act of fellow passenger of plaintiff against whose negligence defendant was bound to shield her by exercise of utmost diligence.

Injury to person accompanying or awaiting passenger at station.

Cited in Union Depot & R. Co. v. Londoner, 50 Colo. 27, 33 L.R.A.(N.S.) 437, 144 Pac. 316, holding union depot company liable for injury caused to passenger's attendant by following direction of train employee; Atchison, T. & S. F. R. Co. v. Cogswell, 23 Okla. 186, 20 L.R.A.(N.S.) 840, 99 Pac. 923, holding railroad company liable to person coming to station to meet an incoming passenger where such person is injured by falling through negligently kept platform.

Cited in note (20 L.R.A.(N.S.) 833) on duty to persons accompanying or awaiting passengers at station.

Questions of fact.

Cited in Richardson v. El Paso Consol. Gold Min. Co. 51 Colo. 449, 118 Pac. 982, holding that questions of negligence and contributory negligence are for jury, when they depend on facts to be determined from conflicting evidence, from which different intelligent minds may reach different conclusions; Monarch Min. & Development Co. v. DeVoe, 36 Colo. 277, 85 Pac. 633, sustaining refusal to direct verdict where the only evidence of contributory negligence was plaintiff's continuance to work in dangerous place raising question of fact as to degree of danger therefrom; Nichols v. Chicago, B. & Q. R. Co. 44 Colo. 508, 98 Pac. 808, holding it error to decide as a matter of law that plaintiff in crossing track was negligent where a large number of circumstances such as stopping to look and listen, view of track and giving of warning by engineer enter into the question.

51 L. R. A. 125, SOUTHERN R. CO. v. ATLANTA R. & POWER CO. 111 Ga. 679, 36 S. E. 873.

Street railway as additional servitude.

Cited in Wagner v. Bristol Belt Line R. Co. 108 Va. 601, 25 L.R.A.(N.S.) 1282, 62 S. E. 391, holding abutter not entitled to compensation for building of street railway in street on his side of the center thereof especially where he

had formerly conveyed fee to city from his lots to center of street; Peck v. Schenectady R. Co. 170 N. Y. 312, 63 N. E. 357 (dissenting opinion), on construction of street railway on existing street as an additional servitude.

Cited in footnotes to Boston & A. R. Co. v. Worcester, 55 L.R.A. 623, which holds use of railroad location outside of tracks for approach of highway bridge over tracks to abolish grade crossing not new easement on right of way; Mordhurst v. Fort Wayne & S. W. Traction Co. 66 L.R.A. 106, which holds operation of interurban railway by electric power upon T rails through city street with authority to carry passengers, baggage, mail, and light express matter running on more than two cars in train not an additional servitude on street.

Cited in notes (36 L.R.A.(N.S.) 722) on abutter's right to compensation for railroads in streets; (106 Am. St. Rep. 244) on what are additional servitudes in highways.

— Right to cross steam railway.

Cited in Galveston, H. & S. A. R. Co. v. Houston Electric Co. 57 Tex. Civ. App. 174, 122 S. W. 287, holding that no additional servitude devolves on steam railroad by crossing of its tracks by street railway; South East & St. L. R. Co. v. Evansville & Mt. V. Electric R. Co. 169 Ind. 343, 13 L.R.A.(N.S.) 920, 82 N. E. 765, 14 Ann. Cas. 214, holding steam railroad not damaged by construction of street railway across its tracks and cannot recover compensation therefor nor enjoin such crossing until damages assessed are paid or tendered; Louisville & N. R. Co. v. Bowling Green R. Co. 110 Ky. 797, 63 S. W. 4, holding that in absence of statute or constitutional provision equity has no power to enjoin crossing of railroad at grade by street railway.

Cited in note (13 L.R.A.(N.S.) 918) on right of railroad to compensation for laying street railway across track on street crossing.

51 L. R. A. 131, GRAY v. GRIFFIN, 111 Ga. 361, 36 S. E. 792.

Maintenance of jail as governmental function.

Cited in Wilcox v. Rochester, 190 N. Y. 145, 17 L.R.A.(N.S.) 745, 82 N. E. 1119, 113 Ann. Cas. 759, holding that the maintenance of a police station as a jail and police headquarters is purely a governmental function; Carty v. Winooski, 78 Vt. 109, 2 L.R.A.(N.S.) 97, 62 Atl. 45, 6 Ann. Cas. 436, holding that the construction and maintenance of a jail by a municipality is an exercise of a governmental function and that municipality is not liable for negligence to a prisoner confined therein.

Cited in note (2 L.R.A.(N.S.) 95) on liability of county or municipality for injuries received by confinement in unfit prison.

Municipal liability for negligence.

Cited in Dalton v. Wilson, 118 Ga. 101, 98 Am. St. Rep. 101, 44 S. E. 830, holding city not liable for its failure to abate a private nuisance maintained on private property, although it has power to abate such nuisances.

Cited in footnotes to Wilson v. Mitchell, 65 L.R.A. 158, which holds that municipality cannot ratify act of waterworks superintendent in wrongfully connecting well with city water mains so as to become liable for water taken from the well; Fox v. Philadelphia, 65 L.R.A. 214, which holds city liable for injuries due to negligence of operator of elevator in public building, although he was employed by a legislative commission; Kelly v. Boston, 66 L.R.A. 429, which holds portion of city building devoted to housing of executive departments which collect money for city within rule that city is not liable for negligence of those to whom are entrusted care and custody of buildings used exclusively for performance of municipal duties.

Cited in note (108 Am. St. Rep. 173) as to what municipal corporations are answerable for injuries due to defects in streets and other public places.

Municipal liability for torts of officers.

Cited in McDonald v. Butler, 10 Ga. App. 847, 74 S. E. 573, holding city not liable for damages for wrongful removal of remains from cemetery.

— Police officers.

Cited in note (12 L.R.A.(N.S.) 537) on municipal liability for torts of police officers.

51 L. R. A. 134, RACINE IRON CO v. McCOMMONS, 111 Ga. 536, 36 S. E. 866.

Interstate business.

Cited in notes (19 L.R.A.(N.S.) 311) on license or occupation tax on hawkers, peddlers, and persons engaged in soliciting orders by sample or otherwise, as violating the commerce clause; (46 L. ed. U. S. 788) on peddlers and drummers as related to interstate commerce.

Cited as overruled in Stone v. State, 117 Ga. 293, 43 S. E. 740, holding a representative of a foreign business concern taking orders in this state for sale of goods held in that other state and making delivery on a shipment of the goods by breaking original packages and distributing to his customers on receipt of purchase price, to be engaged in interstate business.

"Peddlers."

Cited in Stone v. State, 117 Ga. 293, 43 S. E. 740, holding a house to house canvasser for a foreign business house taking orders and later delivering goods ordered to be a peddler.

Occupation taxes for revenue.

Cited in Jones v. Stewart, 117 Ga. 981, 44 S. E. 879, on tax on occupation as an exercise of taxing power for revenue; Miller v. Shropshire, 124 Ga. 832, 53 S. E. 335, 4 Ann. Cas. 574, holding tax levied by general tax act on bucket shops to be for revenue though collection enforced by penalty, and not a police regulation; Wright v. Macon, 5 Ga. App. 765, 64 S. E. 807, on same point.

— Enforcement by levy.

Cited in Jones v. Stewart, 117 Ga. 988, 44 S. E. 879, as an instance where the authority of tax collection to levy for collection of occupation taxes passed unchallenged.

51 L. R. A. 141, SCHMIDT v. NORTHERN LIFE ASSO. 112 Iowa, 41, 84 Am. St. Rep. 323, 83 N. W. 800.

Murder of insured by beneficiary as affecting liability on certificate.

Cited in Supreme Lodge, K. & L. H. v. Menkhausen, 209 Ill. 281, 65 L.R.A. 510, 101 Am. St. Rep. 239, 70 N. E. 567, affirming 106 Ill. App. 665, holding that assurance association will not be absolved from liability on benefit certificate because assured was murdered by beneficiary where certificate contains no clause to that effect.

Cited in footnote to Supreme Lodge K. & L. H. v. Menkhausen, 65 L.R.A. 508, which holds those entitled to fund in absence of beneficiary entitled to enforce benefit certificate where beneficiary has lost the right by murdering the insured.

Cited in note (3 L.R.A.(N.S.) 728) on homicide as affecting devolution of property.

Lapse of insurance into estate on failure of beneficiary.

Cited in Mullen v. Woodmen of the World, 144 Iowa, 231, 122 N. W. 903, holding that administratrix of insured is entitled to recover amount due on

certificate, where beneficiary is not within any of classes designated by law; Oliphant v. American Health & Acci. Asso. 147 Iowa, 661, 126 N. W. 806, holding that administrator can recover under policy payable to illegal beneficiary if surviving, otherwise to assured's legal representatives; Smith v. Supreme Tent, K. M. W. 127 Iowa, 118, 69 L.R.A. 176, 102 N. W. 830, holding that administrator can recover proceeds of benefit certificate where the named beneficiary is incapacitated to take by reason of nonrelationship; Anderson v. Life Ins. Co. 152 N. C. 2, 67 S. E. 53, holding that proceeds of life policy will be awarded to representatives of insured where he has been murdered by beneficiary and insurer does not protest payment.

Cited in footnote to Lanier v. Box, 64 L.R.A. 458, which holds that the proceeds of a policy which the administrator of the insured could not receive because the insured wilfully took the life of his wife to whom the policy had been assigned, passed to her distributees instead of escheating to the state.

Cited in note (17 L.R.A.(N.S.) 1086) on disposition of fund in benefit society upon failure of beneficiary.

Distinguished in Warner v. Modern Woodmen, 67 Neb. 239, 61 L.R.A. 607, 108 Am. St. Rep. 634, 93 N. W. 397, 2 Ann. Cas. 660, where statute clearly omits administrator from taking proceeds of benefit certificate.

Profit by one's own wrong.

Cited in Clinton County v. Davis, 162 Ind. 67, 64 L.R.A. 785, 69 N. E. 680, 1 Ann. Cas. 282, denying statutory reward to person disclosing vote buying and election bribery, where such person is the vote buyer or sellor.

Distinguished in McAllister v. Fair, 72 Kan. 537, 3 L.R.A.(N.S.) 731, 115 Am. St. Rep. 233, 84 Pac. 112, 7 Ann. Cas. 973, where person to be benefited was husband who murdered intestate's wife to obtain her property under laws of descent making no exception in case of crime.

51 L. R. A. 146, LENOIR v. LINVILLE IMPROV. CO. 126 N. C. 922, 36 S. E. 185.

Effect of receivership on corporate offices.

Approved in Williamson County Banking & T. Co. v. Roberts-Buford Dry Goods Co. 118 Tenn. 345, 9 L.R.A.(N.S.) 645, 101 S. W. 421, 12 Ann. Cas. 579, holding that an officer of a corporation whose employment is terminated by appointment of receiver cannot recover for breach of contract especially where he was a stockholder and director and knew the condition of the concern at time of his election.

Cited in Ely v. Van Kannel Revolving Door Co. 184 Fed. 462, holding that employee can recover from receiver salary up to time receiver turns property over to purchaser.

Cited in notes (69 L.R.A. 125, 145) on recovering for services and expenses under running contract with corporation ended by its insolvency and dissolution; (33 L.R.A.(N.S.) 701) on effect upon contract obligation of failure of third person to take action essential to performance.

51 L. R. A. 151, STATE EX REL. STAR PUB. CO. v. ASSOCIATED PRESS, 159 Mo. 410, 81 Am. St. Rep. 368, 60 S. W. 91.

Duties compellable by mandamus.

Cited in McAlester-Edwards Coal Co. v. State, 31 Okla. 633, 39 L.R.A.(N.S.) 813, 122 Pac. 194, holding that mandamus will not lie to compel coal company to furnish to miners timbers, props and cap pieces necessary to keep working place safe; State ex rel. Milwaukee v. Milwaukee Electric R. & Light Co. 144

Wis. 391, 140 Am. St. Rep. 1025, 129 N. W. 623, holding that mandamus will lie to compel railway to sprinkle.

Cited in notes (39 L.R.A.(N.S.) 811, 812) on mandamus to compel continuous acts or control general course of conduct; (125 Am. St. Rep. 495, 497) on duties, performance of which may be compelled by mandamus.

Validity of contracts with newspapers.

Cited in note (93 Am. St. Rep. 911) on contracts with newspapers void as against public policy.

Illegal trusts and combinations.

Cited in Rohlf v. Kasemeier, 140 Iowa, 190, 23 L.R.A.(N.S.) 1287, 132 Am. St. Rep. 261, 118 N. W. 276, 17 Ann. Cas. 750, holding that a combination of doctors to raise the price of professional services is not within statute prohibiting combinations to raise price of "merchandise" or "commodities;" Lohse Patent Door Co. v. Fuelle, 215 Mo. 444, 22 L.R.A.(N.S.) 616, 128 Am. St. Rep. 492, 114 S. W. 997, holding that a combination of laborers of certain kind in order to shorten hours of labor and obtain increased pay as not unlawful.

Cited in note in (23 L.R.A.(N.S.) 1261, 1263) on combination to control price of personal service as violation per se of antimonoply statute.

Business and property affected with a public interest.

Cited in American Surety Co. v. Shallenberger, 183 Fed. 639, holding that business of surety company is not affected with public interest; State ex rel. Burr v. Atlantic Coast Line R. Co. 59 Fla. 628, 52 So. 4, holding that service of milling in transit may be regulated by railroad commissioners; State ex rel. Payne v. Kinloch Teleph. Co. 93 Mo. App. 361, 67 S. W. 684, holding that a telephone company having right of eminent domain and having dedicated its property to public use is amenable to regulation where it arbitrarily refuses service to a citizen willing and able to pay for same; Walsh v. Association of Master Plumbers, 97 Mo. App. 289, 71 S. W. 455, on the right of any person to do or refuse to do business with any other unless such business is of a public character; State v. Bixman, 162 Mo. 60, 62 S. W. 828 (dissenting opinion), on regulation of private business receiving public aid.

Requisites of an offer of binding force.

Cited in Butler v. Kemmerer, 218 Pa. 246, 67 Atl. 332, holding that an offer to divide profits if any on a very liberal basis with plaintiff if he stay in offeror's employment is not enforceable as being too indefinite.

Non-actionable wrongs.

Cited in Fuller v. Rose, 110 Mo. App. 348, 85 S. W. 931, holding that advertising placed on walls by landlord merely offending taste of tenants will not support an action.

51 L. R. A. 170, DOWNEND v. KANSAS CITY, 156 Mo. 60, 56 S. W. 902.

Dedication to public use.

Cited in Maysville v. Brooks, 145 Ky. 536, 140 S. W. 665, holding that private sewer was not adopted by city, where extent of city's control over it has been to keep it clean; Kansas City & N. Connecting R. Co. v. Baker, 183 Mo. 322, 82 S. W. 85, holding that the sale of lots with reference to a plat reserving a strip for "Depot Grounds" constitutes a good dedication of such grounds to public use even though the dedication was not complete by plat.

Cited in note (23 L.R.A.(N.S.) 810) on leaving blank in plat as dedication.

Acceptance and establishment of street.

Cited in Johnson v. St. Joseph, 96 Mo. App. 668, 71 S. W. 106, holding acceptance of plat, user by public, and the placing of hydrants by city, and authorization of placing telephone poles and plumbing in street, to be evidence of an establishment and acceptance as public street.

Cited in note (129 Am. St. Rep. 626, 629) on what constitutes dedication to, and acceptance of, a public street.

— By act of city officers.

Cited in Conner v. Nevada, 188 Mo. 159, 107 Am. St. Rep. 314, 86 S. W. 256, holding a street to be public where it had been improved by street commissioner, though there was no evidence of an ordinance authorizing the work.

— User by public.

Cited in Stickley v. Sodus Twp. 131 Mich. 518, 59 L.R.A. 291, 91 N. W. 745, holding that mere permissive use of a private road by the general public for any length of time will not constitute such road a public highway under statute.

Cited in footnotes to Stickley v. Sodus Twp. 59 L.R.A. 287, which holds private way, built for private gain from highway to private wharf, and maintained by private enterprise, does not become public by user without objection; Riley v. Buchanan, 63 L.R.A. 642, which holds acceptance of dedicated highway evidence by long continued user; Okanogan County v. Cheetham, 70 L.R.A. 1027, which holds public use of strip of land as highway for seven years before homestead rights attach thereto, sufficient acceptance of benefit of Act of Congress granting right of way for construction of highways over public lands.

Distinguished in Knight v. Kansas City, 113 Mo. App. 564, 87 S. W. 1192, where the public nature of the street rested on more than mere user by the public; Foster v. Kansas City, 114 Mo. App. 730, 90 S. W. 751, where the street in question was an actual existing state road taken into city limits by an extension of such limits.

— Imposing duty on city to keep safe for travel.

Cited in Hendrick v. St. Joseph, 138 Mo. App. 400, 122 S. W. 375; Atkinson v. Nevada, 133 Mo. App. 4, 112 S. W. 1022,—holding that neither dedication of street to the public use by owner of platted addition, nor use of street by the public as a thoroughfare had the effect of imposing on city the duty of keeping street in safe condition for travel; McClafferty v. Philadelphia, 17 Pa. Dist. R. 24, 134 Pa. Co. Ct. 482, holding no obligation to rest on city to keep street free from obstacles where it had not in any manner been thrown open to the public for travel; Brown v. Scruggs, 141 Mo. App. 635, 125 S. W. 537, holding that condemnation and vacation of proposed street for street purposes, imposes a duty on city to keep it free from nuisance.

Distinguished in Haxton v. Kansas City, 190 Mo. 62, 88 S. W. 714, where the street in question was a well used and principal thoroughfare of the city having curbing, sidewalks and crossings.

Improvement of part of street only.

Cited in Curran v. St. Joseph, 143 Mo. App. 621, 128 S. W. 203, holding city not liable for injury to person walking on path on one side of street where city had only improved a strip in center thereof as a road and inhabitants had built a sidewalk on other side.

Liability of municipality for defects in streets.

Cited in note (20 L.R.A.(N.S.) 562, 563, 570, 575) on liability of municipality for defects or obstructions in streets.

51 L. R. A. 176, RE FLUKES, 157 Mo. 125, 80 Am. St. Rep. 619, 57 S. W. 545.

Equal privileges and immunities.

Cited in White v. Missouri, K. & T. R. Co. 230 Mo. 305, 29 L.R.A.(N.S.) 879, 130 S. W. 325, holding valid, act forbidding garnishment of wages of railroad employes under $200, until judgment has been recovered against debtor; Woolley v. Mears, 226 Mo. 52, 136 Am. St. Rep. 637, 125 S. W. 1112, holding unconstitutional an act punishing those the results of whose gambling occur outside of the state and protecting those achieving results within the state.

Nullity of unconstitutional statute.

Cited in State ex rel. Anheuser-Busch Brewing Asso. v. Eby, 170 Mo. 525, 71 S. W. 52, holding that prohibition will issue against a prosecution under an unconstitutional statute such statute having no force; Henderson v. Koenig, 192 Mo. 710, 91 S. W. 88, on the rule that an unconstitutional statute has no more binding effect or force than had no statute ever been enacted.

Habeas corpus to test constitutionality of statute.

Cited in Ex parte Lucas, 160 Mo. 280, 61 S. W. 218, holding that person arrested under statute may contest its constitutionality by habeas corpus proceedings; O'Haver v. Montgomery, 120 Tenn. 468, 127 Am. St. Rep. 1014, 111 S. W. 449, on habeas corpus to test rights under statute.

When debt garnishable.

Cited in note (67 L.R.A. 223) as to where debt garnishable.

Exemption of wages from garnishment.

Cited in footnote to Siever v. Union P. R. Co. 61 L.R.A. 319, which sustains right to injunction against prosecuting multiplicity of garnishment proceedings for exempt wages.

51 L. R. A. 178, BOARDMAN v. SCOTT, 102 Ga. 404, 30 S. E. 982.

Recognition of well known artificial bodies of water.

Approved in Patapsco Guano Co. v. Bowers-White Lumber Co. 146 N. C. 190, 13 L.R.A.(N.S.) 320, 125 Am. St. Rep. 473, 59 S. E. 538, holding that the rules regarding boundaries applicable to natural lakes also apply to artificial lakes and ponds which have become well known land marks and are considered as permanent and also approving annotation on same point.

Pond as stream.

Cited in Johnson v. State, 114 Ga. 792, 40 S. E. 807, as defining stream under statute to include an inland pond formed by dam in water course.

Estoppel establishing boundary.

Cited in Farr v. Woolfolk, 118 Ga. 279, 45 S. E. 230, holding that acquiescence by acts or declarations by adjoining owners as to location of boundary line for seven years is not necessary where the parties have made a parol agreement as to its location, the line becomes established at once.

51 L. R. A. 187, BONTE v. POSTELL, 109 Ky. 64, 58 S. W. 536.

Liability of persons connecting property with sewer.

Cited in note (70 L.R.A. 243) on liability of persons connecting property with drain or sewer, for injuries.

Joint tort fensors.

Cited in William Tackaberry Co. v. Sioux City Service Co. — Iowa, —, 40 L.R.A.(N.S.) 113, 132 N. W. 945, holding that several riparian owners are not jointly liable for injury to upper owner from obstructions independently con-

structed; Bowman v. Humphrey, 132 Iowa, 249, 6 L.R.A.(N.S.) 1113, 109 N. W. 714, 11 Ann. Cas. 131, holding that upper and lower riparian owners, each independently polluting the stream, are not joint wrongdoers; Schneider v. Augusta, 118 Ga. 611, 45 S. E. 459, holding city not joint tort feasor with property owner who places defective grating in sidewalk, there being no concerted action between them; Willard v. Red Bank Oil Co. 151 Ill. App. 438, holding owners of separate oil wells cannot be sued as joint tort feasors for damages to plaintiff's land caused by waste oil.

— Joint or several liability.

Cited in Louisville & N. R. Co. v. Roth, 130 Ky. 769, 114 S. W. 264, sustaining return of separate verdicts in action against joint tort feasors.

Cited in note (6 L.R.A.(N.S.) 1149) on joinder of parties in suit to restrain pollution of water course.

Distinguished in San Marcos Electric Light & P. Co. v. Compton, 48 Tex. Civ. App. 592, 107 S. W. 1151, rejecting apportionment of damages where concurring negligence of telephone and electric light company caused fatal accident.

Failure to protect property against surface water as contributory negligence.

Cited in note (33 L.R.A.(N.S.) 370) on failure to protect property against wrongfully diverted surface water as contributory negligence.

51 L. R. A. 190, TREADWELL v. TREADWELL, 176 Mass. 554, 57 N. E. 1016.

Limitations upon enforcement of trust.

Cited in Libby v. Todd, 194 Mass. 513, 80 N. E. 584, on running of statute of limitations after misapplication of trust funds by trustee; Reardon v. Reardon, 192 Mass. 451, 78 N. E. 430, on laches as a bar to enforcement of a trust.

51 L. R. A. 193, LEGERN v. WARREN, 62 Ohio St. 500, 78 Am. St. Rep. 738, 57 N. E. 506.

Arrest without warrant.

Cited in O'Malley v. Whitaker, 118 La. 913, 43 So. 545, holding arrest without warrant where for good cause and not arbitrary is constitutional.

Cited in footnote to McCullough v. Greenfield, 62 L.R.A. 906, which holds that possession of warrant by officer will not justify arrest of accused by police department of another town under direction by telephone by such officer.

Cited in note (34 L.R.A.(N.S.) 1182) on innocence of one arrested as affecting right under statute authorizing arrest without warrant when offender taken in act.

— Liability.

Cited in Harness v. Steele, 159 Ind. 295, 64 N. E. 875, holding sheriff liable for false imprisonment where in case of arrest without warrant prisoner is unreasonably detained; Atchison, T. & S. F. R. Co. v. Hinsdell, 76 Kan. 78, 12 L.R.A.(N.S.) 94, 90 Pac. 800, 13 Ann. Cas. 981, holding release of person arrested without warrant not made after unreasonable detention is not conclusive proof of bad faith in causing arrest.

Cited in note (33 L.R.A.(N.S.) 275) on liability of sureties on officer's bond for illegal arrest.

Action for false imprisonment.

Cited in Washer v. Iler, 9 Ohio C. C. N. S. 272, 29 Ohio C. C. 320, holding that the mayor, chief of police, and keeper of the city prison were all liable for the false imprisonment in the city prison, of a person pending a hearing in the police court, where such person was illegally detained more than four days.

Cited in footnotes to Mumford v. Starmont, 69 L.R.A. 350, which holds mayor and chief of police liable for arresting motorman to abate nuisance from operation of cars when trolley wire is in such poor condition as to be liable to fall; Rush v. Buckley, 70 L.R.A. 464, which holds magistrate not liable to civil action for erroneously deciding that he has jurisdiction over particular offense of which complaint is made to him and issuing warrant for arrest of accused.

Acts done in virtue or in color of office.

Cited in Gold v. Campbell, 54 Tex. Civ. App. 278, 117 S. W. 463, defining virtue officii as distinguished from colore officii.

51 L. R. A. 226, OTT v. HENTALL, 70 N. H. 231, 47 Atl. 80.

Married women's act as affecting marital rights.

Cited in Foote v. Nickerson, 70 N. H. 518, 54 L.R.A. 565, 48 Atl. 1088; Booth v. Manchester Street R. Co. 73 N. H. 530, 63 Atl. 578,—holding statute modifying married women's common law status does not deprive husband of right to compensation for loss of her services; McConnell v. McConnell, 75 N. H. 387, 74 Atl. 875, holding that wife may make binding contract for board and lodging for herself and child.

Authority to charge husband for necessaries.

Cited in note (98 Am. St. Rep. 633, 644) on wife's implied authority to act for husband and charge him for necessaries.

51 L. R. A. 229, STATE EX REL. WINNIE v. STODDARD, 25 Nev. 452, 62 Pac. 237.

Right to mandamus.

Cited in State ex rel. Holley v. Boerlin, 30 Nev. 477, 98 Pac. 402, holding mandamus will lie only where clear right to the remedy is shown; Hardin v. Guthrie, 26 Nev. 251, 66 Pac. 744, holding mandamus will not issue to compel revaluation of property where complainant had no legal right to demand valuation: State ex rel. Crandall v. McIntosh, 205 Mo. 609, 103 S. W. 1078, holding mandamus will not issue to compel examination of applicant for admission to practice of dentistry where applicant's right to examination is not clear.

Attack on constitutionality of statute in mandamus.

Cited in note (16 L.R.A.(N.S.) 267) on right of relator in mandamus to attack constitutionality of statute relied upon.

51 L. R. A. 235, RE MEEKIN, 164 N. Y. 145, 79 Am. St. Rep. 635, 58 N. E. 50.

Nature of right of action for wrongful death.

Approved in People ex rel. Harris v. Gill, 85 App. Div. 195, 83 N. Y. Supp. 135, holding action by administrator for wrongful death of intestate is action for injury to property rights of beneficiaries and execution against the person of defendant will issue.

Cited in Tompkins v. Williams, 137 App. Div. 522, 122 N. Y. Supp. 152, holding that judgment for damages for death caused by administration of chloral, or negligence in caring for intoxicated guest, does not survive discharge in bankruptcy; Re Burnstine, 131 Fed. 831, holding right of action for wrongful death is a property right and assignable; Tanas v. Municipal Gas Co. 88 App. Div. 257, 84 N. Y. Supp. 1053, holding that since right of action for wrongful death is a property right vesting immediately in next of kin action may be maintained

by nonresident alien next of kin: Re Carrig, 36 Misc. 613, 73 N. Y. Supp. 1123, holding amount paid as settlement to estate of person wrongfully killed is property of the estate and not part of the inheritance hence attorneys employed by decedent to recover for his personal injuries have no claim.

— Accrual of right.

Cited in Mella v. Northern S. S. Co. 127 Fed. 417, holding right of action for wrongful death is a property right accruing to next of kin at instant of death and may be released prior to appointment of administrator.

Distinguished in Crapo v. Syracuse, 183 N. Y. 401, 76 N. E. 465, 35 N. Y. Civ. Proc. Rep. 200, Reversing 98 App. Div. 381, 90 N. Y. Supp. 553, as deciding no question as to time of accrual of action for wrongful death.

— Who may sue.

Cited in Hodges v. Webber, 65 App. Div. 172, 72 N. Y. Supp. 508, 32 N. Y. Civ. Proc. Rep. 210, holding under statute that only personal representative or his successor as such may sue for wrongful death and that upon death of such representative neither his personal representative nor the beneficiaries may maintain the action.

— Survivability of action.

Cited in Conway v. New York, 139 App. Div. 452, 124 N. Y. Supp. 660, holding that cause of action for wrongful death survives death of administratrix before suit brought; Pitkin v. New York C. & H. R. R. Co. 94 App. Div. 36, 87 N. Y. Supp. 906, holding right of action for death by wrongful act accrues at time of death and survives to estate of beneficiary; Behen v. St. Louis Transit Co. 186 Mo. 447, 85 S. W. 346, holding right of action for wrongful death survives to administrator of plaintiff who died pending appeal; Bates v. Sylvester, 205 Mo. 503, 11 L.R.A.(N.S.) 1161, 120 Am. St. Rep. 761, 104 S. W. 73, 12 Ann. Cas. 457, as expressly approving an earlier case holding that right of action for wrongful death does not survive the wrongdoer.

Cited in note (24 L.R.A.(N.S.) 845) on survival of statutory action for wrongful death to personal representatives of original beneficiary.

Distinguished in McHugh v. Grand Trunk R. Co. 2 Ont. L. Rep. 608, holding under Canadian statute right of action for wrongful death ends with death of sole beneficiary who dies before judgment.

Disapproved in Gilkeson v. Missouri P. R. Co. 222 Mo. 190, 24 L.R.A.(N.S.) 852, 121 S. W. 138, 17 Ann. Cas. 763, holding action by minor for wrongful death of parent is a personal action for loss of support and does not survive the plaintiff.

— Damages recoverable.

Cited in Countryman v. Fonda J. & G. R. Co. 166 N. Y. 209, 82 Am. St. Rep. 640, 59 N. E. 822, on right of action for wrongful death as a property right the value of which is to be ascertained by the jury; Marshall v. Consolidated Jack Mines Co. 119 Mo. App. 274, 95 S. W. 972, on right of action for wrongful death as founded upon property loss and holding recovery limited to pecuniary damages sustained; Austin v. Metropolitan Street R. Co. 108 App. Div. 254, 95 N. Y. Supp. 740, holding amount of damages recoverable for wrongful death is for the jury having in view the actual expenses incurred and the reasonable expectation of pecuniary benefits for next of kin had decedent lived; Rosin v. Lidgerwood Mfg. Co. 89 App. Div. 252, 86 N. Y. Supp. 49, on there being no limit to amount recoverable for wrongful death under New York constitution; Murphy v. Erie R. Co. 202 N. Y. 245, 95 N. E. 699, holding that proof of services and expeditures by decedent for children of plaintiff her half-sister, with whom she lived,

is incompetent; Simpson v. Foundation Co. 201 N. Y. 487, 95 N. E. 10, Ann. Cas. 1912 B, 321, holding that evidence that injured man had wife and children is competent, where loss of sexual power is shown.

Survivability of statutory right of action.

Cited in Burke v. Holtzmann, 117 App. Div. 293, 102 N. Y. Supp. 162, holding veteran's right to preference in employment on public works of city is a property right and hence action for wages of which he was wrongfully deprived is survivable.

51 L. R. A. 238, SPENCE v. HAM, 163 N. Y. 220, 57 N. E. 412.

Review of facts on appeal.

Cited in Vollkommer v. Cody, 177 N. Y. 127, 69 N. E. 277, molding where appeal is from an order reversing a judgment upon questions of law alone the court of appeals will not consider questions of fact; De Klyn v. Gould, 165 N. Y. 285, 80 Am. St. Rep. 719, 59 N. E. 95, 31 N. Y. Civ. Proc. Rep. 225, holding that court of appeals may inquire whether findings had any reasonable support in the evidence although the order appealed from does not show reversal upon question of fact.

Presumption that intermediate court considered only questions of law.

Cited in McClure v. Leaycraft, 183 N. Y. 40, 75 N. E. 961, 5 Ann. Cas. 45, 35 N. Y. Civ. Proc. Rep. 162, holding where an order of reversal is silent as to grounds thereof the only questions presented on appeal are of law; People ex rel. Berlinger v. Wells, 178 N. Y. 415, 70 N. E. 926, holding court of appeals bound to presume appeal was not on facts where order of reversal is silent as to grounds; Hinckel v. Stevens, 165 N. Y. 173, 58 N. E. 879, holding court of appeals cannot consider questions of fact where order appealed from does not show reversal upon that ground although a reference to the opinion indicates the contrary; Schultze v. Goodstein, 180 N. Y. 251, 73 N. E. 21, holding where order appealed from does not show reversal on question of fact judgment will be affirmed if essential facts are supported by evidence and sustain the judgment.

Substantial performance of building contract.

Approved in Lombard v. Overland Ditch & Reservoir Co. 41 Colo. 256, 92 Pac. 695, on recovery under evidence of substantial compliance with building contract.

Cited in Smith v. Russell, 140 App. Div. 105, 125 N. Y. Supp. 952, holding that substantial performance is actual performance and deduction may be made from price for small defects; Dickinson v. Sheldon, 146 App. Div. 149, 130 N. Y. Supp. 889, holding that recovery for substantial performance of contract for printing catalogues cannot be had, where many of half-tones were blurred; Gompert v. Healy, 149 App. Div. 199, 133 N. Y. Supp. 689, holding that recovery for substantial performance of contract to supervise erection of dwelling-house cannot be had, where plaintiff permitted installation of plumbing system essentially different from plans; Finkelstein v. Miller, 54 Misc. 556, 104 N. Y. Supp. 880, holding it error to refuse to charge that upon substantial performance the value of imperfect work may be charged against the contract price; Fuchs v. Salafino, 133 App. Div. 715, 118 N. Y. Supp. 172, holding where omissions and defects equal fifteen per cent of work contracted for recovery for substantial performance will be denied.

Cited in notes (134 Am. St. Rep. 681, 683, 686, 688, 695; 24 L.R.A.(N.S.) 330, 336, 345, 346, 350) on recovery upon substantial performance of building con-

tract; (16 L.R.A.(N.S.) 490) on use of building by owner as acceptance of work of construction or repair.

— Burden of proof.

Approved in Nesbit v. Braker, 104 App. Div. 394, 93 N. Y. Supp. 856, holding burden of proof is on contractor to show substantial performance and reasonable compensation for defects.

Cited in St. George Contracting Co. v. New York, 143 App. Div. 558, 128 N. Y. Supp. 393; Norton v. United States Wood Preserving Co. 89 App. Div. 241, 85 N. Y. Supp. 886,—holding that one setting up substantial performance has the burden of proving that defects or omissions were unsubstantial and unintentional and to show the amount necessary to make them good; Hudson River Power Transmission Co. v. United Traction Co. 43 Misc. 209, 88 N. Y. Supp. 448, holding plaintiff setting up substantial performance must show that there was no wilful or intentional breach; Flanders v. Rosoff, 111 App. Div. 4, 97 N. Y. Supp. 514, holding failure to offer evidence of value of work done and materials furnished is fatal to action on quantum meruit.

Distinguished in Niemeyer v. Woods, 72 App. Div. 630, 76 N. Y. Supp. 563, holding omission of plaintiff in suit for balance due on substantial performance of building contract to prove necessary expense to complete the contract is supplied by defendant's evidence of such expense.

Substantial performance as distinguished from nonperformance.

Cited in Rowe v. Gerry, 112 App. Div. 359, 98 N. Y. Supp. 380, Sustaining on reargument 109 App. Div. 155, 95 N. Y. Supp. 857, holding proof of substantial performance sufficient under allegation of performance; Maeder v. Wexler, 43 Misc. 18, 87 N. Y. Supp. 400, denying recovery on quantum meruit where plaintiff sets up but fails to prove substantial performance.

Distinguished in Rowe v. Gerry, 86 App. Div. 351, 83 N. Y. Supp. 740, holding it error to receive evidence of excuses for nonperformance under allegation of full performance.

— From absolute performance.

Cited in Bowen v. Kimball, 203 Mass. 370, 133 Am. St. Rep. 302, 89 N. E. 542, on the mode of pleading where recovery is sought, under the New York practice, for substantial rather than absolute performance.

51 L. R. A. 241, WOLF v. DOWNEY, 164 N. Y. 30, 58 N. E. 31.

Liability for fall of material from building under construction.

Followed in Jack v. McCabe, 56 App. Div. 380, 67 N. Y. Supp. 810, holding contractor having charge of all brick work on building not liable for injury by falling brick in absence of proof of who started brick in motion where numerous other contractors were at work on building.

Cited in Anderson v. McNulty Bros. 149 App. Div. 738, 134 N. Y. Supp. 21, holding plaster contractor liable for injury to ironworker from fall of wooden joist down elevator shaft; Miller v. Levering & G. Co. 144 App. Div. 16, 128 N. Y. Supp. 812, holding ironwork contractor liable for injury to bricklayer from being hit on head by iron bolt dropped from above; Halsch v. J. B. & J. M. Cornell Co. 49 Misc. 527, 97 N. Y. Supp. 983, denying liability of contractor for falling materials where other contractors were at work and wrongdoer is not identified; Sartirana v. New York County Nat. Bank, 139 App. Div. 600, 124 N. Y. Supp. 197, holding subcontractor liable for injury to pedestrian struck by hoist being lowered.

Distinguished in Zettel v. Taylor, 128 App. Div. 252, 112 N. Y. Supp. 639,

holding prima facie case established where only one contractor was at work on building from which tool fell on pedestrian.

Res ipsa loquitur.

Cited in Allen v. United Traction Co. 67 App. Div. 365, 73 N. Y. Supp. 737, holding proof of fall of fire extinguisher hung in street car, upon passenger, establishes prima facie case; Casey v. Davis & F. Mach. Co. 149 App. Div. 427, 134 N. Y. Supp. 355, on fall of iron ball from machine in factory as prima facie proof of negligence; Hardie v. Charles P. Boland Co. 205 N. Y. 341, 98 N. E. 661, holding doctrine of res ipsa loquitur inapplicable, where plaintiff's intestate was killed by being thrown from scaffold by collapse of chimney; Hastorf v. Hudson River Stone Supply Co. 110 Fed. 670, holding res ipsa loquitur applies where bins provided for crushed stone collapsed injuring boat moored alongside; O'Rourke v. Guy B. Waite Co. 125 App. Div. 826, 110 N. Y. Supp. 170, holding where material dropped is identified with defendant burden of proof is on defendant to show lack of negligence; Duerr v. Consolidated Gas Co. 86 App. Div. 26, 83 N. Y. Supp. 714, holding res ipsa loquitur applies to both owner and contractor for injuries resulting from bursting of large tank on test after completion; McNamara v. Boston & M. R. Co. 202 Mass. 499, 89 N. E. 131, holding res ipsa loquitur inapplicable where accident occurred while car was not under control of defendant railway.

Cited in note (113 Am. St. Rep. 1018) on presumption of negligence from happening of accident causing personal injuries.

Distinguished in Scheider v. American Bridge Co. 78 App. Div. 168, 79 N. Y. Supp. 634, holding res ipsa loquitur obtains in case of person killed by falling material while rightfully on public highway where wrongdoer is identified; Hughes v. Harbor & Suburban Bldg. & Sav. Asso. 131 App. Div. 190, 115 N. Y. Supp. 320, holding res ipsa loquitur applies to owner of building from which materials fall while it is undergoing repairs although wrongdoer is not identified.

Negligence of independent contractor.

Cited in Burk v. Ireland, 166 N. Y. 314, 59 N. E. 914, denying owners liability where collapse of building occurred through negligence of independent contractor and of architect who independently contracted to inspect.

51 L. R. A. 246, STATE v. TUCKER, 36 Or. 291, 61 Pac. 894.

Proof to support charge of burglary.

Cited in note (12 L.R.A.(N.S.) 210) on possession of recently stolen property as evidence of burglary.

Distinguished in State v. Burke, 11 Idaho, 426, 83 Pac. 228, holding evidence that is merely insinuative is insufficient to warrant conviction.

Prosecution upon information as due process of law.

Followed in State v. Ju Nun, 53 Or. 3, 97 Pac. 96, holding prosecution on information filed by district attorney under statute and followed by bench warrant arrest is not an unconstitutional violation of personal liberty.

Cited in State v. Guglielmo, 46 Or. 252, 69 L.R.A. 469, 79 Pac. 577, 7 Ann. Cas. 976, holding statute permitting district attorney to file information and leaving the calling of grand juries to discretion of circuit judges is constitutional.

Cited in footnotes to State v. Kyle, 56 L.R.A. 115, which upholds statute authorizing prosecution of crimes already committed, by information; State v.

Guglielmo, 69 L.R.A. 466, which holds indictment by grand jury unnecessary to due process of law.

Cited in note (1 L.R.A.(N.S.) 1153) on sufficiency of information, without indictment, in common-law felonies.

Questions of fact.

Cited in State v. Colestock, 41 Or. 14, 67 Pac. 418, holding where bill of exceptions does not bring up the evidence verdict will be presumed to have been sustained by evidence.

Error in refusing instructions.

Cited in State v. Mack, 57 Or. 575, 112 Pac. 1079, holding refusal of instructions no error, where court gave in substance instructions requested, in so far as they were applicable to facts.

51 L. R. A. 252, BROWN v. SUN L. INS. Co. — Tenn. —, 57 S. W. 415.

Presumptions as to accidental death within meaning of insurance policy.

Cited in Supreme Tent K. M. W. v. King, 73 C. C. A. 668, 142 Fed. 681, holding that there is no presumption of accidental death where the deceased is found under circumstances clearly pointing to suicide.

Cited in note (4 L.R.A.(N.S.) 637) on duty of insured to negative death or accident from excepted cause.

Construction of suicide clause in policy.

Cited in footnotes to Boynton v. Equitable L. Assur. Co. 52 L.R.A. 687, which requires insurer, claiming suicide of insured, to overcome every reasonable hypothesis of accidental death; Scherar v. Prudential Ins. Co. 56 L.R.A. 611, which sustains condition of liability for amount only of premiums paid in case of suicide within three years; Courtemanche v. Supreme Court Independent Order of Foresters, 64 L.R.A. 668, which holds accidental death of assured from taking poison to frighten wife into giving him money not within provision against liability in case of self-destruction; Brignac v. Pacific Mut. L. Ins. Co. 66 L.R.A. 323, which holds that suicidal intent will not be found where facts admit of different construction.

Cited in note (17 L.R.A.(N.S.) 262) on effect of words, "sane or insane," etc., in suicide clause in life policy.

51 L. R. A. 254, CROY v. EPPERSON (CROY v. OBION COUNTY), 104 Tenn. 525, 78 Am. St. Rep. 931, 58 S. W. 235.

What constitutes interstate commerce.

Cited in Re Agnew, 89 Neb. 310, 35 L.R.A.(N.S.) 839, 131 N. W. 817, Ann. Cas. 1912 C, 676, holding that interstate quality of property shipped into state is lost, when original packages are broken and contents are sold to retailers; Kinsley v. Dyerly, 79 Kan. 6, 19 L.R.A.(N.S.) 408, 98 Pac. 228, holding that where an agent solicits orders for goods by sample, and the orders are subject to the approval of his employer, and if accepted the goods are sent to the agent for delivery, the transaction constitutes interstate commerce where the agent and the employer reside in different states; Loverin & B. Co. v. Tansil, 118 Tenn. 722, 102 S. W. 77, holding where an agent solicited orders for goods upon condition that if they were not according to the sample they need not be accepted, and after receiving all the orders, he made a general order for all the goods to be shipped to him which when received he divided and delivered according to orders, he was not engaged in interstate commerce.

Cited in footnotes to French v. State, 52 L.R.A. 160, which holds agent of non-

resident company selling organ taken with him, or taking orders for others to be delivered by him, engaged in interstate commerce; State v. Willingham, 52 L.R.A. 198, which holds as interstate commerce, delivery of portraits and frames by agent previously taking orders for nonresident manufacturer.

Cited in notes (19 L.R.A.(N.S.) 312) on soliciting orders by sample or otherwise, as interstate commerce; (46 L. ed. U. S. 791) on peddlers and drummers as related to interstate commerce.

What constitutes original package.

Cited in note (39 L.R.A.(N.S.) 1055) on what constitutes original or unbroken package.

51 L. R. A. 255, J. M. JAMES CO. v. CONTINENTAL NAT. BANK, 105 Tenn. 1, 80 Am. St. Rep. 857, 58 S. W. 261.

Liability of bank for wrongful dishonor of check.

Cited in American Nat. Bank v. Morey, 113 Ky. 863, 58 L.R.A. 958, 101 Am. St. Rep. 379, 69 S. W. 759, holding instructions justifying award of punitive damages because of gross injuries caused by wrongful dishonor of check is error in absence of indications of malice or bad motive.

Cited in footnote to American Nat. Bank v. Morey, 58 L.R.A. 956, which denies bank's liability to punitive damages for wrongful refusal to honor check in absence of actual malice, oppression, or bad motive.

Cited in notes (5 L.R.A.(N.S.) 870) on character of action by depositor against bank wrongfully refusing to honor check; (128 Am. St. Rep. 87) on actions maintainable on bank check.

Presumption as to damage suffered by trader by wrongful dishonor of check.

Cited in Third Nat. Bank v. Ober, 102 C. C. A. 178, 178 Fed. 679, holding law presumes substantial damage to trader from wrongful refusal of bank to pay check; Weller v. Western State Bank, 18 Okla. 499, 90 Pac. 877; Wiley v. Bunker Hill Nat. Bank, 183 Mass. 496, 67 N. E. 655,—holding that substantial damages may be presumed from the wrongful dishonoring of a trader's check, and they may be recovered without any averments of special damages, but the latter may be recovered if properly pleaded; Lorick v. Palmetto Bank & T. Co. 74 S. C. 188, 54 S. E. 206, 7 Ann. Cas. 818, on the necessity of pleading damages for wrongful dishonoring of check.

Erroneous instructions.

Cited in Louisville & N. R. Co. v. Satterwhite, 112 Tenn. 208, 79 S. W. 106, holding instruction upon assumed state of facts not at all in evidence is reversible error if prejudicial.

Damages for discontinuance of service.

Cited in footnote to Cumberland Teleph. & Teleg. Co. v. Hendon, 60 L.R.A. 849, which holds damages for wrongfully disconnecting telephone to be amount which will compensate for injuries from breach of contract.

51 L. R. A. 260, TRAVERS v. ABBEY, 104 Tenn. 665, 58 S. W. 247.

Review of proceedings of ecclesiastical courts by the civil courts.

Cited in Satterlee v. United States, 20 App. D. C. 418, holding that in matters of discipline and the enforcement of its canons, the proceedings of the ecclesiastical court are conclusive and cannot be reviewed by the civil courts; Hatfield v. De Long, 156 Ind. 210, 51 L.R.A. 753, 83 Am. St. Rep. 194, 59 N. E. 483, holding that if only ecclesiastical questions, such as those of doctrine or

discipline, are in issue, the decision of the spiritual court is final and will be accepted as conclusive by the secular courts.

Cited in footnote to Hatfield v. De Long, 51 L. R. A. 751, which authorizes injunction against expulsion of church member by improperly organized tribunal.

Cited in notes (49 L.R.A. 395) on conclusiveness of decisions of tribunals of associations or corporations; (24 L.R.A.(N.S.) 693) on litigation growing out of schism in religious society; (35 L.R.A.(N.S.) 920) on civil review of removal of priest or minister by ecclesiastical tribunal; (100 Am. St. Rep. 734, 742) on jurisdiction of civil courts over church controversies.

51 L. R. A. 261, ELMORE v. ELMORE, 58 S. C. 289, 36 S. E. 656.

Liability of executors for torts.

Cited in note (38 L.R.A.(N.S.) 379) on liability of executor or administrator for personal injury resulting from negligence in care or management of property of estate.

51 L. R. A. 270, EX PARTE KENNEDY, 42 Tex. Crim. Rep. 148, 58 S. W. 129.

Works of necessity.

Cited in footnotes to Arnheiter v. State, 58 L.R.A. 392, which holds sale of meat by butcher to customers on Sunday not work of necessity or charity; State v. McBee, 60 L.R.A. 638, which holds pumping oil well on Sunday work of necessity, if permanent, material loss and injury would otherwise result; State v. Collect, 64 L.R.A. 204, which holds repairing of belt in factory on Sunday so as to prevent two hundred hands from losing work on the following day, work of necessity.

— Barbering.

Cited in Armstrong v. State, 170 Ind. 191, 15 L.R.A.(N.S.) 650, 84 N. E. 3, holding a law prohibiting barbering on Sundays not of itself unconstitutional; State v. Schatt, 128 Mo. App. 632, 107 S. W. 10, holding barbering generally is not a necessary business within the meaning of statute permitting doing business of necessity on Sunday.

Cited in footnote to State v. Sopher, 60 L.R.A. 468, which holds keeping open of barber shop on Sunday for transaction of business not an act of necessity.

51 L. R. A. 272, JOHNSON v. STATE, 42 Tex. Crim. Rep. 87, 58 S. W. 60.

Followed without discussion in Johnson v. State, 42 Tex. Crim. Rep. 107, 58 S. W. 69 (dissenting opinion).

Review for erroneous charge.

Followed in Smith v. State, 45 Tex. Crim. Rep. 554, 78 S. W. 694, holding that objection to the charge cannot be reviewed on appeal where no exception was taken thereto during the trial or on motion for a new trial.

Harmless error.

Cited in Dent v. State, 43 Tex. Crim. Rep. 145, 65 S. W. 627, holding it harmless error in the trial of an accessory to charge that the record of the conviction of the principal was conclusive of the guilt of such principal, where no evidence was introduced to disprove such guilt, since the record was prima facie evidence of the guilt; Nicholson v. State, 44 Tex. Crim. Rep. 435, 71 S. W. 969, holding failure to instruct jury that game was not played at private residence is harmless error where evidence was clear that crap game was played in a pasture.

51 L. R. A. 280, WILLOW CREEK IRRIG. CO. v. MICHAELSON, 21 Utah, 248, 81 Am. St. Rep. 687, 60 Pac. 943.

Ownership of percolating waters.

Cited in Herriman Irrig. Co. v. Keel, 25 Utah, 96, 69 Pac. 719, holding land owner may drain his land by tunnels although in so doing he destroys flow of spring on another's land where connection is solely by percolation; Fayter v. North, 30 Utah, 186, 6 L.R.A.(N.S.) 423, 83 Pac. 742 (dissenting opinion), on the ownership and appropriation of percolating waters.

Cited in footnotes to Brosnan v. Harris, 54 L.R.A. 628, which sustains right under statute to appropriate water of spring without natural outlet; Stillwater Water Co. v. Farmer, 60 L.R.A. 875, which sustains right to injunction against land owner draining, collecting and diverting percolating waters solely to waste them; Huber v. Merkel, 62 L.R.A. 589, which sustains land owner's right as against neighbor to sink wells and use percolating water.

Cited in notes (21 L.R.A.(N.S.) 77) on appropriation of percolating waters on public lands; (99 Am. St. Rep. 67) on landowner's right in percolating waters.

Appropriation of waters of streams formed by drainage.

Cited in Cardelli v. Comstock Tunnel Co. 26 Nev. 296, 66 Pac. 950, 21 Mor. Min. Rep. 699, holding waters derived solely from drainage of defendant's land are not subject to appropriation although he has acquiesced in plaintiff's use of such waters for over eight years and also citing annotation on this point; Quinlan v. Calvert, 31 Mont. 119, 77 Pac. 428, on the right to appropriate waters drained from another's land, and also citing annotation on this point.

51 L. R. A. 283, TABB v. COM. 98 Va. 47, 34 S. E. 946.

Effect of tax sale upon estate of remainderman.

Followed in Glenn v. West, 106 Va. 360, 56 S. E. 143, holding upon default in payment of taxes by life tenant only life estate may be sold by tax collector under the statute.

Distinguished in Murphy v. Richmond, 111 Va. 461, 69 S. E. 442, holding that taxes assessed against homestead during widow's lifetime are properly chargeable on corpus of land itself.

51 L. R. A. 288, HALL v. UNION CENT. L. INS. CO. 23 Wash. 610, 83 Am. St. Rep. 844, 63 Pac. 505.

Presumption of continuance of agency.

Cited in note (1 L.R.A.(N.S.) 891) on presumption of continuance of agency.

Waiver of conditions of policy.

Cited in Staats v. Pioneer Ins. Asso. 55 Wash. 56, 104 Pac. 185, holding limitation in policy for commencing suit is waived by request of company's adjuster to wait until other companies had acted.

Distinguished in Nixon v. Travellers' Ins. Co. 25 Wash. 259, 65 Pac. 195, holding that the forfeiture was not waived by the acts of the defendant's agent in misrepresenting the necessity for prompt payment of premiums, where the policy provided that payment would be waived by a failure to promptly pay premiums and that no agent had authority to waive any condition of the policy.

Agent's acts as binding insurance company.

Cited in Foster v. Pioneer Mut. Ins. Asso. 37 Wash. 294, 79 Pac. 798, holding insurance company is bound by false entries of its agent where applicant answered truthfully; Shultice v. Modern Woodmen, 67 Wash. 68, 120 Pac. 531,

holding fraternal society liable on death loss, where, after knowledge of suspension, it retained monthly assessments, transmitted by local clerk, who knew that member had become insane.

Cited in note (88 Am. St. Rep. 785) on liability of principal for unauthorized acts of agent.

Declarations as part of res gestæ.

Cited in Roberts v. Port Blakely Mill. Co. 39 Wash. 33, 70 Pac. 111, holding that statements by the general superintendent made a few hours after the wreck and soon after he arrived and was examining the same, as to the cause of the wreck, were admissible as a part of the res gestæ in an action for the death of the conductor of the train.

Cited in note (131 Am. St. Rep. 332, 338) on declarations and acts of agents.

51 L. R. A. 292, FISHER v. CUSHMAN, 43 C. C. A. 381, 103 Fed. 860.

Liquor license as personal property.

Cited in Re McArdle, 126 Fed. 443, denying right of holder of liquor license to mortgage same as personal property under state decisions and bankruptcy court would not enforce such a mortgage.

— Of bankrupt.

Cited in Hanson v. W. L. Blake & Co. 155 Fed. 356, on property within the meaning of the bankruptcy law; Tracy v. Ginzberg, 189 Mass. 262, 75 N. E. 637, holding that money paid to the bankrupt for the transfer of his liquor license and to secure the nomination of the purchaser as a successor of the bankrupt in the business, was property of the bankrupt and properly kept by the trustee for distribution among the creditors; Degginger v. Seattle Brewing & Malting Co. 41 Wash. 388, 4 L.R.A.(N.S.) 629, 83 Pac. 898, holding where statute permits transfer of liquor license it is property within the meaning of the bankruptcy law; Re Olewine, 125 Fed. 841, 13 Pa. Dist. R. 361, holding liquor license may be claimed as part of bankrupt's exemptions though the same is not transferable without approval and is not subject to seizure on execution.

Cited in note (4 L.R.A.(N.S.) 628) on liquor license as asset.

Distinguished in Bryan v. Sturgis Nat. Bank, 40 Tex. Civ. App. 312, 90 S. W. 704, holding that the wife's share in the accumulated but undivided profits of a bank is not the property of her husband within the meaning of the bankruptcy law.

Transfer of property to trustee in bankruptcy.

Cited in Re Cantelo Mfg. Co. 185 Fed. 280, compelling assignment to trustee in bankruptcy of rights under pending applications for patents; Ellis v. Small, 209 Mass. 150, 95 N. E. 79, refusing trustees specific performance of contract to assign lease to bankrupt, where lease contains covenant against assignment.

— Liquor license.

Cited in Re Flaherty, 184 Fed. 965, holding trustee in bankruptcy entitled to money realized from bankrupt's liquor license, as against assignee of license as collateral; F. & M. Schaefer Brewing Co. v. Moebs, 187 Mass. 574, 73 N. E. 858, on the right to compel a transfer of liquor license to trustee in bankruptcy.

Distinguished in Re Dann, 129 Fed. 496, holding bankrupt need not assign his interest in an alleged invention to trustee in bankruptcy where application for patent is pending.

Public policy as affecting proceedings of bankruptcy court.

Distinguished in Augusta Trust Co. v. Federal Trust Co. 82 C. C. A. 309, 153 Fed. 161, holding that a bankruptcy court would not enforce notes secured

by bonds issued by a street railway company when not authorized by statute and contrary to a fixed public policy.

Review of bankruptcy proceedings.

Cited in Hutchinson v. Le Roy, 51 C. C. A. 159, 113 Fed. 203, holding decision of bankruptcy court as to the ownership of funds may be reviewed on petition for revision and not by appeal, where the facts are undisputed; Chesapeake Shoe Co. v. Seldner, 58 C. C. A. 261, 122 Fed. 594, holding an appeal from an order in bankruptcy may be treated as a petition for revision where only a question of law is presented; First Nat. Bank v. State Nat. Bank, 65 C. C. A. 414, 131 Fed. 433, holding where statute provides specifically for means of reviewing bankruptcy cases all other means of review are excluded.

Disapproved in Dodge v. Norlin, 66 C. C. A. 425, 133 Fed. 366, holding specification in statute of cases where appeal shall lie in bankruptcy cases does not exclude appeal on separate controversies regarding bankrupt's estate.

Proceedings subject to review.

Cited in Lewis Pub. Co. v. Wyman, 168 Fed. 758, holding court will not proceed with adjudication where question involved becomes moot pending appeal.

Intervention by party in interest.

Cited in Re Goldsmith, 118 Fed. 768, holding creditor who claims a lien on certain property may intervene to have funds which arose from sale of such property applied to alleged indebtedness.

51 L. R. A. 298, EBNER v. MACKEY, 186 Ill. 297, 78 Am. St. Rep. 280, 57 N. E. 834.

Employment of physicians.

Cited in Gibson v. O'Gara Coal Co. 151 Ill. App. 428, holding that the employment of a physician or surgeon continues in the absence of stipulation to the contrary, as long as professional attention is required; Tyson v. Baizley, 35 Pa. Super. Ct. 322, holding that a physician is bound to treat his patients with reasonable diligence and skill and there is no implied warranty to cure.

51 L. R. A. 301, LOWERY v. PEKIN, 186 Ill. 387, 57 N. E. 1062.

Later appeal in 210 Ill. 576, 71 N. E. 626.

Injunction as remedy where legal remedy is inadequate.

Cited in New York C. & H. R. R. Co. v. Ryan, 71 Misc. 252, 129 N. Y. Supp. 55, holding that railroad can restrain hackmen from interfering with rights of hackman to whom it has granted exclusive hacking privileges; Donovan v. Pennsylvania Co. 199 U. S. 305, 50 L. ed. 204, 26 Sup. Ct. Rep. 91, holding court of equity may restrain cabmen from continuous trespassing in depot of railroad.

Right of owner of way to compensation upon its conversion into public highway.

Cited in note (2 L.R.A.(N.S.) 598) on right of owner of easement of way to compensation upon its conversion into public highway.

51 L. R. A. 306, FRAZER v. CHICAGO, 186 Ill. 480, 78 Am. St. Rep. 296, 57 N. E. 1055.

Hospital as nuisance.

Cited in Barry v. Smith, 191 Mass. 88, 5 L.R.A.(N.S.) 1035, 77 N. E. 1099, 6 Ann. Cas. 817, holding that city health officers were not personally liable for loss of rents from surrounding property where they acted in good faith in

selecting a building near-by as a pest house; Tollefson v. Ottawa, 129 Ill. App. 142, holding that city was not liable for the negligence of its servants in the operation of a charitable hospital maintained by it; Deaconess Home and Hospital v. Bontjes, 104 Ill. App. 492, holding that a municipality may be held liable where a hospital is wrongfully located or conducted by it, or is operated in an unwarranted manner or without due care and skill; Hessin v. Manhattan, 81 Kan. 158, 25 L.R.A.(N.S.) 231, 105 Pac. 44, holding in emergency city may maintain pest house if chosen as carefully as possible as to situation although dangerous to surrounding residents.

Cited in footnotes to Henderson v. O'Haloran, 59 L.R.A. 718, which holds city liable for contraction of smallpox by guest from inmate of house contracting disease from unlawful location of pesthouse near; Deaconess Home & Hospital v. Bontjes, 64 L.R.A. 215, which denies right to conduct hospital in such proximity to a private residence that the necessary sights, sounds, and smells become an intolerable nuisance.

Cited in notes (5 L.R.A.(N.S.) 1028) on right of property owner to complain of location of contagious disease hospital in neighborhood; (29 L.R.A. (N.S.) 50) on hospital as nuisance.

Taking of private property for public use.

Cited in Chicago, B. & Q. R. Co. v. Illinois, 200 U. S. 589, 50 L. ed. 608, 26 Sup. Ct. Rep. 341, 4 Ann. Cas. 1175, Affirming 212 Ill. 116, 72 N. E. 219, holding railroad may be compelled to stand whole cost of destruction and rebuilding of bridge made necessary by widening of channel; Chicago v. McShane, 102 Ill. App. 242, holding change in grade of street whereby accessability to property is materially lessened is a taking of property without compensation; Metropolitan West Side Elev. R. Co. v. Goll, 100 Ill. App. 333, on the right to damages for injuries to property by the exercise of the police power.

Cited in note (109 Am. St. Rep. 914) on what constitutes "damage" to property within provision that property shall not be taken or damaged for public use without compensation.

Distinguished in Chicago v. Jackson, 196 Ill. 506, 63 N. E. 1013, holding lowering of street so as to physically damage adjoining property owner is a taking of private property for public use.

Police power.

Cited in Evans v. Kankakee, 231 Ill. 227, 13 L.R.A.(N.S.) 1192, 83 N. E. 223, Affirming 132 Ill. App. 491, holding city not liable for acts of its officers in detaining persons in the city jail who were infected with contagious diseases so that persons working near the jail contracted the disease.

51 L. R. A. 310, EWERTSEN v. GERSTENBERG, 186 Ill. 344, 57 N. E. 1050.

Restrictions on use of lands.

Cited in Loud v. Pendergast, 206 Mass. 124, 92 N. E. 40; Curtis v. Rubin, 244 Ill. 93, 135 Am. St. Rep. 307, 91 N. E. 84,— denying injunction against breach of building line restriction at instance of lot owner who has also violated restriction; Downer v. Rayburn, 214 Ill. 346, 73 N. E. 364, 3 Ann. Cas. 36, holding that a conveyance in fee to the trustees of a church and containing a provision that the premises are to be used for church purposes does not operate as a condition or restriction upon the use of the same to church purposes, there being no provisions for re-entry; Simpson v. Mikkelsen, 196 Ill. 579, 63 N. E. 1036, holding grantee in deed in which reference is made to plat is bound by building restrictions in plat although not mentioned in deed; Hays v. St. Paul M. E. Church, 196 Ill. 636, 63 N. E. 1040, holding that where reference was

made to adjoining land in making building restrictions, the latter not being made for the benefit of the owner of such land, a subsequent grantee of such adjoining land cannot enforce the restrictions.

Cited in notes (11 L.R.A.(N.S.) 514, 516) on effect of specifying use of real estate in devise to religious society; (28 L.R.A.(N.S.) 708, 712) on enforcement of restrictive covenant as affected by change in neighborhood; (95 Am. St. Rep. 219) on validity of conditions and restrictions in deed.

51 L. R. A. 316, WINGERT v. ZEIGLER, 91 Md. 318, 80 Am. St. Rep. 453, 46 Atl. 1074.

Failure to use revenue stamps upon commercial paper as affecting its validity.

Cited in Wade v. Foss, 96 Me. 231, 52 Atl. 640, holding unstamped promissory note cannot be excluded from evidence in a state court since the act of Congress applies only to the reception of note in evidence in a Federal court; Ebert v. Gitt, 95 Md. 192, 52 Atl. 900, holding that the inadvertent omission to place a revenue stamp upon a note does not affect its negotiability and the averment that it was insufficiently stamped does not render the declaration subject to demurrer.

Cited in footnotes to Southern Ins. Co. v. Estes, 52 L.R.A. 915, which holds that statutory provision against recording or using as evidence an unstamped instrument does not destroy such instrument as a muniment of title; Small v. Slocomb, 53 L.R.A. 130, which denies power of Congress to prohibit receiving unstamped instruments in evidence in state court.

Validity of curative statutes.

Cited in Eden Street Permanent Bldg. Asso. No. 1 v. Lusby, 116 Md. 176, 81 Atl. 284, holding that statute validating defectively executed and acknowledged conveyances is valid.

51 L. R. A. 319, HAMILTON v. PITTSBURGH, B. & L. E. R. Co. 190 Pa. 51, 42 Atl. 369.

Measure of damages in condemnation proceedings.

Cited in St. Louis, E. R. & W. R. Co. v. Oliver, 17 Okla. 595, 87 Pac. 423, 10 Ann. Cas. 748, holding depreciation in value of land caused by operation of trains with probable attendant danger of fires, killing of stock etc., may be considered by jury in assessing damages; Hewitt v. Pittsburg, S. & N. R. Co. 19 Pa. Super Ct. 308, holding separate items of damage are not to be considered as distinct items of loss but as they affect market value.

Annotation cited in Hunter v. Chesapeake & O. R. Co. (Fitzgerald v. Chesapeake & O. R. Co.) 107 Va. 163, 17 L.R.A.(N.S.) 127, 59 S. E. 415, on recovery for loss of profits during suspension of business caused by removal from property taken.

Cited in notes (9 L.R.A.(N.S.) 794) on right to set off benefits against damages on condemnation; (17 L.R.A.(N.S.) 124) on loss of profits from suspension of business while moving, as element of damage on condemnation.

Distinguished in Gearhart v. Clear Spring Water Co. 202 Pa. 297, 51 Atl. 891, holding value of land for use as reservoir may be considered in assessing damages for taking it.

51 L. R. A. 332, FULLER v. HUFF, 43 C. C. A. 453, 104 Fed. 141.

Right to use trademark or tradename.

Approved in Holeproof Hosiery Co. v. Fitts, 167 Fed. 379, enjoining use of

words "no-hole" and guaranty card similar to complainant's where complainant product was named "Holeproof Hosiery."

Cited in Rosenburg v. Fremont Undertaking Co. 63 Wash. 55, 114 Pac. 886, enjoining use of name "Fremont Undertaking Company," where another had established business under name "Fremont Undertaker"; Northwestern Knitting Co. v. Garon, 112 Minn. 326, 128 N. W. 288, holding that continuance of use of trade-name after notice of plaintiff's prior rights will be restrained, where defendant adopted name in ignorance of plaintiff; Computing Cheese Cutter Co. v. Dunn, 45 Ind. App. 29, 88 N. E. 89 (dissenting opinion), on injunction by "Computing Cheese Cutter Company, Anderson, Indiana" against "Anderson Cheese Cutter Company;" Eureka Fire Hose Co. v. Eureka Rubber Mfg. Co. 69 N. J. Eq. 170, 60 Atl. 561, enjoining use of word "Eureka" in selling goods and as part of corporate name at suit of corporation selling similar goods of whose name it already formed a part; Shaver v. Heller & M. Co. 65 L.R.A. 886, footnote p. 878, 48 C. C. A. 48, 108 Fed. 830, enjoining use of names "American Ball Blue," and "American Wash Blue" to palm off bluing made by others than those first adopting those names; Hostetter Co. v. Martinoni, 110 Fed. 526, enjoining use of name "Hostetter" in sale of stomach bitters at suit of party who had purchased exclusive right to use such name, in marketing bitters; Bissell Chilled Plow Works v. T. M. Bissell Plow Co. 121 Fed. 367, holding name "Bissell" could not be used in name of corporation or in marking plows which it made, where another had prior right to it; De Long Hook & Eye Co. v. Francis Hook & Eye & Fastener Co. 139 Fed. 150, restraining sale of cards with hooks and eyes stitched thereon in imitation of goods of another manufacturer; Walter Baker Co. v. Puritan Pure Food Co. 139 Fed. 681, holding trademark consisting of picture of female dressed as waitress and of manufacturer's name is infringed by use of like picture with different words and name; Buzby v. Davis, 80 C. C. A. 163, 150 Fed. 278, 10 Ann. Cas. 68, denying right of second comer to use word "Keystone" in selling oils and lubricants.

Cited in footnotes to La Republique Francaise v. Saratoga Vichy Springs Co. 65 L.R.A. 830, which holds conspicious use of word "Vichy" and inconspicuous use of word "Saratoga" on bottle of water from Saratoga Spring unfair competition with bottled waters from Vichy in France; Kipling v. G. P. Putnam's Sons, 65 L.R.A. 873, which holds merely placing a design on the covers of an edition of an author's works without registering it as a trademark or giving notice that it is such does not protect it from use by others.

Cited in notes (12 L.R.A.(N.S.) 730) on right to use substantially similar work as trademark or tradename, as affected by differences in other respects; (25 Eng. Rul. Cas. 223) on infringement of trademark.

Distinguished in Woodcock v. Guy, 33 Wash. 243, 74 Pac. 358, denying injunction against use of name "Gargeline" in sale of medicinal preparation for throat troubles where complainant selling "Gargline" did not allege fraud or injury.

Descriptive words.

Cited in Scriven v. North, 67 C. C. A. 348, 134 Fed. 378, enjoining advertising or selling of drawers as "Elastic Seam" or "Stretchy Seam" drawers and use of other imitating devices upon complainant of makers of "Scrivens Elastic Seam" drawers; Williams v. Mitchell, 45 C. C. A. 265, 106 Fed. 171, holding where article is known by descriptive word, one may not use it to palm off his goods as those of another who first adopted it.

Distinguished in Battle Creek Sanitarium Co. v. Fuller, 30 App. D. C. 413, allowing registration of words "Health Food" as trademark under "ten years"

clause of trademark act; Florence Mfg. Co. v. Dowd, 171 Fed. 125, holding use of descriptive word to designate product not enjoinable unless fraudulent.

51 L. R. A. 335, ATLANTA v. STEIN, 111 Ga. 789, 36 S. E. 932.

Discrimination among bidders for contracts for public work.

Cited in Farr v. Detroit, 136 Mich. 205, 99 N. W. 19 (dissenting opinion), on invalidity of provisions of contract for public work restrictive and discriminatory in nature; Dillingham v. Spartanburg, 75 S. C. 558, 8 L.R.A.(N.S.) 417, 117 Am. St. Rep. 917, 56 S. E. 381, 9 Ann. Cas. 829, on destruction of competition in letting contracts for public work.

Cited in footnotes to Fiske v. People ex rel. Raymond, 52 L.R.A. 291, which holds void, ordinance giving monopoly to union labor on city contracts; State ex rel. Robert Mitchel Furniture Co. v. Toole, 55 L.R.A. 644, which denies validity of contract for public supplies let upon bid pursuant to advertisement limiting right to bid to employers of union labor only.

Cited in notes (2 L.R.A.(N.S.) 293) on validity of contract to employ union labor only; (23 L.R.A.(N.S.) 816) on right of municipality or other public body to discriminate in favor of organized labor; (36 L.R.A.(N.S.) 10) on taxpayer's right to enjoin unlawful municipal expenditures on favoritism in contracts.

— Public printing.

Cited in Paterson Chronicle Co. v. Paterson, 66 N. J. L. 131, 48 Atl. 589, denying power of mayor and aldermen to pass resolution limiting orders for printing and advertising to officers and newspapers recognizing typographical union; People ex rel. John Single Paper Co. v. Edgecomb, 112 App. Div. 605, 98 N. Y. Supp. 965, holding requirement of use of label limiting bidders for public printing to members of particular union illegal; Miller v. Des Moines, 143 Iowa, 423, 23 L.R.A.(N.S.) 822, 122 N. W. 226, denying power of city council to discriminate in favor of employer of union labor in letting contract for public printing; Marshall & B. Co. v. Nashville, 109 Tenn. 499, 71 S. W. 815, holding ordinance providing all city printing shall bear union label is invalid.

Illegality of monopolies.

Cited in Hudspeth v. Hall, 113 Ga. 7, 84 Am. St. Rep. 200, 38 S. E. 358, holding owner of ferry injured by establishment of another ferry legally secured cannot recover damages or obtain injunction; Brown v. Jacobs' Pharmacy Co. 115 Ga. 448, 57 L.R.A. 557, 90 Am. St. Rep. 126, 41 S. E. 553, holding dealers in combination seeking to compel dealer not in it to sell at their prices may be enjoined from preventing sale of goods to him.

Discretionary authority of public officers.

Cited in Chipstead v. Oliver, 137 Ga. 486, 73 S. E. 576, holding that court will not interfere with discretion of board of education in choosing location for school building; Hudspeth v. Hall, 113 Ga. 7, 84 Am. St. Rep. 200, 38 S. E. 358, holding courts will not interfere in matter of grant of ferry franchise by county commissioners on ground of inexpediency or unwisdom; Bunker v. Hutchinson, 74 Kan. 656, 87 Pac. 884, holding ordinance providing paving contracts must be let to lowest bidder not binding because limiting discretion vested in mayor and council.

Cited in note (38 L.R.A.(N.S.) 659, 664) on discretion in choosing between bidders for public contract.

51 L. R. A. 339, PLANT v. WOODS, 176 Mass. 492, 79 Am. St. Rep. 330, 57 N. E. 1011.

Illegal conspiracies, strikes and boycotts.

Cited in State v. Stockford, 77 Conn. 236, 107 Am. St. Rep. 28, 58 Atl. 769, holding combination to cause strike to injure another is both unlawful and criminal; American Federation of Labor v. Buck's Stove & Range Co. 33 App. D. C. 105, 32 L.R.A.(N.S.) 761, holding combination to coerce firm through boycott is unlawful; Brennan v. United Hatters, 73 N. J. L. 739, 9 L.R.A.(N.S.) 259, 118 Am. St. Rep. 727, 65 Atl. 165, 9 Ann. Cas. 698, on lawfulness of agreement between employers and labor organization to effect that none but members of latter be employed; State v. Van Pelet, 136 N. C. 653, 68 L.R.A. 768, 49 S. E. 177, 1 Ann. Cas. 495, on right of laborers to combine to promote their interests; Erdman v. Mitchell, 207 Pa. 93, 63 L.R.A. 539, 99 Am. St. Rep. 783, 56 Atl. 327, Affirming 10 Pa. Dist. R. 707, 709, holding maintenance of strike to compel employers to discharge employees is unlawful.

Cited in notes (6 L.R.A.(N.S.) 1072) on lawfulness of sympathetic strike, or of threat or act tending thereto; (12 L.R.A.(N.S.) 646) on right of labor union to forbid members to handle one's product; (103 Am. St. Rep. 494, 495, 501, 502) on boycotting; (1 Brit. Rul. Cas. 262) on liability of labor union for boycott; (1 Brit. Rul. Cas. 526) on liability of labor union to persons with whose employment it has interfered.

Distinguished in Minasian v. Osborne, 210 Mass. 255, 37 L.R.A.(N.S.) 183, 96 N. E. 1036, Ann. Cas. 1912C, 1299, holding that labor union has right to strike against recognition in shop of system of piecework.

— Means employed.

Cited in Gray v. Building Trades Council, 91 Minn. 181, 63 L.R.A. 758, 103 Am. St. Rep. 477, 97 N. W. 663, 1 Ann. Cas. 172, holding intimidation and coercion are essential elements of boycott and what amounts to these depends on facts of each case; Lohse Patent Door Co. v. Fuelle, 215 Mo. 448, 22 L.R.A.(N.S.) 617, 128 Am. St. Rep. 492, 114 S. W. 997, as to what amounts to intimidation or coercion; National Protective Asso. v. Cumming, 170 N. Y. 348, 58 L.R.A. 148, 88 Am. St. Rep. 648, 63 N. E. 369 (dissenting opinion), on unlawfulness of procuring employee's discharge or preventing one's employment by coercion; Patterson v. Building Trades Council, 11 Pa. Dist. R. 506, 11 Kulp, 24, holding boycott unlawful because of means employed to carry it on; House Painters' Beneficial Asso. v. Feeney, 29 Pa. Co. Ct. 526, 13 Pa. Dist. R. 336, holding crippling and destruction of incorporated trade union by preventing persons from joining it and forcing its members to leave may be enjoined; Everett Waddey Co. v. Richmond Typographical Union No. 90, 105 Va. 194, 5 L.R.A.(N.S.) 795, 53 S. E. 273, 8 Ann. Cas. 798, holding evidence insufficient to show molestation annoyance or damage in conduct of business giving complainant right to injunction against union; Allis-Chalmers Co. v. Iron Moulders' Union No. 125, 150 Fed. 177, holding persuasion reaching stage of intimidation and coercion is malicious injury if harm results.

Cited in note (17 L.R.A.(N.S.) 170) on controversy over "open" or "closed" shop as justification for means employed to aid strike.

— Burden of proof.

Cited in Aberthaw Constr. Co. v. Cameron, 194 Mass. 215, 120 Am. St. Rep. 542, 80 N. E. 478, holding combination to coerce employer must be pleaded and proved before appropriate relief is granted.

— Remedy.

Cited in American Federation of Labor v. Buck's Stove & Range Co. 33 App. D. C. 105, 32 L.R.A.(N.S.) 761, enjoining federation of labor from placing name of boycotted concern on their "We Don't Patronize" list; Kemp v. Division No. 241, 153 Ill. App. 371, enjoining union from coercing employer to discharge former members of union; Baldwin v. Escanaba Liquor Dealers' Asso. 165 Mich. 111, 130 N. W. 214, enjoining boycott of newspaper by liquor dealers association; Folsom v. Lewis, 208 Mass. 338, 35 L.R.A.(N.S.) 789, 94 N. E. 316, enjoining strike to compel employers to unionize their shop; Purvis v. Local No. 500, U. B. C. & J. 214 Pa. 355, 12 L.R.A.(N.S.) 648, 112 Am. St. Rep. 757, 63 Atl. 585, 6 Ann. Cas. 275, enjoining injury and destruction of business, in pursuance of conspiracy, as penalty for refusal to unionize mill; Booth & Bro. v. Burgess, 72 N. J. Eq. 185, 65 Atl. 226, holding strike to enforce boycott is enjoinable; Christensen v. Kellogg Switchboard & Supply Co. 110 Ill. App. 74, enjoining combination and picketing threats, intimidation and other unlawful means to compel employer to sign agreement as to employment of labor; Underhill v. Murphy, 117 Ky. 650, 111 Am. St. Rep. 262, 78 S. W. 482, 4 Ann. Cas. 780, enjoining members of union from picketing employer's place of business and use of violent means to compel his workmen to quit work; Pickett v. Walsh, 192 Mass. 580, 6 L.R.A.(N.S.) 1077, 116 Am. St. Rep. 272, 78 N. E. 753, 7 Ann. Cas. 638, enjoining combination of bricklayers and stone masons from procuring discharge of or interfering with brick and stone painters; Reynolds v. Davis, 198 Mass. 298, 17 L.R.A.(N.S.) 168, 84 N. E. 457, enjoining combination to further strike for closed shop.

Cited in footnote to Erdman v. Mitchell, 63 L.R.A. 534, which upholds right to enjoin acts of council of allied labor unions seeking by intimidation to coerce laborers to join particular organization.

Distinguished in L. D. Willcutt & Sons Co. v. Driscoll, 200 Mass. 114, 23 L.R.A.(N.S.) 1241, 85 N. E. 897, enjoining members of labor unions from fining or threatening to fine members to prevent their employment by certain employer; M. Steinert & Sons Co. v. Tagen, 207 Mass. 397, 32 L.R.A.(N.S.) 1019, 93 N. E. 584, enjoining bearing of placard through streets announcing pendency of strike after strike has ended.

Procuring violation of contract.

Cited in Garst v. Charles, 187 Mass. 149, 72 N. E. 839, holding conspiracy to deprive one of benefit of contract with another is unlawful; Wells & R. Co. v. Abraham, 146 Fed. 194, granting injunction against procuring violation of contract as to sale of proprietary medicine made with manufacturer thereof.

Distinguished in Beekman v. Marsters, 195 Mass. 212, 11 L.R.A.(N.S.) 207, 122 Am. St. Rep. 232, 80 N. E. 817, 11 Ann. Cas. 332, restraining person from acting as territorial agent of hotel corporation where he procured agency by inducing corporation to violate contract granting exclusive agency.

— Contract of employment.

Cited in London Guarantee & Acci. Co. v. Horn, 101 Ill. App. 366, holding employee entitled to damages from party procuring his discharge by employer; Moran v. Dunphy, 177 Mass. 487, 52 L.R.A. 116, 83 Am. St. Rep. 289, 59 N. E. 125, holding it is actionable tort maliciously and without justifiable cause to induce employer to end employee's employment; Berry v. Donovan; 188 Mass. 356, 5 L.R.A.(N.S.) 902, 108 Am. St. Rep. 499, 74 N. E. 603, 3 Ann. Cas. 738, holding representative of labor union liable in damages to employee whose discharge he procured.

— Marital duty.

Cited in Nolin v. Pearson, 191 Mass. 289, 4 L.R.A.(N.S.) 648, 114 Am. St. Rep. 605, 77 N. E. 890, 6 Ann. Cas. 658, holding wife may maintain action against another woman for alienation of husband's affection.

Unlawfulness consisting in motive.

Cited in Dunshee v. Standard Oil Co. 152 Iowa, 624, 36 L.R.A.(N.S.) 266, 132 N. W. 371, holding that wholesaler of oil, entering retail business solely to drive customer out of trade, is liable in damages; Klingel's Pharmacy v. Sharp & Dohme, 104 Md. 233, 7 L.R.A.(N.S.) 982, 118 Am. St. Rep. 399, 64 Atl. 1029, 9 Ann. Cas. 1184, holding refusal to sell to certain person is unlawful where it is in pursuance of conspiracy in restraint of trade; Morrison v. Lawrence, 186 Mass. 463, 72 N. E. 91, holding in suit for damages for unlawful expulsion of pupil from school question of good faith of committee in conducting hearing was for jury; Huskie v. Griffin, 75 N. H. 352, 27 L.R.A.(N.S.) 969, 74 Atl. 595, holding to prevent one's employment by another solely to injure him is unjustifiable.

Cited in note (62 L.R.A. 698) on effect of bad motive to make actionable what would otherwise not be.

Disapproved in Foster v. Retail Clerks' International Protective Asso. 39 Misc. 54, 78 N. Y. Supp. 860, holding mere picketing is not unlawful whatever be motive of picketers.

Intentional injury as actionable wrong.

Cited in Martell v. White, 185 Mass. 258, 64 L.R.A. 262, 102 Am. St. Rep. 341, 69 N. E. 1085, holding intentional injury of another's business without just cause or excuse is actionable, and justification must cover object sought and means used; Aikens v. Wisconsin, 195 U. S. 204, 49 L. ed. 159, 25 Sup. Ct. Rep. 3, sustaining statute imposing penalty on any two or more persons combining to wilfully or maliciously injure, another in his reputation, trade, business or profession.

Cited in note (25 Eng. Rul. Cas. 83) on liability for wilfully and intentionally harming another in exercise of a legal right.

— Acts of trade competitors.

Cited in Davis v. New England R. Pub. Co. 203 Mass. 479, 25 L.R.A.(N.S.) 1027, 133 Am. St. Rep. 318, 89 N. E. 565, holding one cannot advance his own interests in competition by interfering with another's business by misstatements and false publication; Tuttle v. Buck, 107 Minn. 150, 22 L.R.A.(N.S.) 602, 131 Am. St. Rep. 446, 119 N. W. 946, 16 Ann. Cas. 807, holding one who starts business solely to drive his competitor out and intending to retire after accomplishing his purpose, is guilty of actionable tort.

Labor union as party to action.

Cited in Pickett v. Walsh, 192 Mass. 590, 6 L.R.A.(N.S.) 1081, 116 Am. St. Rep. 272, 78 N. E. 753, 7 Ann. Cas. 638, holding unincorporated labor union cannot be made party defendant.

51 L. R. A. 345, STRETCH v. CASSOPOLIS, 125 Mich. 167, 84 Am. St. Rep. 567, 84 N. W. 51.

Abutter's rights in trees in street.

Cited in Burget v. Greenfield, 120 Iowa, 439, 94 N. W. 933, holding town bound to strict compliance with statute as ordinance before interference with trees in building sidewalk; Paola v. Wentz, 79 Kan. 151, 131 Am. St. Rep. 290, 98 Pac. 775, on interference with trees by town in constructing sidewalk;

Miller v. Detroit, Y. & A. A. R. Co. 125 Mich. 173, 51 L.R.A. 957, 84 Am. St. Rep. 569, 84 N. W. 49, holding street railway company liable to landowner for removing trees in highway without notice; Maynard v. Reynolds, 137 Mich. 47, 100 N. W. 174 (dissenting opinion), on removal of shade trees in highway.

Cited in footnotes to Miller v. Detroit, Y. &. A. A. R. Co. 51 L.R.A. 955, which sustains street railway company's right to remove obstructing shade trees without compensation to abutter; Frostburg v. Wineland, 64 L.R.A. 627, which denies right to remove trees which have stood for forty years because they extend a short distance outside the curb on a proposed street improvement.

Cited in notes (20 L.R.A.(N.S.) 811) on right of municipality to cut or trim trees within highway; (101 Am. St. Rep. 112) on rights, obligations and remedies of persons over whose land a highway runs as to shrubs and trees.

51 L. R. A. 347, STATE v. SCHLENKER, 112 Iowa, 642, 84 Am. St. Rep. 360, 84 N. W. 698.

Validity of pure food laws.

Cited in American Linseed Oil Co. v. Wheaton, 25 S. D. 68, 41 L.R.A.(N.S.) 153, 125 N. W. 127, holding that state may prohibit sale of linseed oil which does not answer test for purity recognized by U. S. Pharmacopœia; State v. Armour Packing Co. 124 Iowa, 330, 100 N. W. 59, 2 Ann. Cas. 448, as bearing on validity of statutes absolutely prohibiting sale of oleomargarine.

Cited in footnotes to State v. Layton, 62 L.R.A. 164, which upholds statutory prohibition of manufacture or sale of baking powder containing alum; Arbuckle v. Blackburn, 65 L.R.A. 864, which upholds statute prohibiting the coloring, coating, or polishing of article intended for food whereby damage or inferiority is concealed.

Cited in note (109 Am. St. Rep. 790) on validity of regulation of food supplies.

— Adulterated milk or cream.

Cited in St. Louis v. Liessing, 190 Mo. 484, 1 L.R.A.(N.S.) 923, 109 Am. St. Rep. 774, 89 S. W. 611, 4 Ann. Cas. 112, sustaining ordinance prohibiting sale of milk showing analysis of less than 7/10 of 1 % ash; St. Louis v. Polinsky, 190 Mo. 523, 89 S. W. 625, holding city may prohibit sale of milk or cream adulterated with foreign substances; St. Louis v. Schuler, 190 Mo. 535, 1 L.R.A.(N.S.) 930, 89 S. W. 621, sustaining conviction under ordinance for offering for sale milk containing formaldehyde as preservative.

Cited in footnotes to State v. Crescent Creamery Co. 54 L.R.A. 466, which sustains statute against selling cream containing less than 20 per cent of fat; People v. Biesecker, 57 L.R.A. 178, which denies legislative power to prohibit sale of certain preservatives or of dairy products containing same; Norfolk v. Flynn, 62 L.R.A. 771, which upholds ordinance requiring inspection of milk within city limits and licensing of vendors as against nonresidents bringing or sending milk into the city for sale; St. Louis v. Fischer, 64 L.R.A. 679, which upholds ordinance forbidding dairy within city limits without permission from the city council.

Cited in note (1 L.R.A.(N.S.) 928) on police power to prohibit adulteration or addition of other substance to milk.

Police power and due process of law.

Cited in Smith v. State Medical Examiners, 140 Iowa, 70, 117 N. W. 1116, sustaining statute authorizing board of medical examiners to revoke certificate of physician and surgeon for incompetency upon notice; Mier v. Phillips Fuel Co. 130 Iowa, 579, 107 N. W. 621, holding statute allowing double damages in

case of mining of coal from another's land did not take property without due process of law.

Cited in footnotes to Bailey v. People, 54 L.R.A. 839, which holds void, restriction on number which lodging-house keepers may permit to occupy one room; Bessette v. People, 56 L.R.A. 558, which holds void, requirement that horseshoers practice business for four years, submit to examination, and pay license fee.

When intent is not essential element of crime.

Cited in Groff v. State, 171 Ind. 549, 85 N. E. 769, 17 Ann. Cas. 133, holding principal criminally liable for sale of oleomargarin as butter by clerk such practice being forbidden by statute.

Definitive clauses in statutes.

Cited in State v. Bristow, 131 Iowa, 667, 109 N. W. 199, holding clause interpreting word "peddler" in statute valid and controlling; Rossmiller v. State, 114 Wis. 179, 58 L.R.A. 96, 91 Am. St. Rep. 910, 89 N. W. 839, holding it competent for legislature to give an act a clear legislative construction as to its design.

51 L. R. A. 351, BARCLAY v. BARCLAY, 184 Ill. 375, 56 N. E. 636.

Liability to pay alimony.

Cited in McIlroy v. McIlroy, 208 Mass. 464, 94 N. E. 696, Ann. Cas. 1912A, 934, holding that husband's estate is liable for arrears of alimony accruing during his lifetime.

Criticized in McKnight v. McKnight, 5 Neb. (Unof.) 269, 98 N. W. 62, holding decree for alimony may be made though there has been equal division of estate prior to separation.

— Imprisonment for nonpayment.

Cited in Re Cave, 26 Wash. 216, 90 Am. St. Rep. 736, 66 Pac. 425, holding decree for alimony is not liable within constitutional provision against imprisonment for debt.

Cited in footnote to State v. Cook, 58 L.R.A. 625, which holds decree for alimony not within prohibition against imprisonment for debt.

Cited in note (17 L.R.A.(N.S.) 1141) on imprisonment for failure to pay alimony as imprisonment for debt.

— Effect of bankruptcy proceedings.

Cited in Welty v. Welty, 195 Ill. 340, 88 Am. St. Rep. 208, 63 N. E. 161, Affirming 96 Ill. App. 142; Deen v. Bloomer, 191 Ill. 423, 61 N. E. 131,—holding obligation to pay alimony not discharged by proceeding in bankruptcy; Wetmore v. Markoe, 196 U. S. 73, 49 L. ed. 392, 25 Sup. Ct. Rep. 172, 2 Ann. Cas. 265, holding decree for alimony though without reservation of right to change it, is not discharged by bankruptcy proceedings; Audubon v. Shufeldt, 181 U. S. 579, 45 L. ed. 1011, 21 Sup. Ct. Rep. 735, holding neither alimony in arrear at time of adjudication in bankruptcy, nor alimony accruing thereafter is provable in bankruptcy or barred by discharge therein.

Jurisdiction to enforce alimony.

Cited in Israel v. Israel, 9 L.R.A.(N.S.) 1171, 79 C. C. A. 32, 148 Fed. 578, 8 Ann. Cas. 697, holding action not maintainable upon foreign decree for alimony in so far as future payments are concerned; Van Horn v. Van Horn, 48 Wash. 389, 125 Am. St. Rep. 940, 93 Pac. 670, holding action will not lie on interlocutory order of foreign court awarding temporary alimony.

Cited in note (102 Am. St. Rep. 702) on power of courts to create and enforce liens to secure payment of alimony.

Disapproved in Patton v. Patton, 67 Misc. 405, 123 N. Y. Supp. 329, holding action maintainable on foreign final decree for future alimony.

Provable debts in bankruptcy.

Cited in footnotes to Colwell v. Tinker, 58 L.R.A. 765, which holds judgment awarding damages for criminal conversation with plaintiff's wife not released by discharge in bankruptcy; McKittrick v. Cahoon, 62 L.R.A. 757, which holds final money judgment for total amount due from putative father in bastardy proceedings a debt dischargable by proceedings in bankruptcy; Macdonald v. Tefft-Weller Co. 65 L.R.A. 106, which holds obligation of married woman to pay for goods forming part of her stock in trade, a debt within provision of bankruptcy act; Dight v. Chapman, 65 L.R.A. 793, which holds liability of stockholders for corporate debts a debt provable in bankruptcy proceedings.

51 L. R. A. 353, PRESS PUB. CO. v. MONROE, 19 C. C. A. 429, 38 U. S. App. 410, 73 Fed. 196.

Exclusive rights in unpublished manuscript or information.

Annotation cited in Vernon Abstract Co. v. Waggoner Title Co. 49 Tex. Civ. App. 147, 107 S. W. 919, holding compiler of data forming abstracts of land titles is entitled to exclusive use of such abstract while he keeps it from publication.

Cited in footnotes to Miffin v. R. H. White, Co. 61 L.R.A. 134, which holds exclusive right under copyright lost by author's permitting publication in magazine of chapters of book without other than general notice of magazine publishers; Kipling v. G. P. Putnam's Sons, 65 L.R.A. 873, which holds merely placing a design on the covers of an edition of an author's works, without registering it as a trademark or giving notice that it is such does not protect it from use by others.

Cited in notes (66 L.R.A. 447) on effect of omitting notice of copyright from licensed publication; (37 L.R.A.(N.S.) 944, 945) on injunction: against publication or sale of letters.

Distinguished in American Law Book Co. v. Chamberlayne, 91 C. C. A. 281, 165 Fed. 316, holding author who has sold copyright of article cannot maintain action for trespass upon literary property therein.

Restrictions on permissive use.

Cited in Bobbs-Merrill Co. v. Straus, 15 L.R.A.(N.S.) 769, 77 C. C. A. 607, 147 Fed. 19, holding publication not limited by printing notice on one of first pages of book that sale at less than stated price will be treated as infringement of copyright.

What constitutes publication.

Cited in Werckmeister v. American Lithographic Co. 68 L.R.A. 598, 69 C. C. A. 553, 134 Fed. 328, holding exhibition of painting at academy under restrictions as to admission and use not a publication; F. W. Dodge Co. v. Construction Information Co. 183 Mass. 65, 60 L.R.A. 811, 97 Am. St. Rep. 412, 66 N. E. 204, holding information regarding erection of buildings and construction of public works to be done on contracts not published by furnishing it to subscribers.

Annotation cited in Chamber of Commerce v. Wells, 100 Minn. 213, 111 N. W. 157, holding use made of stock bond and grain quotations including recording them upon blackboard by chamber of commerce and members is not general publication thereof.

Cited in footnote to Werckmeister v. American Lithographic Co. 68 L.R.A. 591, which holds exhibition of painting at academy of arts for entry to which a fee is charged not a publication.

Distinguished in Wagner v. Conried, 125 Fed. 800, holding offer for sale of edition of opera to whomsoever will buy and sale of number of copies constitutes publication.

Exemplary damages.

Cited in Lampert v. Judge & D. Drug Co. 238 Mo. 416, 37 L.R.A.(N.S.) 536, 141 S. W. 1095, Ann. Cas. 1913A, 351, holding that punitive damages may be allowed for infringement of trademark, though actual damages are nominal.

Cited in notes (16 L.R.A.(N.S.) 442) on necessity of actual malice to justify exemplary damages for tort; (37 L.R.A.(N.S.) 534) on punitive damages for infringing tradename, trademark or copyright where amount of actual damage not established; (59 Am. St. Rep. 601) on exemplary damages against corporations.

Common-law action for infringment of copyright.

Cited in note (2 L.R.A.(N.S.) 914) on common-law action for infringement of copyright.

51 L. R. A. 381, RHOBIDAS v. CONCORD, 70 N. H. 90, 85 Am. St. Rep. 604, 47 Atl. 92.

Municipal liability for violation of private rights.

Cited in Flanders v. Franklin, 70 N. H. 169, 47 Atl. 88, holding municipality invading property right of land owner by unreasonably turning surface water upon his land is liable for resulting injury; Roberts v. Dover, 72 N. H. 154, 55 Atl. 895, holding duties to individuals of city undertaking construction and management of sewers for local advantage are measured by rule of ordinary care applying to private parties.

— In exercise of a public duty.

Cited in Gates v. Milan, 76 N. H. 136, 35 L.R.A.(N.S.) 600, 80 Atl. 39, holding town not liable for injury to employe in improving highway; Richmond v. Lincoln, 167 Ind. 470, 79 N. E. 445, holding city operating electric light plant for municipal and commercial purposes, does not act in governmental capacity; Harris v. Salem School Dist. 72 N. H. 425, 57 Atl. 332, holding duty of school district to transport pupil to and from school is public, and no action lies for its negligent performance.

Cited in footnotes to Peterson v. Wilmington, 56 L.R.A. 959, which denies city's liability for injury to fireman from negligence in permitting apparatus to get out of repair; Colwell v. Waterbury, 57 L.R.A. 218, which denies city's liability for injury to employee through defect in machine for crushing stone for highways; Bowden v. Kansas City, 66 L.R.A. 181, which holds that city is performing ministerial public duty in maintaining fire station so as to be liable in damages to employee for personal injuries resulting from neglect of city to furnish reasonably safe place to work.

Cited in notes (23 L.R.A.(N.S.) 207; 25 L.R.A.(N.S.) 242) on municipal liability for tort in connection with waterworks; (108 Am. St. Rep. 138, 157, 163) as to what municipal corporations are answerable for injuries due to defects in streets and other public places.

— Acts of municipal employees.

Cited in Aschoff v. Evansville, 34 Ind. App. 31, 72 N. E. 279, holding waterworks trustees appointed by mayor under statute represent city; Richmond v.

Lincoln, 167 Ind. 471, 79 N. E. 445, holding electric light commissioners appointed and removable by council represent city and latter is liable for their negligence; Lockwood v. Dover, 73 N. H. 212, 61 Atl. 32, holding city liable for negligence of water commissioners and street and park commissioners in connection with water works and sewers.

Cited in footnote to Wilson v. Mitchell, 65 L.R.A. 158, which holds that municipality cannot ratify act of waterworks superintendent in wrongfully connecting well with city water mains so as to become liable for water taken from the well.

Distinguished in Hall v. Concord, 71 N. H. 369, 58 L.R.A. 458, 52 Atl. 864, where act complained of was not that of city's servants; O'Brien v. Derry, 73 N. H. 203, 60 Atl. 843, holding town not liable for injury of laborer on highway due to defective cart furnished by superintendent.

51 L. R. A. 389, ELLSWORTH v. METHENEY, 44 C. C. A. 484, 104 Fed. 119.

Injury of servant when not engaged in his employment.

Cited in Southern R. Co. v. Bentley, 1 Ala. App. 368, 56 So. 249, holding that man employed in unloading car is not acting in line of employment while riding on car to switch and back to pass time; Dayton Coal & I. Co. v. Dodd, 37 L.R.A.(N.S.) 464, 110 C. C. A. 395, 188 Fed. 608, holding that miners being gratuitously carried to work on private railroad are employes and not passengers; Moyse v. Northern P. R. Co. 41 Mont. 287, 108 Pac. 1062, holding that freight conductor, subject to be called on duty, was in discharge of his duties while asleep in caboose; Brown v. Shirley Hill Coal Co. 47 Ind. App. 358, 94 N. E. 574, holding operator not liable for injury from fall of stone from roof on miner returning from fellow-miner's room after securing loaned tool; Pioneer Min. & Mfg. Co. v. Talley, 152 Ala. 165, 12 L.R.A.(N.S.) 864, 43 So. 800, holding mining company not liable to miner injured by falling of draw slate at place where he went on his own business from his place of work; Schmnoske v. Asphalt Ready Roofing Co. 129 App. Div. 502, 114 N. Y. Supp. 87, holding servant could not recover where he left his own place of work and went to place where he was injured by machinery in motion; Dishon v. Cincinnati, N. O. & T. P. R. Co. 66 C. C. A. 345, 133 Fed. 477, Affirming 126 Fed. 205, 206, holding employee of railroad company guilty of contributory negligence in passing between cars at place not public crossing without looking or listening, after his day's work.

Cited in footnote to Mitchell-Tranter Co. v. Ehmet, 55 L.R.A. 710, which holds relation of master and servant not severed by noon intermission so as to prevent recovery for injury while working in unsafe place by direction of superior officer.

Cited in note (12 L.R.A.(N.S.) 854) on existence of relationship where servant goes on master's premises at other than hours of actual labor.

Liability of licensor to licensee of premises.

Cited in Hupfer v. National Distilling Co. 114 Wis. 291, 90 N. W. 191, on duty of licensor to licensee as to safety of premises; De Haven v. Hennessey Bros. & E. Co. 69 C. C. A. 620, 137 Fed. 476, holding licensee using elevator does not assume risk of negligence of licensor or his servants; Winters v. Baltimore & O. R. Co. 100 C. C. A. 462, 177 Fed. 50, holding railroad employee had license to ride on top of camp car where employees habitually did so with knowledge of section foreman and conductor; Tutt v. Illinois C. R. Co. 44

C. C. A. 320, 104 Fed. 744, holding question as to existence of implied license was for jury in action for injury of child on railroad track at place where people were constantly crossing.

Cited in note (36 L.R.A.(N.S.) 494) on liability to trespasser or bare licensee from active negligence.

Master's duty to warn servant.

Cited in Wright v. Stanley, 56 C. C. A. 234, 119 Fed. 333, holding where there is safe and unsafe way of operating machinery it is master's duty to show unskilled employee the safe way.

Necessity of furnishing safe place for miners to work.

Cited in footnote to Tradewater Coal Co. v. Johnson, 61 L.R.A. 161, which holds master liable for failure of loaders to remove loose coal hanging in nine, rendering it unsafe for other employees.

51 L. R. A. 393, LINDSAY v. UNITED STATES SAV. & L. CO. 127 Ala. 366, 28 So. 717.

Payment of legal interest as condition of relief from usury.

Followed in Barnett v. Lehman-Durr Co. 127 Ala. 673, 28 So. 1010, holding bill to redeem from mortgage and enjoin foreclosure sale, alleging usury in mortgage debt, property dismissed for failure to offer to pay interest.

Cited in Ward v. Bank of Abbeville, 130 Ala. 600, 30 So. 341, holding decree in action for relief from usury is erroneous in requiring complainant to pay anything in excess of loan with legal interest; First Nat. Bank v. Clark, 161 Ala. 502, 49 So. 807, holding statute abrogating rule requiring complainant to offer to pay principal debt with legal interest, does not impose penalty for usury or impair vested contract right.

Distinguished in Barclift v. Fields, 145 Ala. 266, 41 So. 84, holding under statute mortgagor seeking relief from usurious mortgage may have it without paying any interest.

Construction of revisory statute.

Cited in Southern R. Co. v. Smith, 163 Ala. 186, 50 So. 390, holding statute not changed by revisory statute with altered phraseology unless legislative intent to change law is clear.

51 L. R. A. 396, MONTGOMERY BEER BOTTLING WORKS v. GASTON, 126 Ala. 425, 85 Am. St. Rep. 42, 28 So. 497.

Documents admissible to prove enactment of statute.

Cited in Robertson v. State, 130 Ala. 169, 30 So. 494, holding recourse may be had only to bill itself as enrolled, signed and approved and to journals of two houses of legislature; State ex rel. Frederick v. Brodie, 148 Ala. 384, 41 So. 180, holding courts will not hear evidence outside journals of houses to sustain or defeat statute.

What constitutes journal of legislature.

Cited in State ex rel. Crocker v. Junkin, 79 Neb. 542, 113 N. W. 256, as to what constitutes legislative journals.

Conclusiveness of enrolled bill.

Cited in note (40 L.R.A.(N.S.) 11, 19, 20, 38) on conclusiveness of enrolled bill.

51 L. R. A. 403, BROWN v. JOHNSON BROS. 127 Ala. 292, 85 Am. St. Rep. 134, 28 So. 579.

Avoidance of contract by alteration thereof.

Cited in Bryan v. Carter, 169 Ala. 516, 51 So. 999, holding that change of name of agent for lessor vitiates lease; Prim v. Hammel, 134 Ala. 655, 92 Am. St. Rep. 52, 32 So. 1006, holding avoiding of contract by material alteration after its execution does not depend on question of detriment to maker; Houston v. Davis, 162 Ala. 124, 49 So. 869, holding alteration of note constituting rental contract by change of amount discharges maker from liability thereon.

Cited in footnotes to Rochford v. McGee, 61 L.R.A. 335, which holds removal of note written below perforated line on application for insurance, material alteration rendering it void; Foxworthy v. Colby, 62 L.R.A. 393, which holds unauthorized insertion of word "gold" before word "dollars."

Cited in note (86 Am. St. Rep. 127) on unauthorized alteration of written instruments.

51 L. R. A. 404, SMITH v. STATE, 155 Ind. 611, 58 N. E. 1044.

Validity of fish and game laws.

Cited in People v. Bootman, 180 N. Y. 10, 72 N. E. 505, 2 Ann. Cas. 226, 19 N. Y. Crim. Rep. 36, holding legislature may prohibit possession of game in close season though taken in another state and brought in during open season; State v. Nielsen, 51 Or. 595, 131 Am. St. Rep. 765, 95 Pac. 720, 16 Ann. Cas. 1113, holding laws of different states regulating right to fish in boundary waters are valid if in harmony, if not, law of state most restrictive prevails; State v. Hume, 52 Or. 6, 95 Pac. 808, sustaining act requiring license to be obtained and fee to be paid by those engaging in business of canning salmon.

Cited in footnote to State v. Mallory, 67 L.R.A. 773, denying right of state to forbid nonresident landowner to take fish and game on his property within the state.

Construction of statutes.

Cited in Cummins v. Pence, 174 Ind. 124, 91 N. E. 529, holding that thing within intent of act is as much part of it as if written therein.

51 L. R. A. 410, MERENESS v. FIRST NAT. BANK, 112 Iowa, 11, 84 Am. St. Rep. 318, 83 N. W. 711.

Nature of certificate of deposit.

Cited in Re Brown, 113 Iowa, 354, 85 N. W. 617, holding liability of payor to payees named in certificate of deposit is similar to that of maker of promissory note.

Cited in notes (1 L.R.A.(N.S.) 1130) as to when demand must be made on certificate of deposit to prevent bar of limitations; (29 L.R.A.(N.S.) 686, 687) as to when statute begins to run on certificate of deposit.

Overruled in Elliott v. Capital City State Bank, 128 Iowa, 276, 1 L.R.A. (N.S.) 1134, 111 Am. St. Rep. 198, 103 N. W. 777, holding demand certificate of deposit is not treated as promissory note as regards statute of limitations.

Accrual of right of action on demand obligation.

Cited in Re Deaner, 126 Iowa, 703, 106 Am. St. Rep. 374, 102 N. W. 825, holding action maintainable by wife against husband on demand notes given by husband to wife any time after they are executed.

Tolling statute of limitations by fraud and concealment.

Cited in Boyd v. Beebe, 64 W. Va. 220, 17 L.R.A.(N.S.) 665, 61 S. E. 304, holding mere silence as to fraud in obtaining money does not prevent running of statute against action to recover it back.

Cited in footnotes to Smith v. Blachley, 53 L.R.A. 849, which holds running of limitation against action to recover back money not prevented by fraud unless investigation prevented by affirmative efforts; Pietsch v. Milbrath, 68 L.R.A. 945, which holds that the fraudulent concealment of a cause of action at law will not prevent running of limitations where the statute expressly states that it shall not run under such circumstances in equity cases.

— By disability of party to assert right.

Cited in Roclefsen v. Pella, 121 Iowa, 155, 96 N. W. 738, holding where statute commences to run against person of sound mind it will not be tolled by his subsequent insanity.

Cited in note (104 Am. St. Rep. 768) on suspension of running of statute of limitations by death of ancestor.

51 L. R. A. 412, STEICHEN v. FEHLEISEN, 112 Iowa, 612, 84 N. W. 715.

Construction of covenant not to engage in competitive business.

Cited in footnotes to Love v. Stidham, 53 L.R.A. 397, which holds covenant by partnership selling business not to engage in business within specified distance of old stand, broken by one partner so engaging; Pholman v. Dawson, 54 L.R.A. 913, which holds agreement on sale of business not to engage in barber business in any manner, violated by working as employee in other shop; Raymond v. Yarrington, 62 L.R.A. 962, which holds seller of business violating agreement not to engage in such business liable for nominal damages; Eugene Dietzgen Co. v. Kokosky, 66 L.R.A. 503, which sustains right to injunction against member of former partnership agreeing on sale of business not to engage directly or indirectly in competitive business within specified city for designated period from continuing in rival business into which he entered in violation of such agreement; Keene Syndicate v. Wichita Gas., E. L. & P. Co. 67 L.R.A. 61, which holds void lease by corporation generating electricity to rival company with agreement not to engage in business for ten years.

Cited in note (24 L.R.A.(N.S.) 926) on validity of agreement in restraint of trade, ancillary to sale of business or profession, as affected by territorial scope.

Joint and several obligation of partnership contract.

Cited in Barron v. Collenbaugh, 114 Iowa, 73, 86 N. W. 53, holding agreement not to engage in certain business while partnership is engaged therein not binding after identity of partnership is destroyed.

Disapproved in Raymond v. Yarrington, 96 Tex. 448, 62 L.R.A. 965, 97 Am. St. Rep. 914, 73 S. W. 800, holding it is breach of contract for individual partner to engage in business which partnership has agreed to stay out of.

Misjoinder of causes of action.

Cited in Iowa Lillooet Gold Min. Co. v. Bliss, 144 Fed. 455, holding defaulting employee cannot be joined as defendant with guaranty company in action upon latter's bond wherein employee's undertaking is with company.

51 L. R. A. 414, STATE EX REL. REMLEY v. MEEK, 112 Iowa, 338, 84 Am. St. Rep. 342, 84 N. W. 3.

Law of fishing.

Cited in note (131 Am. St. Rep. 763) on law of fishing.

Acquittal as affecting civil action.

Cited in State v. Roach, 83 Kan. 609, 31 L.R.A.(N.S.) 672, 112 Pac. 150, 21 Ann. Cas. 1182, holding that acquittal of criminal charge of maintenance of place for illegal sale of liquors is not bar to injunction against such place as nuisance; State v. Cobb, 123 Iowa, 629, 99 N. W. 299, holding acquittal of charge of keeping liquor to be sold in violation of law is bar to action to condemn the liquor.

Cited in notes (11 L.R.A.(N.S.) 667) on judgment in criminal action as res judicata in civil action; (103 Am. St. Rep. 21, 26) on res judicata in criminal proceedings.

Distinguished in Busby v. State, 51 Tex. Crim. Rep. 309, 103 S. W. 638, holding judgment against person in civil suit is inadmissible against him on part of state in criminal action.

51 L. R. A. 419, NEWCOMB v. NEWCOMB, 108 Ky. 582, 57 S. W. 2.

Conflict of laws as to wills.

Cited in Higgins v. Eaton, 188 Fed. 963, holding that wills of realty must be executed in accordance with law of state where realty is situated.

Conclusiveness of foreign judgment.

Cited in footnote to McDonald v. Grand Trunk R. Co. 59 L.R.A. 448, which holds foreign judgment for defendant on merits bar to action in local courts.

— Probate of will.

Cited in note (115 Am. St. Rep. 518) on conclusiveness of foreign probate of will.

51 L. R. A. 425, OCEAN CITY ASSO. v. SHRIVER, 64 N. J. L. 550, 46 Atl. 690.

Title to accretions.

Cited in Spinning v. Pugh, 65 Wash. 494, 118 Pac. 635, holding that title to accretions belongs to owner of contiguous land to which addition is made; Ocean City Hotel & Development Co. v. Sooy, 77 N. J. L. 530, 73 Atl. 236, holding that if whole of street bounding land conveyed is covered by ocean, grantee is entitled to accretions, if not so covered, he is not entitled thereto; Atty. Gen. v. Morris & C. Dredging Co. 64 N. J. Eq. 569, 55 Atl. 59, holding as between vendor, vendee, and those claiming under them line of ordinary high tide at time of conveyance governs as to riparian rights; Stockley v. Cissna, 56 C. C. A. 324, 119 Fed. 829, holding right to accretion depends upon contiguity of claimant's estate to river.

Cited in footnote to Widdecombe v. Chiles, 61 L.R.A. 309, which holds accretions to granted land which has become riparian by washing away of intervening land belong to grantee instead of the government.

Cited in note (23 Eng. Rul. Cas. 163) on riparian owner's right to accretions.

Disapproved in Peuker v. Canter, 62 Kan. 371, 63 Pac. 617, holding owner of tract separated from river by another tract entitled to equitable proportion of alluvion formed within and beyond lines or other tract when river receded after advancing to and upon his land.

Title to soil in street.

Cited in Friedman v. Snare & T. Co. 71 N. J. L. 609, 70 L.R.A. 150, 108 Am. St. Rep. 764, 61 Atl. 401, 12 Ann. Cas. 497, holding in absence of evidence to contrary title and legal possession of abutting owner extend to middle of highway; Ocean City Hotel & Development Co. v. Sooy, 77 N. J. L. 530, 73

Atl. 236, holding conveyance by reference to map and to street as boundary is not conclusive as to title to soil in street.

Rights in submerged lands.

Cited in Atty. Gen. v. Central R. Co. 68 N. J. Eq. 204, 59 Atl. 348, on power of riparian commissioners to grant lands under water.

— Reappearance after submergence.

Cited in Simpson v. Moorhead, 65 N. J. Eq. 632, 56 Atl. 887, holding title to land once reclaimed remains in reclaiming owner whether afterwards overflowed by tidewater or not; Stockley v. Cissna, 119 Tenn. 176, 104 S. W. 792, holding owner of land carried away by avulsion is entitled thereto upon its reappearance.

51 L. R. A. 432, EDGERLY v. LAWSON, 176 Mass. 551, 57 N. E. 1020.

51 L. R. A. 433, TYLER v. REGISTRATION CT. JUDGES, 175 Mass. 71, 55 N. E. 812.

Proceeding in rem.

Cited in Merriman v. Currier, 191 Mass. 137, 77 N. E. 708, holding statutory action to enforce lien for materials furnished in construction of schooner is in rem; Carino v. Insular Government, 212 U. S. 456, 53 L. ed. 596, 29 Sup. Ct. Rep. 334, holding proceeding for registration of land in Philippines is in rem and may be taken to Supreme Court by writ of error; Whitney v. Wenman, 140 Fed. 960, holding proceeding to pass receiver's accounts is not action in rem.

— Acquisition of jurisdiction.

Approved in Farm Invest. Co. v. Carpenter, 9 Wyo. 152, 50 L.R.A. 761, 87 Am. St. Rep. 918, 61 Pac. 258, holding service by publication and registered mail of notice of proceedings to determine water rights is sufficient.

Cited in Sweet v. Boston, 186 Mass. 82, 71 N. E. 113, holding actual notice to minor and nonresident of proceedings to take land by eminent domain is not necessary; Minot v. Purrington, 190 Mass. 340, 77 N. E. 630, holding personal service not required to give validity to decree for management and distribution of trust fund; Leigh v. Greene, 193 U. S. 92, 48 L. ed. 629, 24 Sup. Ct. Rep. 390, holding in proceeding to enforce tax lien on property notice addressed to all parties interested in the real estate is sufficient.

Statutory provisions for registering or clearing title to land.

Cited in American Land Co. v. Zeiss, 219 U. S. 63, 55 L. ed. 96, 31 Sup. Ct. Rep. 200, upholding statute for quieting title on loss of public records, by action in rem; Title & Document Restoration Co. v. Kerrigan, 150 Cal. 307, 8 L.R.A.(N.S.) 686, 119 Am. St. Rep. 199, 88 Pac. 356, holding statute providing for action to establish title where public records are lost or destroyed by floods, fire or earthquake is valid; Robinson v. Kerrigan, 151 Cal. 46, 121 Am. St. Rep. 90, 90 Pac. 129, 12 Ann. Cas. 829, sustaining "Torrens Law" and holding it does not take property without due process of law or deny persons equal protection of law; State ex rel. Douglas v. Westfall, 85 Minn. 446, 57 L.R.A. 302, 89 Am. St. Rep. 571, 89 N. W. 175, holding "Torrens Law" not unconstitutional in that it deprives parties of interest in land without due process of land.

Cited in footnote to State ex rel. Douglas v. Westfall, 57 L.R.A. 297, which sustains act for Torrens system for registering land titles.

Distinguished in Bear Lake County v. Budge, 9 Idaho, 713, 108 Am. St. Rep. 179, 75 Pac. 614, holding provisions of statute for service by publication upon

claimants of right to use, water of steam in action to determine such rights are invalid.

— As prescribing a judicial act.

Cited in Title & Document Restoration Co. v. Kerrigan, 150 Cal. 321, 8 L.R.A. (N.S.) 686, 119 Am. St. Rep. 199, 88 Pac. 356, holding action under statute to establish title where public records are lost or destroyed by flood, fire or earthquake is judicial, not administrative; People ex rel. Smith v. Crissman, 41 Colo. 461, 92 Pac. 949, holding statute providing acts of registrars shall be performed under control of court does not devolve executive duties on court; State ex rel. Douglas v. Westfall, 85 Minn. 447, 57 L.R.A. 302, 89 Am. St. Rep. 571, 89 N. W. 175, holding same provision does not confer judicial duties on registrar of titles.

Delegation of judicial power.

Cited in Voorhies v. Voorhies, 66 Misc. 80, 120 N. Y. Supp. 677, on delegation of judicial authority to examiners of title.

Due process.

Cited in Blinn v. Nelson, 222 U. S. 7, 56 L. ed. 68, 32 Sup. Ct. Rep. 1, upholding statute for distribution of estate of absentee; Peirson v. Boston Elev. R. Co. 191 Mass. 231, 77 N. E. 769, holding by analogy legislature may provide, new trial shall not be forced upon litigants and that it is waived unless promptly asked for and reasons stated, to court and adverse party.

51 L. R. A. 447, NATIONAL GRANITE BANK v. TYNDALE, 176 Mass. 547, 57 N. E. 1022.

Cited in Tyndale v. Stanwood, 186 Mass. 60, 71 N. E. 83, on history of litigation related to cited case.

Contracts between husband and wife.

Cited in Tucker v. Gurtin, 78 C. C. A. 557, 148 Fed. 936 (dissenting opinion), on nonenforcement in equity of contract between husband and wife; Blackwell v. Blackwell, 196 Mass. 190, 81 N. E. 910, 12 Ann. Cas. 1070, on invalidity in equity of contracts between husband and wife; Atkins v. Atkins, 195 Mass. 128, 11 L.R.A.(N.S.) 276, 122 Am. St. Rep. 221, 80 N. E. 806, holding executory contract for sale of realty between husband and wife not enforceable in equity; Caldwell v. Nash, 190 Mass. 508, 77 N. E. 515, holding notes given by debtor to his wife for money borrowed of her invalid both at law and equity; Re Talbot, 110 Fed. 925, holding in Massachusetts wife cannot prove against estate of bankrupt husband for money loaned him from her separate estate.

Distinguished in Re Nickerson, 116 Fed. 1006, holding wife who is surety on and pays husband's notes, may prove same against husband's estate in bankruptcy; James v. Gray, 1 L.R.A.(N.S.) 323, 65 C. C. A. 385, 131 Fed. 401, holding wife may prove against bankrupt partnership for money loaned to it from her separate estate though her husband was partner.

Void note as payment.

Cited in Reggio v. Warren, 207 Mass. 537, 32 L.R.A.(N.S.) 345, 93 N. E. 805, 20 Ann. Cas. 1244, holding that beneficiary of trust who released estate on receipt of void note, receives small amount of cash, does not prevent his maintaing bill to rescind for mistake; Bass v. Wellesley, 192 Mass. 530, 78 N. E. 543, holding payment cannot be made by forged note.

Equitable estoppel.

Cited in footnotes to Hunt v. Reilly, 59 L.R.A. 206, which holds wife's failure to notify purchaser of rights after learning of forgery of her name to

husband's deed will not estop her to claim dower; Grice to Woodworth, 69 L.R.A. 584, which holds married woman estopped to set up invalidity of contract by her husband and herself to sell homestead for failure to comply with certain conditions after purchaser has paid purchase price, taken possession, and made valuable improvements.

51 L. R. A. 451, EIKHOFF v. GILBERT, 124 Mich. 353, 83 N. W. 110.

Libel of candidate for public office.

Cited in Smurthwaite v. News Pub. Co. 124 Mich. 384, 83 N. W. 116, holding publications which were discussions of matters involved in election and of fitness of candidates not libelous.

Cited in footnotes to Coffin v. Brown, 55 L.R.A. 732, which denies right to falsely attack character of appointee of governor to prevent latter's re-election; Star Pub. Co. v. Donahoe, 65 L.R.A. 980, which holds newspaper publication charging candidate for office with a criminal offense, not privileged.

Cited in note (104 Am. St. Rep. 136) on what libelous statements as to candidates are privileged.

51 L. R. A. 458, RENAUD v. STATE CT. OF MEDIATION & ARBITRATION, 124 Mich. 648, 83 Am. St. Rep. 346, 83 N. W. 620.

When mandamus lies.

Cited in Atty. Gen. ex rel. Hudson v. Detroit, 164 Mich. 376, 129 N. W. 879, granting mandamus to prevent holding of special election to amend city charter.

51 L. R. A. 461, PEOPLE v. MARSH, 125 Mich. 410, 84 Am. St. Rep. 584, 84 N. W. 472.

Pardon during prosecution.

Cited in Spafford v. Benzie Circuit Judge, 136 Mich. 27, 98 N. W. 741, sustaining pardon by governor before sentence; State v. Corrivau, 93 Minn. 39, 100 N. W. 638, on acceptance of commutation of sentence by prisoner as admission of guilt and waiver of right to appeal.

Conditional pardons.

Cited in Ex parte Houghton, 49 Or. 234, 9 L.R.A.(N.S.) 739, 89 Pac. 801, 13 Ann. Cas. 1101, holding governor may attach to commutation condition that unless prisoner remain law-abiding it will be revoked.

Distinguished in State ex rel. Davis v. Hunter, 124 Iowa, 574, 104 Am. St. Rep. 361, 100 N. W. 510, holding prisoner cannot be deprived of statutory diminution of sentence on account of good conduct in prison by condition imposed by executive granting suspension of sentence.

51 L. R. A. 463, PAGE v. CITIZENS' BKG. CO. 111 Ga. 73, 78 Am. St. Rep. 144, 36 S. E. 418.

Joint liability for tort.

Cited in Williams v. Inman, 1 Ga. App. 323, 57 S. E. 1009, holding attorney and client may be joined as trespassers, where they wrongfully levy attachment.

— Partnership.

Cited in Johnson v. Ridley, 185 Fed. 217, sustaining demurrer for misjoinder of parties defendant in action for malicious prosecution against partners jointly, where declaration contains no allegation showing that they acted jointly; Malone & G. Co. v. Hammond, 6 Ga. App. 120, 64 S. E. 666, holding partnership liable for trespass to personalty committed by authority of its members.

Cited in note (3 L.R.A.(N.S.) 221, 222) on liability for act of co-partner in causing false imprisonment.

Distinguished in Martin v. Simkins, 116 Ga. 256, 42 S. E. 483, holding partnership not liable under code for acts of partner in procuring illegal imprisonment, also citing annotation on this point; Hendricks v. Middlebrooks Co. 118 Ga. 136, 44 S. E. 835, holding partnership not liable for circulation, by one of its members, of slanderous reports concerning an individual.

What constitutes termination of prosecution.

Cited in Clark v. Douglas, 6 Ga. App. 490, 65 S. E. 304, holding prosecution is terminated by voluntary abandonment and dismissal; Pickard v. Bridges, 7 Ga. App. 463, 67 S. E. 117, holding prosecution ended where accused was arrested and taken before magistrate, who dismissed warrant and discharged him and grand jury met and adjourned without further prosecution; Schaefer v. Cremer, 19 S. D. 658, 104 N. W. 468, holding prosecution is not terminated where defendant therein obtains release by bond, and charge is dismissed at hearing by state's attorney with defendant's consent.

Cited in footnote to Luby v. Bennett, 56 L.R.A. 261, which holds suit for malicious prosecution maintainable of material issues in prosecution decided in defendant's favor before suit commenced.

Cited in note (2 L.R.A.(N.S.) 939) as to when action sufficiently at an end to support suit for malicious prosecution.

What constitutes false imprisonment.

Cited in McIntosh v. Bullard, 95 Ark. 233, 129 S. W. 85, holding that constable, who arrests person on warrant regular on face, is not liable for false imprisonment; Berger v. Saul, 113 Ga. 871, 39 S. E. 326, holding under statute only void process and bad faith need be shown to support count for false imprisonment; Michael v. Bacon, 5 Ga. App. 333, 63 S. E. 228, holding arrest and imprisonment under affidavit and warrant which are in conformity to law is not false imprisonment; Williams v. Sewell, 121 Ga. 665, 49 S. E. 732, holding officer who in good faith makes arrest under invalid judgment imposing fine to be enforced by hard labor is not liable for false imprisonment; Gordon v. West, 129 Ga. 534, 13 L.R.A.(N.S.) 550, 59 S. E. 232, holding arrest and imprisonment under bail proceedings regularly sued out and valid gives no right of action for false imprisonment.

Dealing with demurrer and answer at same time.

Cited in Morris v. Duncan, 126 Ga. 468, 115 Am. St. Rep. 105, 54 S. E. 1045, holding error in striking out answer will be considered on second writ of error where judgment on motion in nature of general demurrer to petition was reversed on first writ of error.

51 L. R. A. 496, MEYER v. STATE, 112 Ga. 20, 81 Am. St. Rep. 17, 37 S. E. 96.

Illegal hazards or lotteries.

Cited in State v. Perry, 154 N. C. 619, 70 S. E. 387; De Florin v. State, 121 Ga. 594, 104 Am. St. Rep. 177, 49 S. E. 699, holding "suit club" whose members paid one dollar weekly, weekly drawings being held, and holder of lucky number getting suit of clothes, was lottery; Whitley v. McConnell, 133 Ga. 739, 27 L.R.A.(N.S.) 288, 134 Am. St. Rep. 223, 66 S. E. 933, holding scheme whereby purchasers of lots were to have chance in drawing to get another lot as prize is illegal; State ex rel. Hathorn v. United States Exp. Co. 95 Minn. 448, 104 N. W. 556, as to what constitutes lottery; Russell v. Equitable Loan & Secur. Co. 129 Ga. 161, 58 S. E. 881, 12 Ann. Cas. 129, on what constitutes a gift enterprise;

Quatsoe v. Eggleston, 42 Or. 319, 71 Pac. 66, holding voting scheme for distributing pianos in which element of chance was wanting was not lottery; Equitable Loan & Secur. Co. v. Waring, 117 Ga. 614, 62 L.R.A. 121, 97 Am. St. Rep. 177, 44 S. E. 320, holding scheme not illegal where element of prize was missing elements of consideration and of chance being present.

Cited in footnotes to State ex rel. Prout v. Nebraska Home Co. 60 L.R.A. 448, which holds scheme by which common fund is distributed among contributors, a valuable preference in distribution depending on chance, a lottery; Equitable Loan & S. Co. v. Waring, 62 L.R.A. 93, which holds consideration, prize, and chance essential elements of lottery; People ex rel. Ellison v. Lavin, 66 L.R.A. 601, which holds distribution of prizes to those who shall make closest estimate of number of cigars on which tax is paid during specified month, a lottery; People v. McPhee, 69 L.R.A. 506, which holds a scheme by which a certain number of persons pay a small sum weekly and choose by lot each week one of the number to receive a suit of clothes worth much more than the weekly payment after which he ceases to be a member, a lottery, although each member is entitled to trade out the amount paid in whenever he chooses to withdraw.

Cited in notes (20 L.R.A.(N.S.) 242) on operation of slot machine as gambling; (121 Am. St. Rep. 704) on gambling games and devices.

51 L. R. A. 499, CLARKE v. HAVARD, 111 Ga. 242, 36 S. E. 837.

Who is agent of lender in negotiating loan.

Distinguished in Barksdale v. Security Invest. Co. 120 Ga. 394, 47 S. E. 943, holding deposit of fund in bank by lender subject to check of negotiator for amount of loan, after lender approves it, does not make negotiator lender's agent.

Usury in loan through agent.

Writ of error to second trial, 115 Ga. 883, 42 S. E. 264, Affirming directed verdict where new evidence showed negotiator of loan was not agent of lender and lender had no knowledge of commissions charged.

Cited in Wilkins v. Gibson, 113 Ga. 54, 84 Am. St. Rep. 204, 38 S. E. 374, holding commissions charged by negotiators of loan do not render contract usurious unless they were agents of lender who knew of receipt of compensation from borrower and other facts; McCall v. Herring, 116 Ga. 240, 42 S. E. 468, holding transaction usurious where commission retained by agent added to interest contracted to be paid exceeded highest rate allowed.

Cited in note (19 L.R.A.(N.S.) 394) on commissions charged borrower by lender had no knowledge of commissions charged.

51 L. R. A. 504, MILLER v. FREEMAN, 111 Ga. 654, 36 S. E. 961.

Accounting between partners.

Cited in McConnell v. Stubbs, 124 Ga. 1044, 53 S. E. 698, on partner's right to an accounting.

Suit between partners during existence of partnership.

Cited in Paulk v. Creech, 8 Ga. App. 742, 70 S. E. 145, holding that one partner cannot sue another at law.

Distinguished in Benton v. Hunter, 119 Ga. 384, 46 S. E. 414, where partnership had been dissolved.

51 L. R. A. 509, STATE v. KODAT, 158 Mo. 125, 81 Am. St. Rep. 292, 59 S. W. 73.

Testimony of one spouse against other in criminal case.

Cited in State v. Witherspoon, 231 Mo. 723, 133 S. W. 323, holding that wife cannot testify against husband in criminal action; Ex parte Reville, 58 Fla. 188, 27 L.R.A.(N.S.) 281, 50 So. 685, 19 Ann. Cas. 48 (dissenting opinion), on existence at common law of privilege as to criminating consort testimony; State v. Bean, 104 Mo. App. 256, 78 S. W. 640, holding husband may be convicted of wife abandonment on affidavit and testimony of wife.

Cited in note (2 L.R.A.(N.S.) 864; 106 Am. St. Rep. 764) on husband and wife as witness for or against each other in criminal prosecutions.

51 L. R. A. 510, ROCHE v. SMITH, 176 Mass. 595, 79 Am. St. Rep. 345, 58 N. E. 152.

Real estate broker's right to commission.

Cited in Wenks v. Hazard, 149 Iowa, 21, 127 N. W. 1099, holding broker entitled to commissions on procuring purchaser with whom seller making contract, though purchaser fails to perform; Reynolds-McGinness Co. v. Green, 78 Vt. 32, 61 Atl. 556, holding broker finding purchaser is entitled to commission, though party employing him refuses to convey; Carnes v. Howard, 180 Mass. 572, 63 N. E. 122, holding in absence of bad faith on part of party to exchange broker is entitled to commission for securing binding contract without proof of ability of such party to perform; Weaver v. Richards, 144 Mich. 412, 6 L.R.A.(N.S.) 860, 108 N. W. 382, on right of agent to assume that his principal is bound to show valid title to the property for which he secured purchaser.

Cited in footnotes to Caston v. Quimby, 52 L.R.A. 785, which denies right to commissions for obtaining unaccepted offer to loan money, requiring payment in gold; Cadigan v. Crabtree, 66 L.R.A. 982, which holds real estate broker not entitled to commission where after producing customer willing to negotiate for lease principal in good faith decides not to lease and discharges broker, although he subsequently decides to lease and makes contract with the person produced by the broker.

Contract to convey by one who cannot perform.

Cited in Atwood v. Walker, 179 Mass. 518, 61 N. E. 58, on liability of party contracting to sell land which he holds by defective title; Boyden v. Hill, 198 Mass. 484, 85 N. E. 413, holding vendor in contract to sell land bound thereby, though under misapprehension as to his title, where vendee is not guilty of bad faith.

— Measure of damages.

Cited in note (106 Am. St. Rep. 971) on measure of vendee's damages on breach of contract to convey realty.

Distinguished in Boyden v. Hill, 198 Mass. 484, 85 N. E. 413, where option was given to enable its holder to offer to sell to third party.

51 L. R. A. 513, STEVENS v. CHAMBERLAIN, 40 C. C. A. 421, 100 Fed. 378.

Vice-principal or fellow servant.

Cited in Kitchen Bros. Hotel Co. v. Dixon, 71 Neb. 298, 98 N. W. 816, holding bell and elevator boys in hotel are fellow servants; also citing annotation on this point; Katahdin Pulp Paper Co. v. Peltona, 84 C. C. A. 338, 156 Fed. 343, holding question on issue, as to whether employee, was vice-principal or

fellow servant referring to date later than injury not injurious where such issue was unimportant.

Annotation cited in Dill v. Marmon, 164 Ind. 519, 69 L.R.A. 171, 73 N. E. 67, as to who is vice-principal; Lunn v. Morris & Co. 81 Kan. 100, 105 Pac. 15, as to who is fellow servant: Galvin v. Pierce, 72 N. H. 82, 54 Atl. 1014, on rank of servant and extent of control over others as test to determine whether he represents master.

Cited in footnotes to Mitchell-Tranter Co. v. Elmet, 55 L.R.A. 710, which authorizes recovery for injury during noon intermission to servant removing broken timbers at superior's direction: Swift & Co. v. Bleise, 57 L.R.A. 147, which holds negligent act of foreman in ordering subject workman on elevator which the former negligently operates, not act of fellow servant; Kelly v. New Haven Steamboat Co. 57 L.R.A. 494, which denies owner's liability for injuries to employee from neglect of mate to use fender provided for bringing vessel into dock; Southern Pacific R. Co. v. Schoer, 57 L.R.A. 707, which holds master liable for injury to servant by one having power to direct and control him and others though not actually exercising superintendence at the time; McLaine v. Head & D. Co. 58 L.R.A. 462, which denies foreman's implied authority to bind employer by promise that one appointed to warn laborers in trench of dumping of dirt therein will perform his duty; Illinois S. R. Co. v. Marshall, 66 L.R.A. 298, which holds person placed by railroad company in charge of operation of pile driver and car on which it is carried with discretion to determine when to remove apparatus from main track to avoid passing trains and method of doing so and authority to direct acts of other employees in accomplishing the purpose, a foreman or vice principal; Alabama G. S. R. Co. v. Baldwin, 67 L.R.A. 340, which holds railroad conductor signaling engineer to back engine to effect a coupling not a fellow servant of brakeman attempting to prepare cars for coupling; Johnson v. Union P. Coal Co. 67 L.R.A. 506, which holds persons entrusted by master with management or direction of general work or some particular part thereof not fellow servants with subordinate employees; Dill v. Marmon, 69 L.R.A. 163, which denies master's liability for injury to servant assisting in shifting cars to be loaded at mill due to negligence of foreman in charge of men but not at the head of a department of the work in directing him to push car started by momentum of another car; Beresford v. American Coal Co. 70 L.R.A. 256, which holds mine owner liable for act of superintendent who has general command of operation of mine in sending engineer away from engine operating cage hoist and attempting to operate same himself with knowledge of his incompetency.

Cited in notes (20 L.R.A.(N.S.) 434) on section foreman as fellow servant of members of crew with respect to operation of hand car; (23 L.R.A.(N.S.) 302) on liability of master for injury to vice principal by negligence of servant; (30 L.R.A.(N.S.) 48) as to who are fellow servants of lineman; (48 L. ed. U. S. 1007) on railway telegraph operators as fellow servants of railway trainmen.

Liability of master to volunteers.

Cited in Kelly v. Tyra, 103 Minn. 180, 17 L.R.A.(N.S.) 342, 114 N. W. 750, as to duty of master to volunteer; Baynes v. Billings, 30 R. I. 61, 73 Atl. 625, holding question whether elevator boy's instructions authorized him to seek assistance of plaintiff in adjusting screen on elevator top was for jury.

Cited in footnote to Cincinnati, N. O. & T. P. R. Co. v. Finnell, 57 L.R.A. 266, which holds master not liable for injury to seventeen-year-old boy while helping brakeman to load piano at their request.

Masters duty to instruct and warn.

Cited in Gaska v. American Car & Foundry Co. 127 Mo. App. 184, 103 S. W. 3, holding under proper allegations character, extent and complexity of business may be given in evidence on issues as to necessity of regulations or existence of reasonable ones.

Cited in note (26 L.R.A.(N.S.) 626) on delegability of master's duty to instruct or warn servants.

51 L. R. A. 532, O'NEIL v. GREAT NORTHERN R. CO. 80 Minn. 27, 82 N. W. 1086.

Assumption of risk of service.

Cited in Boyer v. Eastern R. Co. 87 Minn. 368, 92 N. W. 326, holding that a person engaged in unloading logs from flat cars assumed the risk of injury thereby from the negligence of fellow servants.

— Foreman as fellow-servant or vice-principal.

Cited in Anderson v. Pittsburgh Coal Co. 108 Minn. 465, 26 L.R.A.(N.S.) 636, 122 N. W. 794, holding that failure of hatch tender to give coal heaver customary warning before bucket was lowered was negligence of vice principal; Foley v. Cudahy Packing Co. 119 Iowa, 256, 93 N. W. 284, holding that if staging used in construction work is rendered unsafe by order of the one in charge of the work it is the act of a vice-principal for which the master is liable; Wilder v. Great Western Cereal Co. 134 Iowa, 461, 109 N. W. 789, on the superintendent of construction work as a vice-principal; Dixon v. Union Ironworks, 90 Minn. 495, 97 N. W. 375, holding that a foreman engaged with other servants in loading machinery upon a wagon was a fellow servant and not a vice-principal; Barrett v. Reardon, 95 Minn. 429, 104 N. W. 309, holding that a foreman who had charge of a crew of men, who had power to direct the places in which they worked and general supervision of the work was a vice-principal; Berneche v. Hilliard, 101 Minn. 369, 112 N. W. 392, holding that the act of the foreman in signalling the engineer of the hoist engine was the act of a fellow servant for which the master was not liable; Pasco v. Minneapolis Steel & Machinery Co. 105 Minn. 133, 18 L.R.A.(N.S.) 155, 117 N. W. 479, holding that the test to determine whether a party is a fellow servant or vice-principal is the nature of the service and not his rank or authority, whether he is entrusted with some absolute duty of the master.

Application of "Fellow-servants Act."

Cited in Christiansen v. Chicago, M. & St. P. R. Co. 107 Minn. 344, 120 N. W. 300, holding it question for jury whether track repairer was subject to hazards peculiar to operation of railroads; Jenning v. Great Northern R. Co. 96 Minn. 307, 1 L.R.A.(N.S.) 701, 104 N. W. 1079, holding that a crew consisting of nine men engaged in the operation of a steam shovel in a sand pit, were not fellow servants on a "railroad."

Validity of fellow-servant act.

Cited in Kiley v. Chicago, M. & St. P. R. Co. 138 Wis. 250, 119 N. W. 309, (dissenting opinion), on validity of fellow-servant act.

Delegability of master's duty to warn.

Cited in note (26 L.R.A.(N.S.) 639) on delegability of master's duty to instruct or warn servants.

51 L. R. A. 622, MITCHELL v. GEORGIA & A. R. CO. 111 Ga. 760, 36 S. E. 971.

Possessory right maintainable by action.

Cited in Rowland v. Gregg, 122 Ga. 823, 50 S. E. 949, on right of agent to protect his possession under statute; Jackson v. State, 124 Ga. 136, 52 S. E. 155, holding one cannot be convicted of trespass in going on person's land where it appears such person was merely agent having no estate in the land; Sheriff v. Thompson, 116 Ga. 438, 42 S. E. 738, holding principal may proceed by possessory warrant against agent who refuses to deliver principal's property; Monk v. Gay, 3 Ga. App. 357, 59 S. E. 1117, holding possessory warrant for certain rollers property awarded to person who cut wood for them and gave them to mechanic for manufacture as against purchaser from mechanic.

Distinguished in Boyd v. McArthur, 120 Ga. 977, 48 S. E. 358, where possession was in bailee with interest.

Nature of action of trover.

Cited in Hicks v. Moyer, 10 Ga. App. 489, 73 S. E. 754, holding that action of trover is purely statutory and is available in any case in which trover replevin or detinue could have been employed at common law.

Who may maintain trover.

Cited in Southern R. Co. v. Strozier, 10 Ga. App. 158, 73 S. E. 42, holding that plaintiff to support recovery in action of trover, must show either title in himself, prior possession, or right of possession; Burch v. Pedigo, 113 Ga. 1159, 54 L.R.A. 808, 39 S. E. 493, as to propriety of suit in trover by one person for use of another; Roper Wholesale Grocery Co. v. Favor, 8 Ga. App. 181, 68 S. E. 883; Painter v. McGaha, 6 Ga. App. 54, 64 S. E. 129, holding possessor of property under conditional sale may maintain trover; Crum v. Bray, 121 Ga. 712, 49 S. E. 686, 1 Ann. Cas. 991, holding owner of hogs wrongfully impounded may maintain trover therefor; Reid v. Caldwell, 114 Ga. 677, 40 S. E. 712, holding purchaser of corporate stock in whom title has not vested cannot maintain trover for it; Phelan v. Vestner, 125 Ga. 827, 54 S. E. 697, holding petition alleging possession of property by defendant and his refusal to deliver, ownership by plaintiff, and value and identification of property states cause of action in trover.

Cited in note (26 L.R.A.(N.S.) 841) on right of agent to maintain action for conversion of personalty.

Maintenance of suit for another's benefit.

Cited in Atkinson v. Cawley, 112 Ga. 486, 37 S. E. 715, as indicating that petition by person as governor should be treated as petition by him as individual; Norwich Union F. Ins. Soc. v. Wellhouse, 113 Ga. 974, 39 S. E. 397, holding person having no cause of action on insurance policy cannot maintain action thereon for another's use.

— Amendment of pleading.

Cited in Louisville & N. R. Co. v. Ramsay, 137 Ga. 577, 73 S. E. 847, allowing amendment of petition for damages to land, by adding name of person who held title at commencement of action and thereafter transferred title to petitioners; Willis v. Burch, 116 Ga. 375, 42 S. E. 718, holding petition in trover by one suing for another is not amendable by striking out name of nominal plaintiff; Atlantic Coast Line R. Co. v. Hart Lumber Co. 2 Ga. App. 90, 58 S. E. 316, holding plaintiff may amend by substituting one but not two persons suing for his use; McElmurray v. Harris, 117 Ga. 919, 43 S. E. 987,

holding where owner sues in trover for use of another, user's name may be treated as surplusage.

Construction of statute as declaratory of existing law.

Cited in Wilensky v. Central R. Co. 136 Ga. 891, 72 S. E. 418, Ann. Cas. 1912 D, 271, holding that section of code, not of original statutory origin, will be construed merely as codification of existing law; Forsyth Mfg. Co. v. Castlen, 112 Ga. 206, 81 Am. St. Rep. 28, 37 S. E. 485, construing statute as to sale of goods for future delivery as merely declaratory of existing rule on that subject; Turner v. Turner, 123 Ga. 9, 107 Am. St. Rep. 76, 50 S. E. 969, construing statute as to admissibility of agent's declarations as against principal as declaratory of existing law; Brandon v. Pritchett, 126 Ga. 289, 55 S. E. 241, 7 Ann. Cas. 1093, holding code does not change common-law rule in reference to creating agency to make memorandum required by statute of frauds.

Construction of code by reference to original acts.

Cited in Smith v. Evans, 125 Ga. 112, 53 S. E. 589, holding where code sections are incomplete or ambiguous they must be construed in connection with original acts.

51 L. R. A. 630, STATE v. CHAUVET, 111 Iowa, 687, 82 Am. St. Rep. 539, 83 N. W. 717.

Corroboration of accomplice.

Cited in State v. Jones, 115 Iowa, 119, 88 N. W. 196, holding circumstantial evidence in corroboration of accomplice is sufficient if it tends to connect prisoner with crime charged.

Cited in note (98 Am. St. Rep. 169) on convicting on testimony of accomplice.

What constitutes house.

Cited in footnotes to Hipp v. State, 62 L.R.A. 973, which holds tent occupied by divorced man and his child a private residence occupied by a family within meaning of statute against gambling; People v. Bernard, 65 L.R.A. 559, which holds small boat used for carrying passengers for hire not within rule justifying forceable resistance of attempt to enter dwelling house, although person in possession uses a seat therein as a sleeping place.

51 L. R. A. 632, WALKER v. ST. PAUL CITY R. CO. 81 Minn. 404, 84 N. W. 222.

Duty of traveler at railway crossing.

Cited in Ames v. Waterloo & C. F. Rapid Transit Co. 120 Iowa, 658, 95 N. W. 161, (dissenting opinion), as to traveller at crossing of street railway not being strictly bound to stop, look and listen as at a steam railway crossing; Dieckmann v. Chicago & N. W. R. Co. 145 Iowa, 274, 31 L.R.A.(N.S.) 349, 139 Am. St. Rep. 420, 121 N. W. 676, holding that contributory negligence of passenger, required to cross tracks to board train, was for jury.

Negligence in passing in front of moving car.

Cited in Baly v. St. Paul City R. Co. 90 Minn. 41, 95 N. W. 757, holding evidence showed that plaintiff did not look in direction of car and was guilty of contributory negligence; Olson v. Northern P. R. Co. 84 Minn. 261, 87 N. W. 843, holding evidence showed that injured person failed to use his sense of sight while walking upon crossing in advance of a rapidly moving train; Woehrle v. Minnesota Transfer R. Co. 82 Minn. 169, 52 L.R.A. 352, 84 N. W. 791, holding while he cannot omit to use due care in looking and listening, in reliance

upon the railway company doing its duty as to signals yet under special circumstances he may regulate his own conduct in some degree with reference to the presumption that it will do its duty.

Right to rely on rules and customs of railroads.

Cited in Curran v. St. Paul City R. Co. 100 Minn. 62, 110 N. W. 259, holding plaintiff had no reason to anticipate that motorman would not be attending to his duty, see his signals and slow down; Graham v. Minneapolis, St. P. & S. S. M. R. Co. 95 Minn. 53, 103 N. W. 714, holding question for jury whether plaintiff was in exercise of ordinary care in relying on custom of train to slow down at particular spot.

51 L. R. A. 640, BALDWIN v. GREAT NORTHERN R. CO. 81 Minn. 247, 83 Am. St. Rep. 370, 83 N. W. 986.

Seizure under process as defense to conversion by carrier.

Distinguished in Merz v. Chicago & N. W. R. Co. 86 Minn. 36, 90 N. W. 7, holding it is a sufficient defense in an action for conversion brought against a common carrier to prove that there has been a seizure of the property under legal process, but burden is on carrier to show such seizure was valid on its face.

Attachment of property in transit.

Cited in Conner v. Quincy, O. & K. C. R. Co. 92 Minn. 23, 64 L.R.A. 626, 104 Am. St. Rep. 659, 99 N. W. 365, 2 Ann. Cas. 347, holding a railroad car a foreign company sent into this state with freight to be delivered here and then within a reasonable time necessary for its return, reloaded, and in the customary and usual course of business, forwarded to state from which it came, is not liable to attachment in an action in our courts; A. C. L. Haase & Sons Fish Co. v. Merchants' Despatch Transp. Co. 143 Mo. App. 54, 122 S. W. 362, on attachment of goods in transit as excuse for delay in transportation.

51 L. R. A. 642, CUNNINGHAM v. CUNNINGHAM, 80 Minn. 180, 81 Am. St. Rep. 256, 83 N. W. 58.

Sufficiency of attestation of a will in presence of testator.

Cited in Raymond v. Wagner, 178 Mass. 318, 59 N. E. 811, holding that where the witnesses signed the will while in a room adjoining that where the testator lay, but the latter could have seen them do it if he had raised himself slightly, it was properly attested; Church of St. Vincent DePaul v. Brannan, 97 Minn. 353, 107 N. W. 141, holding that the will was properly attested where signed by the witnesses on the table adjoining the bed where the testator lay, but he had his face turned away from the table and another person stood between him and it; Healey v. Bartlett, 73 N. H. 111, 59 Atl. 617, 6 Ann. Cas. 413, holding that where the testator is deprived of the use of some of his faculties, if the will is attested in his presence, and he is conscious of the presence of the witnesses and knows what they are doing when they are attesting his will, and could have seen them but for his infirmity, his will is properly attested.

Cited in foot note to Re Claflin, 58 L.R.A. 261, which holds mere presence of attesting witnesses in same room with each other and testator insufficient unless they could see each other sign.

Disapproved in Calkins v. Calkins, 216 Ill. 465, 1 L.R.A.(N.S.) 397, 108 Am. St. Rep. 233, 75 N. E. 182, holding attestation insufficient where the witnesses signed the will in another room from the one where the testator was, if he did

not see them sign although he had requested them to do so, and saw them take it away to sign it.

51 L. R. A. 645, ERICKSON v. GREAT NORTHERN R. CO. 82 Minn. 60, 83 Am. St. Rep. 410, 84 N. W. 462.

Liability for keeping instrumentality dangerous and alluring to children upon one's premises.

Cited in American Advertising & Bill Posting Co. v. Flannigan, 100 Ill. App. 454, holding lessee of vacant lot not liable in damages for injury to child who fell into ashes with hot embers underneath which were upon the lot; McAllister v. Jung, 112 Ill. App. 148, holding operator of elevated railroad not liable for injury sustained by child from contact with third rail; Ellington v. Great Northern R. Co. 96 Minn. 183, 104 N. W. 827, holding doctrine of landowner's liability for injury of child has been strictly limited by Supreme Court to dangerous machinery and instrumentalities; Driscoll v. Clark, 32 Mont. 188, 80 Pac. 1, holding one who operates endless chain with sharp projections is not liable for injury sustained by child playing about it; Wheeling & L. E. R. Co. v. Harvey, 77 Ohio St. 264, 19 L.R.A.(N.S.) 1145, 122 Am. St. Rep. 503, 83 N. E. 66, 11 Ann. Cas. 981, on limitation of doctrine of turntable cases to cases of injury at turntables; Wheeling & L. E. R. Co. v. Harvey, 77 Ohio St. 264, 19 L.R.A.(N.S.) 1145, 122 Am. St. Rep. 503, 83 N. E. 66, 11 Ann. Cas. 981, waterworks company not liable in damages for death of child drowned in its reservoir.

Cited in note (39 L.R.A.(N.S.) 1058, 1059) on duty to guard against injury to trespassing children by fire.

Distinguished in Urbas v. Duluth, M. & N. R. Co. 113 Minn. 311, 129 N. W. 513, overruling demurrer to complaint for injury to child playing on railway crossing.

51 L. R. A. 649, PENDLETON v. LUTZ, 78 Miss. 322, 29 So. 164.

Exclusiveness of jurisdiction by appointment of receiver.

Cited in note (31 L.R.A.(N.S.) 1047) on exclusiveness of jurisdiction by appointment of receiver.

51 L. R. A. 653, MORGAN v. RANDOLPH-CLOWES CO. 73 Conn. 396, 47 Atl. 658.

Suit on promise by person other than promisee.

Cited in Sullivan County R. Co. v. Connecticut River Lumber Co. 76 Conn. 474, 57 Atl. 287, holding corporation's right of action on contract is personal to itself in court of law; Atwood v. Burpee, 77 Conn. 44, 58 Atl. 237, holding person to whom one promises another pay to money cannot sue on the promise.

51 L. R. A. 654, EX PARTE PATTERSON, 42 Tex. Crim. Rep. 256, 58 S. W. 1011.

Review on habeas corpus.

Cited in Ex parte Brown, 43 Tex. Crim. Rep. 46, 64 S. W. 249, holding record must show relator was continuously in custody of sheriff since he was remanded or appeal from hearing will be dismissed.

Municipal police power.

Cited in Re Junqua, 10 Cal. App. 606, 103 Pac. 159, sustaining conviction under ordinance making it unlawful to permit soot to escape from chimney of

furnace consuming distillate or crude oil as fuel; Re Smith, 143 Cal. 373, 77 Pac. 180, holding county ordinance making it misdemeanor to maintain gas works within certain boundary is unreasonable and oppressive.

— Power to regulate.

Cited in Peace v. McAdoo, 110 App. Div. 16, 96 N. Y. Supp. 1039, holding power of police commissioner to regulate does not include power to prohibit traffic in streets.

51 L. R. A. 657, COAST CO. v. SPRING LAKE, 58 N. J. Eq. 586, 47 Atl. 1131.

Equitable relief from corporate abuse.

Cited in Madison v. Madison Gas & Electric Co. 129 Wis. 263, 8 L.R.A.(N.S.) 535, 116 Am. St. Rep. 944, 108 N. W. 65, 9 Ann. Cas. 819, holding acts in excess and abuse of corporate privileges, resulting in private injuries may be enjoined.

— Illegal acts of municipal corporation.

Cited in Cuba v. Mississippi Cotton Oil Co. 150 Ala. 262, 10 L.R.A.(N.S.) 311, 43 So. 706, holding equity will enjoin enforcement of unauthorized ordinance by removal of buildings thereby declared to be nuisances when it will work irreparable injury.

Maintenance of suit in equity by public corporation.

Cited in Houlton v. Titcomb, 102 Me. 285, 10 L.R.A.(N.S.) 583, 120 Am. St. Rep. 492, 66 Atl. 733, sustaining bill by town to restrain violation of ordinance regulating buildings in fire district, also citing annotation on this subject; Chosen Freeholders v. Central R. Co. 68 N. J. Eq. 507, 59 Atl. 303, holding board of freeholders and boulevard commissioners of county are proper parties to file bill to protect boulevard from unlawful interference.

Attack on corporate existence.

Cited in St. John v. Andrews Institute, 117 App. Div. 717, 102 N. Y. Supp. 808, on attack upon corporate existence when it is recognized by state and no proceeding had to annul or forfeit its charter; Topeka v. Dwyer, 70 Kan. 250, 78 Pac. 417, 3 Ann. Cas. 239, holding constitutionality of statute for enlargement of corporate limits of cities not subject to collateral attack.

Untimely objection to equity jurisdiction.

Cited in Mertens v. Schlemme, 68 N. J. Eq. 549, 59 Atl. 808, holding court will in its discretion retain cause where objection that complainant has adequate remedy at law is not raised until after all proofs are in at final hearing; Paterson v. East Jersey Water Co. 74 N. J. Eq. 59, 70 Atl. 472, holding question of legal title will be determined by equity court in absence of objection either at answer or on hearing.

Who may abate public nuisance.

Cited in notes (19 L.R.A.(N.S.) 1173) on right of state to abate or enjoin public nuisance in city street; (124 Am. St. Rep. 605) on abatement of public nuisance by private person without suit.

51 L. R. A. 668, GODSHAW v. STRUCK, 109 Ky. 285, 58 S. W. 781.

Implied power to employ physician for employee.

Cited in Texas Bldg. Co. v. Drs. Albert & Edgar, 57 Tex. Civ. App. 644, 123 S. W. 716, holding that foreman has implied authority to employ surgeons to attend employee needing immediate attention; Habhegger v. King, 149 Wis. 4, 39 L.R.A.(N.S.) 884, 135 N. W. 166, holding that boy operating father's auto-

mobile for his own pleasure has no implied authority to engage physician for person injured.

Cited in footnote to Spelman v. Gold Coin Min. & Mill. Co. 55 L.R.A. 640, which denies presumption of general manager's implied authority to bind mining company for medical aid to injured employees.

Cited in note (34 L.R.A.(N.S.) 354) on implied power to employ physician for injured employee.

51 L. R. A. 671, DAVIS v. HAMBRICK, 109 Ky. 276, 58 S. W. 779.

Decisions of party tribunals.

Cited in Beasly v. Adams, 118 Ky. 701, 82 S. W. 249, holding under statute no appeal lies to court from decision of county executive committee in contest over primary election between rival candidates; State ex rel. Mitchell v. Larson, 13 N. D. 423, 101 N. W. 315, holding decision of state convention as to which of two county conventions is regular and its nominees entitled to have names on official ballot is conclusive; State ex rel. Cook v. Houser, 122 Wis. 585, 100 N. W. 964, holding decision of state committee and not of national convention controls as to which of two state conventions is regular.

Cited in footnote to People ex rel. Coffey v. Democratic General Committee, 51 L.R.A. 674, which denies right of county committee to remove member.

51 L. R. A. 674, PEOPLE EX REL. COFFEY v. DEMOCRATIC GENERAL COMMITTEE, 164 N. Y. 335, 58 N. E. 124.

Validity of primary election laws.

Cited in Healey v. Wipf, 22 S. D. 350, 117 N. W. 521, holding that primary law is not improper infringement on elective franchise; Ledgerwood v. Pitts, 122 Tenn. 591, 125 S. W. 1036; Hopper v. Stack, 69 N. J. L. 569, 56 Atl. 1,—holding primary elections are proper objects of legislative oversight; Riter v. Douglass, 32 Nev. 419, 109 Pac. 444; Ladd v. Holmes, 40 Or. 187, 91 Am. St. Rep. 457, 66 Pac. 714,—holding primary election law does not constitute unwarrantable interference with party management; State ex rel. Shepard v. Superior Ct. 60 Wash. 382, 140 Am. St. Rep. 925, 111 Pac. 233, holding that law is not void because it tends to destroy political parties; Rouse v. Thompson, 228 Ill. 563, 81 N. E. 1109 (dissenting opinion) on validity of primary election law requiring declaration of party affiliations in order to vote; State ex rel. Labauve v. Michel, 121 La. 391, 46 So. 430, holding legislature may require nominations to be by primary and prescribe qualifications of voters at primaries in addition to those of constitution; Hopper v. Britt, 204 N. Y. 533, 98 N. E. 86 (dissenting opinion), on validity of primary election law.

— Enforcement by mandamus.

Cited in D'Alemberte v. State, 56 Fla. 190, 47 So. 489, holding writ of mandamus may be used to compel performance of duties under primary election laws; People ex rel. McCarren v. Dooling, 128 App. Div. 5, 112 N. Y. Supp. 71, Reversing 60 Misc. 138, 112 N. Y. Supp. 67, granting mandamus to compel board of elections of city to appoint members of boards of election officers from lists filed by chairman of committee not recognized by state convention.

Distinguished in Weidenfeld v. Keppler, 84 App. Div. 238, 82 N. Y. Supp. 634, holding mandamus will not lie to compel reinstatement of member of unincorporated stock exchange under suspension.

Status of political party committees.

Cited in Brown v. Cole, 54 Misc. 283, 104 N. Y. Supp. 109, holding under statute committee of political party may be sued as unincorporated association.

— Rights of committeemen.

Cited in Hines v. Board of Elections, 141 App. Div. 574, 126 N. Y. Supp. 386, holding that office of county general committeeman is such that title thereto may be questioned in courts on ground of fraud at election; State ex rel. Rudolph v. Witthoeft, 117 Mo. App. 628, 93 S. W. 284, holding majority of political committee cannot oust person elected by voters and substitute another; People ex rel. Garvey v. Democratic General Committee, 39 Misc. 725, 80 N. Y. Supp. 953, holding members of committee elected pursuant to primary election law cannot be expelled on any pretext; Cummings v. Bailey, 53 Misc. 143, 104 N. Y. Supp. 283, holding expulsion of members of state committee by majority thereof enjoinable; State ex rel. Guion v. Miles, 210 Mo. 146, 109 S. W. 595, granting mandamus to compel reinstatement of member of party committee elected under primary election law and expelled by committee; People ex rel. Hahn v. Republican County Committee, 124 App. Div. 433, 108 N. Y. Supp. 1051, denying power of committee of political party to eject member entitled to seat under statute on ground he was illegally elected.

Distinguished in People v. Kings County Republican General Committee, 63 App. Div. 441, 71 N. Y. Supp. 528, holding committee of political party may fill vacancy caused by resignation of member.

— Validity of committee rules.

Cited in People ex rel. Garvey v. Democratic General Committee, 39 Misc. 727, 80 N. Y. Supp. 953, holding existing rules governing committee cannot be changed by resolution unauthorized under statute.

Powers of political committees.

Cited in footnote to Davis v. Hambrick, 51 L.R.A. 671, which holds decision of state central committee between bodies claiming to be executive committee of county, conclusive on courts.

51 L. R. A. 681, FOX v. MOHAWK & H. RIVER HUMANE SOCIETY, 165 N. Y. 517, 80 Am. St. Rep. 767, 59 N. E. 353.

Application of moneys received for dog licenses.

Cited in People ex rel. Westbay v. Delaney, 73 Misc. 7, 130 N. Y. Supp. 833, upholding statute for payment of dog license to humane society and application of proceeds to carrying out of statute; McGlone v. Womack, 129 Ky. 284, 17 L.R.A.(N.S.) 858, 111 S. W. 688, holding valid statute providing that funds received from licenses for dogs should be used to pay losses for destruction of sheep by dogs.

Equal operation of laws.

Cited in State v. Mitchell, 97 Me. 73, 94 Am. St. Rep. 481, 53 Atl. 887, holding statute void which imposed tax for peddling on those having no place of business, but imposing no tax therefor on those having place of business; Thousand Island Park Asso. v. Tucker, 173 N. Y. 210, 60 L.R.A. 789, 65 N. E. 975, holding statute which authorized private park association to empower others to purchase and deal in provisions and commodities and make regulations therefor, did not authorize the establishment of a monopoly therein.

Proper objects for public aid.

Cited in Firemen's Relief Asso. v. Scranton, 217 Pa. 591, 66 Atl. 1103, on validity of ordinance appropriating portion of tax on premiums by insurance company to firemen's relief association; Mahon v. Board of Education, 171 N. Y. 265, 89 Am. St. Rep. 810, 63 N. E. 1107, Affirming 68 App. Div. 157, 74 N. Y. Supp. 172, holding unconstitutional law authorizing board of education to place

on list of retired teachers entitled to annuity those who had retired before passage of law; People v. Brooklyn Cooperage Co. 187 N. Y. 158, 79 N. E. 866, upholding act appropriating money to provide for establishment of college of forestry at Cornell University, giving it title to land, and possession, management and control of lands acquired.

Distinguished in State Board of Pharmacy v. Bellinger, 138 App. Div. 15, 122 N. Y. Supp. 651, on validity of pharmacy act providing that surplus money collected by board be paid to certain educational corporation.

Character of dog tax.

Cited in note (39 L.R.A.(N.S.) 155) on character of dog tax.

Right to kill dogs under police power.

Cited in note (19 L.R.A.(N.S.) 835) on right to kill dogs under police power.

51 L. R. A. 687, STROBEL v. KERR SALT CO. 164 N. Y. 303, 79 Am. St. Rep. 643, 58 N. E. 142, 21 Mor. Min. Rep. 38.

Rehearing denied in 165 N. Y. 617, 59 N. E. 1131.

Right of upper riparian owner to use of waters.

Cited in Hall v. Conklin, 138 App. Div. 453, 122 N. Y. Supp. 967, holding that upper riparian owner may dam stream; People v. Hulbert, 131 Mich. 164, 64 L.R.A. 271, 100 Am. St. Rep. 588, 91 N. W. 211, holding upper riparian owner on lake may bathe therein as against right of city, as lower riparian owner which, takes its water supply therefrom; Henderson Estate Co. v. Carroll Electric Co. 113 App. Div. 778, 99 N. Y. Supp. 365, holding use by upper owner of water for mill purpose, where there is no interference with industries below, reasonable; Durham v. Eno Cotton Mills, 141 N. C. 626, 7 L.R.A.(N.S.) 327, 54 S. E. 453, holding reasonableness of use of waters by riparian owner is for jury.

Cited in note (25 Eng. Rul. Cas. 410) on rights of riparian proprietor to use or divert water of stream.

— Pollution of waters.

Approved in Worthen v. White Spring Paper Co. 74 N. J. Eq. 654, 70 Atl. 468, holding lower owner can enjoin pollution of stream by upper owner whereby injury results.

Cited in New York v. Blum, 72 Misc. 245, 131 N. Y. Supp. 87, enjoining use by riparian owner as duck pond, of pond forming part of city water supply; Arminius Chemical Co. v. Landrum, 113 Va. 14, 38 L.R.A.(N.S.) 277, 73 S. E. 459, holding upper riparian owner liable for pollution of stream by mining operations; West Muncie Strawboard Co. v. Slack, 164 Ind. 27, 72 N. E. 879, holding lower owner entitled to relief where upper owner by discharge of chemicals and other substances into stream so pollutes it as to kill fish therein, cause it to exude noxious vapors, destroy crops and render water unfit for stock to drink; Teel v. Rio Bravo Oil Co. 47 Tex. Civ. App. 161, holding riparian owner may maintain suit for damages and injunction against owners of oil wells for polluting stream by conducting by means of ditches waste oil, and other injurious substances into said stream; Sammons v. Gloversville, 81 App. Div. 334, 81 N. Y. Supp. 466, holding injunction will issue to restrain discharge of city sewage into stream whereby it is polluted and rendered unfit for use by lower owner to his material damage, regardless of distance of complainants' land from city; Warren v. Gloversville, 81 App. Div. 293, 80 N. Y. Supp. 912, holding, where damages are substantial, equity will enjoin the discharge of sewage by city into canal at suit of lower adjoining land owner although the injunction inter-

fere with the plans of great city for drainage; Butler v. White Plains, 59 App. Div. 34, 69 N. Y. Supp. 193, holding equity would enjoin discharge of effluent from city sewage disposal plant, at suit of lower owner, where water of stream was polluted and rendered unfit for domestic use; Durham v. Eno Cotton Mills, 141 N. C. 626, 7 L.R.A.(N.S.) 327, 54 S. E. 453, holding city can enjoin dumping of sewage by upper proprietor into stream from which city obtains part of its water for drinking and other purposes; Reese v. Johnstown, 45 Misc. 434, 92 N. Y. Supp. 728, holding riparian owner could not enjoin city from discharging sewage into stream, where such owners and predecessors have for years discharged sewage therein; Whalen v. Union Bag & Paper Co. 145 App. Div. 5, 129 N. Y. Supp. 391 (dissenting opinion) on injunction against pollution of stream.

Cited in footnote to Weston Paper Co. v. Pope, 56 L.R.A. 899, which sustains liability for pollution of stream by discharge from strawboard works, though business skilfully conducted.

Cited in notes (1 L.R.A.(N.S.) 125) on effect of legislative authority upon liability for pollution of waters; (84 Am. St. Rep. 909, 911) on extent of municipal right to pollute waters.

— Diminution of flow.

Cited in Penrhyn Slate Co. v. Granville Electric Light & P. Co. 84 App. Div. 94, 82 N. Y. Supp. 547, holding upper owner cannot divert water from stream for purposes of sale; Samuels v. Armstrong, 46 Misc. 482, 93 N. Y. Supp. 24, holding upper owner cannot divert water to pond for purpose of selling ice formed thereon, to injury of lower owner; Lonsdale Co. v. Woonsocket, 25 R. I. 438, 56 Atl. 448, holding lower owner can enjoin city as upper proprietor from diverting water from stream for purpose of water supply for inhabitants, whereby flow is diminished; Pierson v. Speyer, 178 N. Y. 273, 102 Am. St. Rep. 499, 70 N. E. 799, Reversing 82 App. Div. 558, 81 N. Y. Supp. 636, holding upper owner had right by means of dam to impound water of stream for domestic and ornamental purposes, although greater surface is exposed to evaporation and absorption, there being nothing to show such use unreasonable.

Joinder of parties with a common interest.

Cited in White v. Moore, 139 App. Div. 273, 123 N. Y. Supp. 1012, holding that several lot owners may join to restrain impairment of their easements in park; William Fox Amusement Co. v. McClellan, 62 Misc. 107, 114 N. Y. Supp. 594, holding one licensee for moving picture show under common show license may maintain action for himself and all other licensees of such shows against mayor to rescind order of mayor revoking all such licenses; Bradley v. Bradley, 165 N. Y. 187, 58 N. E. 887, holding there is not a misjoinder of parties, plaintiff in equitable action to rescind sale of stock where such parties, though owning separate shares, acted in concert in the sale thereof relying on same fraud of defendant; New York & H. R. R. Co. v. Reeves, 41 Misc. 498, 85 N. Y. Supp. 28, holding objection tenable where railroad sued some sixty ticket brokers, each having no connection with the other, to enjoin them from sale of tickets.

Cited in note (10 L.R.A.(N.S.) 170) on character of liability of several whose independent wrongs contribute to enhance degree or extent of injury.

— Joinder in abatement of nuisance.

Cited in Younkin v. Milwaukee Light, Heat & Traction Co. 112 Wis. 21, 87 N. W. 861, holding adjoining owners along street can sue jointly for the abatement of obstruction in street by a street railway company in placing track thereon; Burghen v. Erie R. Co. 53 Misc. 458, 103 N. Y. Supp. 292, holding various lot

owners affected by nuisance created by railroad, may join in action for its abatement.

Cited in note (118 Am. St. Rep. 873, 874) on actions against two or more persons creating or maintaining a nuisance.

— Joinder in assertion of riparian rights.

Cited in Cloyes v. Middlebury Electric Co. 80 Vt. 120, 11 L.R.A.(N.S.) 698, 66 Atl. 1039, holding riparian owners on stream above a waterfall, being injured in the same way but not to same extent, could join in equitable suit to have dam, which obstructed stream removed; Climax Specialty Co. v. Seneca Button Co. 54 Misc. 155, 103 N. Y. Supp. 822, holding owner of right of race in stream may sue for benefit of all interested, in action respecting invasion of respective rights of owners by wrongful cutting off of source of supply; Horton v. Fulton, 130 Ga. 468, 60 S. E. 1059, holding several lower riparian owners have such community of interest in enjoyment of non-navigable stream that they may join in petition to restrain adulteration or overflow by upper proprietor or stranger; Warren v. Parkhurst, 105 App. Div. 240, 93 N. Y. Supp. 1009, Affirming 45 Misc. 468, 92 N. Y. Supp. 725, holding equity would enjoin large number of upper owners from polluting stream causing injury to lower owner, his remedy at law being inadequate.

Attachment of conditions in grant of equitable relief.

Cited in Whalen v. Union Bag & Paper Co. 130 App. Div. 316, 114, N. Y. Supp. 220, holding equity may refuse permanent injunction against pollution on condition that defendant take appropriate steps to prevent or minimize the pollution.

Public use justifying the taking of property.

Cited in Gray v. York State Teleph. Co. 41 Misc. 111, 83 N. Y. Supp. 920, holding, telephone company, not having right of eminent domain cannot erect its poles and wires on highway against abutting owner's consent without payment of compensation therefor, on ground of public service.

51 L. R. A. 695, FORBELL v. CITY OF NEW YORK, 164 N. Y. 522, 79 Am. St. Rep. 666, 58 N. E. 644.

Rights in natural sources of water supply.

Cited in Lindsley v. Natural Carbonic Gas Co. 162 Fed. 959, on validity of statute regulating use of natural mineral springs.

Cited in footnotes to New Whatcom v. Fairhaven Land Co. 54 L.R.A. 190, which denies city's right to appropriate waters of navigable lake for water supply to injury of riparian owner; Brosnan v. Harris, 54 L.R.A. 628, which sustains right under statute to appropriate water of spring without natural outlet.

Rights in percolating water.

Cited in Jager v. New York, 35 Misc. 622, 72 N. Y. Supp. 131, without discussion, as an action of similar character; Ryan v. Quinlan, 45 Mont. 533, 124 Pac. 512, holding that owner of land has right to use percolating water as he pleases for improvement of his own land; Huber v. Merkel, 117 Wis. 361, 62 L.R.A. 593, 98 Am. St. Rep. 933, 94 N. W. 354, holding owner of artesian well can enjoy unrestricted use thereof where source of waters is not subterranean stream but inclined stratum of porous rock through which water percolates; Clarke County v. Mississippi Lumber Co. 80 Misc. 545, 31 So. 905, holding owner may use at will for his own business subsurface percolating waters, whether for machinery, mining, milling or "a reservoir on his own land;" Smith v.

Stoughton, 185 Mass. 333, 70 N. E. 195, holding water company authorized to take water to sell to inhabitants of town where source is a certain named brook, cannot obtain water by sinking wells to draw off subsurface percolations.

Cited in footnote to Huber v. Merkel, 62 L.R.A. 589, which sustains land owner's right as against neighbor to sink wells and use percolating water.

Cited in notes (64 L.R.A. 238; 17 L.R.A.(N.S.) 650) on correlative rights in percolating water; (99 Am. St. Rep. 741) on landowner's right in percolating waters; (2 Brit. Rul. Cas. 1002) on character of water flowing underground in defined but unknown channel.

Cited as disapproved in Houston & T. C. R. Co. v. East, 98 Tex. 150, 66 L.R.A. 740, 107 Am. St. Rep. 620, 81 S. W. 279, 4 Ann. Cas. 827, holding railroad has right to dig well on its land for water for its use though it draws percolating waters from well of another to his injury.

— Rights of others in the common supply.

Cited in Meeker v. East Orange, 77 N. J. L. 633, 25 L.R.A.(N.S.) 471, 134 Am. St. Rep. 798, 74 Atl. 379, Reversing 76 N. J. L. 442, 70 Atl. 360, holding landowner whose supply of water has been lost and crops damaged by loss of subsurface moisture may maintain action against city for drawing off subsurface percolating waters by means of artesian wells; Reisert v. New York, 101 App. Div. 94, 91 N. Y. Supp. 780, holding that damages can be recovered if plaintiff's land is injured by operation of pumps adjacent thereto which draw off subsurface waters; Reisert v. New York, 174 N. Y. 200, 66 N. E. 731, Reversing 69 App. Div. 303, 74 N. Y. Supp. 673, holding land owner can recover damages for diversion by means of pumps of subterranean percolating waters by a city; Hathorn v. Dr. Strong's Saratoga Springs Sanitarium, 55 Misc. 448, 106 N. Y. Supp. 553, holding one owner can enjoin adjoining owner from diverting by means of pumps percolating mineral waters from first owner's spring where source is common to both; Westphal v. New York, 75 App. Div. 253, 78 N. Y. Supp. 56, Affirming 34 Misc. 687, 70 N. Y. Supp. 1021, on withdrawal of subterranean waters as a continuing wrong.

— Unreasonable use.

Cited in Pence v. Carney, 58 W. Va. 302, 6 L.R.A.(N.S.) 270, 112 Am. St. Rep. 963, 52 S. E. 702, holding owner of land cannot make unreasonable use of subterranean percolating water, where otherwise valuable natural springs of adjoining owner would be destroyed or materially injured; People v. New York Carbonic Acid Gas Co. 196 N. Y. 431, 90 N. E. 441, holding one landowner cannot make unreasonable appropriation of natural spring and subsurface water to the injury of adjoining landowner; Hathorn v. Natural Carbonic Gas. Co. 194 N. Y. 336, 23 L.R.A.(N.S.) 443, 128 Am. St. Rep. 555, 87 N. E. 504, 16 Ann. Cas. 989, Affirming 128 App. Div. 38, 112 N. Y. Supp. 374, which modified and affirmed 60 Misc. 345, 113 N. Y. Supp. 458, holding landowner cannot by use of pumps and other apparatus accelerate and increase flow of subterranean percolating waters for commercial purposes, to injury of other owners; Katz v. Walkinshaw, 141 Cal. 149, 64 L.R.A. 246, 99 Am. St. Rep. 35, 70 Pac. 663, holding one landowner cannot by artesian well draw out subterranean percolating waters and sell same for irrigating lands at distance, to injury of adjoining landowner who derives water from same source; Erickson v. Crookston Waterworks, Power & Light Co. 100 Minn. 487, 8 L.R.A.(N.S.) 1253, 111 N. W. 391, 10 Ann. Cas. 843, holding water company has no right to deprive land owners, having wells tapping underground basin, of such water by artificial force in pumping water in basin to lower level for purpose of supplying water as merchandise to another community; Stone v. Providence Gas & Water Co. 13

Pa. Dist. R. 559, holding water company cannot cut off under ground percolating waters to increase its own supply for purposes of sale, to injury of adjoining owner, though free from malice therein.

Cited in footnotes to Canton v. Shock, 58 L.R.A. 637, which holds city liable to lower proprietor for furnishing water to outside persons, or for transportation, or unreasonable amount to manufacturers; Gagnon v. French Lick Springs Hotel Co. 68 L.R.A. 176, which sustains right to interlocutory injunction against malicious pumping by owners of surface of mineral water from large subterranean reservoir coming to surface in valuable springs on neighboring property.

Distinguished in Erickson v. Crookston Waterworks, Power & Light Co. 105 Minn. 196, 17 L.R.A.(N.S.) 659, 117 N. W. 435, holding water company furnishing city with its water supply could draw off water by pumps from artesian basin for purely domestic purposes.

— Waste.

Cited in Lindsley v. Natural Carbonic Gas Co. 220 U. S. 73, 55 L. ed. 375, 31 Sup. Ct. Rep. 337, Ann. Cas. 1912 C, 160, upholding statute to safeguard natural mineral springs against waste; Gagnon v. French Lick Springs Hotel Co. 163 Ind. 697, 68 L.R.A. 179, 72 N. E. 849, holding one owner will not be allowed to pump subterranean waters to prevent flow of springs of adjoining owner, and merely to waste such water; Barclay v. Abraham, 121 Iowa, 628, 64 L.R.A. 258, 100 Am. St. Rep. 365, 96 N. W. 1080, holding landowner who obtains water from well supplied from percolating waters must not waste water for purpose of injuring adjoining owner who derives his supply from same source.

Cited in footnote to Stillwater Water Co. v. Farmer, 60 L.R.A. 875, which sustains right to injunction against land owner draining, collecting and diverting percolating waters solely to waste them.

Interference with natural flow of waters.

Cited in Franklin v. Durgee, 71 N. H. 190, 58 L.R.A. 114, 51 Atl. 911, holding city may maintain action against landowner for throwing up embankment on his land adjoining highway which causes water flowing in natural depressions on defendant's land to be obstructed and flow back and injure highway; Tremblay v. Harmony Mills, 171 N. Y. 601, 64 N. E. 501, holding person injured may recover damages against landowner who negligently maintains leader from roof of building so as to discharge water on sidewalk whereby ice accumulated thereon.

Trespass by force originated outside the close.

Cited in Whittaker v. Stangwick, 100 Minn. 390, 10 L.R.A.(N.S.) 923, 117 Am. St. Rep. 703, 111 N. W. 295, 10 Ann. Cas. 528, holding shooting across another's land is a trespass which may be enjoined.

51 L. R. A. 698, CONNECTICUT F. INS. CO. v. JEARY, 60 Neb. 338, 83 N. W. 78.

Followed without discussion in Connecticut F. Ins. Co. v. Waugh, 60 Neb. 353, 83 N. W. 1118.

Effect of failure to comply with "iron safe clause" in policy.

Approved in Continental Ins. Co. v. Waugh, 60 Neb. 349, 83 N. W. 81, holding failure to keep set of books from date of inventory, which latter could be taken within thirty days from policy does not defeat recovery where fire occurred in thirty days.

Cited in Bray v. Virginia F. & M. Ins. Co. 139 N. C. 394, 51 S. E. 922, holding where policy provided inventory should be taken within thirty days from

date of policy and set of books kept showing business transactions from date of inventory, failure to keep books did not defeat right of recovery where fire occurred within thirty days and no inventory had been taken; Jensen v. Palatine Ins. Co. 81 Neb. 526, 116 N. W. 286, holding failure to make inventory did not defeat recovery where insured had right to take it within one year from date of policy and loss occurred within that time; Hamann v. Nebraska Underwriters Ins. Co. 82 Neb. 432, 118 N. W. 65, holding failure to keep books in fire proof safe not fatal to recovery where right was given to keep books after inventory which could be taken in year after policy, and fire occurred within year.

Annotation cited in Prudential F. Ins. Co. v. Alley, 104 Va. 365, 51 S. E. 812, on undertaking to keep books and take inventory as amounting to warranty; Arnold v. Indemnity F. Ins. Co. 152 N. C. 236, 67 S. E. 574, on strictness of compliance with "iron safe clause" required of assured.

Cited in footnotes to Phoenix Ins. Co. v. Schwartz, 57 L.R.A. 752, which holds provision for locking up books and inventories at all times when building not actually open for business inapplicable to suspension of business by fire threatening to consume building; Continental F. Ins. Co. v. Whitaker, 64 L.R.A. 451, which holds violation of provision of policy as to keeping inventory and books of account in fireproof safe within provision of statute that false warranties shall not avoid the policy unless made with intent to deceive, or unless they increase the risk.

Cited in notes (15 L.R.A.(N.S.) 471) on what books and inventories come within requirements of iron-safe clause; (28 L.R.A.(N.S.) 337) on loss or destruction of books, etc., as excusing production required by insurance policy.

Disapproved in King v. Concordia F. Ins. Co. 140 Mich 265, 103 N. W. 616, 6 Ann. Cas. 87, holding that a failure to keep his books and inventory in a safe as required by a rider on a policy avoided the policy.

Construction of doubtful provisions in policies of insurance.

Cited in Erickson v. Ladies of Maccabees, 25 S. D. 195, 126 N. W. 259, holding it question for jury whether applicant acted honestly in answering question as to cause of father's death; Modern Woodmen v. Wilson, 76 Neb. 348, 107 N. W. 568, holding where import of question is susceptible to misunderstanding, it being prepared by insurer, should be construed most strongly against it.

Construction of provisions in policy regarding forfeiture.

Cited in German Ins. Co. v. Shader, 68 Neb. 9, 60 L.R.A. 922, 93 N. W. 972, holding law will not favor construction of provision that conditions can only be waived in prescribed manner which will work a forfeiture; Henton v. Farmers' & M. Ins. Co. 1 Neb. (Unof.) 426, 95 N. W. 670, holding where literal meaning of provision regarding forfeiture is broader than its reason, its operation will be restricted to mischief sought to be guarded against; Haas v Mutual L. Ins. Co. 84 Neb. 696, 26 L.R.A.(N.S.) 753, 121 N. W. 996, 19 Ann. Cas. 58, holding failure to pay annual premium on life policy promptly will not work a forfeiture if policy contains no provision therefor; Woodmen Acci. Asso. v. Pratt, 62 Neb. 679, 55 L.R.A. 294, 89 Am. St. Rep. 777, 87 N. W. 546, holding provision in accident policy requiring notice of injury within specified time will not be construed to work forfeiture for failure therein where person injured was rendered crazy so as to be unable to give notice.

51 L. R. A. 715, BULLARD v. CHAFFEE, 61 Neb. 83, 84 N. W. 604.

Where debt garnishable.

Cited in footnote to Tootle v. Coleman, 57 L.R.A. 120, which holds right to garnish debtor not limited by situs of chose in action.

Cited in note (67 L.R.A. 210) as to where debt garnishable; (3 L.R.A.(N.S.) 608) on place of payment as affecting jurisdiction to garnish debt.

Situs of debt.

Cited in Dodge County v. Burns, 89 Neb. 536, 35 L.R.A.(N.S.) 878, 131 N. W. 922, holding that credit payable in New York, evidenced by contract of sale of realty in Nebraska, is not subject to inheritance tax.

Cited in footnote to National Broadway Bank v. Sampson, 66 L.R.A. 606, which holds liability of nonresident to nonresident corporation not subject to attachment within state when debtor is temporarily within jurisdiction as situs of debt is at place of residence either of debtor or of creditor.

51 L. R. A. 717, LITTLE v. STATE, 60 Neb. 749, 84 N. W. 248.

What is practice of medicine.

Cited in Witty v. State, 173 Ind. 412, 25 L.R.A.(N.S.) 1302, 90 N. E. 327, holding that one advertising to cure disease by suggestive therapeutics practices medicine; Smith v. People, 51 Colo. 274, 36 L.R.A.(N.S.) 160, 117 Pac. 612, holding that "healer" practices medicine; Bragg v. State, 134 Ala. 181, 58 L.R.A. 930, 32 So. 767, holding one practicing osteopathy included in statute prescribing penalty for practicing medicine without license; Witty v. State, 173 Ind. 412, 25 L.R.A.(N.S.) 1302, 90 N. E. 627, holding statute prescribing penalty for practicing medicine without license and state defining what practice consists of include one who prefixes term "Dr." to his name, and advertises to cure every known disease, although he used no drugs; Parks v. State, 159 Ind. 231, 59 L.R.A. 198, 64 N. E. 862, holding one who advertised himself as a magnetic healer and prefixed word "Professor" to his name, his method of treatment being in part same as employed by medical practitioner, is practicing medicine within statute defining practice as opening office or announcing readiness to heal or cure suffering, or uses word "Doctor" or "Professor" in connection with name; State v. Edmunds, 127 Iowa, 338, 101 N. W. 431, holding nonresident who goes from house to house and advertises to treat diseases and does attempt and profess to treat and cure disease by his patients taking exercises, dieting and wearing glasses, was an itinerant physician within statute declaring one professing to treat diseases who goes from place to place, itinerant physician, and was practicing medicine under statute declaring professing to heal is practicing medicine; State v. Heath, 125 Iowa, 590, 101 N. W. 429, holding one practicing "magnetic treatment" for cure of disease within statute prescribing penalty for practicing medicine without license.

Cited in footnotes to State v. Gravett, 55 L.R.A. 791, which holds void, statute discriminating against osteopathists; Bragg v. State, 58 L.R.A. 925, which requires license for practice of osteopathy; State v. MacKnight, 59 L.R.A. 187, which holds license not necessary to practice of osteopathy; State v. Biggs, 64 L.R.A. 140, which denies right to compel a license as for practice of medicine and surgery from treating disease by baths, physical culture, manipulation of muscles, bones, spine and solar plexus, and advice as to diet; State v. Yegge, 69 L.R.A. 504, which holds license required of ophthalmologist who prefixes letters "Dr." on sign and on notices in which he undertakes to correct certain diseased conditions by fitting glasses to eyes.

Cited in notes (3 L.R.A.(N.S.) 764) on application of statutes regulating practice of medicine to persons giving special kinds of treatment; (98 Am. St. Rep. 748) on practice of osteopathy; (129 Am. St. Rep. 293) on constitutional limitations on power to impose license or occupation taxes on physicians and surgeons.

51 L. R. A. 720, HANDEL v. CHAPLIN, 111 Ga. 800, 36 S. E. 979.

51 L. R. A. 722, RE DENNY, 156 Ind. 104, 59 N. E. 359.

Construction of constitutional provisions as to balloting on amendments.

Cited with approval in Eufaula v. Gibson, 22 Okla. 521, 98 Pac. 565, holding where constitution provides that majority of all the votes cast shall determine election as to location of county seat, all votes cast, whether intelligible or unintelligible, must be taken into consideration.

Cited in Eufaula v. Gibson, 22 Okla. 521, 98 Pac. 565, holding that valid legal ballots, though unintelligible, are to be counted to determine majority in election for location of county seat; Williamson v. Aldrich, 21 S. D. 15, 108 N. W. 1063, holding that majority of all electors of city is essential to validity of bonds; State ex rel. Blair v. Brooks, 17 Wyo. 355, 22 L.R.A.(N.S.) 486, 99 Pac. 874, holding provision that amendment must be ratified "by a majority of the electors" means majority of all electors and not of those who vote on amendment; Kadderly v. Portland, 44 Or. 143, 74 Pac. 710, holding where constitution provides that when amendment shall be agreed to by two legislative assemblies, it must be submitted to the electors by one last agreeing to it, and therein is fatal to amendment.

Cited in note (22 L.R.A.(N.S.) 479) on basis for computation of majority essential to adoption of proposition submitted at general election.

— Jurisdiction to try validity of submission.

Cited in McConaughy v. Secretary of State, 106 Minn. 401, 119 N. W. 408, holding courts have jurisdiction to determine whether constitutional amendment has been legally submitted to and adopted by people.

Judicial notice of number of ballots cast.

Cited in State v. Flynn, 119 Mo. App. 728, 94 S. W. 543, holding court could take notice as to number of ballots cast by Democratic Party in election during certain year.

Definition of constitution.

Cited in Frantz v. Autry, 18 Okla. 614, 91 Pac. 193, declaring a constitution to be a written instrument by which fundamental powers of government are established, limited and defined and by which a distribution thereof is made.

Meaning of word "voters."

Cited in Mills v. Hallgren, 146 Iowa, 220, 124 N. W. 1077, holding that "voters" mean those who cast ballots at last election, in determining sufficiency of petition for revocation of consent to sale of liquors.

51 L. R. A. 744, RICHMOND NATURAL GAS CO. v. CLAWSON, 155 Ind. 659, 58 N. E. 1049.

Discrimination by public service corporation.

Cited in Bourke v. Olcott Water Co. 84 Vt. 124, 33 L.R.A.(N.S.) 1017, 78 Atl. 715, Ann. Cas. 1912D, 108, holding that water company cannot make payment of its bills by owners condition to supplying water to tenants; Robbins v. Bangor R. & Electric Co. 100 Me. 504, 1 L.R.A.(N.S.) 967, 62 Atl. 136, on right to discriminate between dwelling house and boarding house in furnishing of water; Gordon v. Doran, 100 Minn. 351, 8 L.R.A.(N.S.) 1053, 111 N. W. 272, holding water board cannot arbitrarily refuse to furnish water to anyone, for purpose which it has recognized as legitimate and which it has granted others; Bradford v. Citizens' Teleph. Co. 161 Mich. 390, 126 N. W. 444,

holding telephone company has no right to charge new subscriber higher rate than that charged old subscriber for exactly same service.

Cited in footnotes to State ex rel. Wood v. Consumers' Gas Trust Co. 55 L.R.A. 245, which authorizes mandamus to compel natural gas company to permit participation in gas furnished; Indiana Natural & Illuminating Gas Co. v. State, 57 L.R.A. 761, which denies right of natural gas company to discriminate against single consumer by enforcing meter rate instead of flat rate against him.

Cited in note (27 L.R.A.(N.S.) 675) on discrimination in rates of water or light company.

51 L. R. A. 748, OVERSHINER v. STATE, 156 Ind. 187, 83 Am. St. Rep. 187, 59 N. E. 468.

Power to appoint executive officers.

Cited in Richardson v. Young, 122 Tenn. 498, 125 S. W. 664, upholding amendment taking from governor power of appointing board of elections and vesting such power in assembly; Southern P. Co. v. Bartine, 170 Fed. 746, holding all power is not vested in governor where constitution is silent on subject; State ex rel. Milwaukee Medical College v. Chittenden, 127 Wis. 523, 107 N. W. 500, holding valid law providing for appointment by governor to state dental board of candidates recommended by dental association; State v. Davis, 88 S. C. 208, 70 S. E. 417, holding that governor can appoint special judge recommended by chief justice.

Delegation of legislative authority.

Cited in Bullock v. Billheimer, 175 Ind. 439, 94 N. E. 763, holding that act to promote scientific and agricultural improvement is not rendered void by provision for advisory committee to act with director of experiment station; Isenhour v. State, 157 Ind. 523, 87 Am. St. Rep. 228, 62 N. E. 40, holding law vesting in board of health power to adopt measures necessary to facilitate enforcement of pure food law not a delegation of legislative authority.

Cited in footnote to Harmon v. State, 58 L.R.A. 618, which holds void, act making various district examiners exclusive judges as to competency of applicants for license as steam engineers.

Cited in note (6 L.R.A.(N.S.) 433) on membership in association as condition of right to transact business.

Regulation of right to practice dentistry.

Cited in footnote to State v. Brown, 68 L.R.A. 889, which denies right to require license to own, run, or manage a dental office from one having no intention of engaging in actual practice of dentistry.

Validity of statutes.

Cited in Strange v. Grant County, 173 Ind. 650, 91 N. E. 242, upholding act for construction and improvement of highways.

51 L. R. A. 751, HATFIELD v. De LONG, 156 Ind. 207, 83 Am. St. Rep. 194, 59 N. E. 483.

Appeal from judgment on the merits in 31 Ind. App. 211, 67 N. E. 551.

Followed without discussion in Hatfield v. Brown, 156 Ind. 703, 59 N. E. 1134.

Investigation of ecclesiastical decrees by civil courts.

Cited in Ramsey v. Hicks, 174 Ind. 444, 30 L.R.A.(N.S.) 672, 91 N. E. 344, Affirming 44 Ind. App. 504, 87 N. E. 1091, holding that decision of proper church tribunal that it has jurisdiction to form union with another church is binding

on civil court; Boyles v. Roberts, 222 Mo. 648, 121 S. W. 805, holding when it is necessary in determining property rights, civil courts will investigate ecclesiastical decrees; Bonacum v. Murphy, 71 Neb. 476, 98 N. W. 1030, holding court will interfere to ascertain whether church tribunal which has undertaken to expel member has been organized in conformity with church constitution, and as to qualification of presiding officer; Landrith v. Hudgins, 121 Tenn. 650, 120 S. W. 783, holding civil court will not intermeddle with mere disciplinary proceedings.

Cited in notes (4 L.R.A.(N.S.) 1154, 1155) on review by civil courts of expulsion of member of religious society; (24 L.R.A.(N.S.) 701) on litigation growing out of schism in religious society; (36 L.R.A.(N.S.) 947) on power to compel restoration of member expelled by religious society; (100 Am. St. Rep. 735, 739) on jurisdiction of civil courts over church controversies.

Distinguished in Bentle v. Ulay, 175 Ind. 496, 94 N. E. 759, Affirming 46 Ind. App. 663, 93 N. E. 459, holding that two churches become one, where highest judicatories of each agree that doctrines are same and majority of members of each vote for union.

51 L. R. A. 754, BARRETT v. FISH, 72 Vt. 18, 82 Am. St. Rep. 914, 47 Atl. 174.

Injunction against publication of letters.

Cited in note (37 L.R.A.(N.S.) 945) on injunction; against publication or sale of letters.

Admission of documentary evidence unlawfully secured.

Cited in State v. Slamon, 73 Vt. 212, 87 Am. St. Rep. 711, 50 Atl. 1097, 15 Am. Crim. Rep. 686, on admission of letter illegally taken from accused's person in service of search warrant; Imboden v. People, 40 Colo. 178, 90 Pac. 608, holding private communications between bank officers admissible in prosecution for conspiracy to defraud where they abstracted from files of bank by servants therein and surrendered to public prosecutor.

Cited in notes (94 Am. St. Rep. 345; 136 Am. St. Rep. 142, 150) on admissibility of evidence wrongfully obtained.

51 L. R. A. 758, GERMAN SAV. BANK v. DRAKE ROOFING CO. 112 Iowa, 184, 84 Am. St. Rep. 335, 83 N. W. 960.

Necessity of notice of acceptance to bind guarantor.

Cited in Bankers' Iowa State Bank v. Mason Hand Lathe Co. 121 Iowa, 577, 97 N. W. 70, holding where accommodation endorser delivers note with authority to make advances thereon to maker, notice of acceptance as to each advancement unnecessary.

Cited in footnote to Cowan, M. & Co. v. Robert, 65 L.R.A. 729, which holds notice of acceptance not necessary to bind one guaranteeing debt with provision that guaranty shall remain in force until full payment or discharge in writing.

Cited in notes (105 Am. St. Rep. 514, 516; 16 L.R.A.(N.S.) 359, 371, 378) on necessity of notice of acceptance to bind guarantor.

51 L. R. A. 763, CHICAGO, R. I. & P. R. CO. v. OTTUMWA, 112 Iowa, 300, 83 N. W. 1074.

Property subject to assessment for local improvement.

Cited in Georgia R. & Bkg. Co. v. Decatur, 137 Ga. 543, 40 L.R.A.(N.S.) 940, 73 S. E. 830, holding railroad right of way liable for sewer assessment; Oskaloosa v. Oskaloosa Traction & Light Co. 141 Iowa, 239, 119 N. W. 736, holding

street railway company enjoying easement in street not assessable as abutting property owner for improvement of street, and liability is only such as is specially imposed by statute.

Cited in footnote to United R. & Electric Co. v. Baltimore, 52 L.R.A. 772, which holds railroad right of way and tracks not within provision as to increasing taxation on "landed property."

Cited in note (12 L.R.A.(N.S.) 114) on liability of railroad right of way to assessment for local improvements.

Distinguished in Minneapolis & St. L. R. Co. v. Lindquist, 119 Iowa, 148, 93 N. W. 103, holding, under statute, lots of railroad owned in fee, fronting on improvement, subject to assessment, though right of way was across such lots; Heman Constr. Co. v. Wabash R. Co. 206 Mo. 186, 12 L.R.A.(N.S.) 120, 121 Am. St. Rep. 649, 104 S. W. 67, 12 Ann. Cas. 630, holding, under statute, railroad's right of way including in assessment district fronting an improvement, subject to assessment.

Special assessments distinguished.

Cited in Hackworth v. Ottumwa, 114 Iowa, 470, 87 N. W. 424, on difference between assessments and taxation.

Formal requirements for special assessment.

Cited in Re Lightner, 145 Iowa, 105, 123 N. W. 749; Howard v. Emmet County, 140 Iowa, 530, 118 N. W. 882,—holding statutes giving power to levy and collect special assessments for drainage purposes must be strictly construed; Comstock v. Eagle Grove, 133 Iowa, 595, 111 N. W. 51, holding subsequent proceedings void where there was a failure to give notice of proposals for bids for public improvements for length of time required by statute.

Personal liability for assessment.

Cited in Shreveport v. Kansas City, S. & G. R. Co. 125 La. 582, — L.R.A.(N.S.) —, 51 So. 648, on railroad right of way as "abutter" within sense of law assessing cost of paving to abutter.

Cited in note (133 Am. St. Rep. 940) as to whether a personal liability may be created for an assessment.

Transaction for benefit of one not a party thereto.

Cited in Bird v. Jacobus, 113 Iowa, 198, 84 N. W. 1062, on admissibility of evidence as to agreement to make will by one not a party to agreement although benefited thereby.

Assessments for improvements by front-foot rule.

Cited in note (28 L.R.A.(N.S.) 1130, 1132, 1133, 1151, 1170) on assessments for improvements by front-foot rule.

51 L. R. A. 772, SMITH v. STATE, 92 Md. 518, 48 Atl. 92, 9 Am. Neg. Rep. 286.

Liability of landlord by reason of defective premises.

Cited in Whitcomb v. Mason, 102 Md. 281, 4 L.R.A.(N.S.) 567, 62 Atl. 749, holding owner of office building who retains control of portions of building used to gain access to offices not liable to lawyer for loss of his furniture in calamitous fire on Sunday where owner has kept locked only means of access.

Cited in footnotes to Moore v. Parker, 53 L.R.A. 778, which holds landlord liable for failure to inform tenant of known defection of dangerous condition; Thompson v. Clemens, 60 L.R.A. 580, which denies landlord's liability for injury to member of tenant's family from failure to keep agreement to make repairs; Brady v. Klein, 62 L.R.A. 909, which denies landlord's liability for injury to lessee of tenant due to premises being in defective condition; Davis v. Smith, 66

L.R.A. 478, which holds landlord not liable for damages to tenant or member of his family through sickness due to breach of covenant to repair.

— For injury to third person.

Cited in Miller v. Fisher, 111 Md. 93, 73 Atl. 891, holding landlord liable for injuries from faulty or defective construction of premises amounting to nuisance; Thompson v. Clemens, 96 Md. 203, 60 L.R.A. 582, 53 Atl. 919, holding action cannot be maintained by member of tenant's family for injuries although landlord had agreed to repair defective premises.

51 L. R. A. 776, STATE v. BAIR, 112 Iowa, 466, 84 N. W. 532.

What is practice of medicine.

Cited in State v. Miller, 146 Iowa, 524, 124 N. W. 167; State v. Corwin, 151 Iowa, 423, 131 N. W. 659,—holding that man professing to cure by system of treatment called "chiropractic" practices medicine; State v. Marble, 72 Ohio St. 40, 70 L.R.A. 841, 106 Am. St. Rep. 570, 73 N. E. 1063, 2 Ann. Cas. 898, holding giving of Christian Science treatment practice of medicine within statute declaring such to consist of appending letters "M. D." or "M. B." or other title to name, or for fee to direct, prescribe or recommend any drugs, medicine or other agency for treatment of ills.

— Right to practice.

Cited in Smith v. State Medical Examiners, 140 Iowa, 69, 117 N. W. 1116, holding right to practice medicine is valuable right which cannot be taken away without due process of law.

— Power to regulate.

Approved in State v. Adkins, 145 Iowa, 674, 124 N. W. 627; State v. Wilhite, 132 Iowa, 229, 109 N. W. 730, 11 Ann. Cas. 180,—upholding constitutionality of statute regulating practice of medicine.

Cited in State v. Heath, 125 Iowa, 589, 101 N. W. 429, on power to state to prescribe restrictions and regulations in the practice of medicine; State v. Edmunds, 127 Iowa, 337, 101 N. W. 431, holding that the state may determine what acts shall constitute the practice of the healing art, and may impose conditions upon the exercise thereof.

— Penal action for disregard of regulations.

Cited in State v. Kendig, 133 Iowa, 170, 110 N. W. 463, holding indictment sufficient although it did not contain exceptions as to practice by physicians who have obtained license to practice without diploma, students under supervision of preceptors and others named.

Regulation of trades and professions.

Cited in State ex rel. Milwaukee Medical College v. Chittenden, 127 Wis. 523, 107 N. W. 500, upholding validity of law requiring candidates for admission to practice of dentistry who have attended dental school to be graduates of reputable dental college; State v. Sharpless, 31 Wash. 199, 96 Am. St. Rep. 893, 71 Pac. 737, upholding validity of law providing for licensing and regulating business and dividing state into districts according to number of people in towns and cities.

51 L. R. A. 779, ROCKPORT v. ROCKPORT GRANITE CO. 177 Mass. 246, 58 N. E. 1017, 9 Am. Neg. Rep. 298.

Liability of landowner for dangerous condition of premises.

Cited in Flynn v. Butler, 189 Mass. 387, 75 N. E. 730, holding one who maintains powder magazine on land is under legal obligation to take every possible

precaution absolutely to prevent injury therefrom to those living in neighborhood and liable for injuries from explosion unless caused by great and unanticipated natural force, or wrongful acts of third persons not reasonably to be anticipated.

Cited in note (25 Eng. Rul. Cas. 84) on liability of landowner for dangerous condition of premises.

Liability of owner for negligence of licensee or bailee.

Cited in Chicago Teleph. Co. v. Hayes, 121 Ill. App. 318, holding telephone company not liable for fall of wire belonging to city which is strung on cross arm of company in consideration of grant of privilege to erect poles; Patnoude v. New York, N. H. & H. R. Co. 180 Mass. 120, 61 N. E. 813, holding railroad which had delivered car, on which white canvas was nailed, to place required by consignee, not liable for fright caused plaintiff's horse some time thereafter, ample opportunity being given consignee to remove covering.

Who is licensee.

Cited in Moore v. Stetson, 96 Me. 202, 52 Atl. 767, holding steamboat owner, who under contract, takes boat upon railway to make repairs by his own employees and to return boat to water after repairs, paying for use and occupancy, was a licensee.

Instrument creating right in minerals as lease.

Cited in note (26 L.R.A.(N.S.) 618) as to when instrument creating right in minerals to be regarded as lease.

51 L. R. A. 781, BOSTON WOVEN HOSE & RUBBER CO. v. KENDALL, 178 Mass. 232, 86 Am. St. Rep. 478, 59 N. E. 657, 9 Am. Neg. Rep. 496.

Liability for negligence as affected by intervening acts.

Cited in D'Almeida v. Boston & M. R. Co. 209 Mass. 88, 95 N. E. 398, holding railroad liable for injury to mill employee from defective car, delivered into sole control of mill; Turner v. Page, 186 Mass. 602, 72 N. E. 329, holding defendant negligently allowing his team to run away was liable for injuries received by plaintiff when the act of a third person in trying to stop them made them to swerve so as to collide with plaintiff's buggy; Conroy v. G. W. & F. Smith Iron Co. 194 Mass. 476, 80 N. E. 488, on the concurring negligence of third parties as affecting defendant's liability for negligence; Pittsfield Cotton-wear Mfg. Co. v. Pittsfield Shoe Co. 72 N. H. 548, 58 Atl. 242, on the intervening negligence of a third person as relieving one from liability for an omission of duty.

Liability of one, whose negligence concurred in an injury, to the other wrongdoer.

Cited in Central of Georgia R. Co. v. Macon R. & Light Co. 9 Ga. App. 636, 71 S. E. 1076, holding that railroad cannot recover from light company amount of judgment paid by railroad for wrongful death of its employee through electric shock; Boston & M. R. Co. v. Sargent, 72 N. H. 465, 57 Atl. 688, holding a railroad company might recover from a shipper who under a contract with the railroad assumed control of a car and undertook to heat it, for damages caused by the defective condition of the heating apparatus; Boston & M. R. Co. v. Brackett, 71 N. H. 498, 53 Atl. 304, holding in order that plaintiff against whom a judgment has been recovered by an employee for injuries received by reason of a defective track belonging to defendants and on whom the burden rests to keep it in repair may recover of defendants, it must prove that it could not have prevented the injury by the exercise of ordinary care.

Cited in notes (36 L.R.A.(N.S.) 587) on rule denying contribution between

joint tort feasors as affected by question of proximate cause; (40 L.R.A.(N.S.) 1156) on right of employer held liable for tort of or upon servant or contractor, to recover over from actual wrongdoer.

Distinguished in Merrimac Chemical Co. v. American Tool & Mach. Co. 192 Mass. 211, 78 N. E. 419, holding defendant company was not liable to plaintiff for the amount paid to wife of an employee killed by the bursting of a machine driven at an excessive speed, the driving pulley of which was less in diameter than designated in the blue print, where plaintiff was aware of the difference and knew that the result would be an excessive speed; Union Stock Yard Co. v. Chicago, B. & Q. R. Co. 196 U. S. 226, 49 L. ed. 456, 25 Sup. Ct. Rep. 226, 2 Ann. Cas. 525, holding plaintiff company who had been held liable for an injury to an employee by reason of imperfect brakes on a car furnished by defendant could not recover from defendant's the defect being one discoverable upon inspection.

Basis of liability in damage.

Cited in Leavitt v. Fiberloid Co. 196 Mass. 446, 15 L.R.A.(N.S.) 864, 82 N. E. 682, on defendant as liable on breach of contract for such damages as follow as a natural consequence and the proximate cause of the act.

False warranty as tort.

Cited in Farrell v. Manhattan Market Co. 198 Mass. 274, 15 L.R.A.(N.S.) 887, 126 Am. St. Rep. 436, 84 N. E. 481, 15 Ann. Cas. 1076, on an action for tort for false warranty as lying where a breach of warranty.

Liability of manufacturer for injury to purchaser's servant.

Cited in footnote to McCaffrey v. Mossberg & G. Mfg. Co. 55 L.R.A. 822, which denies liability of manufacturer of drop press for injury to employee of purchaser from breaking of defective hook.

Personal injuries as element of damages for breach of warranty.

Cited in note (3 L.R.A.(N.S.) 1049) on personal injuries as element of damages for breach of warranty.

Failure to inspect as waiver of warranty.

Cited in note (24 L.R.A.(N.S.) 238) on failure to inspect or test as waiver of express warranty.

51 L. R. A. 783, SWEETLAND v. LYNN & B. R. CO. 177 Mass. 574, 59 N. E. 443.

Waiver or abandonment of rules.

Cited in Feneff v. Boston & M. R. Co. 196 Mass. 577, 82 N. E. 705, holding that jury could infer from fact that for fifteen years yard employees had been accustomed to ride on locomotives that rule requiring pass had been abrogated: Boyle v. Columbian Fire Proofing Co. 182 Mass. 98, 64 N. E. 726, holding the open and continual violation of a rule of defendant company forbidding employees riding on a material hoist is evidence of the abandonment or waiver of the rule; Cutts v. Boston Elev. R. Co. 202 Mass. 456, 89 N. E. 21, holding evidence to the effect that for several years passengers had gone out onto platforms of car before it came to a stop showed a waiver of a notice warning passengers not to leave the car while in motion; Crowley v. Boston Elev. R. Co. 204 Mass. 246, 90 N. E. 532, holding rule forbidding passengers to ride on platform abandoned by reason of continued nonenforcement; Nieboer v. Detroit Electric R. Co. 128 Mich. 494, 87 N. W. 626 (dissenting opinion); Brady v. New York, N. H. & H. R. Co. 184 Mass. 229, 68 N. E. 227,—on how rules and regulations may be waived or abandoned.

Distinguished in Bromley v. New York, N. H. & H. R. Co. 193 Mass. 455, 79 N. E. 775, holding in an action by a passenger for injuries received in a collision where at the time he had left his seat and was standing in the baggage car, evidence that it was customary for passengers between towns to ride in the baggage car was properly refused.

Reasonableness of rules as to riding on platforms of cars.

Cited in Renaud v. New York, N. H. & H. R. Co. 210 Mass. 555, 38 L.R.A. (N.S.) 690, 97 N. E. 98, holding reasonable, regulation forbidding passengers from riding on steps; Burns v. Boston Elev. R. Co. 183 Mass. 97, 66 N. E. 418, holding a notice in a car that passengers riding on the front platform do so at their own risk is a reasonable regulation.

Rules admissible as evidence of negligence.

Cited in Stevens v. Boston Elev. R. Co. 184 Mass. 478, 69 N. E. 338, holding in an action against a street railway company for injuries received in a collision with a car, where the defendant's motorman did not sound the gong, a rule of defendants as to the sounding of the gong is admissible to show negligence on the part of the motorman; Robinson v. Old Colony Street R. Co. 189 Mass. 597, 76 N. E. 190, holding it was competent in an action, for negligent injury to show that the motorman at the time of the accident did not have his hands where he could promptly control the car.

Negligence in riding on platform.

Cited in Heshion v. Boston Elev. R. Co. 208 Mass. 118, 94 N. E. 390, holding former conductor negligent in riding on running board; Pike v. Boston Elev. R. Co. 192 Mass. 427, 78 N. E. 497; McDonough v. Boston Elev. R. Co. 191 Mass. 511, 78 N. E. 141,—holding a person riding on the front platform of a car with knowledge that he did so at his own risk cannot recover for injuries received.

Cited in footnote to Third Ave. R. Co. v. Barton, 52 L.R.A. 471, which denies right of passenger on running board of street car to recover for injuries by contact with pillar near track, while passing around conductor.

Negligence as a question of fact.

Cited in Burns v. Worcester Consol. Street R. Co. 193 Mass. 66, 78 N. E. 740, holding it a question for the jury from the evidence to determine whether a motorman was guilty of negligence in running down a boy crossing the tracks; Pomeroy v. Boston & N. Street R. Co. 193 Mass. 511, 79 N. E. 764, holding it a question for the jury whether railroad company was guilty of negligence in not anticipating that the placing of a pole so near to tracks might result in injury to passengers.

51 L. R. A. 785, CLARK v. NEEDHAM, 125 Mich. 84, 84 Am. St. Rep. 559, 83 N. W. 1027.

Validity of agreements in restraint of trade.

Cited in Darius Cole Transp. Co. v. White Star Line, 108 C. C. A. 165, 186 Fed. 65, holding void, lease of boat by owner to competitor enabling latter to maintain monopoly of business; Barrone v. Mosely Bros. 144 Ky. 702, 139 S. W. 869, holding valid, agreement by laundry owner, on sale of part of machinery to competitor, to abandon within prescribed territory, class of business done with such machinery; Clemons v. Meadows, 123 Ky. 183, 6 L.R.A.(N.S.) 851, 124 Am. St. Rep. 339, 94 S. W. 13, holding invalid as in restraint of trade an agreement between hotel keepers whereby one of them agrees to keep his hotel closed for a period of years; Detroit Salt Co. v. National Salt Co. 134 Mich. 128, 96 N. W. 1, (dissenting opinion); Osius v. Hinchman, 150 Mich. 608, 16

L.R.A.(N.S.) 395, 114 N. W. 402; Stewart v. Stearns & C. Lumber Co. 56 Fla. 592, 24 L.R.A.(N.S.) 658, 48 So. 19,—on the determination of the validity or invalidity of agreements tending to restrain trade.

Cited in footnotes to Cummings v. Union Blue Stone Co. 52 L.R.A. 262, which holds unlawful, contract between persons controlling 90 per cent of blue stone at market to maintain agreed prices; Bancroft v. Union Embossing Co. 64 L.R.A. 298, which holds contract by seller of right to manufacture and sell patented machine not to engage in making same nor grant right to do so to others; Eugene Dietzgen Co. v. Kolosky, 66 L.R.A. 503, which sustains right to injunction against member of former partnership agreeing on sale of business not to engage directly or indirectly in competitive business within specified city for designated period from continuing in rival business into which he entered in violation of such agreement.

Cited in notes (6 L.R.A.(N.S.) 848) on validity of stipulation not to engage in particular business, not ancillary to lawful contract; (24 L.R.A.(N.S.) 924) on validity of agreement in restraint of trade, ancillary to sale of business or profession, as affected by territorial scope; (15 L.R.A.(N.S.) 852; 52 L. ed. U. S. 870) on validity of agreement not to compete, ancillary to sale or lease of property, as affected by covenantee's purpose to procure a monopoly.

51 L. R. A. 787, BARKER v. VALENTINE, 125 Mich. 336, 84 Am. St. Rep. 578, 84 N. W. 297.

Effect of removal of impediment to marriage after cohabitation begun.

Cited in Re Fitzgibbons, 162 Mich. 421, 139 Am. St. Rep. 570, 127 N. W. 313, holding that bigamous marriage becomes valid after death of husband's first wife unknown to both parties.

Cited in footnotes to University of Michigan v. McGuckin, 57 L.R.A. 917, which holds lawful marriage shown between persons whose cohabitation originally meretricious, by continued cohabitation after disability removed and birth of children baptized as legitimate; Eaton v. Eaton, 60 L.R.A. 605, which holds marriage consummated by cohabitation with intent to sustain relation of husband and wife after removal of impediment existing when marriage first contracted.

Cited in note (124 Am. St. Rep. 116, 117; 3 L.R.A.(N.S.) 246) on effect of removal of impediment to marriage after cohabitation begun.

Cohabitation as evidence of marriage.

Cited in Bechtel v. Barton, 147 Mich. 324, 110 N. W. 935, on cohabitation as evidence of marriage.

51 L. R. A. 791, WEST v. BECHTEL, 125 Mich. 144, 84 N. W. 69.

Right to rescind contract because of other party's default.

Cited in Quarton v. American Law Book Co. 143 Iowa, 523, 32 L.R.A.(N.S.) 10, 121 N. W. 1009, holding a contract for the purchase of law books to be delivered in and payable for in instalments may be cancelled by the seller where the buyer fails to pay for several instalments and does not respond to requests for payment and makes no protest when delivery is discontinued; Welsh v. Michigan Maple Co. 161 Mich. 18, 125 N. W. 692, holding a rescission of a contract for the sale of lumber was not justified by a mere failure to pay for a single shipment at the time fixed by the contract; Hibernian Bkg. Asso. v. Eckhart & S. Mill Co. 140 Ill. App. 490, on rescission of contract because of other party's default.

Cited in note (32 L.R.A.(N.S.) 9) on rescission of sale for failure to pay for instalment.

Distinguished in Town v. Jepson, 133 Mich. 678, 95 N. W. 742, holding where a contract for the sale of fruit made payment a condition to the transfer, a refusal of the buyer to pay for a part of the fruit delivered without explanation warranted the seller in refusing to make further deliveries; Michigan Yacht & Power Co. v. Busch, 75 C. C. A. 109, 143 Fed. 933, where a party refused to pay instalments as contracted for unless the other parties give security they were under no obligation to give.

Disapproved in John A. Gauger & Co. v. Sawyer & A. Lumber Co. 88 Ark. 432, 115 S. W. 157, holding a vendor who was not in default might treat a contract as rescinded where the vendee refused to pay sums due to vendor unless he would promise to perform the contract in a designated way; Ross-Meehan Foundry Co. v. Royer Wheel Co. 113 Tenn. 380, 68 L.R.A. 832, 83 S. W. 167, 3 Ann. Cas. 898, holding a contract to make and deliver property as required with payment upon delivery of instalments may be terminated for failure to make such payments.

51 L. R. A. 800, TURPIN v. CUNNINGHAM, 127 N. C. 508, 80 Am. St. Rep. 808, 37 S. E. 453.

Effect of change of color of animal on mortgagee's rights.

Cited in Stickney v. Dunway & Lambert, 169 Ala. 472, 53 So. 770, holding that mortgagee's rights will not suffer prejudice by natural change of color of mule described in mortgage.

51 L. R. A. 801, ROSE v. HIRSCH, 36 C. C. A. 132, 94 Fed. 177.

Damages for infringement of patents, copyrights, or trademarks.

Cited in Pressed Prism Glass Co. v. Continuous Glass Prism Co. 181 Fed. 156, holding that profits of which holder of patent has been deprived by reason of lost sales are proper subject of damages

Cited in notes (21 L.R.A.(N.S.) 526) on power of equity, upon enjoining unfair competition or infringment of trademark, etc., to require payment of damages sustained by complainant, as distinguished from profits realized by defendant; (28 L.R.A.(N.S.) 75) on interest on unliquidated damages; (37 L.R.A. (N.S.) 533) on punitive damages for infringing tradename, trademark, or copyright where amount of actual damage not established; (20 Eng. Rul. Cas. 689) on damages for infringement of patents; (20 Eng. Rul. Cas. 854) on right to injunction or damages in an action for infringement of patent.

Burden of accounting for profits on infringement of patent.

Cited in Novelty Glass Mfg. Co. v. Brookfield, 170 Fed. 958, on it being for the defendant to clear up uncertanties as to profits where an infringement is wilful.

51 L. R. A. 825, ERTZ v. PRODUCE EXCH. CO. 82 Minn. 173, 83 Am. St. Rep. 419, 84 N. W. 743.

Coercive discipline of member of society to compel unlawful act.

Cited in L. D. Willcutt & Sons Co. v. Driscoll, 200 Mass. 137, 23 L.R.A.(N.S.) 1252, 85 N. E. 897 (dissenting opinion), on use of fines or penalty of expulsion to compel minority member of labor union to do unlawful acts.

Cited in footnotes to Downs v. Bennett, 55 L.R.A. 560, which denies right of one only remotely affected, to injunction against fining or expelling member for

violation of by-law prohibiting members dealing with nonmembers, or with those dealing with such nonmembers; Brown v. Jacobs Pharmacy Co. 57 L.R.A. 548, which sustains right to injunction against combination of merchants to prevent sales to other dealer unless he sells at fixed prices; Martell v. White, 64 L.R.A. 260, which sustains right of action by quarry owner against members of voluntary association to which he does not belong for enforcement of by-laws imposing fine on members dealing with nonmembers.

Right of injured person not party to agreement to assail validity as tending to monopoly.

Cited in note (26 L.R.A.(N.S.) 149) on right of injured person not party to agreement to assail validity as tending to monopoly.

Boycotting.

Cited in note (103 Am. St. Rep. 496, 502) on boycotting.

51 L. R. A. 828, MURRAY v. RAMSEY COUNTY, 81 Minn. 359, 83 Am. St. Rep. 379, 84 N. W. 103.

Special legislation.

Cited in Carr v. State, 175 Ind. 265, 32 L.R.A.(N.S.) 1200, 93 N. E. 1071, (dissenting opinion), on validity of law exempting professional baseball players from operation of Sunday laws; State v. Bridgeman & R. Co. 117 Minn. 189, 134 N. W. 496, upholding act to prevent unlawful discrimination in sale of milk, cream and butter fat; Pepin Twp. v. Sage, 64 C. C. A. 169, 129 Fed. 664, holding under laws of Minnesota a law based upon a classification purely arbitrary and not justified by some apparent reason, special legislation; Wall v. St. Louis County, 105 Minn. 409, 117 N. W. 611, (dissenting opinion), as to what constitutes; State ex rel. Board of Education v. Brown, 97 Minn. 414, 5 L.R.A. (N.S.) 336, 106 N. W. 477, holding curative statutes or remedial acts which apply to all places things or subjects which are affected by the conditions to be remedied are not special acts within the meaning of the constitutional prohibition; State v. Ames, 91 Minn. 371, 98 N. W. 190, holding act regulating the manner of drawing jurors in counties having a population of two hundred thousand is a general law, and is constitutional; Le Tourneau v. Hugo, 90 Minn. 422, 97 N. W. 115, holding act applying to all cities of the state having a designated population, valid; State ex rel. Douglas v. Westfall, 85 Minn. 439, 57 L.R.A. 299, 89 Am. St. Rep. 571, 89 N. W. 175, holding population, if not limited to the present, may be a basis of classification of counties for purpose of legislation if germane to purpose of the law; Hetland v. Norman County, 89 Minn. 494, 95 N. W. 305; State ex rel. Chapel v. Justus, 90 Minn. 476, 97 N. W. 124; State v. Walker, 83 Minn. 297, 86 N. W. 104,—holding legislation limited in its relation to particular subdivisions of the state to be valid, must rest on some characteristic or peculiarity plainly distinguishing the places included from those excluded.

Cited in footnote to Carolina Grocery Co. v. Burnet, 58 L.R.A. 687, which upholds as against objection of special legislation statute establishing new method of forming governing boards in counties with provision for nonapplication in specified counties.

— As to institutions for cure of inebriates.

Cited in Leavitt v. Morris, 105 Minn. 177, 17 L.R.A.(N.S.) 990, 117 N. W. 393, 15 Ann. Cas. 961, holding act for state farm for inebriates was valid.

Necessity for uniformity in operation of act.

Cited in Smith v. State, 54 Tex. Crim. Rep. 307, 113 S. W. 289, on necessity that

an act operate uniformly on all within its provisions; State ex rel. Mudeking v. Parr, 109 Minn. 152, 134 Am. St. Rep. 759, 123 N. W. 408, on necessity that a tax on occupations act uniformly on all within the class; Re Mallon, 16 Idaho, 745, 22 L.R.A.(N.S.) 1125, 102 Pac. 374, on the constitutionality of classifications of grades of crimes.

51 L. R. A. 829, SANBORN v. PEOPLE'S ICE CO. 82 Minn. 43, 83 Am. St. Rep. 401, 84 N. W. 641.

Title to ice on public waters.

Cited in State v. Mallory, 73 Ark. 243, 67 L.R.A. 775, 83 S. W. 955, 3 Ann. Cas. 852, on title of state to such ice; Des Moines Park Comrs. v. Diamond Ice Co. 130 Iowa, 607, 3 L.R.A.(N.S.) 1105, 105 N. W. 203, 8 Ann. Cas. 28, as to whether owner of riparian land on public stream has title to ice thereon.

Cited in footnotes to Becker v. Hall, 56 L.R.A. 573, which holds marking, staking, or cleaning ice not thick enough for harvesting, insufficient appropriation; Rossmiller v. State, 58 L.R.A. 93, which holds void, exacting money as consideration for right to take ice from public waters of state.

Distinguished in Rossmiller v. State, 114 Wis. 182, 58 L.R.A. 98, 91 Am. St. Rep. 910, 89 N. W. 839, holding state does not own ice formed on public waters in proprietary sense.

Rights of riparian owners.

Cited in Roanoke Rapids Power Co. v. Roanoke Nav. & Water Power Co. 152 N. C. 491, 68 S. E. 190, on riparian owners as entitled to have a river flow undisturbed along the frontage of their property.

51 L. R. A. 836, ALABAMA & V. R. CO. v. WILLIAMS, 78 Miss. 209, 84 Am. St. Rep. 624, 28 So. 853.

Right of action for wrongful death of illegitimate child.

Cited in Runt v. Illinois C. R. Co. 88 Miss. 583, 41 So. 1; Deichman v. Knecht, 18 Pa. Dist. R. 281, 11 North Co. Rep. 234; Robinson v. Georgia R. & Bkg. Co. 117 Ga. 172, 60 L.R.A. 557, 97 Am. St. Rep. 156, 43 S. E. 452,—holding a mother of an illegitimate child has no right of action for his wrongful death; Lynch v. Knopp, 118 La. 617, 8 L.R.A.(N.S.) 483, 118 Am. St. Rep. 391, 43 So. 252, 10 Ann. Cas. 807, on the right of the mother to recover for the wrongful death of an illegitimate child.

Cited in footnotes to Illinois C. R. Co. v. Johnson, 51 L.R.A. 837, denying right of illegitimate half-sister to maintain action for death of sister or brother; Robinson v. Georgia R. & Banking Co. 60 L.R.A. 555, which denies mother's right of action for death of illegitimate child.

Cited in note (2 L.R.A.(N.S.) 640) on right to recover for negligent killing of illegitimate, or for benefit of illegitimate for negligent killing of relative.

51 L. R. A. 837, ILLINOIS C. R. Co. v. JOHNSON, 77 Miss. 727, 28 So. 753.

Right of action for wrongful death of illegitimate child.

Cited in Alabama & V. R. Co. v. Williams, 78 Miss. 214, 51 L.R.A. 836, 84 Am. St. Rep. 624, 28 So. 853; Robinson v. Georgia R. & Bkg. Co. 117 Ga. 172, 60 L.R.A. 557, 97 Am. St. Rep. 156, 43 S. E. 452,—holding a mother could not recover for the wrongful death of an illegitimate child; Lynch v. Knoop, 118 La. 617, 8 L.R.A.(N.S.) 483, 118 Am. St. Rep. 391, 43 So. 252, 10 Ann. Cas. 807, on right of action for the wrongful death of an illegitimate child.

Cited in footnote to Alabama & V. R. Co. v. Williams, 51 L.R.A. 836, which denies right of mother of illegitimate child to recover for his death.

Cited in note (2 L.R.A.(N.S.) 642) on right to recover for negligent killing of illegitimate, or for benefit of illegitimate for negligent killing of relative.

Distinguished in Southern R. Co. v. Hawkins, 35 App. D. C. 323, 21 Ann. Cas. 926, holding that administrator may maintain action for wrongful death for benefit of illegitimate brother of half blood of decedent.

51 L. R. A. 839, HIBBETTE v. BAINS, 78 Miss. 695, 29 So. 80.

Right to custody of children.

Cited in Re Byron, 83 Vt. 110, 74 Atl. 488, holding that right to custody of illegitimate child is prima facie is mother's; Reese v. Gellerman, 51 Tex. Civ. App. 44, 110 S. W. 196 (dissenting opinion), on right of father to recover custody of daughter from aunt; Ex parte Reynolds, 73 S. C. 302, 114 Am. St. Rep. 86, 53 S. E. 490, 6 Ann. Cas. 936, on the right of a parent to the custody of a child as not being defeated by a parol gift of it to another; Gilmore v. Kitson, 165 Ind. 409, 74 N. E. 1083, holding a father entitled to the custody of his child as against his deceased wife's sister to whom the mother before her death bequeathed the custody of the child, he never having acquiesced therein and being a fit person for its custody; Glidewell v. Morris, 89 Miss. 83, 42 So. 537, awarding the custody of a child as between its grandmother and its father to the latter where it appears that the child's interests will be best served thereby.

Cited in footnotes to Stapleton v. Poynter, 53 L.R.A. 784, which upholds taking custody of child against its will from wealthy grandparent and giving to parent of moral habits; Lasserre v. Michael, 54 L.R.A. 927, which denies father's absolute right to custody of minor child; Fletcher v. Hickman, 55 L.R.A. 896, which holds father bound by agreement intrusting custody of infant child to another; Jones v. Bowman, 67 L.R.A. 860, which holds that religious belief will not in absence of statutory requirement be considered in determining the proper custodian of an infant.

Cited in notes (2 L.R.A.(N.S.) 204) on parent's right to will custody of child; (88 Am. St. Rep. 868, 869) on contracts for transfer of parental custody and responsibility.

51 L. R. A. 850, ST. LOUIS v. CONSOLIDATED COAL CO. 158 Mo. 342, 81 Am. St. Rep. 310, 59 S. W. 103.

Right to wharfage.

Cited in note (70 L.R.A. 200) on right to wharfage.

51 L. R. A. 854, TRAMMELL v. VAUGHN, 158 Mo. 214, 81 Am. St. Rep. 302, 59 S. W. 79.

Disease as a defense to a breach of promise of marriage.

Cited in Grover v. Zook, 44 Wash. 500, 7 L.R.A.(N.S.) 590, 87 Pac. 638, 12 Ann. Cas. 192, holding an action for a breach of promise to marry would not lie where one of the parties is seriously affected with tuberculosis and the other had members of his family die of the disease; Beans v. Denny, 141 Iowa, 59, 117 N. W. 1091, on the affliction of one of parties with a venereal disease as excusing the other from performing his promise of marriage where made with ignorance of the others physical condition.

Cited in footnote to Smith v. Compton, 58 L.R.A. 480, which requires illness,

to excuse breach of marriage promise, to be such as renders marital intercourse impossible.

Cited in note (7 L.R.A.(N.S.S.) 585) on ill health as defense to breach of promise action.

Release from performance of contract by acts of other party.

Cited in Cousins v. Bowling, 100 Mo. App. 459, 74 S. W. 168, holding a person is relieved of a contract to deliver hogs on a certain day, by the act of the purchaser in telling him that if he would not deliver before that time he would not receive them.

Failure to keep agreement for marriage at specified time as breach.

Cited in note (66 L.R.A. 799, 801) on refusal or failure to keep agreement for marriage at specified time or place as breach of marriage contract.

51 L. R. A. 858, WARD v. WARD, 63 Ohio St. 125, 81 Am. St. Rep. 621, 57 N. E. 1095.

Validity of husband's contracts affecting wife's marital rights.

Cited in Fast v. Umbaugh, 22 Ohio C. C. 413, 12 Ohio C. D. 437, holding a conveyance by a husband of an equity in real estate without the knowledge or consent of his wife was a fraud upon her rights; Chittenden v. Chittenden, 22 Ohio C. C. 506, 12 Ohio C. D. 532, holding a mortgage executed by a husband with a view of abandoning wife and for the purpose of defeating any judgment for alimony was a fraud upon the wife; Duttenhofer v. Duttenhofer, 12 Ohio S. & C. P. Dec. 744, holding where an antenuptial settlement upon a wife was grossly disproportionate to the amount which the wife would receive by law the burden was upon the heirs to show good faith in the transaction; Wilson v. Wilson, 32 Utah, 178, 89 Pac. 643, on when a conveyance before marriage is in fraud of the rights of wife; Daniher v. Daniher, 201 Ill. 494, 66 N. E. 239, holding a conveyance to son made a few days before the marriage of the grantor without the knowledge of the intended wife is not fraudulent as to her where made in consideration of services performed by the son and his assumption of certain obligations.

Cited in note (103 Am. St. Rep. 422) on antenuptial conveyance in fraud of intended wife.

51 L. R. A. 860, SECOND NAT. BANK v. BECKER, 62 Ohio St. 289, 56 N. E. 1025.

Imprisonment for debt.

Cited in State v. Cook, 66 Ohio St. 573, 58 L. R. A. 625, 64 N. E. 567, holding a decree for alimony is not a debt within the meaning of a constitutional inhibition against imprisonment for debt; Miller v. Toledo Grain & Mill. Co. 21 Ohio C. C. 332, 11 Ohio C. D. 634, holding that in proceedings to punish for contempt there cannot be imprisonment to enforce payment of costs.

Nature of contempt proceedings.

Cited in Re Quick, 1 Ohio N. P. N. S. 58, 14 Ohio S. & C. P. Dec. 56, holding that proceedings to punish for contempt are quasi-criminal and should be strictly construed; Iron Molders' Union v. Greenwald Co. 4 Ohio N. P. N. S. 173, 16 Ohio S. & C. P. Dec. 688, on the same point.

51 L. R. A. 863, RE WILLBOR, 20 R. I. 126, 78 Am. St. Rep. 842, 37 Atl. 634.

Presumption of survivorship among persons perishing in a common disaster.

Cited in Balder v. Middeke, 92 Ill. App. 229; Middeke v. Balder, 198 Ill. 597, 59 L.R.A. 655, 92 Am. St. Rep. 284, 64 N. E. 1002,—holding where the insured and the beneficiary die in the same disaster, in the absence of proof that the beneficiary survived the insured the benefits of the policy will go to the heirs of the insured; United States Casualty Co. v. Kacer, 169 Mo. 311, 58 L.R.A. 440, 92 Am. St. Rep. 641, 69 S. W. 370; Supreme Council, R. A. v. Kacer, 96 Mo. App. 102, 69 S. W. 671,—holding the ownership of property of persons lost in a common disaster would be adjudged as if it were known that both died simultaneously; Walton & Co. v. Burchel, 121 Tenn. 732, 130 Am. St. Rep. 788, 121 S. W. 391, holding no presumption of survivorship where father and son perish in a common disaster, also citing annotation to this point; Young Women's Christian Home v. French, 187 U. S. 410, 47 L. ed. 236, 23 Sup. Ct. Rep. 184, holding no presumption of survivorship where a mother and son perished on the sinking of a ship.

Cited in footnotes to United States Casualty Co. v. Kacer, 58 L.R.A. 436, which denies presumption of survivorship in case of common calamity; Middeke v. Balder, 59 L.R.A. 653, which holds burden of proving survivorship of beneficiary in benefit certificate on her representatives where insured and beneficiary died in common disaster.

Cited in note (104 Am. St. Rep. 210, 213) on presumption of death.

51 L. R. A. 873, DOWELL v. GOODWIN, 22 R. I. 287, 84 Am. St. Rep. 842, 47 Atl. 693.

Impeachment in equity of proceedings in courts of law.

Cited in Opie v. Clancy, 27 R. I. 45, 60 Atl. 635, holding equity would permit the impeachment of the record of a common law court in proceedings to restrain the levy of execution.

Cited in footnote to National Surety Co. v. State Bank, 61 L.R.A. 394, which sustains injunction in Federal court against using unconscionable judgment of state court to extort from defendant money not justly due.

Cited in note (124 Am. St. Rep. 767) on relief in equity from judgment in case plaintiff did not induce false return of service by sheriff.

Distinguished in Hearn v. Canning, 27 R. I. 220, 61 Atl. 602, holding equity would not aid to restrain the service of execution because of a mistake in the entry of the judgment where no fraud appears in the case.

Disapproved in Smoot v. Judd, 184 Mo. 559, 83 S. W. 481, holding where judgment has been rendered by default on a sheriff's false return of personal service the remedy is a suit on the sheriff's bond for damages where there is no fraud on part of plaintiff.

Fraud as grounds for setting aside a judgment.

Cited in Keith v. Alger, 114 Tenn. 23, 85 S. W. 71, on nature of fraud that will authorize the setting aside of a judgment therefor.

51 L. R. A. 876, ENGELSKIRGER'S APPEAL, 197 Pa. 285, 47 Atl. 233.

Right of foreign executor to sue.

Cited in Hare v. O'Brien, 233 Pa. 334, 39 L.R.A.(N.S.) 434, 82 Atl. 475, holding that domiciliary administrator who has obtained judgment in state of his residence may maintain action on it in local courts; Brooks v. Litchfield, 19

Pa. Dist. R. 40, dismissing foreclosure action by foreign executors; Mansfield v. McFarland, 202 Pa. 175, 51 Atl. 763, holding a foreign executor could not be heard to allege that his testator had no creditors in state in foreign atttachment proceedings.

Remittance of funds by ancillary to foreign administrator.

Cited in Walters's Estate, 19 Pa. Dist. R. 295, holding that fund in hands of ancillary administrator will be remitted to administrator of domicil, where there are no creditors here, though next of kin reside here.

51 L. R. A. 881, PURDY v. WESTINGHOUSE ELECTRIC & MFG. CO. 197 Pa. 257, 80 Am. St. Rep. 816, 47 Atl. 237.

Basis of employer's liability.

Cited in O'Dowd v. Burnham, 19 Pa. Super. Ct. 470, on employers not being liable to employees for the consequences of danger but of negligence.

Master's duty as to appliances.

Cited in note (16 L.R.A.(N.S.) 133) on furnishing servant article in general use as measure of master's duty.

51 L. R. A. 883, THOMPSON v. STATE, 105 Tenn. 177, 80 Am. St. Rep. 875, 58 S. W. 213.

Punishment for crime.

Distinguished in Pressly v. State, 114 Tenn. 538, 69 L.R.A. 293, 108 Am. St. Rep. 92, 86 S. W. 378, holding where a statute creates a misdemeanor and prescribes the punishment it is error where a conviction had for such crime to impose another form of punishment.

51 L. R. A. 885, CHATTANOOGA ELECTRIC CO. v. BODDY, 105 Tenn. 666, 58 S. W. 646.

Termination of relationship of passenger with carrier.

Cited in Palmer v. Winston-Salem R. & Electric Co. 131 N. C. 251, 42 S. E. 604, holding a person who having trouble with the motorman left the car and then returned to renew the altercation was not a passenger so as to entitle him to recover for injuries received at the hands of the motorman.

Duty of person crossing cartracks.

Cited in Hornstein v. United R. Co. 195 Mo. 456, 4 L.R.A.(N.S.) 738, 113 Am. St. Rep. 693, 92 S. W. 884, 6 Ann. Cas. 699, holding a person attempting to cross street car track from behind another car from which he has just alighted without looking to see if a car is approaching cannot recover for injuries received even though motorman failed to give warning.

51 L. R. A. 886, CHATTANOOGA RAPID TRANSIT CO. v. VENABLE, 105 Tenn. 460, 58 S. W. 861.

Railroad employees as passengers.

Cited in Dayton Coal & I. Co. v. Dodd, 37 L.R.A.(N.S.) 463, 110 C. C. A. 395, 188 Fed. 607, holding that miners gratuitously carried to work by mine owner on his private railroad are not passengers; Harris v. City & E. G. R. Co. 69 W. Va. 66, — L.R.A.(N.S.) —, 70 S. E. 859, Ann. Cas. 1912D, 59, holding that day laborer in power house is passenger while riding to work; Headline v. Great Northern R. Co. 113 Minn. 81, 128 N. W. 1115, on bridge carpenter as passenger while being carried to work; Iarussi v. Missouri P. R. Co. 155 Fed. 657, on railroad employees as passengers; Indianapolis Traction & Terminal Co.

v. Romans, 40 Ind. App. 196, 79 N. E. 1068, holding an employee of defendant company riding home from work on a free pass issued to him by defendant was a passenger; Enos v. Rhode Island Suburban R. Co. 28 R. I. 295, 12 L.R.A.(N.S.) 246, 67 Atl. 5, holding an employee receiving transportation tickets as part of his weekly wage might recover as a passenger for injuries received while riding home from work; Simmons v. Oregon R. Co. 41 Or. 164, 69 Pac. 440, holding a carrier liable for injuries to an employee riding on train when off duty as a passenger; Haas v. St. Louis & Suburban R. Co. 111 Mo. App. 713, 90 S. W. 1155, holding a track laborer riding on car in pursuance of an order of his foreman to go to another point on the road occupies the relation of a passenger.

Cited in footnotes to Peterson v. Seattle Traction Co. 53 L.R.A. 586, which holds member of construction gang riding home on ticket after day's work, not fellow servant of those operating car; Sanderson v. Panther Lumber Co. 55 L.R.A. 908, which holds foreman of lumber camp riding on log train to and from camp, fellow servant of persons operating train; Travelers' Ins. Co. v. Austin, 59 L.R.A. 107, which holds railroad paymaster traveling on company's business from station to station, not a passenger within meaning of accident policy.

Cited in notes (12 L.R.A.(N.S.) 858) on existence of relationship where servant goes on master's premises at other than hours of actual labor; (19 L.R.A. (N.S.) 718) on employee of railroad or street railway as a passenger while being carried to or from track.

Effect of permissive violation of rules on liability of carrier.

Cited in Nieboer v. Detroit Electric R. Co. 128 Mich. 494, 87 N. W. 626 (dissenting opinion), on a passenger riding in a dangerous position with the consent of conductor as not being chargeable with contributory negligence.

Cited in note (37 L.R.A.(N.S.) 420) on liability of railroad to person wrongfully on train by collusion with employee.

Measure of carrier's duty to passengers.

Cited in Illinois C. R. Co. v. Kuhn, 107 Tenn. 107, 64 S. W. 202, on the measure of carrier's duty to passengers.

51 L. R. A. 889, STANDARD FURNITURE CO. v. VAN ALSTINE, 22 Wash. 670, 79 Am. St. Rep. 960, 62 Pac. 145.

Cited historically in Standard Furniture Co. v. Van Alstine, 31 Wash. 501, 72 Pac. 119, a subsequent litigation arising out of the same transactions.

Recovery of property or its price when sold for unlawful use.

Cited in Sawyer v. Sanderson, 113 Mo. App. 247, 88 S. W. 151, holding the seller of a saloon stock knowing that it is to be used in violation of law cannot maintain an action on a note given for the purchase price.

Cited in note (40 L.R.A.(N.S.) 967) on right of conditional vendor to recover property as affected by knowledge of intended unlawful use.

Distinguished in Washington Liquor Co. v. Shaw, 38 Wash. 399, 80 Pac. 536, 3 Ann. Cas. 153, holding it no defense to an action for the purchase of price of intoxicating liquors that it was sold with knowledge that it was to be resold in a house of ill-fame.

Action founded on illegal contract.

Cited in Electrova Co. v. Spring Garden Ins. Co. 156 N. C. 237, 35 L.R.A. (N.S.) 1218, 72 N. E. 306, holding that placing of piano in house of ill fame, with hope of selling it to proprietor, will not avoid insurance policy on it; Jenness v. Simpson, 84 Vt. 146, 78 Atl. 886, holding that husband, in action for

alienation of affections, can attack validity of contract between himself and wife releasing defendant from liability; National Surety Co. v. Kansas City Hydraulic Press Brick Co. 73 Kan. 206, 84 Pac. 1034, holding a surety on a contractor's bond cannot be held liable for materials furnished with a knowledge that the contract was obtained without an opportunity for free competition; Johnson v. Douglas, 32 Wash. 294, 73 Pac. 374, holding a person accused of seduction could not maintain an action to recover a deposit to be paid the complaining witness upon dismissal of the prosecution; Grover v. Zook, 44 Wash. 504, 7 L.R.A.(N.S.) 592, 87 Pac. 638, 12 Ann. Cas. 192, holding an action would not lie for breach of a contract to marry where one of parties to is affected with tuberculosis and the other has a hereditary taint of the disease.

Cited in note (117 Am. St. Rep. 509) on contracts, consideration for which has partly failed, or is partly illegal.

51 L. R. A. 892, STULL v. De MATTOS, 23 Wash. 71, 62 Pac. 451.

Uniformity of license tax.

Cited in Washington ex rel. Davis-Smith Co. v. Clausen, 65 Wash. 204, 37 L.R.A.(N.S.) 484, 117 Pac. 1101, holding valid, assessment levied on those conducting hazardous occupations, to provide indemnity fund for employees; Com. v. Payne Medicine Co. 138 Ky. 172, 127 S. W. 760, holding void, act exacting tax from persons selling patent medicine and exempting merchants or druggists selling such medicine; Los Angeles v. Los Angeles Independent Gas Co. 152 Cal. 769, 93 Pac. 1006, holding a license tax imposed on all persons engaged in the same business, without regard to the extent of such business is not an unlawful discrimination; McKnight v. Hodge, 55 Wash. 295, 40 L.R.A.(N.S.) 1212, 104 Pac. 504, holding an act requiring a license from peddlers except peddlers of agricultural products and books, periodicals and newspapers was a reasonable classification; Oilure Mfg. Co. v. Pidduck-Ross Co. 38 Wash. 142, 80 Pac. 276, holding valid an ordinance requiring the payment of a license fee by persons soliciting business by means of trading stamps.

Cited in footnotes to Harrodsburg v. Renfro, 51 L.R.A. 897, which holds void, ordinance imposing greater license fee for sale of liquors on main street of town than elsewhere; Price v. People, 55 L.R.A. 588, which sustains ordinance requiring license for sale of cigarettes; State v. Garboski, 56 L.R.A. 570, which holds void, statute exempting veterans from requirement for peddling license; Com. use of Titusville v. Clark, 57 L.R.A. 348, which holds void, exemption from license tax of contractors and real estate dealers, but not others, whose business less than $1,000.

Cited in note (129 Am. St. Rep. 251, 280) on constitutional limitations on power to impose license or occupation taxes.

Distinguished in Ex parte Hutchinson, 137 Fed. 950, holding an ordinance imposing a tax on merchants selling trading stamps and a further one on merchants using them is void where it is evident that the purpose of the act is to prohibit the use of stamp.

License fee as not a "tax" within meaning of constitution.

Cited in State v. Ide, 35 Wash. 582, 67 L.R.A. 283, 102 Am. St. Rep. 914, 77 Pac. 961, 1 Ann. Cas. 634, on license taxes as not being taxes within the meaning of the constitution; Salt Lake City v. Christensen Co. 34 Utah, 43, 17 L.R.A. (N.S.) 902, 95 Pac. 523, on constitutional provisions requiring uniformity in taxation as not applying to a license tax.

Imposition of license tax for revenue.

Cited in Re Garfinkle, 37 Wash. 654, 80 Pac. 188, holding city had a right to impose a license tax on peddlers for the purpose of revenue.

Duty of court to favor validity of a tax.

Cited in Thurston County v. Tenino Stone Quarries, 44 Wash. 360, 9 L.R.A. (N.S.) 310, 87 Pac. 634, 12 Ann. Cas. 314, on it being the duty of a court to uphold the validity of a tax unless its unconstitutionality is evident.

51 L. R. A. 897, HARRODSBURG v. RENFRO, 22 Ky. L. Rep. 806, 58 S. W. 795.

Uniformity of license tax.

Cited in Com. v. Payne Medicine Co. 138 Ky. 168, 127 S. W. 760, holding void, act exacting tax from persons selling patent medicine and exempting merchants or druggists selling such medicine.

Cited in footnote to Com. use of Titusville v. Clark, 57 L.R.A. 348, which holds void, exemption from license tax of contractors and real-estate dealers, but not others, whose business less than $1,000.

Cited in note (21 L.R.A.(N.S.) 192) on right to discriminate between parts of city as to amount of liquor license fees.

Recovery back of license fee.

Cited in Mt. Sterling v. King, 126 Ky. 529, 104 S. W. 322, holding that, if city requires saloonkeeper to pay more for license than it is authorized to demand he can recover back excess.

Cited in footnote to C. & J. Michel Brewing Co. v. State, 70 L.R.A. 911, which holds that requiring foreign corporation to pay license fee as condition precedent to sale of products within state or subject itself to penalties supposed to be prescribed by statute not such compulsion as will entitle it to recover amounts paid on statute being held unconstitutional.

Cited in note (22 L.R.A.(N.S.) 866) on right to recover license fee unlawfully exacted under color of authority.

51 L. R. A. 898, SOVEREIGN CAMP, W. W. v. FRALEY, 94 Tex. 200, 59 S. W. 879.

Meetings of governing body of fraternal associations held in foreign state.

Cited in Head Camp, P. J. W. W. v. Woods, 34 Colo. 21, 81 Pac. 261, holding changes in the laws of a fraternal association were not void because made at meetings of the head camp held outside the state of its incorporation.

Effect of changes in by-laws on pre-existing members.

Cited in note (83 Am. St. Rep. 709, 717, 718) on effect of changes in by-laws of beneficial association as against pre-existing members.

51 L. R. A. 902, MARYE v. DIGGS, 98 Va. 749, 37 S. E. 315.

Remedies available for collection of taxes.

Cited in Logan County v. Carnahan, 66 Neb. 692, 92 N. W. 980, holding statutory remedies for the collection of taxes on real estate are exclusive.

51 L. R. A. 906, LYLE v. McCORMICK HARVESTING CO. 108 Wis. 81, 84 N. W. 18.

Loss as precedent to action for indemnity.

Cited in Maxey v. Rideout, 173 Fed. 176, holding plaintiff against whom a judgment had been obtained could not maintain an action on an indemnity contract before he had been compelled to satisfy the judgment; First Avenue Land Co. v. Parker, 111 Wis. 9, 87 Am. St. Rep. 841, 86 N. W. 604, on the right to maintain an action for the breach of a bond creating a liability on plaintiff on which as yet he had not been compelled to pay anything.

Measure of damages for wrongful negotiation of note.

Cited in Luetzke v. Roberts, 130 Wis. 106, 109 N. W. 949, holding in an action for the wrongful transfer of notes, the damages recoverable might be measured by the face of the notes although plaintiff had not as yet been compelled to pay them.

Distinguished in Waters v. Susman, 151 N. C. 92, 65 S. E. 623, where no issues submitted as to the face of an unpaid note as being the measure of damages for its wrongful negotiation.

Mitigation of damages.

Cited in White v. Moran, 134 Ill. App. 492, holding in an action for damages sustained by being fraudulently induced to give notes which had never been paid, it was competent in mitigation of damages to show that plaintiff had no property out of which a judgment for the amount due could be satisfied.

Failure to instruct as grounds of error.

Cited in Schroeder v. Wisconsin C. R. Co. 117 Wis. 42, 93 N. W. 837, on omission to give instructions as being grounds for error.

Sufficiency of charge.

Cited in Salchert v. Reinig, 135 Wis. 203, 115 N. W. 132, on generality of charge as affecting its sufficiency; Banderob v. Wisconsin C. R. Co. 133 Wis. 277, 113 N. W. 738, holding court may properly give to jury general rules of law appropriate to the particular question of a special verdict; Du Cate v. Brighton, 133 Wis. 633, 114 N. W. 103, on the submission by court of questions as part of the special verdict.

51 L. R. A. 910, FRENCH LUMBERING CO. v. THERIAULT, 107 Wis. 627.

"Void" as importing "voidable."

Cited in Tudor v. Tudor, 80 Vt. 223, 130 Am. St. Rep. 977, 67 Atl. 539; Hyman v. Landry, 135 Wis. 600, 128 Am. St. Rep. 1044, 116 N. W. 236; Kinney v. Lundy, 11 Ariz. 81, 89 Pac. 496,—construing the word "void" as used in a statute to mean "voidable"; Laun v. Pacific Mut. L. Ins. Co. 131 Wis. 560, 9 L.R.A.(N.S.) 1206, 111 N. W. 660, on the construction of the word void in statute as meaning voidable.

Validity of contracts of insane persons.

Cited in Bowman v. Wade, 54 Or. 360, 103 Pac. 72, holding mortgage by lunatic, void; Maas v. Dunmyer, 21 Okla. 443, 96 Pac. 591; Ratliff v. Baltzer, 13 Idaho, 160, 89 Pac. 71,—holding the contract of a person not entirely without understanding was voidable only.

Cited in footnote to Foote v. De Poy, 68 L.R.A. 302, which holds that surrender of bulk of property by one mentally infirm for benefit of child of divorced wife to secure withdrawal of proceedings by wife to place him under guardianship will be set aside.

Avoidance of fraudulent conveyance.

Cited in Ellis v. Southwestern Land Co. 108 Wis. 314, 81 Am. St. Rep. 909, 84 N. W. 417, holding a fraudulent conveyance could not be avoided by a surety who had not paid the debt; Level Land Co. No. 3 v. Sivyer, 112 Wis. 453, 88 N. W. 317; State Bank v. Bienfang, 133 Wis. 437, 113 N. W. 726; Hyman v. Landry, 135 Wis. 602, 128 Am. St. Rep. 1044, 116 N. W. 236; Mueller v. Bruss, 112 Wis. 410, 88 N. W. 229,—on when equity will aid creditor in having a conveyance set aside as fraudulent; Crocker v. Huntzicker, 113 Wis. 191, 88 N. W. 232, on failure to exhaust legal remedies as defeating action to set aside a conveyance as fraudulent of creditors.

Cited in note (67 L.R.A. 882, 884) on effect on legal title of conveyance of land in fraud of creditors.

Failure to record.

Cited in Re Standard Teleph. & Electric Co. 157 Fed. 110, on rule that unrecorded transfers are binding except as to subsequent takers in good faith and without notice.

Conditions precedent to equitable remedies of creditors.

Cited in note (23 L.R.A.(N.S.) 36) on conditions precedent to equitable remedies of creditors.

Estates to which judgment liens attach.

Cited in note (117 Am. St. Rep. 785, 786) on estates and interests to which judgment liens attach.

51 L. R. A. 917, STATE ex rel. DAVIS & S. LUMBER CO. v. PORS, 107 Wis. 420, 83 N. W. 706.

Retrospective statutes.

Cited in Galusha v. Wendt, 114 Iowa, 603, 87 N. W. 512, holding a statute providing for the collection of omitted taxes is remedial and retroactive in operation; Anderson v. Ritterbusch, 22 Okla. 782, 98 Pac. 1002, on when statutes providing for the collection of omitted taxes is retroactive in operation; Stone v. Little Yellow Drainage Dist. 118 Wis. 396, 95 N. W. 405; Winneconne v. Winneconne, 122 Wis. 355, 99 N. W. 1055; Berges v. Milwaukee County, 116 Wis. 198, 93 N. W. 44,—on when statutes will be construed to operate retrospectively.

Statutory construction.

Cited in Miller v. Chicago & N. W. R. Co. 133 Wis. 190, 113 N. W. 384, on how statutes are to be construed; State ex rel. Schutz v. Williams, 127 Wis. 239, 106 N. W. 286, 7 Ann. Cas. 303, giving the words of a statute their plain, ordinary meaning where they lead to no absurd consequences; State v. Hall, 141 Wis. 33, 123 N. W. 251, construing the words "beer garden" as used in a statute to mean a place where intoxicating liquors are sold.

Extent of taxing power.

Cited in Adams v. Kuykendall, 83 Miss. 593, 35 So. 830, on the extent of the legislative power of taxation.

Presumption of accuracy of assessor's report.

Cited in State ex rel. Giroux v. Lien, 108 Wis. 318, 84 N. W. 422, holding assessors valuation of property prima facie correct.

Assessment of omitted taxes.

Cited in Ashland County v. Knight, 129 Wis. 66, 108 N. W. 208, holding personalty was not re-assessable to an agent who did not have possession and to whom it never belonged.

Distinguished in Fond du Lac v. Otto, 113 Wis. 43, 90 Am. St. Rep. 830, 88 N. W. 917, holding taxes on personalty omitted during previous years cannot be assessed in district where deceased owner resides, the administrator residing in another district.

Nature of obligation to pay tax.

Cited in Mariner v. Milwaukee, 146 Wis. 609, 131 N. W. 442, holding that taxes are debts due government which property owner has no more right to withhold than private debts.

Criticised in State v. Chicago & N. W. R. Co. 128 Wis. 501, 108 N. W. 594, as incorrectly speaking of a tax as a debt.

Taxation of manufacturing corporations.

Cited in note (64 L.R.A. 56) on taxation of manufacturing corporations.

51 L. R. A. 923, LA CROSSE CITY R. CO. v. HIGBEE, 107 Wis. 389, 83 N. W. 701.

Street railways as additional burdens on the streets.

Followed in Linden Land Co. v. Milwaukee Electric R. & Light Co. 107 Wis. 511, 83 N. W. 851, holding the laying and operation of an electric street railroad was not an additional burden on the fee.

Cited in Schuster v. Milwaukee Electric R. & Light Co. 142 Wis. 581, 126 N. W. 26, on the right of abutting owner to enjoin the running of interurban trains as an additional servitude; Hester v. Durham Traction Co. 138 N. C. 291, 1 L.R.A.(N.S.) 984, 50 S. E. 711, holding fact that cars in turning corner overhung for an instant the sidewalk of an abutting property owner did not constitute an additional burden on the property; Peck v. Schenectady R. Co. 170 N. Y. 312, 63 N. E. 357 (dissenting opinion); Gosa v. Milwaukee Light, Heat & Traction Co. 134 Wis. 373, 15 L.R.A.(N.S.) 534, 114 N. W. 815,—on the laying and operation of a street railway as not being an additional burden on the streets.

Cited in footnote to Mordhurst v. Fort Wayne & S. W. Traction Co. 66 L.R.A. 106, which holds operation of interurban railway by electric power upon T rails through city street with authority to carry passengers, baggage, mail, and light express matter running no more than two cars in train not an additional servitude on street.

Cited in notes (15 L.R.A.(N.S.) 532) on damages to abutting owner for right to run interurban cars over street railway; (25 L.R.A.(N.S.) 1271) on right of abutter to damages for special injuries where street railway not considered additional burden; (28 L.R.A.(N.S.) 1084) on preventive remedy of nonconsenting abutting owner where use of highway for street railway authorized by public; (36 L.R.A.(N.S.) 715, 723) on abutter's right to compensation for railroads in streets; (106 Am. St. Rep. 242, 258) on what are additional servitudes in highways.

Distinguished in Abbott v. Milwaukee Light, Heat & Traction Co. 126 Wis. 638, 4 L.R.A.(N.S.) 206, 106 N. W. 523; Younkin v. Milwaukee Light, Heat & Traction Co. 120 Wis. 482, 98 N. W. 215,—holding the running of interurban trains over the lines of a city street railroad was an additional burden on the lands of abutting owners.

Right to impose additional burdens on street.

Cited in Davis v. Appleton, 109 Wis. 588, 85 N. W. 515, denying right of city to erect an obstruction on the street which does not aid public travel and interferes with an abutting owners means of ingress and egress from his lot.

51 L. R. A. 930, HERRIMAN IRRIG. CO. v. BUTTERFIELD MIN. & MILL. CO. 19 Utah, 453, 57 Pac. 537.

Second appeal in 25 Utah, 99, 69 Pac. 719.

Use of natural streams to convey appropriated water.

Cited in Pomona Land & Water Co. v. San Antonia Water Co. 152 Cal. 624, 93 Pac. 881, holding plaintiff who by contract with defendant is entitled to one half the natural flow of a stream as it reaches a dam has no rights in water saved and brought to the dam by defendant through artificial means; Miller v. Wheeler, 54 Wash. 434, 23 L.R.A.(N.S.) 1069, 103 Pac. 641, holding water

appropriated from another watershed by artificial means was not lost to the appropriator on its conveyance by a natural water course.

Cited in note (23 L.R.A.(N.S.) 1066, 1067) on rights, as against other appropriators, of one who adds to natural flow of stream.

Rights in subterranean waters.

Cited in footnotes to Stillwater Water Co. v. Farmer, 60 L.R.A. 875, which sustains right to injunction against land owner draining, collecting and diverting percolating waters solely to waste them; Gagnon v. French Lick Springs Hotel Co. 68 L.R.A. 176, which sustains right to interlocutory injunction against malicious pumping by owners of surface of mineral water from large subterranean reservoir coming to surface in valuable springs on neighboring property.

Cited in note (2 Brit. Rul. Cas. 996) on character of water flowing underground in defined but unknown channel.

51 L. R. A. 936, KANSAS & T. COAL R. CO. v. NORTHWESTERN COAL & MIN. CO. 161 Mo. 288, 84 Am. St. Rep. 717, 61 S. W. 684.

Right to collaterally attack corporate powers.

Cited in Madera R. Co. v. Raymond Granite Co. 3 Cal. App. 679, 87 Pac. 27, on the right to collaterally attack the validity of a corporate charter; State ex rel. Greffet v. Williams, 227 Mo. 49, 127 S. W. 52, denying the right to question the extent of powers of a corporation in condemnation proceedings; Union P. R. Co. v. Colorado Postal Teleg-Cable Co. 30 Colo. 141, 97 Am. St. Rep. 106, 69 Pac. 564, holding the charter of a corporation duly organized could not be attacked in proceedings by the corporation to condemn land; Demaree v. Bridges, 30 Ind. App. 137, 65 N. E. 601, holding a suit would not lie by a tax payer to enjoin the collection of a tax voted a railroad on the ground that it had not complied with the purpose of its organization; Richland School Twp. v. Overmyer, 164 Ind. 387, 73 N. E. 811, holding in proceedings to condemn land for school purpose the motives of the trustees could not be inquired into.

Public nature of corporation.

Cited in State ex rel. McIntosh v. Superior Ct. 56 Wash. 217, 105 Pac. 637, holding a railroad is not deprived of its public nature by reason of fact that private citizens and corporations having a special interest therein subscribe to its stock; State ex rel. Northwestern R. Co. v. Willcuts, 140 Wis. 453, 122 N. W. 1048, holding a railroad is not deprived of its public nature by reason of the fact that a large part of its business is done for a corporation controlled by the same persons controlling the railroad; Oregon Short Line R. Co. v. Postal Teleg. Cable Co. 49 C. C. A. 663, 111 Fed. 844, holding it cannot be shown in derogation of a duly organized corporation's right to condemn land that it is subordinate to a corporation of another state which controls its stock and management.

Right to exercise power of eminent domain.

Cited in Washington Water Power Co. v. Waters, 19 Idaho, 611, 115 Pac. 682, holding that extent of enterprise and necessity for taking should be left to discretion of public agency seeking to make condemnation; Riley v. Charleston Union Station Co. 71 S. C. 491, 110 Am. St. Rep. 579, 51 S. E. 485, affirming a refusal to enjoin condemnation proceedings by defendant company to condemn lands for a union station where there appeared to be no abuse of discretion in so doing; Miocene Ditch Co. v. Jacobsen, 77 C. C. A. 106, 146 Fed. 685, holding a corporation organized for the purpose of working mines, with the right to maintain and operate necessary water ways might condemn land for the purpose of carrying water to its claims.

Cited in footnote to Re Rhode Island Suburban R. Co. 52 L.R.A. 879, which denies power to condemn land for power house and coal pockets in city five miles from street railway lines.

What is a public use.

Cited in Dotson v. Atchison, T. & S. F. R. Co. 81 Kan. 822, 106 Pac. 1045, holding the use of a spur track is a public one if a part of the railroad system subject to the use of the public; Kansas City & N. Connecting R. Co. v. Baker, 183 Mo. 322, 82 S. W. 85, holding the use of lands for depot grounds is an appropriation for a public use; Welch v. Morris, 193 Mo. 301, 92 S. W. 98, holding a petition in condemnation proceedings which sets out that the land is to be used for a regularly organized and chartered railroad, shows the land is sought to be condemned for a public use.

Cited in footnotes to Re Chicago & N. W. R. Co. 56 L.R.A. 240, which sustains right to condemn land for spur track to reach large ice industry; Healy Lumber Co. v. Morris, 63 L.R.A. 821, which denies right to condemn land for transportation to market of logs of private owner; Ulmer v. Lime Rock R. Co. 66 L.R.A. 387, which sustains right to acquire by eminent domain right of way for branch track to sustain quarry when intended for use of public though primary purpose is accommodation of owner of quarry.

Cited in notes (1 L.R.A.(N.S.) 210) on taking property for irrigating or draining private lands; (1 L.R.A.(N.S.) 978) on exercise of eminent domain for mining road; (22 L.R.A.(N.S.) 186) on power to condemn right of way for track to private establishment.

Judicial power over eminent domain.

Cited in Cloth v. Chicago, R. I. & P. R. Co. 97 Ark. 91, 132 S. W. 1005, Ann. Cas. 1912C, 1115; Ozark Coal Co. v. Pennsylvania Anthracite R. Co. 97 Ark. 501, 134 S. W. 634, Ann. Cas. 1912D, 1000,—holding that question of public use is for court.

Cited in notes (11 L.R.A.(N.S.) 941, 942) on necessity of taking particular land by eminent domain, as a judicial question; (22 L.R.A.(N.S.) 61, 63, 119, 122, 130–132) on judicial power over eminent domain; (88 Am. St. Rep. 931, 939) on existence of public use as question for courts.

Selection of location.

Cited in Tuolumne Water Power Co. v. Frederick, 13 Cal. App. 506, 110 Pac. 134, upholding instruction that electric power company has right to construct its line in place it deems best, provided location is most compatible with greatest public good and least private injury.

51 L. R. A. 951, BUFFALO & L. LAND CO. v. BELLEVUE LAND & IMPROV. CO. 165 N. Y. 247, 59 N. E. 5.

Effect of statements in order of reversal.

Cited in Yeoman v. McClenahan, 190 N. Y. 123, 82 N. E. 1086, holding the statement in order of reversal that it was made upon the facts does not necessarily raise any question of fact.

Sufficient performance of contract.

Cited in R. J. Menz Lumber Co. v. E. J. McNeeley & Co. 58 Wash. 234, 28 L.R.A.(N.S.) 1013, 108 Pac. 621, holding that shortage of cars and shipment through mountains in winter are to be considered in determining whether goods were shipped within reasonable time; New Jersey Co. v. Nathaniel Wise Co. 55 Misc. 295, 105 N. Y. Supp. 231, holding where contract called for the delivery

of a quantity of bricks not later than a certain day, a delivery on the early morning of the following day was a sufficient compliance with the contract.

Impossibility as excusing performance of contract.

Cited in Rowe v. Peabody, 207 Mass. 233, 93 N. E. 604, holding that practical impossibility of performance of contract to construct tunnel does not excuse contractor; Asphalt Paving & Contracting Co. v. New York, 69 Misc. 593, 127 N. Y. Supp. 794, on defect in plan of pavement rendering contract for repairs impossible as excuse for performance; Walden v. Jamestown, 178 N. Y. 218, 70 N. E. 466; R. J. Menz Lumber Co. v. E. J. McNeeley & Co. 58 Wash. 234, 28 L.R.A. (N.S.) 1013, 108 Pac. 621, on impossibility of performance as excusing breach of contract; Marsh v. Johnston, 125 App. Div. 600, 109 N. Y. Supp. 1106, holding a vendor of land having only a contract with a third person for a sale to himself, who engages to sell without qualification, is on a breach of the contract not excused by his impossibility to perform; Stern v. Rosenthal, 56 Misc. 644, 107 N. Y. Supp. 772, holding a workman taking goods to his own premises to work upon, payment to be made on delivery to the owner cannot recover for work done on them where destroyed without his fault.

Cited in footnote to Ontario Deciduous Fruit Growers' Asso. v. Cutting Fruit Packing Co. 53 L.R.A. 681, which denies liability for failure to deliver specified quantity of fruit contracted for, from failure of crop due to unusual climatic conditions.

Right to rescind contract for other party's default.

Cited in footnote to Forge Co. v. Leonard, 57 L.R.A. 225, which sustains seller's right to rescind for purchaser's demand for additional deliveries before remitting for articles delivered.

51 L. R. A. 955, MILLER v. DETROIT, T. & A. A. R. CO. 125 Mich. 171, 84 Am. St. Rep. 569, 84 N. W. 49.

Liability for removal of shade trees in street.

Cited in Stretch v. Cassapolis, 125 Mich. 170, 51 L.R.A. 347, 84 Am. St. Rep. 567, 84 N. W. 51 (dissenting opinion), denying that municipality is necessarily liable for cutting down shade trees in street without giving notice to adjacent owners.

Cited in footnotes to Hazlehurst v. Mayes, 64 L.R.A. 805, which denies owner's right of action for injury to trees in highway from necessary trimming for installation of electric lighting system for municipality; Brown v. Asheville Electric Co. 69 L.R.A. 631, which holds municipal authority to place electric light poles and wires on designated sidewalk no defense against liability for damage from removal of trees; Donahue v. Keystone Gas Co. 70 L.R.A. 761, which holds gas company negligently permitting gas to escape from pipes in highway liable for resulting injury to shade trees in front of abutting property though fee of street is in public.

Cited in notes (12 L.R.A.(N.S.) 1127; 36 L.R.A.(N.S.) 725) on liability to abutter for mutilating trees in highway by putting up poles or wires; (20 L.R.A. (N.S.) 809, 811) on right of municipality to cut or trim trees within highway; (25 L.R.A.(N.S.) 1268) on right of abutter to damages for injuries to trees where street railway not considered additional burden; (101 Am. St. Rep. 112, 113) on rights, obligations and remedies of persons over whose land a highway runs as to trees.

51 L. R. A. 958, STATE ex rel. SCHARNIKOW v. HOGAN, 24 Mont. 379, 62 Pac. 493.

Prohibition when will lie.

Cited in State ex rel. Robinson v. Durand, 36 Utah, 102, 104 Pac. 760, on writ of prohibition to review ruling of justice's court; State ex rel. Clarke v. Moran, 24 Mont. 442, 63 Pac. 390, on prohibition as not lying to stop proceedings of a ministerial nature; State ex rel. Whiteside v. First Judicial Dist. Ct. 24 Mont. 562, 63 Pac. 395, on prohibition as going to officers or tribunals exercising judicial functions; Winsor v. Bridges, 24 Wash. 546, 64 Pac. 780, holding the original jurisdiction of the supreme court is not extended to include ministerial acts, by a statute providing that the writ of prohibition shall arrest the proceedings of boards, tribunals or persons in excess of their jurisdiction.

Cited in note (111 Am. St. Rep. 931, 933,) on writ of prohibition.

Power to issue, hear and determine original writs.

Cited in State ex rel. Anaconda Copper Min. Co. v. District Ct. 25 Mont. 522, 65 Pac. 1020, holding the power to issue, hear and determine original writs, is lodged within the discretion of the Supreme Court subject only to constitutional limitations.

L. R. A. CASES AS AUTHORITIES.

CASES IN 52 L. R. A.

52 L. R. A. 33, WALLACE v. PENNSYLVANIA R. CO. 195 Pa. 127, 45 Atl. 685.

Admissibility of evidence of profits on question of earning power.

Cited in Comstock v. Connecticut R. & Light Co. 77 Conn. 69, 58 Atl. 465, holding in an action by a boarding house keeper for damages for an injury due to defendants negligence, evidence of the profits derived from such a business are admissible on the question of plaintiff's earning capacity; Heer v. Warren-Scharf Asphalt Paving Co. 118 Wis. 63, 94 N. W. 789; Mitchell v. Chicago, R. I. & P. R. Co. 138 Iowa, 292, 114 N. W. 622,—holding in an action for damages for negligent injury evidence of the profits of plaintiff's business were admissible on the question of his earning capacity; McLane v. Pittsburg R. Co. 230 Pa. 38, 79 Atl. 237; Simpson v. Pennsylvania R. Co. 210 Pa. 104, 59 Atl. 693,—holding the profits of a business might be considered in determining the earning power; O'Reilly v. Monongahela Street R. Co. 17 Pa. Super. Ct. 630, holding a verdict for damages based on the earning power of the plaintiff was erroneous where there was no evidence as to his earning capacity or industry.

Annotation cited in Coyle v. Pittsburg, B. & L. E. R. Co. 18 Pa. Super. Ct. 240, holding an instruction that if the wrongful act caused a loss of patronage to plaintiff's business, it would be an element of damages, was erroneous, where no evidence of loss of patronage was given.

Distinguished in Reagan v. Harlan, 24 Pa. Super. Ct. 32, holding a husband might recover compensation for the negligent act of another causing injury to his wife without proof of the monetary value of her services and society.

Loss of profits as an element of damages.

Annotation cited in Kentucky Heating Co. v. Hood, 133 Ky. 390, 22 L.R.A. (N.S.) 592, 134 Am. St. Rep. 457, 118 S. W. 337, holding in an action for damages for the wrongful act of defendant's servants in destroying gas connections within plaintiff's house, recovery might be had for the loss of profits because of the leaving of tenants.

Loss or impairment of earning power as damages.

Cited in Bower v. Conestoga Traction Co. 26 Lanc. L. Rev. 293, holding that damages for loss or impairment of earning power may be recovered by person

52 L.R.A.

who made and sold horse powder and treated horses; Stynes v. Boston Elev. R. Co. 206 Mass. 77, 30 L.R.A.(N.S.) 740, 91 N. E. 998, holding that plaintiff may show that he is compelled to employ servants to perform labor formerly done by himself, but not amount he pays them.

Burden of proof of damages.

Cited in Rakestraw v. Woodward, 25 Super. Ct. 170, holding the measure of damages suffered by defendant by reason of fruit trees sold by plaintiff being not as represented would be dependable on evidence produced by defendant and also citing annotation on this point.

"Profits" defined.

Cited in Morrow v. Missouri P. R. Co. 140 Mo. App. 215, 123 S. W. 1034, defining "profits" as the advantage remaining after the deduction of charges and expenses from an income.

52 L. R. A. 36, HORRES v. BERKELEY CHEMICAL CO. 57 S. C. 189, 35 S. E. 500.

Measure of damages for injury to a growing crop.

Cited in Lampley v. Atlantic Coast Line R. Co. 63 S. C. 469, 41 S. E. 517, holding the trial court erred in charging that the jury might take into consideration what the crop reasonably would have made in determining its value at the time of the injury; Wade v. Belmont Irrigating Canal & Water Power Co. 87 Neb. 735, 31 L.R.A.(N.S.) 746, 138 Am. St. Rep. 506, 128 N. W. 514, holding that supposed value of possible crop of grass, if unbroken and practically unproductive prairie land had been irrigated as per contract is too remote and speculative; Smith v. Hicks, 14 N. M. 575, 19 L.R.A.(N.S.) 944, 98 Pac. 138, on the measure of damages for destruction of growing crops.

Cited in notes (23 L.R.A.(N.S.) 315) on measure of damages for destruction of perennial crops; (140 Am. St. Rep. 313) on damages for injuries to growing crops.

Disapproved in Hunt v. St. Louis, I. M. & S. R. Co. 126 Mo. App. 267, 103 S. W. 133; Teller v. Bay & River Dredging Co. 151 Cal. 213, 12 L.R.A.(N.S.) 274, 90 Pac. 942, 12 Ann. Cas. 779,—holding the measure of damages for the destruction of a growing crop was the market value of the probable yield, with a deduction for the cost of producing and marketing.

Waiver of exceptions to ruling of court.

Cited in Chicago City R. Co. v. Uhter, 212 Ill. 181, 72 N. E. 195, holding the introduction of like evidence was not a waiver by defendant of an exception to courts overruling of exceptions to admission of certain evidence.

Cited in note (33 L.R.A.(N.S.) 104) on waiver of objection to testimony by cross-examination.

52 L. R. A. 67, RICHARDSON v. NEW ORLEANS DEBENTURE REDEMPTION CO. 102 Fed. 780, 42 C. C. A. 619.

Trust in bank deposit in hands of receiver.

Cited in Widman v. Kellogg, 22 N. D. 403, 39 L.R.A.(N.S.) 567, 133 N. W. 1020, holding that receiver of insolvent bank which issued drafts is trustee ex maleficio of money received by bank for drafts; Hewitt v. Hayes, 205 Mass. 362, 137 Am St. Rep. 448, 91 N. E. 332, holding that beneficiary of trust money deposited in bank by trustee with his own money can charge such particular deposit with his claim after trustee is adjudged bankrupt; Butler v. Western German Bank, 86 C. C. A. 306, 159 Fed. 117; Western German Bank v. Norvell,

134 Fed. 726,—holding a draft received for collection by a bank which went into the hands of a receiver the following day, and the officers of which were aware of its insolvent condition remained the property of the depositor for collection; Crawford County v. Strawn, 15 L.R.A.(N.S.) 1107, 84 C. C. A. 553, 157 Fed. 54, holding in order to impress funds in the hands of a receiver for a bank with a trust in favor of a county whose treasurer wrongfully placed the money in the bank it must be shown that the money went into such fund: Lucas County v. Jamison, 170 Fed. 347, to the same effect; Orme v. Baker, 74 Ohio St. 356, 113 Am. St. Rep. 968, 78 N. E. 439, holding that a deposit having been made in an insolvent bank, the bank receives no title to the deposit and it may be recovered upon a timely demand.

Cited in footnotes to Richardson v. Oliver, 53 L.R.A. 113, which sustains shareholder's right to recover back deposit fraudulently taken while bank insolvent; Lincoln Sav. Bank & S. D. Co. v. Morrison, 57 L.R.A. 885, which holds *cestui que trust* entitled to preference only to extent trustee's estate shown to have been increased by misappropriation of trust property.

Cited in notes (1 L.R.A.(N.S.) 253) on claim of preference of special or trust deposit out of funds of insolvent bank; (86 Am. St. Rep. 801, 803, 805) on right to recover money deposited with or collected by bank upon its insolvency.

52 L. R. A. 70, SOUTHERN F. INS. CO. v. KNIGHT, 111 Ga. 622, 78 Am. St. Rep. 216, 36 S. E. 67.

Effect of failure to furnish proof of loss within the specified time.

Cited in Nance v. Oklahoma F. Ins. Co. 31 Okla. 212, 38 L.R.A.(N.S.) 432, 120 Pac. 948, holding that action on policy cannot be maintained before compliance with requirement as to proof of loss; Connecticut F. Ins. Co. v. Colorado Leasing Min. & Mill. Co. 50 Colo. 442, 116 Pac. 154, Ann. Cas. 1912C, 597, holding that failure to furnish statement within stipulated time will not bar action on policy, where such failure was not within condemnatory clause; Hope Spoke Co. v. Maryland Casualty Co. 102 Ark. 1, 38 L.R.A.(N.S.) 67, 143 S. W. 85, holding that insurer cannot avoid liability on policy for failure to give required notice of claim, if notice was given to insurance broker; Mason v. St. Paul F. & M. Ins. Co. 82 Minn. 339, 83 Am. St. Rep. 433, 85 N. W. 13; Harp v. Fireman's Fund Ins. Co. 130 Ga. 728, 61 S. E. 704, 14 Ann. Cas. 299,—holding the failure to furnish proof of loss within the sixty days provided for by the policy will not avoid it where the policy does not expressly provide for a forfeiture in case of such failure; Woodall v. Fidelity & C. Co. 131 Ga. 519, 62 S. E. 808, holding a provision in a policy of insurance against illness for immediate notice to the insurer is not complied with where during the continuance of the illness no notice was given the insurer although the illness covered a period of six months.

Cited in footnotes to Peabody v. Satterlee, 52 L.R.A. 956, which requires reception, not mere mailing of statement as to time and origin of fire within time specified; Woodmen Acci. Asso. v. Byers, 55 L.R.A. 291, which holds failure to give notice of injury excused by derangement of insured; Hartford Fire Ins. Co. v. Redding, 67 L.R.A. 518, which holds policy not forfeited by failure to give notice or make proofs of loss within stipulated time in absence of stipulation to that effect.

Distinguished in Teutonia Ins. Co. v. Johnson, 72 Ark. 490, 79 S. W. 1052, holding the failure to furnish proof of loss within the time stipulated by policy works a forfeiture of the policy.

Severability of contract.

Cited in Benham v. Farmers' Mut. F. Ins. Co. 165 Mich. 416, — L.R.A. (N.S.) —, 131 N. W. 87, Ann. Cas. 1912C, 983 (dissenting opinion), on divisibility of policy on buildings, stock and other property, giving separate amounts for which each item was insured; Spalding County v. Chamberlin, 120 amounts for which each item was insured; Spalding County v. Chamberlin, 130 Ga. 654, 61 S. E. 533, holding a contract for the preparation of plans and specifications for a court house and the superintending of the construction thereof was an entire contract and no recovery could be had for the performance of part of it; Parsons v. Lane (Re Millers' & Mfrs. Ins. Co.) 97 Minn. 123, 4 L.R.A.(N.S.) 243, 106 N. W. 485, 7 Ann. Cas. 1144; St. Landry Wholesale Mercantile Co. v. New Hampshire F. Ins. Co. 114 La. 152, 38 So. 87, 3 Ann. Cas. 821,—holding a contract of insurance issued for a gross sum in consideration of a single premium is indivisible although part is on the building and part on the stock of merchandise therein; North British & M. Ins. Co. v. Tye, 1 Ga. App. 390, 58 S. E. 110, on the indivisibility of a contract of insurance; Taylor v. Anchor Mut. F. Ins. Co. 116 Iowa, 630, 57 L.R.A. 331, 93 Am. St. Rep. 261, 88 N. W. 807, holding that where a policy insured for separate amounts the dwelling house, furniture and cattle, the policy was divisible so that a chattel mortgage on the cattle did not avoid the policy as to the rest.

Disapproved in Goorberg v. Western Assur. Co. 150 Cal. 514, 10 L.R.A.(N.S.) 879, 119 Am. St. Rep. 246, 89 Pac. 130, 11 Ann. Cas. 801, holding the question of the severability of a contract of insurance depends upon the nature of the risk.

Nature and validity of "iron safe clause" in policy.

Cited in Ætna Ins. Co. v. Johnson, 127 Ga. 493, 9 L.R.A.(N.S.) 668, 56 S. E. 643, 9 Ann. Cas. 461, holding an "iron-safe clause" in a policy of fire insurance company is a promissory warranty; Coggins v. Ætna Ins. Co. 144 N. C. 10, 8 L.R.A.(N.S.) 840, 56 S. E. 506, holding valid an "iron safe clause" in a policy of insurance.

Sufficiency of compliance with "iron safe clause" of policy — Inventory and accounts.

Cited in Phoenix Ins. Co. v. Sherman, 110 Va. 439, 66 S. E. 81, holding insufficient, inventory consisting of mere statement of articles put down in lump sums, and entire bills put down at gross sum; Johnson v. Sun F. Ins. Co. 3 Ga. App. 434, 60 S. E. 118, avoiding policy because of the failure of the insured to keep an inventory or books showing the status of his business within the "iron-safe clause" of policy; Ætna Ins. Co. v. Lipsitz, 130 Ga. 183, 60 S. E. 531, 14 Ann. Cas. 1070, holding an "iron-safe clause" with regard to the keeping of books is sufficiently complied with if from such as were kept with explanation it can be determined the amount of purchases and sales and the cash and credit transactions distinguished; Buchman v. Insurance Co. 134 Ga. 507, 68 S. E. 71, holding no sufficient compliance with the "iron-safe clause" of policy with regard to the keeping of books where the entries on the cash book were only entries of totals and required explanation, and the entries in the ledger were not shown.

Cited in footnotes to Phœnix Ins. Co. v. Schwartz, 57 L.R.A. 752, which holds provision for locking up books and inventories at all times when building not actually open for business inapplicable to suspension of business by fire threatening to consume building; Continental F. Ins. Co. v. Whitaker, 64 L.R.A. 451, which holds violation of provision of policy as to keeping inventory and

books of account in fireproof safe within provision of statute that false warranties shall not avoid the policy unless made with intent to deceive, or unless they increase the risk.

Distinguished in Kline Bros. & Co. v. Royal Ins. Co. 192 Fed. 384, holding sufficient, books of tobacco warehouse showing number of each bale, with size of leaf, kind and packing.

— Invoices as inventory.

Cited in Fire Asso. v. Masterson, 25 Tex. Civ. App. 521, 61 S. W. 962; Cobb & S. Shoe Store v. Ætna Ins. Co. 78 S. C. 391, 58 S. E. 1099,—holding the inventory required by the "iron-safe clause" of a policy was not supplied by invoices.

Disapproved in Ruffner Bros. v. Dutchess Ins. Co. 59 W. Va. 436, 115 Am. St. Rep. 924, 53 S. E. 943, 8 Ann. Cas. 866, holding invoices of a new stock constituted an "inventory" within the iron-safe clause of a policy.

Direction of verdict.

Cited in American Ins. Co. v. Peebles & Co. 5 Ga. App. 732, 64 S. E. 304, holding court might direct jury that proof of loss was made within a reasonable time where the undisputed evidence demanded such a finding.

Waiver of conditions of policy as question for the jury.

Cited in Queen Ins. Co. v. Hartwell Ice & Laundry Co. 7 Ga. App. 795, 68 S. E. 310, holding the question of the waiver of conditions of a policy was for the jury on the evidence.

Stipulations as conditions precedent.

Cited in Adams v. Haigler, 123 Ga. 666, 51 S. E. 638, holding a stipulation in a building contract that the determination of damages from delay in the work shall be referred to arbitrators is not a condition precedent to a suit for damages unless it clearly appears to be such.

52 L. R. A. 75, BUTTERFIELD v. SAWYER, 187 Ill. 598, 79 Am. St. Rep. 246, 58 N. E. 602.

Construction of deeds.

Cited in Morton v. Babb, 251 Ill. 491, 96 N. E. 279, holding that proof of custom in drawing deeds is inadmissible, when there is no ambiguity in language of deed: Killgore v. Cranmer, 35 Colo. 488, 84 Pac. 70, holding a provision in a trust deed that in case the trustee should fail to act in the selling of the land the "acting sheriff" should become successor in trust was sufficiently certain to designate the acting sheriff of the county in which the land was situated; Atherton v. Roche, 192 Ill. 261, 55 L.R.A. 594, 61 N. E. 357, holding a deed to grantees, "to them and their bodily heirs forever" passed a life estate to the grantees and remainder in fee to their bodily heirs.

Construction of instrument.

Cited in Wallace v. Noland, 246 Ill. 544, 138 Am. St. Rep. 247, 92 N. E. 956; construing "heirs" as including adopted children; People's Gaslight & Coke Co. v. Hale, 94 Ill. App. 420, holding courts would not go beyond the wording of an ordinance in its construction.

Manner of adoption of children.

Cited in Carroll's Estate, 219 Pa. 445, 123 Am. St. Rep. 673, 68 Atl. 1038, holding no manner of adoption of children except as provided by statute is recognized.

Status of adopted children.

Cited in Litchter v. Thiers, 139 Wis. 488, 121 N. W. 153, holding it a question

of intent whether adopted children are included within the provision of a will in favor of the children of a particular person.

Cited in notes (27 L.R.A.(N.S.) 1160) on "child," "children," "issue," etc., in will, as including adopted children; (118 Am. St. Rep. 685, 686) on right of adopted children to inherit.

52 L. R. A. 78, STATE v. RASMUSSEN, 7 Idaho, 1, 97 Am. St. Rep. 234, 59 Pac. 933.

Statutory regulations respecting infected animals.

Cited in State v. Keller, 8 Idaho, 703, 70 Pac. 1051, historically as affirming the validity of an act providing for the establishment of a quarantine against diseased sheep; State v. Southern R. Co. 141 N. C. 852, 54 S. E. 294, upholding the validity of the establishment of quarantine lines to prevent the moving of diseased cattle.

Cited in footnotes to Sifers v. Johnson, 54 L.R.A. 785, which sustains statute against grazing sheep within 2 miles of inhabited dwelling; Pierce v. Dillingham, 62 L.R.A. 888, which holds invalid rules of state board of livestock commissioners for applying tuberculine test to cattle brought into state for dairy or breeding purposes.

Cited in note (26 L.R.A.(N.S.) 280) on legislation for protection of health of live stock as interference with interstate commerce.

52 L. R. A. 83, STATE v. VINCENT, 91 Md. 718, 47 Atl. 1036.

Mandatory requirements with reference to jurors.

Distinguished in State v. McNay, 100 Md. 630, 60 Atl. 273, holding a provision of an act that persons selected as jurors should be able to read and write the English language was merely directory.

Indictment by incompetent grand jurors.

Cited in State v. Mercer, 101 Md. 538, 61 Atl. 220, on the incompetency of grand jurors as rendering indictment void.

52 L. R. A. 87, GAMBRILL v. SCHOOLEY, 93 Md. 48, 86 Am. St. Rep. 414, 48 Atl. 730.

Publication of libel.

Cited in Gambrill v. Schooley, 95 Md. 279, 63 L.R.A. 445, 52 Atl. 500, historically as to publication of a libel by its dictation to a stenographer; Sun Life Assur. Co. v. Bailey, 101 Va. 445, 44 S. E. 692, holding allegation of "mailing and publication" of letter sufficed against demurrer; Ferdon v. Dickens, 161 Ala. 187, 49 So. 888, holding the dictation of a libelous letter to a stenographer who copies and mails it to the person to whom addressed is a sufficient publication thereof.

Cited in notes (36 L.R.A.(N.S.) 452; 1 Brit. Rul. Cas. 456) on communication to stenographer or clerk as publication of libel.

Exemplary or punitive damages in libel.

Cited in Davis v. Hearst, 160 Cal. 174, 116 Pac. 530, holding it erroneous to charge that plaintiff is entitled, as of right, to punitive damages, if jury find malice in fact; Russell v. Washington Post Co. 31 App. D. C. 282, 14 Ann. Cas. 820, holding that recovery of exemplary damages in an action for libel was a question for the jury; Brinsfield v. Howeth, 107 Md. 291, 24 L.R.A.(N.S.) 599, 68 Atl. 566, holding a prayer in an action for slander that the jury could

not allow punitive damages unless the words were found to have been spoken with actual malice was properly rejected.

52 L. R. A. 92, DORSEY v. KANSAS CITY, P. & G. R. Co. 104 La. 478, 29 So. 177.

Liability of master for tortious acts of servant.

Cited in footnotes to Lynch v. Florida C. & P. R. Co. 54 L.R.A. 810, which denies company's liability for assault by station agent as result of personal quarrel; Alsever v. Minneapolis & St. L. R. Co. 56 L.R.A. 748, which sustains liability for injuries by engineer operating blow-off cock to frighten children; Southern R. Co. v. James, 63 L.R.A. 257, which holds master liable for act of nightwatchman in shooting trespasser while running away after having escaped from him while taking to town calaboose; Evers v. Krouse, 66 L.R.A. 593, which holds servant alone responsible for act by him while engaged in master's work but entirely disconnected therefrom; Bowen v. Illinois Central R. Co. 70 L.R.A. 915, which holds railroad company not liable for wanton act of station agent in killing a person who had come to station to inquire about demurrage on car of coal and whom agent shot as he was about to sign receipt for a package.

Distinguished in McDermott v. American Brewing Co. 105 La. 127, 52 L.R.A. 686, 83 Am. St. Rep. 225, 29 So. 498, holding a master was not liable for an assault committed by a servant upon plaintiff where the servant having failed to collect for goods on the previous day as required is refused payment by plaintiff.

— In ejecting trespasser from moving car.

Cited in Johnson v. Chicago, St. P. M. & O. R. Co. 116 Iowa, 644, 88 N. W. 811, holding defendant company was liable for injuries received by plaintiff when a brakeman by force made him jump from a rapidly moving train on which he was stealing a ride.

Cited in footnotes to Palmisano v. New Orleans City R. Co. 58 L.R.A. 405, which denies master's liability for injury to boy running blindly against moving car, after release by employee who had caught and lectured him; McNamara v. St. Louis Transit Co. 66 L.R.A. 486, which holds exemplary damages against street car company justified by conductor's intentional and unjustified kicking of boy attempting to board car; Dixon v. Northern P. R. Co. 88 L.R.A. 895, which sustains master's liability for injuries caused by brakeman wantonly and wilfully kicking trespasser from moving car.

Cited in note (13 L.R.A.(N.S.) 365–367) on liability of railroad for negligence in ejecting trespasser from moving train.

52 L. R. A. 95, SVEA ASSUR. CO. v. PACKHAM, 92 Md. 464, 48 Atl. 359.

Settlement by insured with wrongdoer as binding on insurer.

Cited in Merchants' Underwriters v. Parkhurst-Davis Mercantile Co. 140 Ill. App. 519, affirming the doctrine that nonparticipation of insurer in an action by insured against the wrong doer where opportunity to become a participant was given and refused, would not furnish grounds for complaint of a settlement made in good faith.

Loss of profits as damages.

Cited in Gossage v. Philadelphia, B. & W. R. Co. 101 Md. 700, 61 Atl. 692, holding in an action for the negligent destruction of a vessel, estimated profits dependent upon the earnings of the vessel as evidenced by past earnings were too

conjectural to be recovered; Western U. Teleg. Co. v. Lehman, 106 Md. 332, 67 Atl. 241, 14 Ann. Cas. 736, holding in an action for damages sustained by a delay in delivering a message, possible profits that might have been made from the resale of cattle he would have purchased was too speculative to be recovered.

Cited in footnote to Mason v. Marine Ins. Co. 54 L.R.A. 700, which holds insurer receiving abandonment of vessel injured by collision entitled to recovery for loss of prospective earnings recovered.

Attorney's lien on fund recovered.

Cited in note (27 L.R.A.(N.S.) 635) on right of attorney taking case on contingent fee or percentage to implied or equitable lien on fund recovered.

52 L.R.A. 100, TYLER v. STATE, 93 Md. 309, 48 Atl. 840.

State regulation of fishing rights.

Distinguished in Windsor v. State, 103 Md. 614, 12 L.R.A.(N.S.) 871, 64 Atl. 288, holding oysters taken from private beds are within a state regulation as to what will constitute merchantable oysters.

52 L. R. A. 102, WOLF v. FRANK, 92 Md. 138, 48 Atl. 132.

Right to maintain action for alienation of affections.

Cited in Nolin v. Pearson, 191 Mass. 290, 4 L.R.A.(N.S.) 649, 114 Am. St. Rep. 605, 77 N. E. 890, 6 Ann. Cas. 658; King v. Hanson, 13 N. D. 97, 99 N. W. 1085; Dodge v. Rush, 28 App. D. C. 152, 8 Ann. Cas. 671,—holding a wife might have a right of action for the alienation of a husband's affections; Callis v. Merrieweather, 98 Md. 362, 103 Am. St. Rep. 404, 57 Atl. 201, holding an action might be maintained for alienation of wife's affections without proof of adultery where, the interference of defendant destroyed plaintiff's comfort in married life; Lonstorf v. Lonstorf, 118 Wis. 167, 95 N. W. 961 (dissenting opinion), maintaining that wife might have action for the alienation of husband's affections.

Cited in footnote to Betser v. Betser, 52 L.R.A. 630, which sustains wife's right of action for alienating husband's affections.

Cited in note (29 L.R.A.(N.S.) 843) on wife's right under enabling acts to sue for alienation of affections.

Estimation of damages for alienation of affections.

Cited in Noxon v. Remington, 78 Conn. 301, 61 Atl. 963, holding in an action for damages for the alienation of husband's affections, the jury may in fixing the damages consider the loss of the husband's affections and the injury to plaintiffs feelings; Angell v. Reynolds, 26 R. I. 163, 106 Am. St. Rep. 707, 58 Atl. 625, holding in action for the alienation of a husband's affections, the defendant might show in mitigation of damages that others than herself had been guilty of alienating the husband's affections and that the plaintiff was aware of such fact.

Disabilities of feme covert under common law.

Cited in Lyell v. Walvach, 113 Md. 578, 33 L.R.A.(N.S.) 743, 77 Atl. 1111, on disabilities of feme covert under common law.

52 L. R. A. 106, ALLEN v. SOMERS, 73 Conn. 355, 84 Am. St. Rep. 158, 47 Atl. 653.

Liability of cold storer.

Cited in footnote to Marks v. New Orleans Cold Storage Co. 57 L.R.A. 271, which holds cold storer liable for deterioration of goods while in cold storage.

Cited in notes (90 Am. St. Rep. 296, 297; 136 Am. St. Rep. 223, 234, 38 L.R.A.(N.S.) 994) on liability of bailee for damages to goods received for cold storage.

Meaning of the use of the term cold storage.

Cited in Hunter v. Porter, 10 Idaho, 86, 77 Pac. 434, holding the term "cold storage building" must be understood to have a meaning peculiar to the uses for which the building intended.

52 L. R. A. 110, LINCOLN v. DURRAGE, 177 Mass. 378, 59 N. E. 67.

Covenant running with land.

Cited in Beasley v. Texas & P. R. Co. 191 U. S. 495, 48 L. ed. 275, 24 Sup. Ct. Rep. 164, holding an agreement by a railroad on the purchase of land not to build a depot within three miles of one built on the land conveyed was not personal and was not a covenant running with the land; Forbes v. Thorpe, 209 Mass. 581, 95 N. E. 955, holding that person defrauded by firm can compel corporation, to which firm deeded property, to perform covenant in deed to pay firm debts.

— Promise to pay for party wall.

Cited in Cook v. Paul, 4 Neb. (Unof.) 97, 66 L.R.A. 680, 93 N. W. 430, holding a promise to compensate an adjoining owner for the use of a party wall was personal in nature and not a covenant running with the land.

Cited in note (66 L.R.A. 687, 705) on enforcement of obligation to contribute to cost of party walls, by or against grantees or successors in title.

Implied promise to pay towards party wall.

Cited in Paul v. Cook, 4 Neb. (Unof.) 470, 94 N. W. 997, on the implied contract of a second builder for the payment for the use of a party wall.

52 L. R. A. 112, BURT v. TUCKER, 178 Mass. 493, 86 Am. St. Rep. 499, 59 N. E. 1111.

Establishment of exclusive property in trademark or trade name.

Cited in Regis v. Jaynes, 185 Mass. 459, 70 N. E. 480, holding the adoption of a trade mark to designate an article manufactured and its use without interruption for a long period of time, with the creation of a demand for the article established an exclusive right in such trademark; Nelson v. Winchell & Co. 203 Mass. 82, 23 L.R.A.(N.S.) 1154, 89 N. E. 180, holding plaintiff had an exclusive property right in a tradename adopted by him as the name of a shoe manufactured under his direction especially for his trade notwithstanding that for a time, his business was taken over by defendants with a license to use such tradename.

Abandonment of trademark.

Cited in Gaines v. E. Whyte Grocery, Fruit & Wine Co. 107 Mo. App. 525, 81 S. W. 648, holding a person might acquire a title to an abandoned trademark as against the originator thereof.

52 L. R. A. 115, MORAN v. DUNPHY, 177 Mass. 485, 83 Am. St. Rep. 289, 59 N. E. 125.

Actionable procurement of discharge of employee.

Cited in Jones v. Leslie, 61 Wash. 117, — L.R.A.(N.S.) —, 112 Pac. 81, Ann. Cas. 1912B, 1158, holding that employer notifying prospective employer of his employe not to employ him is liable for damages: Kemp v. Division No. 241, 153 Ill. App. 365, holding that union will be restrained from conspiring to

coerce employer to discharge former members; Lopes v. Connolly, 210 Mass. 495, 38 L.R.A.(N.S.) 988, 97 N. E. 80, holding that one persisting in claiming assignment of wages under mistake in identity which results in employe's discharge, is liable for wages lost; Tennessee Coal, Iron & R. Co. v. Kelly, 163 Ala. 353, 50 So. 1008, holding an action could not be maintained for procuring plaintiff's discharge by shutting off the water to employer's mill where it was not shown that the shutting off of the water was rightful; London Guarantee & Acci. Co. v. Horn, 206 Ill. 503, 99 Am. St. Rep. 185, 69 N. E. 526, Affirming 101 Ill. App. 355, holding defendant company liable for damages for procuring plaintiff's discharge by threatening cancellation of an employer's guaranty policy; Hollenbeck v. Ristine, 114 Iowa, 367, 86 N. W. 377, holding defendant liable for securing plaintiff's discharge by threatening to sever connections with plaintiff's employers because of the employment of such a man against whom he preferred libelous charges; Berry v. Donovan, 188 Mass. 360, 5 L.R.A.(N.S.) 904, 108 Am. St. Rep. 499, 74 N. E. 603, 3 Ann. Cas. 738, holding a right to recover damages for wrongfully procuring plaintiff's discharge is not affected by the fact that plaintiff's employment was terminable at will; Beekman v. Marsters, 195 Mass. 210, 11 L.R.A.(N.S.) 206, 122 Am. St. Rep. 232, 80 N. E. 817, 11 Ann. Cas. 332, holding plaintiff might enjoin defendant's from inducing plaintiff's employer to break its contract with plaintiff; McGurk v. Cronenvett, 199 Mass. 460, 19 L.R.A.(N.S.) 563, 85 N. E. 576, holding in an action for damages for wrongfully procuring plaintiff's discharge the fact that defendant was a stranger to plaintiff's contract was of no consequence; Carter v. Oster, 134 Mo. App. 155, 112 S. W. 995, holding plaintiff had a right of action against members of a union who secured his discharge by threatening to strike unless he was discharged; J. F. Parkinson Co. v. Building Trades Council, 154 Cal. 621, 21 L.R.A.(N.S.) 570, 98 Pac. 1027, 16 Ann. Cas. 1165 (dissenting opinion), on illegality of combination of employees to quit their employment in order to compel the discharge of another employee.

Cited in footnote to Baker v. Metropolitan L. Ins. Co. 55 L.R.A. 271, which denies liability for discharge by reason of conspiracy of servant employed for indefinite time.

Cited in note (1 Brit. Rul. Cas. 515) on liability of labor union to persons with whose employment it has interfered.

Action for inducing violation of contracts.

Cited in Dr. Miles Medical Co. v. Jaynes Drug Co. 149 Fed. 841; Wells & R. Co. v. Abraham, 146 Fed. 194,—holding plaintiff might enjoin defendant from inducing purchasers of plaintiff's product to violate a contract only to sell at a certain price; Employing Printers' Club v. Dr. Blasser Co. 122 Ga. 518, 69 L.R.A. 96, 106 Am. St. Rep. 137, 50 S. E. 353, 2 Ann. Cas. 694, enjoining defendant combination from interfering with complainants business by procuring his employees to violate their contracts because of refusal of complainant to affiliate with defendant combination; Wheeler-Stenzel Co. v. American Window Glass Co. 202 Mass. 473, — L.R.A.(N.S.) — , 89 N. E. 28, holding plaintiff a jobber of window glass had a cause of action against a manufacturer thereof for inducing a jobbers association to break its contract with plaintiff for the delivery of a large quantity of glass; Booth & Bro. v. Burgess, 72 N. J. Eq. 185, 65 Atl. 226, holding plaintiff a manufacturer who had been declared "unfair" by the labor unions might enjoin them from causing third persons to break contracts with plaintiff by threatening a strike of their employers; American Banana Co. v. United Fruit Co. 213 U. S. 358, 53 L. ed. 833, 29 Sup. Ct. Rep. 511, 16 Ann. Cas. 1047, denying relief to plaintiff against the wrongful acts of defend-

ant in procuring a foreign nation to seize plaintiff's property in its territory and confiscate, resulting in the distructions of plaintiff's business; Squires v. Wason Mfg. Co. 182 Mass. 138, 65 N. E. 32, on a right of action for procuring the breaking of negotiations for the purchase of property rights of plaintiff; People v. Rittman, 155 Ill. App. 527, holding that quo warranto lies to test right to office on allegations of violation of by-laws and use of undue influence; Thacker Coal & Coke Co. v. Burke, 59 W. Va. 257, 5 L.R.A.(N.S.) 1099, 53 S. E. 161, 8 Ann. Cas. 885, holding that an action lies against a person who wantonly and maliciously induces a servant to break his contract with the master; Nolin v. Pearson, 191 Mass. 289, 4 L.R.A.(N.S.) 648, 114 Am. St. Rep. 605, 77 N. E. 890, 6 Ann. Cas. 658, holding a wife might maintain an action for the alienation of husband's affections.

Existence of present right in contract terminable at will.

Cited in Citizens' Loan Asso. v. Boston & M. R. Co. 196 Mass. 530, 14 L.R.A. (N.S.) 1028, 124 Am. St. Rep. 584, 82 N. E. 696, 13 Ann. Cas. 365, holding a present right exists in an assignment of future earnings under a contract terminable at will.

Motive as affecting liability for procuring injury to another.

Cited in Aikens v. Wisconsin, 195 U. S. 204, 49 L. ed. 159, 25 Sup. Ct. Rep. 3, on the justification of combinations to injure another in his business or which have such a result.

52 L. R. A. 117, MILLARD v. BRAYTON, 177 Mass. 533, 83 Am. St. Rep. 294, 59 N. E. 436.

Distribution of proceeds of insurance policy.

Cited in Dunn v. New Amsterdam Casualty Co. 141 App. Div. 481, 126 N. Y. Supp. 229, holding that proceeds go to estate of insured, where he and beneficiary, his sister, died in common disaster; Michigan Mut. L. Ins. Co. v. Basler, 140 Mich. 235, 103 N. W. 596, holding where a life insurance policy was made payable to a wife and in case of her death to the children and the wife and one of the children died before the insured, on his death the policy was payable to the surviving child and the children of the deceased child; Pool v. New England Mut. L. Ins. Co. 123 App. Div. 887, 108 N. Y. Supp. 431, holding on a policy taken out by a wife on husband's life for her benefit, the proceeds of the policy passes to her personal representative although she died before her husband; Braddock v. Manhattan L. Ins. Co. 16 Pa. Dist. R. 133, holding under a policy issued to a wife on the life of her husband for her benefit and in case of her death before that of the assured for the benefit of her children, the proceeds of the policy passes to the representatives of the wife dying before the insured where her only child died during her lifetime; United States Casualty Co. v. Kacer, 169 Mo. 312, 58 L.R.A. 440, 92 Am. St. Rep. 641, 69 S. W. 370, holding where an assured and beneficiary perish in a common disaster the fund goes to the personal representative of the assured.

Interest in policy by payment of premiums.

Cited in Lewis v. Metropolitan L. Ins. Co. 178 Mass. 54, 86 Am. St. Rep. 463, 59 N. E. 439, holding the mere fact of payment of premiums on the policy of another creates no interest in the policy to the person paying them.

What laws govern policy of insurance.

Cited in Swing v. Wellington, 44 Ind. App. 462, 89 N. E. 514; Haas v. Mutual L. Ins. Co. 90 Neb. 819, 134 N. W. 937, Ann. Cas. 1913B, 919,—holding that policy is governed by law of state where application is made, premium paid and

policy delivered; Wilde v. Wilde, 209 Mass. 207, 95 N. E. 295, holding that policy issued by foreign corporation is governed by laws here, though insurance money is to be paid in foreign states; Johnson v. Mutual L. Ins. Co. 180 Mass. 409, 63 L.R.A. 842, 62 N. E. 733, holding a right of action on a policy of insurance issued by a foreign corporation doing business in state to one living in another state at time although domiciled in this state is not affected by a failure to comply with a statutory requirement providing for the attachment of the application to the policy.

Cited in footnotes to Cravens v. New York L. Ins. Co. 52 L.R.A. 305, which holds life policies of foreign company taking effect on delivery and collection of premium governed by law of state of delivery, notwithstanding provision in policy; Swing v. Munson, 58 L.R.A. 223, which holds insurance contract, valid where made, not enforceable in state where property located whose laws directly violated.

Cited in notes (63 L.R.A. 841, 857) on conflict of laws as to insurance contracts; (104 Am. St. Rep. 490) on conflict of laws as to nonforfeiture of insurance policy.

Policy for benefit of wife as creating contract between insurer and wife.

Cited in Emerson v. Metropolitan L. Ins. Co. 185 Mass. 319, 70 N. E. 200, doubting whether the contract in a policy of insurance made payable to the wife was not a contract between the insurer and the wife.

Application and policy as one contract.

Cited in Paquette v. Prudential Ins. Co. 193 Mass. 220, 79 N. E. 250, holding in the absence of agreement the application and the policy form one contract; New York L. Ins. Co. v. Hardison, 199 Mass. 194, 127 Am. St. Rep. 478, 85 N. E. 410, requiring insurance company to reform provisions of policy so as to include the application as part of the contract.

Nature of beneficiaries interest in a life insurance policy.

Cited in Lanier v. Eastern L. Ins. Co. 142 N. C. 18, 54 S. E. 786, affirming the interest of a beneficiary in a life insurance policy to be a vested one; Canterbury v. Northwestern Mut. L. Ins. Co. 124 Wis. 185, 102 N. W. 1096, holding a policy of insurance issued on life of husband for benefit of wife was properly assigned by the act of the husband and wife with the consent of the insurer; Blinn v. Dame, 207 Mass. 163, 93 N. E. 601, 20 Ann. Cas. 1184, holding that beneficiary may maintain action on policy in his own name.

Effect of rejection of portion of application for insurance.

Cited in note (5 L.R.A.(N.S.) 741) on effect of rejection of portion of application for insurance.

52 L. R. A. 123, YOUNG MEN'S CHRISTIAN ASSO. v. DOUGLAS COUNTY, 60 Neb. 642, 83 N. W. 924.

Presumption as to exemption from taxation.

Cited in Shreveport Creosoting Co. v. Shreveport, 119 La. 642, 44 So. 325, holding it would not be presumed or implied that complainants were exempt from certain taxes under an act exempting manufacturers.

Property exempt from taxation.

Cited in Plattsmouth Lodge No. 6, A. F. & A. M. v. Cass County, 79 Neb. 470, 113 N. W. 167, holding property of a lodge used only for charitable and benevolent purposes was exempt from taxation.

Cited in footnote to Protestant Episcopal Church v. Prioleau, 57 L.R.A. 606, which holds exempt, church parsonage rented, the rent being used to procure other residence for parson.

Rights where part of property is tax exempt.

Cited in Rohrbough v. Douglas County, 76 Neb. 682, 107 N. W. 1000, holding in the assessment of property partly exempt from taxation, the value of the part coming within the exemption should be deducted from the total value of the property.

52 L. R. A. 126, MALOY v. BERNALILLO COUNTY COMRS. 10 N. M. 638, 62 Pac. 1106.

Accountability of public officials for advantages derived from funds in their control.

Cited in notes (30 L.R.A.(N.S.) 856, 859) on liability of public officer or his bond for interest received; (40 L.R.A.(N.S.) 593) on acceptance of principal as affecting right to interest; (91 Am. St. Rep. 527) on liability of sureties for interest received on public funds.

Disapproved in Rhea v. Brewster, 130 Iowa, 732, 107 N. W. 940, 8 Ann. Cas. 389, holding a party entitled to a fund deposited in court is entitled to the interest earned by such sum while on deposit in a bank.

Public officer's liability for loss by failure of bank.

Cited in footnote to Thomssen v. Hall County, 57 L.R.A. 303, which holds county treasurer liable in bond for loss of money by bank failure.

Cited in notes (36 L.R.A.(N.S.) 286) on public officer's liability for loss of funds by failure of bank; (91 Am. St. Rep. 521) on liability of sureties on official bonds for loss by failure of depositary.

52 L. R. A. 134, ANDERSON v. GORDON, 9 N. D. 480, 83 N. W. 993.

52 L. R. A. 136, COOPER v. COM. 110 Ky. 123, 96 Am. St. Rep. 426, 60 S. W. 938.

What constitutes larceny.

Cited in notes (30 L.R.A.(N.S.) 339) on larceny of property found; (88 Am. St. Rep. 579) on what constitutes larceny.

— Property delivered by mistake.

Cited in note (88 Am. St. Rep. 599, 600) on larceny of property delivered by mistake.

52 L. R. A. 140, EWING v. RHEA, 37 Or. 583, 82 Am. St. Rep. 783, 62 Pac. 790.

Estoppel of licensor to revoke license.

Cited in Flinn v. Vaughn, 55 Or. 375, 106 Pac. 642, holding that failure to object to construction of dam will not constitute estoppel, when dam would have been constructed regardless of anything that might have been said; Shaw v. Proffitt, 57 Or. 202, 109 Pac. 584, 110 Pac. 1092, Ann. Cas. 1913A, 63, holding that implied license is not made irrevocable by expenditures, but express license is; Re White Plains, 124 App. Div. 5, 108 N. Y. Supp. 596, holding a grantee of lands on which a village through a license from grantor had constructed sewer improvements was not on the condemnation of the land for such purpose estopped to demand compensation for sewer improvements put on the land after its conveyance to him; Fowler v. Dalaplain, 79 Ohio St. 287, 21 L.R.A.

(N.S.) 102, 87 N. E. 260, holding a mere license to use land will not estop a revocation of the license although valuable improvements have been made on the land with the acquiescence of licensor.

Cited in footnotes to Hick Bros. v. Swift Creek Mill Co. 57 L.R.A. 720, which holds revocation of parol license to construct dam and ditch on land not prevented by large expenditures on faith of it; Crescent Canal Co. v. Montgomery, 65 L.R.A. 941, which holds that owners of land served by irrigation ditch, who tacitly assent to extension of canal over their land for purpose of changing point of intake, are estopped from objecting to maintenance of canal after its completion; Rodefer v. Pittsburg O. V. & C. R. Co. 70 L.R.A. 844, which holds siding or switch constructed by railroad company to manufactory at expense of and over land of manufacturer for sole purpose of affording facilities for receiving and shipping freight and silent as to period it is to remain not maintainable by railroad company against manufacturer's objection.

Cited in notes (1 L.R.A.(N.S.) 360) on right to revoke so-called license which is in nature of lease; (19 L.R.A.(N.S.) 701) on revocability of license to maintain burden on land after licensee has incurred expense.

Distinguished in McPhee v. Kelsey, 44 Or. 200, 74 Pac. 401, holding defendants could not revoke at will a license to plaintiff to the use of an irrigation ditch and water where in reliance thereon plaintiffs have improved the ditch to their mutual benefit of both parties.

Estoppel by acquiescence in water use.

Cited in Bolter v. Garrett, 44 Or. 307, 75 Pac. 142, holding a party cannot be deprived of his right to the use of water by estoppel because he sees another constructing a ditch and appropriating the water without objection; Brown v. Gold Coin Min. Co. 48 Or. 284, 86 Pac. 361, holding a riparian owner was not estopped to object to defendant's pollution of a stream by reason of the fact that he saw the product of the reduction plant and was aware of what the results would be and made no immediate objection.

Irrevocable license.

Cited in National Automatic Fire Alarm Co. v. Portland, 59 Or. 417, 117 Pac. 285, holding that mere acquiescence of city in act of fire alarm company in using city telegraph as adjunct of its business will not support license; Falls City Lumber Co. v. Watkins, 53 Or. 215, 99 Pac. 884, on the elements essential to the constitution of an irrevocable license and denying irrevocability of particular license.

52 L. R. A. 142, CLEVELAND TERMINAL VALLEY R. CO. v. MARSH, 63 Ohio St. 236, 58 N. E. 821.

Liability of railroad company to children on premises by servant's invitation.

Cited in Lake Shore & M. S. R. Co. v. Duer, 21 Ohio C. C. 516, 11 Ohio C. D. 763, holding no liability on part of a railroad company where a boy allowed by section foreman to ride on the hand car with the section men fell from the car and was injured.

Duty owed by railroad company to trespassers.

Cited in Baltimore & O. R. Co. v. Campbell, 8 Ohio C. C. N. S. 572, 28 Ohio C. C. 665, holding a railroad company was negligent in operating a locomotive without a light or bell at a point where persons had for a long time been in the habit of walking; Cleveland, C. C. & St. L. R. Co. v. Gahan, 1 Ohio C. C. N. S. 209, 24 Ohio C. C. 280, considering the nature of duty owed by railroad com-

panies to trespassers on right of way; Hughes v. Boston & M. R. Co. 71 N. H. 285, 93 Am. St. Rep. 518, 51 Atl. 1070, holding defendant owed no duty to an infant trespasser to keep its right of way clear of obstructions dangerous to him; Missouri, K. & T. Ry. v. Cowles, 29 Tex. Civ. App. 158, 67 S. W. 1078, Affirmed in 96 Tex. 26, 69 S. W. 541, holding railroad company not liable for the killing of a trespasser standing behind a car examining the coupler, the employees having no knowledge of his presence; Murphy v. Wabash R. Co. 228 Mo. 138, 128 S. W. 481 (dissenting opinion), denying that defendant company owed a duty to one not using tracks as a foot path, but upon it out of curiosity.

Cited in footnote to Obertoni v. Boston & M. Co. 67 L.R.A. 422, which denies liability of railroad company for injuries to boy from torpedo left by employees near track after tossing it back and forth.

Proof necessary to establish negligence.

Cited in Wainright v. Lake Shore & M. S. R. Co. 11 Ohio C. D. 540, holding contributory negligence on the part of a brakeman in failing to avoid a danger which he might have been aware of could not be assumed but must be established by proof; Weaver v. Linneman, 16 Ohio S. & C. P. Dec. 342, holding where circumstantial evidence is relied upon to establish negligence, the circumstances cannot be themselves presumed; Hamilton v. Lake Shore & M. S. R. Co. 4 Ohio N. P. N. S. 253, 16 Ohio S. & C. P. Dec. 620, setting aside a verdict based upon the conjecture of the jury that the defendant was guilty of negligence; Frank v. Herancourt Brewing Co. 18 Ohio S. & C. P. Dec. 36, holding in an action for damages against employer for failing to give employee proper protection against dangers of the employment proof must be adduced showing that the alleged cause in fact produced the injury; Baltimore & O. Ry. v. Simpson, 12 Ohio C. C. N. S. 188, 31 Ohio C. C. 351; Welever v. Williams, 5 Ohio C. C. N. S. 410, 26 Ohio C. C. 626,—considering the nature of proof necessary to establish fact of negligence.

Presumption of negligence.

Cited in Cincinnati R. Omnibus Co. v. Tahse, 6 Ohio N. P. N. S. 504, 14 Ohio S. & C. P. Dec. 683, holding the act of defendant's servants in allowing a rope to drag behind a wagon in a crowded street created a presumption of negligence; O'Connell v. Hazen, 17 Ohio S. & C. P. Dec. 756, holding the mere fact that a decedent fell from a building without any proof as to the cause of the fall did not create a presumption of negligence on the part of his employers.

Liability of employer for injury to servant.

Cited in Wainright v. Lake Shore & M. S. R. Co. 11 Ohio C. D. 542, on the duty of employer to call attention to unusual dangers of the employment.

— Servants out of place.

Cited in Carnegie Steel Co. v. Rowan, 10 Ohio C. C. N. S. 338, 30 Ohio C. C. 210, holding where for a long time defendant company had allowed employees to congregate in a certain building for the purpose of eating their dinner it was liable where an employee was injured through defendant's negligence although he would not have beeen injured if he had been in his proper place; Cleveland, A. & C. R. v. Workman, 66 Ohio St. 541, 90 Am. St. Rep. 602, 64 N. E. 582, holding no duty owed by defendant to an employee not upon the track in the course of his employment to keep it safe.

— To volunteers.

Cited in Toledo, B. G. & F. R. Co. v. Pfisterer, 5 Ohio C. C. N. S. 362, 26 Ohio C. C. 671, holding a section hand who while on his way to work attempts in the absence of the conductor inside of car to replace the trolley wheel on the wire,

he having experience in such work is not a volunteer and thus prevented from recovering for injuries received; Belt R. Co. v. Charters, 123 Ill. App. 328, holding a minor volunteering to aid an employee of defendant in the performance of his duty at the request of the employee is not within the exception entitling him to protection against the negligence of defendant's servants; Eight Hour Tobacco Co. v. Koellner, 13 Ohio C. C. N. S. 34, holding master not liable to person assisting servants for injury from absence of guard-rail, where guard-rail would not have prevented accident.

Cited in note (13 L.R.A.(N.S.) 563) on assumption of risk by volunteer.

Keeping of explosives or dangerous things.

Cited in footnote to Nelson v. McLellan, 60 L.R.A. 793, which holds storing dynamite in partially buried box on vacant lot frequented by children, negligence.

Distinguished in Langabaugh v. Anderson, 68 Ohio St. 143, 62 L.R.A. 948, 67 N. E. 286, as inapplicable where a charge was objected to because it submitted without qualification whether storage of crude oil was dangerous.

Liability for injury by servant in use of dangerous agency.

Cited in note (10 L.R.A.(N.S.) 371, 379, 386) on liability for injury by servant to third person in use of dangerous agency.

Liability for injury to trespasser.

Cited in note (25 Eng. Rul. Cas. 114, 115) on liability for injury to trespasser by dangerous instrumentalities.

52 L. R. A. 150, ZANESVILLE v. ZANESVILLE TELEG. & TELEPH. CO. 64 Ohio St. 67, 83 Am. St. Rep. 725, 59 N. E. 781.

Separation of powers of government.

Cited in State v. Superior Ct. 42 Wash. 498, 85 Pac. 264, holding that a statute providing for the determination by the superior court as to the practicability of a drainage system, and its conductiveness to the public welfare, does not confer legislative duties upon the court; Bowlley v. Kline, 28 Ind. App. 663, 63 N. E. 723, holding that the act of the circuit court in making notes of a building and loan association negotiable under the statute, was a judicial act; State v. Brill, 100 Minn. 517, 111 N. W. 639, 10 Ann. Cas. 425, holding that the appointment of members of the county board of control by the judges of the district court, is not a judicial power but is one conferred upon another branch of the government; Fairview v. Giffee, 73 Ohio St. 190, 76 N. E. 865, holding that a statute providing for the separation of unplatted lands from cities and villages and attaching them to towns, by a decree of the court, did not give the latter a legislative function; State v. Harden, 62 W. Va. 382, 60 S. E. 394 (dissenting opinion), on the delegation of legislative functions to the courts; Grover Hill v. McClure, 6 Ohio C. C. N. S. 202, 27 Ohio C. C. 380, sustaining statute providing for the detaching of unplatted farm lands from cities and villages as not conferring legislative powers upon the judiciary; Re Jones Law Petition, 11 Ohio C. C. N. S. 33, 30 Ohio C. C. 705, sustaining the Jones Law for establishment of dry territory in residence districts and holding that the hearing provided for before a justice of the peace or a judge of the common pleas court as to sufficiency of the petition is a judicial one and not a legislative; State v. Gayman, 11 Ohio C. C. N. S. 259, 31 Ohio C. C. 61, holding that the joint resolution of the general assembly to appoint a commission to investigate charges of corruption existing in the government of the city of Cincinnati and Hamilton County is unconstitutional as an exercise of judicial functions by the

legislature; Morris v. Taylor, 70 W. Va. 627, 74 S. E. 872, holding valid, act for incorporation of cities, extent of territory to be within discretion of circuit court granting charter.

Cited in footnote to Re Davies, 56 L. R. A. 855, which holds supreme court justice may be empowered to appoint referee to take testimony to aid in suppressing monopoly.

Distinguished in Denny v. Des Moines County, 143 Iowa, 474, 121 N. W. 1066, holding that the action of the board of supervisors in deciding whether to establish a drainage district is legislative power and cannot be reviewed on appeal.

— Prescribing use of streets by telephone lines.

Cited in Queen City Teleph. Co. v. Cincinnati, 5 Ohio C. C. N. S. 423, 27 Ohio C. C. 398, Affirming 2 Ohio N. P. N. S. 355, 15 Ohio S. & C. P. Dec. 48, holding that the probate court in deciding upon the use of the streets of a city by a telephone company must act judicially by considering each street separately and cannot give the general right to use of all the streets; Cleveland Teleph. Co. v. Chagrin Falls, 1 Ohio N. P. N. S. 538, 14 Ohio S. & C. P. Dec. 452, holding that the proceedings in probate court to determine the use of streets by a telephone company being a judicial proceeding, the court's decision therein may be reviewed on error; Cleveland Teleph. Co. v. South Newburgh, 4 Ohio N. P. N. S. 626, holding that probate court can make no order as to how poles or wires shall be placed in case their location should need to be changed to make moving of building in street possible.

Doubt as to constitutionality of law.

Cited in Norris v. Casper, 8 Ohio N. P. 475, 11 Ohio S. & C. P. Dec. 618, Reversing 8 Ohio N. P. 316, 11 Ohio S. & C. P. Dec. 595, holding that a doubt as to the validity of a law is not sufficient to warrant holding it invalid.

Right to place telephone poles in streets.

Cited in State v. Red Lodge, 30 Mont. 342, 76 Pac. 758, holding that a statute authorizing a telephone company to build a line and place posts upon public roads includes the right to place them upon streets of a city; State v. Toledo Home Teleph. Co. 72 Ohio St. 70, 74 N. E. 162, holding same, and a grant of the right from cities or municipalities is not necessary; Queen City Teleph. Co. v. Cincinnati, 73 Ohio St. 77, 76 N. E. 392, holding that the power to place telephone poles upon the streets of a city is derived from the state; Wichita v. Old Colony Trust Co. 66 C. C. A. 19, 132 Fed. 648, holding that the statute giving the right to place telegraph poles upon public highways and streets, was not repealed by the statutes granting a charter to a city in which the city was authorized to regulate the erection of telegraph and telephone poles; Tannion v. City & Suburban Teleg. Asso. 13 Ohio S. & C. P. Dec. 254, sustaining right of telephone company to erect and maintain poles and wires upon city streets without compensating the abutting owner; Columbus v. Columbus Citizens Teleph. Co. 10 Ohio N. P. N. S. 441, holding that city may exact percentage of rentals from telephones and require company to restore streets to former condition.

Cited in footnote to Ft. Smith v. Hunt, 66 L.R.A. 238, which sustains right of city to exact license fee for privilege of maintaining in highway poles to carry electric wires.

Distinguished in Johnstown & C. Teleph. Co. v. Cush, 14 Ohio S. & C. P. Dec. 154, holding that the erection of a telephone line along a public road or highway imposes an additional burden on the fee and entitles the abutting owner to compensation.

Rights of telephone companies to power of eminent domain.

Cited in Central Union Teleph. Co. v. Columbus Grove, 8 Ohio C. C. N. S. 85, 28 Ohio C. C. 135, holding that foreign telephone companies cannot exercise the power of eminent domain in the absence of statutory authority.

Title of city to its streets.

Cited in Columbus v. Columbus Gas Co. 2 Ohio N. P. N. S. 39, 14 Ohio S. & C. P. Dec. 421, holding that the city obtains the fee in the streets, which it holds in trust for the public and cannot sell, and therefore the exaction of a sum of money from the gas company for the use of the streets is void where made for revenue purposes only; Kinney v. Cincinnati, 6 Ohio N. P. N. S. 139, 18 Ohio S. & C. P. Dec. 259, holding that the city acquired title to the streets in fee but did not acquire a private proprietary right but only a qualified fee.

Right of municipality to compensation for property taken under eminent domain.

Cited in footnote to Nahant v. United States, 69 L. R. A. 723, which holds Federal government liable to municipality for value of sewer and water pipes taken under power of eminent domain.

52 L. R. A. 157, KING v. KING, 63 Ohio St. 363, 81 Am. St. Rep. 635, 59 N. E. 111.

Invalidity of part of contract as affecting whole.

Cited in Livingston v. Chicago & N. W. R. Co. 142 Iowa, 411, 120 N. W. 1040, holding that where an agreement contains two or more distinct stipulations or promises, one of which is against public policy and the others are not, the illegality of one will not relieve the promisor from liability on the others; Gilbert v. Thomas, 16 Ohio S. & C. P. Dec. 13, holding tax inquisitor's contract was not invalidated as to lawful and authorized portions by unauthorized or void provision for payment of commission on real estate where such provision was separable.

Cited in note (117 Am. St. Rep. 495) on validity of contracts, consideration for which has partly failed, or is partly illegal.

Distinguished in Central New York Teleph. & Teleg. Co. v. Averill, 58 Misc. 68, 110 N. Y. Supp. 273, holding that the contract being entire, the invalidity of one of several parts, renders the whole contract unenforceable.

52 L. R. A. 160, FRENCH v. STATE, 42 Tex. Crim. Rep. 222, 58 S. W. 1015.

What is interstate commerce.

Cited in Smith v. Farr, 46 Colo. 370, 104 Pac. 401, holding void, license tax on foreign manufacturer sending wares into state for sale; Lee v. La Fayette, 153 Ala. 679, 45 So. 294, holding that an agent of a foreign stove company who takes stoves from the temporary warehouse and delivers them upon orders procured previously by him and accepted by the main office, he selling by sample, is engaged in interstate commerce and not subject to a local ordinance; Kirkpatrick v. State, 42 Tex. Crim. Rep. 459, 60 S. W. 762, holding where carriages were shipped into the state in large quantities and sold by agents around the state, they making immediate delivery, unless a special design was desired, when it was shipped direct from the factory, the company was engaged in interstate commerce.

Cited in footnote to State v. Willingham, 52 L.R.A. 198, which holds as interstate commerce, delivery of portraits and frames by agent previously taking orders for nonresident manufacturer.

Cited in notes (19 L.R.A.(N.S.) 314) on license or occupation tax on hawkers, peddlers, and persons engaged in soliciting orders by sample or otherwise, as violating the commerce clause; (46 L. ed. U. S. 788, 789) on peddlers and drummers as related to interstate commerce.

Distinguished in Camp v. State, 42 Tex. Crim. Rep. 499, 61 S. W. 401, holding that one engaged in selling and placing lightning rods, was not engaged in interstate commerce where he often placed them in position immediately after securing the order, though the goods were shipped into the state, if he did not fill the orders except from materials on hand; Saulsbury v. State, 43 Tex. Crim. Rep. 93, 96 Am. St. Rep. 837, 63 S. W. 568, holding that one shipping buggies into the state and then setting them up and selling them through agents travelling through the state, forwarding special orders if necessary, was not engaged in interstate commerce.

52 L. R. A. 162, JOHNSON v. ELMER, 94 Tex. 168, 86 Am. St. Rep. 845, 59 S. W. 253.

Parol evidence to show consideration of deed.

Cited in Pope v. Taliaferro, 51 Tex. Civ. App. 221, 115 S. W. 309, holding admissible, unperformed parol contemporaneous agreement for additional consideration, to defeat specific performance of land contract; Glenn v. Seeley, 25 Tex. Civ. App. 526, 61 S. W. 959, holding that parol evidence was admissible to show that a mortgage was given to secure future advances, where before the maturity of the mortgage the mortgagor executed a note for the balance due on his account; Suderman-Dolson Co. v. Rodgers, 47 Tex. Civ. App. 73, 104 S. W. 193, holding that parol evidence was admissible to show an agreement which was part of the consideration of a lease, though the contract recited a consideration in money.

Cited in note (25 L.R.A.(N.S.) 1203) on parol evidence as to consideration of deed.

52 L. R. A. 165, RODINI v. LYTLE, 17 Mont. 448, 43 Pac. 501.

Effect on surety of judgment against principal.

Cited in footnotes to McConnell v. Poor, 52 L.R.A. 312, which holds judgment against principal for damages for breach of contract not conclusive against surety who is not a party or privy to the action; Allred v. Smith, 65 L.R.A. 924, which holds judgment in action quasi in rem binding on the parties only.

Cited in note (40 L.R.A.(N.S.) 707) on effect upon surety of judgment against principal.

52 L. R. A. 188, RE SCHELD, 44 C. C. A. 233, 104 Fed. 870.

Passing of title of bankrupt's property to his trustee.

Cited in Re Mayer, 47 C. C. A. 512, 108 Fed. 607, holding that title to the bankrupt's homestead, which had been abandoned before adjudication, passed to the trustee, for the benefit of the estate.

— Title of insurance policies.

Cited in Allen v. Central Wisconsin Trust Co. 143 Wis. 385, 139 Am. St. Rep. 1107, 127 N. W. 1003, holding that paid-up policy does not pass to trustee in bankruptcy; Pulsifer v. Hussey, 97 Me. 444, 54 Atl. 1076, holding that an insurance policy payable to the insured if he survived twenty years or to his wife if he did not, did not pass to his trustee in bankruptcy appointed before the expiration of the twenty years.

Cited in notes (16 L.R.A.(N.S.) 321) on creditor's rights as to policies having cash surrender value; and as to insured's option to receive cash surrender value; (25 L.R.A.(N.S.) 724, 725) on exemption of paid-up or endowment policies; (26 L.R.A.(N.S.) 453) on life insurance as assets of bankrupt.

Disapproved in Holden v. Stratton, 198 U. S. 212, 49 L. ed. 1022, 25 Sup. Ct. Rep. 656, Reversing 51 C. C. A. 97, 52 C. C. A. 346, 113 Fed. 143, 114 Fed. 652, holding that the exemptions of life insurance policies under the Federal bankruptcy law where they are exempted from execution by state law, is not qualified by the later provision which invests the trustee with the title of the bankrupt except so far as exempt.

Construction of statutes.

Cited in Stiers v. Mundy, 174 Ind. 657, 92 N. E. 374, holding that later provision in statute repeals by implication former conflicting provision.

52 L. R. A. 189, MONROE v. ATKINSON, 125 Mich. 283, 84 N. W. 305.

Exemption from arrest.

Cited in Weale v. Clinton Circuit Judge, 158 Mich. 565, 123 N. W. 31, holding that a person arrested in another state and brought into the state is privileged from arrest in a civil suit for the alienation of the relator's wife's affections.

52 L. R. A. 192, FISHER v. WINEMAN, 125 Mich. 642, 84 N. W. 1111.

Preference in favor of a labor debt.

Cited in Wineman v. Fisher, 135 Mich. 607, 98 N. W. 404, on the unconstitutionality of a statute giving priority to a labor debt over a pre-existing debt.

Cited in note (139 Am. St. Rep. 877) on constitutionality of statutes making wages preferred claims.

52 L. R. A. 195, HAWLEY v. HURD, 72 Vt. 122, 82 Am. St. Rep. 922, 47 Atl. 401.

Application of state laws to national banks.

Cited in State v. Clement Nat. Bank, 84 Vt. 179, 78 Atl. 944, Ann. Cas. 1912D, 22, holding that national banks are instrumentalities of Federal government, under paramount authority of United States; Merchants' Nat. Bank v. Ford, 124 Ky. 409, 99 S. W. 260, holding that a statute which places notes payable to any corporation or person, payable and negotiable to any bank organized under the state or Federal laws, upon the same basis as foreign bills of exchange, is not in conflict with the Federal banking law so far as it applies to national banks.

Citizenship of corporations.

Cited in note (85 Am. St. Rep. 907) on citizenship and residence of corporations for jurisdictional purposes.

Where debt garnishable.

Cited in note (67 L.R.A. 211) on garnishment of debt in domicil of debtor.

52 L. R. A. 198, STATE v. WILLINGHAM, 9 Wyo. 290, 87 Am. St. Rep. 948, 62 Pac. 797.

Uniformity of taxation.

Cited in Smith v. Farr, 46 Colo. 370, 104 Pac. 401, holding void, license tax on foreign manufacturer sending wares into state for sale; Louisville v. Sagalowski & Son, 136 Ky. 330, 136 Am. St. Rep. 258, 124 S. W. 339, holding valid an

ordinance providing for a license for every person in the business of selling any goods, wares or merchandise, except by sample, as not being in violation of the constitutional requirement as to uniformity.

Cited in footnote to Com. use of Titusville v. Clark, 57 L.R.A. 348, which holds void, exemption from license tax of contractors and real estate dealers, but not others, whose business less than $1,000.

Cited in note (129 Am. St. Rep. 252) on constitutional limitations on power to impose license or occupation taxes.

What is interstate commerce.

Cited in State v. Eckenrode, 148 Iowa, 192, 127 N. W. 56, holding that shipments to agent in state to fill orders constitutes interstate commerce; Kinsley v. Dyerly, 79 Kan. 7, 19 L.R.A.(N.S.) 408, 98 Pac. 228, holding that the place of contract is where the proposal is accepted, so that an order to an agent for goods to be shipped to him by his principal from another state, for delivery by him, was interstate commerce; International Textbook Co. v. Peterson, 133 Wis. 309, 113 N. W. 730, 14 Ann. Cas. 965, holding that an agreement by a Pennsylvania corporation to furnish a resident of Wisconsin with instruction, forwarding to him the books and materials to be used was not interstate commerce.

Cited in note (46 L. ed. U. S. 788) on peddlers and drummers as related to interstate commerce.

52 L. R. A. 201, ARRINGTON v. ARRINGTON, 127 N. C. 190, 80 Am. St. Rep. 791, 37 S. E. 212.

Subsequent appeal, 131 N. C. 144, 92 Am. St. Rep. 769, 42 S. E. 554, referring to holding of the court in the cited case.

Dismissal of petition to set aside discharge in bankruptcy in 132 Fed. 200.

Enforcement of foreign decree for alimony.

Cited in Campbell v. Campbell, 28 Okla. 844, 115 Pac. 1111, holding that decrees of Missouri courts for future payments of alimony are not subject to annulment or modification by those courts as to past due and unsatisfied instalments, so as to deprive such decrees of protection of full faith and credit clause; Rogers v. Rogers, 46 Ind. App. 510, 89 N. E. 901, holding that foreign judgment for alimony is entitled to full faith and credit; Page v. Page, 189 Mass. 88, 75 N. E. 92, 4 Ann. Cas. 296, holding that a final decree of divorce which allows alimony, will be enforced in another state under the provisions of the federal constitution; Wagner v. Wagner (Wagner v. Latham) 26 R. I. 29, 65 L.R.A. 817, 57 Atl. 1058, 3 Ann. Cas. 578, holding that an action at law will lie to enforce a foreign decree in equity allowing alimony.

Cited in note (9 L.R.A.(N.S.) 1169) on action to recover alimony accruing under decree in another state.

Distinguished in Hunt v. Monroe, 32 Utah, 437, 11 L.R.A.(N.S.) 252, 91 Pac. 269, holding that a decree for alimony, payable in the future and payable in instalments is not a final decree which is entitled to be enforced in another state.

Force of foreign judgments.

Cited in note (103 Am. St. Rep. 305, 308) on force of judgments of courts of other states.

Law governing limitations.

Cited in footnote to Brand v. Brand, 63 L.R.A. 206, which holds judgment of court of state where note is sent for collection that it is barred by limitation not bar to suit in another state.

When limitations begin to run against actions on judgments.

Cited in footnote to Citizens' Nat. Bank v. Lucas, 56 L.R.A. 812, which holds that limitations began to run against action on judgment from time of its rendition.

52 L. R. A. 205, STEWART v. CALIFORNIA IMPROV. CO. 131 Cal. 125, 63 Pac. 177, 724.

Liability for negligent acts of servants hired to another.

Cited in Highman v. T. W. Waterman Co. 32 R. I. 587, 80 Atl. 178, holding that teaming company, contracting to furnish teams with drivers to lumber company, is liable for injury from fall of pile of lumber made by driver; Ash v. Century Lumber Co. 153 Iowa, 535, 38 L.R.A.(N.S.) 979, 133 N. W. 888, holding that driver furnished by owner of team which is let to haul wagon of lumber company and who receives for compensation one half of compensation paid by company which has no control over him, is not servant of company so as to render it liable for his negligence; Swackhamer v. Johnson, 39 Or. 391, 54 L.R.A. 627, 65 Pac. 91, holding that a railroad promoter having contracted with an employment agency to furnish a foreman and laborers, and assigned a subsidy contract to a member of the agency, the latter was not liable for the negligent acts of the laborers, since they were servants of the promoters; Shepard v. Jacobs, 204 Mass. 112, 26 L.R.A.(N.S.) 443, 134 Am. St. Rep. 648, 90 N. E. 392, holding that the owner of an automobile is liable for the collision through the negligence of the chauffeur, though at the time the machine had been let out to other parties with the chauffeur; dissenting opinions in Philadelphia & R. Coal & Iron Co. v. Barrie, 102 C. C. A. 618, 179 Fed. 54; Kellogg v. Church Charity Foundation, 135 App. Div. 848, 120 N. Y. Supp. 406,—on the liability for negligent acts of servant in the employ of another.

Cited in note (13 L.R.A.(N.S.) 1124) on responsibility for acts of driver furnished with hired vehicle.

— Necessity for relationship of master and servant.

Cited in Johnson v. Helbing, 6 Cal. App. 429, 92 Pac. 360, holding that a lot owner was not liable for injuries to a person standing upon a sidewalk through the negligence of servants of an independent contractor who was working upon the building.

Liability of municipality for injury from steam roller.

Cited in footnote to Hall v. Concord, 58 L.R.A. 455, which denies municipal liability for injury due to commissioner's negligent management of steam roller while repairing highway.

Liability for frightening of horse by escape of steam from engine in highway.

Cited in note (31 L.R.A.(N.S.) 1211) on duty to prevent escape of steam from engine in highway so as to frighten horses.

52 L. R. A. 209, GUETZKOW v. A. H. ANDREWS & CO. 92 Wis. 214, 53 Am. St. Rep. 909, 66 N. W. 119.

Measure of damages for breach of contract.

Cited in Foss v. Heineman, 144 Wis. 149, — L.R.A.(N.S.) —, 128 N. W. 881, holding that damages for breach of contract of sale of lumber to be resold at advanced price are difference between purchase and resale price; First Nat. Bank v. Snell, 144 Wis. 438, 129 N. W. 668, holding that loss of profits on goods bought to fill pre-existing contract cannot be recovered, where goods can be

purchased in open market; Hammond v. Sandwich Mfg. Co. 146 Wis. 488, 131 N. W. 1097, holding that loss of profits cannot be recovered for breach of warranty in sale of gasoline engine; Northern Supply Co. v. Wangard, 123 Wis. 11, 107 Am. St. Rep. 984, 100 N. W. 1066, holding that vendor can recover damages from rotting of potatoes with which he placed defective ones purchased; Cross v. Heckert, 120 Wis. 321, 97 N. W. 952, holding that the measure of damages for failure to deliver possession of premises which had been leased for a specific purpose, was what could reasonably be considered the natural and proximate result of the failure to deliver possession; Lincoln v. Charles Alshuler Mfg. Co. 142 Wis. 480, 28 L.R.A.(N.S.) 783, 125 N. W. 908; Malueg v. Hatten Lumber Co. 140 Wis. 385, 122 N. W. 1057,—holding that the measure of damages for breach of contract to sell personal property, where there is no special circumstances known to the seller, is the difference between the contract price and the contract price and the market price at the place and time of delivery; Loehr v. Dickson, 141 Wis. 337, 30 L.R.A.(N.S.) 497, 124 N. W. 293, holding that the damages to be recoverable must be such as were within the contemplation of the parties at the time the contract was made, as the probable natural result of the breach; Lapp v. Illinois Watch Co. 104 Ill. App. 259, holding that where the vendor is informed at the time of the sale that the goods are purchased by a merchant to fulfil a contract already made, the loss of expected profit therefrom may be recovered; Bradley v. Chicago, M. & St. P. R. Co. 94 Wis. 46, 68 N. W. 410, holding that the carrier is not liable for special damages not within the contemplation of the parties at the time the goods were delivered for shipment; St. Louis & S. F. R. Co. v. Gaba, 78 Kan. 435, 97 Pac. 435, holding that for a delay in the transportation of materials for a building, the consignor could recover from the railroad company what he had been required to pay to the consignee as liquidated damages for failure to furnish the materials according to contract; Crowley v. Burns Boiler & Mfg. Co. 100 Minn. 187, 110 N. W. 969, holding that the measure of damages for a breach of contract to furnish a boiler to enable the plaintiff to perform another contract of which the defendant knew, was the difference between what the boiler was to have cost, and the amount paid for a substitute together with the costs of installing it; Kennedy v. South Shore Lumber Co. 1002 Wis. 288, 78 N. W. 567, holding that the measure of damages for breach of an employment contract was for loss of opportunity to work, measured by what was in the contemplation of the parties at the time the contract was made, and not for wages earned; Serfling v. Andrews, 106 Wis. 80, 81 N. W. 991, holding that where the plaintiff was prevented from performing his contract for labor because of the defendant's refusal to give him possession of the house which plaintiff had leased, the plaintiff could not recover loss of prospective wages unless the defendant knew of the contract for services; Fisher v. Western U. Teleg. Co. 119 Wis. 151, 96 N. W. 545, holding that the loss of commissions from a contemplated contract could not be recovered as damages for a delay in the delivery of a telegram, which was a step in the negotiations for a sale: Sieman v. Biemann, 108 Wis. 375, 84 N. W. 490, holding that the measure of damages for failure to complete a building on time, is the rental value of the property; Kellogg v. Malick, 125 Wis. 246, 103 N. W. 1116, 4 Ann. Cas. 893, holding that the measure of damages for a breach of a contract to lease land in a certain condition, was the difference between the rental value of the land in the condition in which it was contracted for, and the condition in which it was, for the use intended: Kelley v. La Crosse Carriage Co. 120 Wis. 90, 102 Am. St. Rep. 971, 97 N. W. 674, holding that the measure of damages for a failure to

furnish wagon springs according to contract was the difference between the market price of such springs and the contract, together with the costs of obtaining them in the market, or if of no market value, the cost of obtaining the same springs from another manufacturer; Anderson v. Savoy, 137 Wis. 48, 118 N. W. 217, holding that the measure of damages for failure to deliver ice is the difference between the contract price and the fair market value, if it could be obtained in the market, otherwise what it was worth to the buyer when he should have received it; Wahl v. Tracy, 139 Wis. 675, 121 N. W. 660 (dissenting opinion); Cook v. Minneapolis, St. P. & S. Ste. M. R. Co. 125 Wis. 532, 103 N. W. 1097,—on the measure of damages for breach of contract; Swan v. Porter, 96 Wis. 38, 70 N. W. 1068, on the measure of damages for false attachment.

Cited in footnote to Livermore F. & M. Co. v. Union Compress & Storage Co. 53 L.R.A. 482, which holds rental value included in damages for defects in cylinder for cotton compress causing loss of its use for entire season.

Cited in notes (4 L.R.A.(N.S.) 744) on measure of damages for purchaser's refusal to accept goods specially manufactured; (17 L.R.A.(N.S.) 1130) on loss of rents as damages for breach of contract to install elevator or other equipment.

Distinguished in Dwight Bros. Paper Co. v. Western Paper Co. 114 Wis. 420, 90 N. W. 444, holding that where there was not warranty of fitness for a particular purpose, a breach of such warranty could not be proved for the purpose of recovering damages because of the failure to furnish materials suitable for a certain purpose, intended by the parties.

Review of findings on appeal.

Cited in Bartle v. Bartle, 132 Wis. 397, 112 N. W. 471; Stanhilber v. Craves, 97 Wis. 517, 73 N. W. 48,—holding that the court on appeal will not review findings of the trial court upon controverted issues of fact, where they are fairly supported by competent evidence and not plainly contrary to its preponderance; Johnson v. Goult, 106 Wis. 250, 82 N. W. 139; Ott v. Boring, 139 Wis. 406, 121 N. W. 126; Zoesch v. Thielman, 105 Wis. 120, 80 N. W. 1107,—holding same as to findings of referee.

52 L. R. A. 225, TODD v. GAMBLE, 148 N. Y. 382, 42 N. E. 982.

Measure of damages for breach of contract.

Cited in Trinidad Asphalt Mfg. Co. v. Buckstaff Bros. Mfg. Co. 86 Neb. 627, 136 Am. St. Rep. 710, 126 N. W. 293, holding that, ordinarily, measure of damages for refusal to accept goods is difference between contract and market price; Fisher Hydraulic Stone & Machinery Co. v. Warner, 188 Fed. 469, holding that vendor can recover only nominal damages, where vendee failed to order certain patented machinery as agreed; Ideal Cash Register Co. v. Zunino, 38 Misc. 809, 78 N. Y. Supp. 1120, holding that vendor of cash registers is entitled to only nominal damages on countermand of order by vendee before delivery; Haddam Granite Co. v. Brooklyn Heights R. Co. 186 N. Y. 251, 78 N. E. 858, holding that the measure of damages for breach of a contract to deliver goods having a market value, is the difference between the contract price and the market value at the time and place of delivery; Belle of Bourbon Co. v. Leffler, 87 App. Div. 305, 84 N. Y. Supp. 385; Kincaid v. Price, 18 Colo. App. 79, 70 Pac. 153, 22 Mor. Min. Rep. 382,—holding same in the absence of proof that there was no market value; National Cash Register Co. v. Schmidt, 48 App. Div. 473, 62 N. Y. Supp. 952, holding same where vendee refused to accept goods; Rosenthal v. Empire Brick & Supply Co. 123 App. Div. 505, 108 N. Y. Supp. 347, holding same as

to contract to furnish brick; Petigor v. Ward, 36 Misc. 817, 74 N. Y. Supp. 867, holding same, but where the plaintiff does not show a market value, or an absence of one, he is entitled to only nominal damages; Ideal Cash Register Co. v. Zunino, 38 Misc. 809, 78 N. Y. Supp. 1120, holding same but where the contract price and the market price are the same, the plaintiff is entitled to only nominal damages: Delafield v. Armsby Co. 131 App. Div. 590, 116 N. Y. Supp. 71 (dissenting opinion), on the same point: Saxe v. Penokee Lumber Co. 159 N. Y. 377, 54 N. E. 14, holding that the measure of damages for breach of a contract to deliver a certain grade of lumber is the difference between the contract price and the market value at the time and place of delivery; Brauer v. Oceanic Steam Nav. Co. 34 Misc. 129, 69 N. Y. Supp. 465, holding that conjectural profits cannot be recovered as damages for breach of contract of transportation; Standard Supply Co. v. Carter, 81 S. C. 185, 19 L.R.A.(N.S.) 159, 62 S. E. 150, holding that the measure of damages for breach of contract to furnish a certain engine, was the value of the use of plant while it was compelled to remain idle, the value being estimated from records of profits earned and not from conjectural profits; Armbruster v. Auburn Gaslight Co. 18 App. Div. 451, 46 N. Y. Supp. 158, reducing verdict to amount of actual damage shown.

Cited in note (94 Am. St. Rep. 122) on measure of damages on countermand of executory contract of sale.

— For goods having no market value.

Cited in Kelso v. Marshall, 24 App. Div. 129, 48 N. Y. Supp. 728, holding that the measure of damages for breach of a contract to purchase goods to be manufactured, but having no market value, is the difference between the contract price and the cost of production; St. Louis Range Co. v. Kline Drummond Mercantile Co. 120 Mo. App. 450, 96 S. W. 1040, holding that the measure of damages for breach of a contract to purchase stoves is the difference between the contract price and the price received for the stoves sold after the breach and the cost of disposing of them, and the value of the stoves remaining on hand; Crowley v. Burns Boiler & Mfg. Co. 100 Minn. 188, 110 N. W. 969, holding that the measure of damages for a breach of a contract to furnish a certain boiler to complete another contract was the difference between the contract price and the price paid for a substitute boiler, together with the cost of placing it; Coburn v. California Portland Cement Co. 144 Cal. 84, 77 Pac. 771, holding that the measure of damages for breach of contract for the purchase of clay, there being no other market for the clay, was the difference between the contract price, and the cost of performing, where it was more of a detriment to allow the clay to remain on the land; More v. Knox, 52 App. Div. 148, 64 N. Y. Supp. 1101, holding that the measure of damages for failure to furnish a certain make of hats, was the profit he would have made on a sale of all the hats, less the loss by carrying some over till the next year, bad accounts, and what he received by substituting other hats; Gallagher v. Baird, 54 App. Div. 404, 66 N. Y. Supp. 759, holding that the measure of damages to furnish dressed building stone, there being no market for it, is the cost of completing the contract, including the freight and expense of dressing the stone; Ideal Wrench Co. v. Garvin Mach. Co. 65 App. Div. 237, 72 N. Y. Supp. 662, holding that where the defendant deposited a certain sum to be applied upon the last payment under a contract to purchase certain goods to be manufactured, the plaintiff would be damaged at least that amount if the defendant refused to accept the goods; Snell v. Remington Paper Co. 102 App. Div. 143, 92 N. Y. Supp. 343, holding that the measure for the breach of a lumbering contract is the difference between the contract price and what it would cost to complete the contract;

Isaacs v. Terry & Tench Co. 125 App. Div. 534, 109 N. Y. Supp. 792, holding same as to contract for iron beams; May v. Georger, 21 Misc. 623, 47 N. Y. Supp. 1057, holding that the measure of damages for breach of contract to alter a coat was the difference between the value of the coat in its present condition and what it would have been if the alterations had been properly made; H. D. Taylor Co. v. Niagara Bedstead Co. 52 Misc. 359, 102 N. Y. Supp. 173, on the cost of manufacture as determining the measure of damages in the absence of a market value.

— For goods not in existence.

Cited in Meyer Bros. Drug Co. v. McKinney, 137 App. Div. 545, 121 N. Y. Supp. 845, holding that difference between cost of producing goods and agreed price is measure of damages for refusal to accept goods made especially for vendees; Worrell v. Kinnear Mfg. Co. 103 Va. 722, 49 S. E. 988, 2 Ann. Cas. 997, holding that the measure of damages for refusal to accept under a contract an article to be manufactured but not in existence at the time of the breach, is the difference between the contract price and the cost of producing and delivering the article; Puritan Coke Co. v. Clark, 204 Pa. 566, 54 Atl. 350, holding that the measure of damages for failure to accept coke, is the difference between the contract price and the cost of manufacturing and delivery.

Cited in note (4 L.R.A.(N.S.) 742) on measure of damages for purchaser's refusal to accept goods specially manufactured.

52 L. R. A. 262, CUMMINGS v. UNION BLUE STONE CO. 164 N. Y. 401, 79 Am. St. Rep. 655, 58 N. E. 525.

Combinations in restraint of trade.

Cited in Shinola Co. v. House of Krieg, 75 Misc. 223, 133 N. Y. Supp. 1015, holding that sending of letter by secretary of association of jobbers to its members urging them not to deal with plaintiff on certain basis does not constitute unlawful conspiracy; Chicago, W. & V. Coal Co. v. People, 114 Ill. App. 112, holding that attempt by association of coal producers to control output, sale and price of certain kind of coal in certain territory is criminal combination in restraint of trade; Re Atty. Gen. 124 App. Div. 405, 108 N. Y. Supp. 823, Affirming 56 Misc. 60, 106 N. Y. Supp. 407, holding that the combining of six lighting companies and the organization of a holding company to purchase the stock of such lighting companies, did not constitute a combination in restraint of trade, where it left the field open to competitors; Straus v. American Publishers' Asso. 177 N. Y. 477, 64 L.R.A. 707, 101 Am. St. Rep. 819, 69 N. E. 1107, Affirming 85 App. Div. 459, 83 N. Y. Supp. 271, holding that a combination of publishers controlling the printing of ninety five per cent of the books of the country, and ninety per cent of the book trade, was in restraint of trade where it was sought thereby to arbitrarily fix the retail price of books; Straus v. American Pub. Asso. 127 App. Div. 936, 111 N. Y. Supp. 830 (dissenting opinion), on the same point; Bobbs-Merrill Co. v. Struss, 139 Fed. 170, on what constitutes a monopoly.

Cited in footnote to Com. v. Grinstead, 56 L.R.A. 709, which holds agreement not to resell goods at less than specified price, not within statute for suppression of conspiracies.

Distinguished in Locker v. American Tobacco Co. 121 App. Div. 451, 106 N. Y. Supp. 115, holding that in the absence of proof that the defendant company had constituted another corporation its exclusive agent with the power of preventing competition among retailers, such a combination is not in restraint of trade; John D. Park & Sons Co. v. National Wholesale Druggists'

Asso. 175 N. Y. 14, 62 L.R.A. 638, 96 Am. St. Rep. 578, 67 N. E. 136, holding that an association of manufacturers of certain patent medicines to fix the prices at which their remedies should be sold by retailers and wholesalers, was not in restraint of trade; John D. Parks & Sons Co. v. Hartman, 12 L.R.A. (N.S.) 144, 82 C. C. A. 158, 153 Fed. 37, on the same point.

Contracts in the restraint of trade.

Cited in Cohen v. Berlin & J. Envelope Co. 166 N. Y. 299, 59 N. E. 906, holding a contract void as in restraint of trade where made to fix the prices as between a retail dealer, and a manufacturer who controled the making of eighty-five per cent of all the envelopes in the country; Excelsior Quilting Co. v. Creter, 36 Misc. 699, 74 N. Y. Supp. 361, holding an agreement by a sole manufacturer of quilting machines, whose patents had expired, and a purchaser of all his machines in stock, whereby the former is not to make any more like them, is valid; Brooklyn Distilling Co. v. Standard Distilling & Distributing Co. 120 App. Div. 239, 105 N. Y. Supp. 264, holding that a contract for the leasing of a distillery to a corporation organized to monopolize the trade was not invalid, though the owner knew the purpose of the corporation.

Distinguished in Central New York Teleph. & Teleg. Co. v. Averill, 129 App. Div. 760, 114 N. Y. Supp. 99, holding that a contract between a hotel company and a telephone company, whereby the latter is to install a private exchange in the hotel and have exclusive rights thereto for ten years, is not void as in restraint of trade; Grogan v. Chaffee, 156 Cal. 613, 27 L.R.A.(N.S.) 398, 105 Pac. 745, holding a contract between a dealer and a manufacturer by a secret process of olive oil, whereby the former is required to sell at a standard price, is not in restraint of trade where the product of the manufacturer does not compromise a large proportion of the oil manufactured; People v. Klaw, 55 Misc. 91, 106 N. Y. Supp. 341, holding that an agreement between theatre owners not to book attractions or plays belonging to owners not members of the agreement, was not in restraint of trade.

— To refrain from engaging in business.

Cited in Broadbooks v. Tolles, 114 App. Div. 648, 99 N. Y. Supp. 996, holding a contract valid which was for the sale of a business and good will, and an agreement not to again engage in the business for twenty-five years, within twenty five miles of the former place of business; Wood v. Whitehead Bros. Co. 165 N. Y. 552, 59 N. E. 357, holding that a contract not to engage in any certain business is not void as being in restraint of trade, though not made as a part consideration in the sale of the business.

Distinguished in A. Booth & Co. v. Seibold, 37 Misc. 103, 74 N. Y. Supp. 776, holding that an agreement restraining the vendor of a business, from again engaging in the business within a certain time or place, in valid.

Purpose of anti-monopoly statutes.

Cited in Re Davies, 168 N. Y. 101, 56 L.R.A. 860, 61 N. E. 118, 32 N. Y. Civ. Proc. Rep. 171, holding that the purpose of the anti-monopoly statute is to destroy monoplies in restraint of competition in the supply or price of commodities, or in the free pursuit of any lawful business, trade or occupation.

52 L. R. A. 264, ALAMEDA MACADAMIZING CO. v. PRINGLE, 130 Cal. 226, 80 Am. St. Rep. 124, 62 Pac. 394.

Contracts increasing costs of street improvements.

Cited in Mulberry v. O'Dea, 4 Cal. App. 389, 88 Pac. 367, holding that a contract which was to the effect that all damage arising from the nature of the

work, unforeseen difficulties, the action of the elements, or acts of the contractor or employees, should be sustained by the contractor, was void; Woollacott v. Meekin, 151 Cal. 704, 91 Pac. 612; Blochman v. Spreckels, 135 Cal. 665, 57 L.R.A. 215, 67 Pac. 1061,—holding that a contract for street improvements which provided that all loss or damage arising from the nature of the work, shall be sustained by the contractor, was void.

Cited in footnote to Blochman v. Spreckels, 57 L.R.A. 213, which denies power to assess cost of street improvement on abutters where contractor required to sustain all loss from nature of work.

Contract for future maintenance of street.

Approved in Montgomery v. Barnett, 149 Ala. 124, 43 So. 92, holding that where a city is authorized to contract for paving its streets, it has no authority to incorporate into the contract an agreement for the future maintenance thereof.

Cited in Young v. Tacoma, 31 Wash. 160, 71 Pac. 742, holding void a contract for paving which required the contractor to keep the pavement in repair from injury from traffic or otherwise, for five years.

Cited in footnotes to Shank v. Smith, 55 L.R.A. 564, which sustains provision of street paving contract for keeping in good condition for term of years; People ex rel. North v. Featherstonhaugh, 60 L.R.A. 768, which sustains provision requiring street paving contractor to maintain work during period which it ought to wear.

Distinguished in Shank v. Smith, 157 Ind. 409, 55 L.R.A. 568, 61 N. E. 932, holding that an agreement whereby the paving was guaranteed for seven years was not invalid, so far as it related to repairs for defects; Dillingham v. Spartanburg, 75 S. C. 556, 8 L.R.A.(N.S.) 416, 117 Am. St. Rep. 917, 56 S. E. 381, 9 Ann. Cas. 829, holding same where the contract required the contractor to keep the pavement in repair for one year, and provided for the retention of ten per cent of the contract as a guarantee fund.

52 L. R. A. 266, NEW LOVELAND & G. IRRIG. & LAND CO. v. CONSOLIDATED HOME SUPPLY DITCH & RESERVOIR CO. 27 Colo. 525, 62 Pac. 366.

Storage of water for irrigation.

Cited in footnote to Crawford Co. v. Hall, 60 L.R.A. 889, which holds right to use water acquired by appropriation superior to that of subsequent riparian proprietor.

Cited in note (17 L.R.A.(N.S.) 331) on right to store appropriated water.

Distinguished in Seven Lakes Reservoir Co. v. New Loveland & G. Irrig. & Land Co. 40 Colo. 390, 17 L.R.A.(N.S.) 333, 93 Pac. 485, on the right to store water during the irrigation season.

52 L. R. A. 268, WALTON GUANO CO. v. COPELAN, 112 Ga. 321, 37 S. E. 411.

Fraud sufficient to vitiate contract.

Cited in Sumner v. Sumner, 121 Ga. 10, 48 S. E. 727, holding that the fact that the wife received a very small share of the husband's comparatively large estate is not such fraud as will warrant the setting aside a contract providing for her support after their separation.

Fraud perpetrated because of failure to read contract, as a defense.

Cited in Patapsco Shoe Co. v. Bankston, 10 Ga. App. 677, 74 S. E. 60, holding that contract is vitiated by fraudulent misrepresentations by seller inducing

purchaser to sign contract without reading it; McDonald v. Bluthenthal, 117 Ga. 122, 43 S. E. 422, holding that where one who can read, will not read, and signs to his hurt, he must bear the consequences of the negligence; Harrison v. Wilson Lumber Co. 119 Ga. 9, 45 S. E. 730; Rounsaville v. Leonard Mfg. Co. 127 Ga. 737, 56 S. E. 1030; Georgia Medicine Co. v. Hyman, 117 Ga. 853, 45 S. E. 238,—holding one induced to sign a contract by false representations of another as to its contents, cannot escape liability thereby, where he did not read the contract before signing it: Tracy v. Harris, 5 Ga. App. 393, 63 S. E. 233, holding that the defendant having signed the contract without reading it, relying upon the representations of the other party, was bound by the contract though the representations were false; Stoddard Mfg. Co. v. Adams, 122 Ga. 803, 50 S. E. 915, holding a plea demurrable which sets out the facts that the defendant signed the contract while he was busy without stopping to read it, relying upon the representations of the other party as to what it was.

Distinguished in Williams v. Moore Gaunt Co. 3 Ga. App. 762, 60 S. E. 372, holding that one relying upon the misrepresentations of his own agent, and signing a contract without reading it, may set up the fraud of the agent as a defense in an action on the contract where the agent acted as agent for the other party also.

Parol evidence varying terms of written instrument.

Cited in American Harrow Co. v. Dolvin, 119 Ga. 193, 45 S. E. 983, holding that evidence tending to vary the terms of an absolute promissory note, was inadmissible; Biggers v. Equitable Mfg. Co. 124 Ga. 1049, 53 S. E. 674, holding same, where the evidence sought to prove a mere contemporaneous promise.

52 L. R. A. 271, JONES v. DANNENBERG CO. 112 Ga. 426, 37 S. E. 729.

Reaffirmed in subsequent appeal, 115 Ga. 769, 42 S. E. 65.

Contracts to suppress prosecution.

Cited in Deen v. Williams, 128 Ga. 267, 57 S. E. 427, holding immoral and contrary to public policy a contract passing consideration to public prosecutor for the purpose of suppressing a criminal prosecution.

Cited in footnote to United States Fidelity & G. Co. 57 L.R.A. 212, which holds void, note to reimburse surety on fidelity bond given on condition of not prosecuting principal.

Cited in note (20 L.R.A.(N.S.) 484, 489) on contracts procured by threats to prosecute relative.

Distinguished in Hines v. Union Sav. Bank & T. Co. 120 Ga. 714, 48 S. E. 120, where the illegal transaction was collateral and not directly connected with note and mortgage.

52 L. R. A. 274, WESTERN U. TELEG. CO. v. NORTH PACKING & PROVISION CO. 188 Ill. 366, 58 N. E. 958.

52 L. R. A. 277, CLANCY v. FLUSKY, 187 Ill. 605, 58 N. E. 594.

Part performance satisfying statute of frauds.

Cited in White v. White, 231 Ill. 302, 83 N. E. 234, holding the placing of $4,000 worth of improvements on farm and payment of taxes a sufficient partial performance of an oral contract of conveyance to take the deal out of the statute of frauds.

Cited in footnote to Russell v. Briggs, 52 L.R.A. 556, which holds superintendence of repairs on buildings, etc., insufficient to take out of statute of frauds, oral agreement to convey interest in land to be received in exchange.

Specific performance of promise.

Cited in Offutt v. Offutt, 106 Md. 244, 12 L.R.A.(N.S.) 237, 124 Am. St. Rep. 491, 67 Atl. 138, holding that promise of husband in consideration of marriage that he pledged himself to take care of and support promisee so long as she lived is capable of specific performance and will be enforced.

52 L. R. A. 279, VAN FOSSEN v. CLARK, 113 Iowa, 86, 84 N. W. 989.

Right to abate nuisance ante-dating title to property affected.

Cited in Bly v. Edison Electric Illuminating Co. 172 N. Y. 10, 58 L.R.A. 504, 64 N. E. 745, holding that a nuisance to property can be abated by person acquiring property affected without regard to whether the nuisance ante-dated the title or not; United States v. Luce, 141 Fed. 410, holding that persons coming within the radius of a nuisance on their own property are not estopped from abatement merely because the nuisance ante-dated their occupation; Oehler v. Levy, 139 Ill. App. 393, holding that priority of establishment of a stable in a locality subsequently becoming a valuable residence section is no objection to right of residents annoyed, to have it removed.

Cited in footnotes to Bly v. Edison Electric Illuminating Co. 58 L.R.A. 500, which sustains right of tenant to maintain action to abate nuisance created by third person's method of conducting business before lease renewed; Storms v. Manhattan R. Co. 66 L.R.A. 625, which holds lessee's right to damages for injuries to building by interference with light, air, and access by construction of elevated railway in abutting street not cut off by renewal of lease in accordance with its terms.

52 L. R. A. 281, MOERSCHBAECHER v. SUPREME COUNCIL, R. L. 188 Ill. 9, 59 N. E. 17.

Waiver of conditions to membership in benefit society.

Cited in Whigham v. Independent Foresters, 44 Or. 554, 75 Pac. 1067, holding that false statements in application for membership in benefit society will bar recovery on certificate where the society had no knowledge of their falsity at the time or thereafter and accepted no dues after such knowledge; Dillon v. National Council, K. & L. S. 148 Ill. App. 132, holding breach of self executing by-law suspending a member for nonpayment of dues not waived by rejection or acceptance of proof of death and acceptance of back dues by officer having no such authority.

Binding force of subsequently passed by-laws.

Cited in Kavanaugh v. Supreme Council, 158 Mo. App. 243, 138 S. W. 359, upholding by-law reducing benefits in case of death from suicide; Scow v. Supreme Council, R. L. 223 Ill. 36, 79 N. E. 42, holding member of benefit society bound by subsequently passed by-law limiting association's liability on certificates to one half face value in case of suicide, such regulation being reasonable and sanctioned by agreement by insured to submit to subsequently passed by-laws; Hall v. Western Traveler's Accident Assn. 69 Neb. 604, 96 N. W. 170, holding member of mutual benefit society bound by a subsequently passed by-law exempting society from liability for injury caused by vertigo, the members agreeing to be bound by after passed rules.

Cited in footnote to Del Ponte v. Societa Italiana di Marconi, 70 L.R.A. 188, which upholds by-law of benefit society providing for expulsion of members for defaming members of directing council or any member for reasons connected with society causing dissensions and disorders in society.

Cited in notes (1 L.R.A.(N.S.) 1067) on effect of adoption of by-laws by

fraternal insurance order upon benefit certificates already issued; (8 L.R.A. (N.S.) 525) on reasonableness of new by-laws as implied condition of consent to change.

— Exclusion by reason of occupation.

Cited in Supreme Lodge of Fraternal Union v. Light, 115 C. C. A. 591, 195 Fed. 906, holding binding on existing members, by-law providing that members engaging in sale of liquors in capacity of proprietor, stockholder, agent or employe should forfeit rights; State ex rel. Strang v. Camden Lodge, A. O. U. W. 73 N. J. L. 503, 64 Atl. 93, holding a subsequently passed by law, expelling from membership in benefit society all those who are engaged in retail liquor business binding on certificate holder where his application bound him to submit to subsequent by-laws; Grand Lodge, A. O. U. W. v. Oetzel, 139 Ill. App. 6, on same point.

Cited in footnote to Langnecker v. Grand Lodge A. O. U. W. 55 L.R.A. 185, which holds specified business prohibited by by-law of mutual benefit society requiring expulsion of member engaging in.

Distinguished in Modern Woodmen v. Wieland, 109 Ill. App. 350, where the subsequently passed by-law was unreasonable in that it demanded instant discontinuance of liquor business which was allowable prior to its passage.

— Acceptance of dues after breach.

Cited in Bruley v. Royal League, 3 Ill. C. C. 330, holding certificate holder bound by reasonable by-laws subsequently passed where he so agreed in his policy though his dues were accepted with knowledge of his breach of such by-laws.

Cited in note (27 L.R.A.(N.S.) 447) on waiver of provision as to change of insured's occupation, by continued receipt of dues.

What findings of appellate court final.

Cited in Hunter v. National Union, 197 Ill. 481, 64 N. E. 356, holding that the findings of appellate court are final as to the standing of a member of a benefit society such question being one of mixed law and fact; Harley v. Sanitary Dist. 226 Ill. 219, 80 N. E. 771, holding judgment of appellate court final as to pure questions of fact and those of mixed law and fact; Roemheld v. Chicago, 231 Ill. 470, 83 N. E. 291, holding that the finding of appellate court, that certain acts of commissioner amounted to an approval of work submitted is of fact and final; Sandoval Zinc Co. v. New Amsterdam Casualty Co. 235 Ill. 312, 85 N. E. 219; Smith v. Treat, 234 Ill. 557, 85 N. E. 289,—holding that a finding as to a waiver involving a consideration of evidenciary facts is on a question of mixed law and fact and coming from appellate court is final; Ætna L. Ins. Co. v. Sanford, 200 Ill. 130, 65 N. E. 661; Coverdale v. Royal Arcanum, 199 Ill. 652, 65 N. E. 345,—holding findings of fact made by appellate court conclusive on existence of waiver.

Distinguished in Coverdale v. Royal Arcanum, 193 Ill. 102, 61 N. E. 915, reversing 93 Ill. App. 373, where the appellate court made no finding of facts.

Pleading defenses to action on policy.

Cited in Supreme Lodge, K. & L. G. v. Albers, 106 Ill. App. 89, holding that a defense of breaches of warranties representations and statements in application for policy, presented by a special plea is not demurrable.

52 L. R. A. 283, GILLESPIE v. PEOPLE, 188 Ill. 176, 80 Am. St. Rep. 176, 58 N. E. 1007.

Violation of constitutional liberty of employment or contract.

Cited in Josma v. Western Steel Car & Foundry Co. 249 Ill. 514, 94 N. E.

945, holding void, act prohibiting deception in employing workmen; Gleason v. Thaw, 34 L.R.A.(N.S.) 897, 107 C. C. A. 463, 185 Fed. 348, on right to labor as property right; People ex rel. Short v. City Prison, 145 App. Div. 863, 130 N. Y. Supp. 698, holding that person who compels workman to pay him part of his wages on threat of getting him discharged is guilty of extortion; Kelly v. Johnson, 251 Ill. 139, 36 L.R.A.(N.S.) 577, 95 N. E. 1068, holding that contractor may waive right to mechanic's lien; Kemp v. Division No. 241, 153 Ill. App. 654 (dissenting opinion), or right of workmen to threaten to strike to secure closed shop; Bailey v. People, 190 Ill. 33, 54 L.R.A. 840, 83 Am. St. Rep. 116, 60 N. E. 98, holding that a statute regulating number of persons a lodging house keeper may put in one room is a deprivation of property without due process of law; Mathews v. People, 202 Ill. 401, 63 L.R.A. 78, 95 Am. St. Rep. 241, 67 N. E. 28, holding that an act preventing employment bureaus from helping employers maintaining a "lockout" to obtain men is an unlawful deprivation of property and discrimination: O'Brien v. People, 216 Ill. 374, 108 Am. St. Rep. 219, 75 N. E. 108, 3 Ann. Cas. 966, on same point; Douglas v. People, 225 Ill. 540, 8 L.R.A.(N.S.) 1118, 116 Am. St. Rep. 162, 80 N. E. 341, holding that requirement of examination and licensing of persons desiring to work as plumbers is not a deprivation of constitutional rights; W. C. Ritchie & Co. v. Wayman, 244 Ill. 524, 27 L.R.A.(N.S.) 1000, 91 N. E. 695, sustaining statute limiting the employment of women in mechanical factories or laundries as a legitimate exercise of the police power; Branson v. Industrial Workers, 30 Nev. 296, 95 Pac. 354, on invalidity of violations of the right to labor or hire labor; West Virginia Transp. Co. v. Standard Oil Co. 50 W. Va. 616, 88 Am. St. Rep. 895, 40 S. E. 591, holding that the liberty guaranteed by the bill of rights means liberty to carry on a legitimate business as much as exemption from illegal imprisonment; Christensen v. People, 114 Ill. App. 70, holding an agreement with labor union void because tending to monopoly of labor in its favor.

— Statutes regulative of membership in labor union.

Cited in State ex rel. Zillmer v. Kreutzberg, 114 Wis. 534, 58 L.R.A. 751, 91 Am. St. Rep. 934, 90 N. W. 1098; Coffeyville Vitrified Brick & Tile Co. v. Perry, 69 Kan. 303, 66 L.R.A. 188, 76 Pac. 848, 1 Ann. Cas. 936,—holding void statute making unlawful the discharge of an employe because he belongs to a labor organization; Goldfield Mines Co. v. Goldfield Miners' Union Co. 159 Fed. 515; People v. Marcus, 110 App. Div. 261, 97 N. Y. Supp. 322,—holding a statute making it a misdemeanor for an employer to coerce or compel a laborer to sign an agreement not to join a labor union as a condition to employment or remaining in employment.

Cited in footnotes to Zimmer v. Kreutzberg, 58 L.R.A. 748, which denies validity of statute forbidding under penalty an employer from discharging employee because he is a member of a labor organization: Coffeyville Vitrified B. & T. Co. v. Perry, 66 L.R.A. 185, which holds void, statute making it unlawful to discharge employee because he belongs to lawful labor organization and providing for recovery of damages for such discharge.

Cited in notes (7 L.R.A.(N.S.) 282) on constitutionality of statutes forbidding employer to require employee not to join union: (52 L. ed. U. S. 436) on constitutionality of statutes forbidding employer from insisting that employees shall withdraw from or refrain from joining labor union as condition of employment or continued employment.

Distinguished in United States v. Adair, 152 Fed. 753, where federal statute

is applicable to employers engaged in interstate commerce whose rights of contract are restricted by the Federal commerce clauses of the Constitution.

Special or class legislation.

Cited in Withey v. Bloem, 163 Mich. 433, 35 L.R.A.(N.S.) 635, 128 N. W. 913, holding law limiting women's hours of labor not rendered void by exception of canning establishments; W. C. Ritchie & Co. v. Wayman, 244 Ill. 524, 27 L.R.A.(N.S.) 1000, 91 N. E. 695, upholding statute limiting hours of women's labor in mechanical establishments, factories and laundries; Standidge v. Chicago R. Co. 254 Ill. 533, 40 L.R.A.(N.S.) 534, 98 N. E. 963, upholding statute conferring attorneys' liens; Rogers v. St. Louis Carterville Coal Co. 254 Ill. 110, 98 N. E. 270, holding that construction of mines act making it applicable to carpenters employed by coal company to work on outside buildings would render it void; People ex rel. Laist v. Lower, 251 Ill. 530, 36 L.R.A.(N.S.) 1206, 96 N. E. 346, holding that exception in favor of persons planning own buildings, in statute requiring architects to be licensed, does not render statute void; Bessette v. People, 193 Ill. 349, 56 L.R.A. 563, 62 N. E. 215, holding unconstitutional an act imposing conditions on carrying on of horse shoeing business in towns over 50,000 and having no application to towns under 10,000 inhabitants; Jones v. Chicago, R. I. & P. R. Co. 231 Ill. 306, 121 Am. St. Rep. 313, 83 N. E. 215, holding unconstitutional an act giving appellees in actions rights to review adverse finding of facts and law by appellate court and not extending that privilege to appellants; Manowsky v. Stephan, 233 Ill. 412, 84 N. E. 365, holding unconstitutional an act giving attorney's fees to persons recovering on mechanic's lien and not applying to other lien holders; Charles J. Off & Co. v. Morehead, 235 Ill. 44, 20 L.R.A.(N.S.) 168, 126 Am. St. Rep. 184, 85 N. E. 264, 14 Ann. Cas. 434, holding unlawful a statute requiring notification of creditors of vendor and invoice of all back sales of stock not in the usual course of trade; People v. Wilcox, 237 Ill. 424, 86 N. E. 672, holding unconstitutional a local law for the protection of fish though applying alike to all persons coming thereunder where state constitution especially prohibits local or special laws for protection of game or fish; Marshall & B. Co. v. Nashville, 109 Tenn. 504, 71 S. W. 815, holding void an ordinance requiring that all city printing bear the union label, as being a discrimination against certain classes of citizens.

Legislative right to declare an innocent act unlawful.

Cited in Horwich v. Walker-Gordon Laboratory Co. 205 Ill. 506, 98 Am. St. Rep. 254, 68 N. E. 938, holding that the legislature has no power to declare the purchase or sale of certain kinds of property unlawful unless accompanied with written consent of original owner.

Distinguished in Com. v. Anselvich, 186 Mass. 379, 104 Am. St. Rep. 590, 71 N. E. 790, holding constitutional a law making it unlawful to use registered bottles for beverages without written consent of registering owner.

Remedy of wrongfully discharged servant.

Cited in note (6 L.R.A.(N.S.) 55) on remedy of wrongfully discharged servant by action for breach of contract.

52 L. R. A. 287, NOEL v. PEOPLE, 187 Ill. 587, 79 Am. St. Rep. 238, 58 N. E. 616.

Police Power.

Cited in Speilberger Bros. v. Brandes, 3 Ala. App. 598, 58 So. 75, on validity of act regulating assignment of wages; Horwich v. Walker-Gordon Laboratory Co. 205 Ill. 505, 98 Am. St. Rep. 254, 68 N. E. 938, holding police power does not

authorize the passage of an act to prohibit the unauthorized buying and selling of registered receptacles passing from the possession of the registered owner, it being merely for the protection of such owner; Massie v. Cessna, 239 Ill. 359, 28 L.R.A.(N.S.) 1111, 130 Am. St. Rep. 234, 88 N. E. 152, holding unconstitutional a statute regulating the right to assign wages or salaries except when acknowledged and served upon the person from whom the wages are due, and requiring, if the person is married, the assignment to be signed by the other spouse; O'Donnell v. Riter-Conley Mfg. Co. 124 Ill. App. 546, upholding as valid building regulation requiring the construction of a permanent or temporary floor in buildings in process of construction in order to protect workmen engaged in the construction; State v. Brown, 37 Wash. 104, 68 L.R.A. 892, 107 Am. St. Rep. 798, 79 Pac. 635, holding void a regulation requiring examination and license to "own, run or manage" a dental office.

Cited in note (9 L.R.A.(N.S.) 660) on power of municipal corporation to make right to transact certain business dependent upon consent.

— Sale of proprietary medicines and domestic remedies by others than registered pharmacists.

Followed in Overland v. People, 187 Ill. 625, 58 N. E. 1095, holding invalid an act prohibiting the sale of proprietary medicines except by registered pharmacists; Saddler v. People, 188 Ill. 243, 58 N. E. 906, holding same as to sale of domestic remedies.

Cited in People use of State Bd. of Health v. Wilson, 249 Ill. 201, 35 L.R.A. (N.S.) 1077, 94 N. E. 141, holding void, act exacting prohibitive license fee from itinerant venders of proprietary medicines; State Bd. of Pharmacy v. Matthews, 197 N. Y. 359, 26 L.R.A.(N.S.) 1016, 90 N. E. 966, holding statute prohibiting sale of medicines or poisons except in presence of and under supervision of a licensed pharmacist though including thereunder domestic remedies to be a valid exercise of police power.

Partial invalidity of statute.

Cited in Cook County v. Healy, 222 Ill. 315, 78 N. E. 623, holding valid the portion of a statute fixing salary of judges although another part which attempts to fix the salary of state's attorney is void because legislature and governor did not concur as to amount, the two sections having no effect on each other.

Invalidity of legislation allowing arbitrary exercise of discretion.

Cited in Meyer v. Decatur, 125 Ill. App. 560, holding invalid an ordinance giving city council right to refuse or grant liquor licenses, for not prescribing certain filed rules and regulations whereby its impartial enforcement could be secured; Elkhart v. Murray, 165 Ind. 305, 1 L.R.A.(N.S.) 943, 112 Am. St. Rep. 228, 75 N. E. 593, 6 Ann. Cas. 748, holding invalid an ordinance requiring street car companies to have on front of their cars a "Hunter automatic fender, made by Hunter Company, or some other fender just as good, to be approved by common council or its committee;" State v. Butler, 105 Me. 100, 24 L.R.A. (N.S.) 746, 73 Atl. 560, 18 Ann. Cas. 484, holding unconstitutional a statute empowering governor to create and fill office of special attorney for certain counties at his discretion; Buffalo Fertilizer Co. v. Cheektowaga, 61 Misc. 408, 113 N. Y. Supp. 901, holding invalid legislation which does not prescribe the terms and conditions upon which a consent or license shall be given or withheld, but leaves the absolute and unlimited power to the commissioner as he may determine; Hubbard v. Hubbard, 77 Vt. 80, 67 L.R.A. 971, 107 Am. St. Rep. 749, 58 Atl. 969, 2 Ann. Cas. 315, holding invalid a statute authorizing a

court "in its discretion" to allow married woman on her petition to convey her realty without signature of husband, as authorizing a deprivation of property by arbitrary will of magistrate; New York ex rel. Lieberman v. Van DeCarr, 199 U. S. 559, 50 L. ed 309, 26 Sup. Ct. Rep. 144, affirming judgments which affirmed 81 App. Div. 132; 80 N. Y. Supp. 1108, upholding the allowance of discretion of reasonable amount in health board as to refusal or allowance of license to retail milk.

Cited in note (1 L.R.A.(N.S.) 941) on validity of ordinance vesting in officer's discretion as to subject-matter.

Distinguished in Meyer v. Decatur, 143 Ill. App. 107, where the statute in question pertained to the regulation of the liquor traffic; State v. Briggs, 45 Or. 369, 77 Pac. 750, 2 Ann. Cas. 424, holding valid a law defining what shall constitute a barber although leaving to the judgment of a board the prescription as to the standard or degree of knowledge, learning or experience sufficient to entitle an applicant to a license.

Criticised in State Racing Commission v. Latonia Agri. Asso. 136 Ky. 192, 25 L.R.A.(N.S.) 912, 123 S. W. 681, holding that a statute creating a horse racing commission giving it right to issue license to racing associations on an ascertainment of qualifications to meet legislative requirements, is constitutional and not a delegation of arbitrary and legislative power to the commission.

Special privileges.

Cited in Carr v. State, 175 Ind. 265, 32 L.R.A.(N.S.) 1200, 93 N. E. 1071 (dissenting opinion), on invalidity of Sunday law exempting professional baseball players; Shaw v. Marshalltown, 131 Iowa, 151, 10 L.R.A.(N.S.) 835, 104 N. W. 1121, 9 Ann. Cas. 1039 (dissenting opinion), on the invalidity of legislation granting special privileges to a certain class of people; State ex rel. Galle v. New Orleans, 113 La. 381, 67 L.R.A. 75, 36 So. 999, 2 Ann. Cas. 92, holding mandamus proper to compel city to grant license for opening and conducting a bar where applicant comes up to all the requirements demanded of others in same locality and business; State v. Mitchell, 97 Me. 74, 94 Am. St. Rep. 481, 53 Atl. 887, holding unconstitutional an arbitrary rule providing that vendors of goods paying tax thereon exceeding $25 or more are free from license and those paying a less amount must pay license.

Cited in footnote to State v. Garboski, 56 L.R.A. 570, which holds void, statute exempting veterans from requirement for peddling license.

52 L. R. A. 291, FISKE v. PEOPLE, 188 Ill. 206, 58 N. E. 985.

Restriction of competitive bidding in public contracts.

Cited in Siegel v. Chicago, 223 Ill. 433, 79 N. E. 280, 7 Ann. Cas. 104, holding void an ordinance prescribing that pavement be made of a certain patented material so controlled as to preclude competitive bidding.

Cited in note (38 L.R.A.(N.S.) 664) on discretion in choosing between bidders for public contract.

— Ordinances calling for union labor on public improvements.

Cited in Marshall & B. Co. v. Nashville, 109 Tenn. 499, 71 N. W. 815, holding invalid an ordinance requiring city printing to be done under union label where city charter required all goods supplied to city over certain cost to be obtained by competitive bidding; People ex rel. John Single Paper Co. v. Edgcomb, 112 App. Div. 606, 98 N. Y. Supp. 965, holding unlawful a requirement by county supervisors that the printing of its journal be done under union label; Shaw v. Marshalltown, 131 Iowa, 151, 10 L.R.A.(N.S.) 835, 104 N. W. 1121, 9 Ann.

Cas. 1039 (dissenting opinion); Grey v. People, 194 Ill. 487, 62 N. E. 894,— on the invalidity of ordinance requiring bidders on public works to employ none but union workmen; Lewis v. Board of Education, 139 Mich. 310, 102 N. W. 756, holding that school board has no power to place stipulation for union labor in its contracts.

Cited in footnote to State ex rel. Robert Mitchel Furniture Co. v. Toole, 55 L.R.A. 644, which denies validity of contract for public supplies let upon bid pursuant to advertisement limiting right to bid to employers of union labor only.

Cited in notes (2 L.R.A.(N.S.) 293) on validity of contract to employ union labor only; (23 L.R.A.(N.S.) 816) on right of municipality or other public body to discriminate in favor of organized labor.

— Ordinance limiting hours of labor in public improvement.

Cited in McChesney v. People, 200 Ill. 150, 65 N. E. 626, holding unlawful an ordinance limiting the hours of work by laborers on public improvements to eight hours per day; Farr v. Detroit, 136 Mich. 205, 99 N. W. 19 (dissenting opinion) on the illegality of labor and time conditions imposed in contracts for public works as interfering with right of taxpayer to have work done by lowest bidder.

Cited in notes (65 L.R.A. 38) on legislative limitation of hours of labor; (8 L.R.A.(N.S.) 134) on limitation of hours of labor on public work; (48 L. ed. U. S. 149) on validity of legislation regulating hours of labor.

— Effect of void ordinances on contracts entered into thereafter.

Followed in Treat v. People, 195 Ill. 198, 62 N. E. 891, holding void an ordinance calling for union labor in execution of all public contracts but holding contract binding where nothing appears to the effect that the ordinance was applied to the injury of the complainant.

Cited in Gage v. People, 207 Ill. 67, 69 N. E. 635, on the validity of contracts disregarding specification that only union labor be employed.

— Avoidance of special assessments.

Cited in Rogne v. People, 224 Ill. 452, 79 N. E. 662, holding good an objection to assessment for public ditch where contract was let without notice as required by statute in order to allow competition; Glover v. People, 201 Ill. 548, 66 N. E. 820, holding an objection to special assessment sufficient which alleges that the specifications for the improvement called for eight hour days of labor and that the specifications were complied with.

Unconstitutional discrimination as to union labor.

Cited in Mathews v. People, 202 Ill. 401, 63 L.R.A. 78, 95 Am. St. Rep. 241, 67 N. E. 28, holding that an act preventing free employment bureaus from securing workmen for employers maintaining a "lockout" is an attempt at legislative discrimination and unconstitutional; Christensen v. People, 114 Ill. App. 70, on discrimination against different classes of labor on union and non-union basis as being unlawful; O'Brien v. People, 216 Ill. 374, 108 Am. St. Rep. 219, 75 N. E. 108, 3 Ann. Cas. 966, on same point.

Objections first made on appeal.

Cited in Fisher v. Chicago, 213 Ill. 270, 72 N. E. 680, holding that objections not made in county court must be considered as waived and cannot be raised for the first time on appeal to supreme court; Mystic Workers v. Troutman, 113 Ill. App. 88, holding that a question of fraud and collusion not being raised below by submission of instructions to jury cannot be raised for the first time on appeal.

Restriction to record on appeal.

Cited in Spring Creek Drainage Dist. v. Highway Comrs. 238 Ill. 524, 87 N. E. 394, holding that an order finding certain facts cannot be collaterally attacked by parol evidence beyond or outside the record.

52 L. R. A. 293, GULF, C. & S. F. R. CO. v. OAKES, 94 Tex. 155, 86 Am. St. Rep. 835, 58 S. W. 999.

Liability for the keeping of dangerous instrumentalities.

Cited in Barnes v Zettlemoyer, 25 Tex. Civ. App. 471, 62 S. W. 111, as qualifying the broadly stated rule that one who brings dangerous instrumentalities on to his land does so at his peril; Galveston, H. & S. A. R. Co. v. Currie, 100 Tex. 147, 10 L.R.A.(N.S.) 390, 96 S. W. 1073, holding that liability for the keeping of highly compressed air causing injury depends on a question of negligence the keeper not being an insurer.

Liability of railroad company for spread of noxious plants.

Cited in San Antonio & A. P. R. Co. v. Burns, 39 Tex. Civ. App. 35, 89 S. W. 21, holding railroad company not liable under the common law to adjoining owners for the spread of Johnson grass not purposely brought on its right of way or so spread.

Use of one's own property as damnum absque injuria.

Cited in Hamm v. Gunn, 51 Tex. Civ. App. 427, 113 S. W. 304, holding that neighbor cannot abate as nuisance cotton gin; Oklahoma City & T. R. Co. v. Dunham, 39 Tex. Civ. App. 578, 88 S. W. 849, holding that the use of a right of way for the building of additional tracks and buildings beyond those originally contemplated affords no grounds for compensation to abutters for resulting injury.

Cited in note (123 Am. St. Rep. 567, 574) on duty and liability of land owners to adjoining proprietors.

Distinguished in Teel v. Rio Bravo Oil Co. 47 Tex. Civ. App. 159, 104 S. W. 420, where the use of property in mining of oil allowed the waste oil to pollute an adjoining stream to the extent that its domestic use was impossible.

52 L. R. A. 299, STATE v. O'LEARY, 155 Ind. 526, 58 N. E. 703.

Injunction against crime.

Cited in People v. Condon, 102 Ill. App. 459, holding that an injunction will not issue to abate the carrying on of an unlawful gambling house, the proper remedy being by indictment and prosecution; Campbell v. Jackman Bros. 140 Iowa, 485, 27 L.R.A.(N.S.) 292, 118 N. W. 755, holding that in the absence of a statute to that effect equity has no power to enjoin the carrying on of retail liquor business as a nuisance.

52 L. R. A. 305, FERRIS v. AMERICAN BREWING CO. 155 Ind. 539, 58 N. E. 701.

Agreements in restraint of trade.

Cited in Trentman v. Wahrenburg, 30 Ind. App. 313, 65 N. E. 1057, holding that an agreement by vendor of a business on sale of such business that he will not again enter into such business for a period of five years within limits of the county is valid and reasonable.

Injunction against violation of negative clause in contract.

Cited in Barth v. Pittsburgh, C. C. & St. L. R. Co. 45 Ind. App. 436, 90 N. E. 322; Barth v. Pittsburgh, C. C. & L. R. Co. 175 Ind. 563, 93 N. E. 535,—hold-

ing that railroad may be enjoined from extending switches in violation of contract; Sullivan v. Kohlenberg, 31 Ind. App. 218, 67 N. E. 541, holding that sale of liquor can be enjoined on a lot purchased with knowledge of a contract that such lot was not to be used for location of a liquor business and not to be sold without a restriction in deed; Butterick Pub. Co. v. Rose, 141 Wis. 538, 124 N. W. 647, holding that an injunction will not be deemed to enforce the negative clause of a contract merely because the same remedy could not be invoked to enforce the affirmative obligation of the contract.

Cited in note (90 Am. St. Rep. 638) on injunction against breach of contract.

— Agreement to deal solely in complainant's goods.

Cited in Beck v. Indianapolis Light & P. Co. 36 Ind. App. 614, 76 N. E. 312, holding that injunction will lie against breach of a contract to use only such current as supplied by complainant at a reduced rate for a given period, there being no adequate remedy at law where defendant attempts to use another current; Butterick Pub. Co. v. Fisher, 203 Mass. 132, 133 Am. St. Rep. 283, 89 N. E. 189, holding that complainant can enjoin the violation of a contract by a large dry goods company that it would handle its patterns, catalogues and fashion plates and no others on consideration of exclusive agency and supply of goods at reduced rates, the legal remedy being inadequate.

Criticized in Hardy v. Allegan Circuit Judge, 147 Mich. 597, 10 L.R.A.(N.S.) 477, 118 Am. St. Rep. 557, 111 N. W. 166, holding mortgagee of building not entitled to restrain subsequent purchaser of such building from selling other kinds of beer than that made by mortgagee where mortgage secured performance of contract on part of mortgagor that no other beer be sold thereon.

Enforcement of agreements in favor of third persons.

Cited in Edwards v. Van Cleave, 47 Ind. App. 351, 94 N. E. 596, holding that third party may maintain action on contract made for his benefit; Eisman v. Whalen, 39 Ind. App. 355, 79 N. E. 514, holding that a creditor can enforce in his own name an agreement between a vendee and vendor that vendee pay a debt of vendors to creditor as part of purchase price of land, against a subsequent purchaser of the land with knowledge of the facts: Knight & J. Co. v. Castle, 172 Ind. 103, 27 L.R.A.(N.S.) 582, 87 N. E. 976; Ochs v. M. J. Carnahan Co. 42 Ind. App. 161, 80 N. E. 163,—holding that laborers and material men may sue in their own name to enforce contractor's bond given to owner that he pay for all material and help used in construction.

Cited in footnotes to Electric Appliance Co. v. United States Fidelity & G. Co. 53 L.R.A. 609, which denies right of action of one furnishing materials to contractor on bond given by latter to city, conditioned on turning over building free of claims for materials; Boston Ins. Co. v. Chicago, R. I. & P. R. Co. 59 L.R.A. 796, which denies right of action against railroad company carrying mail under contract with government, by sender of registered mail destroyed through negligence of its employees; Tweeddale v. Tweeddale, 61 L.R.A. 509, which sustains right of third person to enforce contract made for his benefit: Voorhees, M. & Co. v. Porter, 65 L.R.A. 736, which sustains right of creditors of vendor of goods to sue purchaser on agreement with vendor to pay such creditors out of the purchase money.

52 L. R. A. 307, SECOND NAT. BANK v. MIDLAND STEEL CO. 155 Ind. 581, 58 N. E. 833.

Followed without discussion in First Nat. Bank v. Midland Steel Co. 157 Ill. 702, 59 N. E. 1134.

Signature of obligations by name and title of person as officer.

Followed in Midland Steel Co. v. Citizens' Nat. Bank, 26 Ind. App. 73, 59 N. E. 211; Midland Steel Co. v. Citizens' Nat. Bank, 34 Ind. App. 111, 72 N. E. 290, —holding averments that note was issued in usual course of business and that it was executed for a debt of corporation unnecessary in complaint in suit on note averred to be executed by "R. J. Beattie, President" for value received also averring such to be the manner of execution of notes by corporation; Taylor v. Angel, 162 Ind. 673, 71 N. E. 49, holding that averment of extrinsic proof that a person signing an obligation by his name and title as agent, really acts as agent of an alleged corporation, sufficiently states a cause of action.

Cited in J. L. Mott Iron Works v. Clark, 87 S. C. 204, 69 S. E. 227, holding that fact that guarantor signs president after his name does not affect his individual liability as guarantor of account of corporation.

Parol evidence as to capacity of signer.

Cited in footnote to Usher v. Daniels, 69 L.R.A. 629, which holds parol evidence admissible that one signing memorandum for sale of goods acted as agent for the one seeking to enforce contract.

Relief from mistakes in execution of instruments.

Cited in notes (28 L.R.A.(N.S.) 830) on relief from mistake of law as to effect of instrument; (117 Am. St. Rep. 240) on mistakes as to capacity in which party signed for which written instruments may be cancelled or corrected in equity.

52 L. R. A. 312, McCONNELL v. POOR, 113 Iowa, 133, 84 N. W. 968.

Judgments against principal or surety as res judicata against the other.

Cited in Calhoun v. Gray, 150 Mo. App. 598, 131 S. W. 478, holding that judgment for costs against principal is conclusive against sureties on cost bond; Gorman v. Williams, 117 Iowa, 562, 91 N. W. 819, holding that principal on bond can show that no liability existed against surety thereunder in suit in order to defend himself against action by surety for reimbursement where principal was not called in to defend with the surety.

Cited in notes (132 Am. St. Rep. 764; 40 L.R.A.(N.S.) 699, 701, 703, 704, 736) on effect upon surety of judgment against principal.

Distinguished in Beh v. Bay, 127 Iowa, 248, 109 Am. St. Rep. 385, 103 N. W. 119, holding that a decision that payment was not made on a note, in an action by maker to recover such note, is binding on surety on the defense of payment based on same transaction relied on by maker in previous action, in an action to collect the amount of the note though surety was not a party.

— As affected by notice to defend.

Cited in American Soda Fountain Co. v. Dean Drug Co. 136 Iowa, 322, 111 N. W. 534, on necessity of notice to surety to defend to render a judgment against his principal binding on him; Fred Andres & Co. v. Schlueter, 140 Iowa, 393, 118 N. W. 429, holding that a court has power to enter judgment on a bond without notice to surety where by condition in the bond on record consent to judgment so rendered is given; Park v. Ensign, 66 Kan. 54, 97 Am. St. Rep. 352, 71 Pac. 230, holding that notice to sureties of suit on the principal, short of actual service of process on sureties, does not make a judgment against principal binding on them the privity between the two being merely of contract and not of representation.

Distinguished in Friend v. Ralston, 35 Wash. 433, 77 Pac. 794, holding that where contract and bond are sued on as connected instruments the surety having had notice is bound by judgment against the principal.

Contract obligation of surety under bond.

Cited in Rogers v. Western Mut. Life Asso. 123 Iowa, 723, 99 N. W. 589, holding that the undertaking of a surety on bonds for costs is not that he will pay the rightful costs, but what is taxed against the principal as costs; Jewett v. Shoemaker, 124 Iowa, 563, 100 N. W. 531, holding that sureties on a supersedeas bond being bound to abide the result of the appeal cannot raise the issue that the judgment ought not to have been affirmed an appeal, the principal failing to raise the issue.

Effect of judgment on persons not parties.

Cited in footnote to Allred v. Smith, 65 L.R.A. 924, which holds judgment in action quasi in rem binding on the parties only.

52 L. R. A. 315, STATE EX REL. BUMP v. OMAHA & C. B. R. CO. & BRIDGE CO. 113 Iowa, 30, 86 Am. St. Rep. 357, 84 N. W. 983.

Franchise ordinances of general or permanent nature.

Cited in Sapulpa v. Sapulpa Oil & Gas Co. 22 Okla. 353, 97 Pac. 1007, holding an ordinance passed by an incorporated town amending an ordinance granting a corporate franchise to furnish light and heat and extending period of operation of franchise to be an ordinance of general and permanent nature under statute.

Cited in note (16 L.R.A.(N.S.) 652) on right of municipality to contract for free transportation or special rates on street cars.

52 L. R. A. 318, KIRCHMAN v. STANDARD COAL CO. 112 Iowa, 668, 84 N. W. 939.

Presumption as to the inclusion of evidence in abstract on appeal.

Cited in Alston v. Alston, 114 Iowa, 31, 86 N. W. 55, holding that in order to secure a trial de novo in this court it is not necessary that the appellant formally allege in his abstract that it contains all the evidence and that evidence was preserved in proper manner; Shebeck v. National Cracker Co. 120 Iowa, 420, 94 N. W. 930, holding that a general denial not putting in issue the proper preservation of the record of the evidence will not cause the court to treat the abstract otherwise than as containing all the evidence deemed material by the parties.

Right of promisee to have obligation in favor of third person performed.

Cited in Dorr Cattle Co. v. Jewett, 116 Iowa, 95, 89 N. W. 109, on the necessity of advantage passing to promisee to support an action by him for breach of promise in favor of third person.

Effect of mistaken statements made without knowledge of hearer's interest.

Followed in Near v. Green, 113 Iowa, 649, 85 N. W. 799, holding that title of execution purchaser's grantee is not affected by random statement made by such purchaser to the purchaser of the equity of redemption, that his claim for which the property was encumbered is entirely satisfied, he not knowing of the interest of the inquirer.

Cited in Criley v. Cassel, 144 Iowa, 689, 123 N. W. 348, holding that devisee obtaining construction of will as giving him only life estate is estopped from afterwards claiming to be absolute owner of property; Dallett v. Ogden, 20 Pa. Dist. R. 850, 11 Del. Co. Rep. 423, holding that declarations that one is partner does not estop him from denying liability, where declarations were made with no intent that they should be acted upon: Iowa R. Land Co. v. Fehring, 126 Iowa, 6, 101 N. W. 120, holding that a statement by agent that his principal did not have title to land inquired about, not knowing at the time that inquirer intended to buy, will not estop principal from asserting title.

52 L. R. A. 321, KANSAS CITY v. CLARK, 59 Kan. 427, 53 Pac. 468.

Persons entitled to attack the validity of a statute.

Cited in Pugh v. Pugh, 25 S. D. 13, 32 L.R.A.(N.S.) 963, 124 N. W. 959, holding that nonresident cannot attack constitutionality of divorce statute; Smiley v. Kansas, 196 U. S. 457, 49 L. ed. 551, 25 Sup. Ct. Rep. 289, Affirming 65 Kan. 247, 67 L.R.A. 907, 69 Pac. 199, holding person not included within operation of a statute cannot be heard to complain against statute for being too broad in its inclusions; Kansas City v. Silver, 74 Kan. 853, 85 Pac. 805, holding that no complaint can be raised to the invalidity of a curative act as applying to defects not within power of legislature to remedy; Patti v. United Surety Co. 61 Misc. 449, 115 N. Y. Supp. 844, holding that a surety company when attacked for violation of a bond law cannot defend on grounds of its invalidity for unlawfully discriminating against others; Benz v. Kremer, 142 Wis. 4, 26 L.R.A.(N.S.) 842, 125 N. W. 99, holding that all parts of a law objected to for unconstitutionality not affecting objector injuriously must be left out of consideration providing the affecting part can stand alone; Benz v. Kremer, 142 Wis. 4, 26 L.R.A.(N.S.) 844, 125 N. W. 99, holding that courts of equity will not enjoin the enforcement of an unconstitutional law, at the suit of one who does not show himself injured by it.

Cited in note (32 L.R.A.(N.S.) 955, 957) as to who may object to statute as containing unconstitutional discrimination.

Extension of city limits.

Cited in State ex rel. Major v. Kansas City, 233 Mo. 215, 134 S. W. 1007, holding extension of city limits reasonable.

52 L. R. A. 323, T. B. TOWNSEND BRICK & CONTRACTING CO. v. ALLEN, 62 Kan. 311, 84 Am. St. Rep. 388, 62 Pac. 1008.

Contracts respecting chattels not in esse.

Cited in First Nat. Bank v. McIntosh & P. Live Stock & Commission Co. 72 Kan. 613, 84 Pac. 535, holding that a mortgage on the interest of bailee of cattle at a time when they have no increase in weight is void where bailee's only interest is in the increase; Holt v. Lucas, 77 Kan. 714, 17 L.R.A.(N.S.) 206, 127 Am. St. Rep. 459, 96 Pac. 30, holding that a chattel mortgage on the increase of animals is valid as against attaching creditors of mortgagor only as to increase actually in existence or in process of gestation; Robinson v. Stricklin, 73 Neb. 248, 102 N. W. 429, holding that a contract to deliver the crop grown from certain seed furnished, on the payment of a stipulated price for such crop when grown does not pass title to the crop.

52 L. R. A. 325, STILLWELL v. SOUTH LOUISVILLE LAND CO. 22 Ky. L. Rep. 785, 58 S. W. 696.

Liability on agreement to repair premises.

Cited in Brady v. Klein, 133 Mich. 425, 62 L.R.A. 911, 103 Am. St. Rep. 455, 95 N. W. 557, 2 Ann. Cas. 464, holding that licensee of tenant cannot maintain action on landlord's covenant to repair, for injuries caused by defects; Miles v. Janvrin, 196 Mass. 437, 13 L.R.A.(N.S.) 380, 124 Am. St. Rep. 575, 82 N. E. 708, holding landlord not liable for injury to tenant through pre-existing obvious defect, though he undertakes to repair; Thompson v. Clemens, 96 Md. 206, 60 L.R.A. 583, footnote, p. 580, 53 Atl. 919, denying landlord's liability for injury to member of tenant's family from failure to keep agreement to make repairs.

Cited in footnote to Davis v. Smith, 66 L.R.A. 478, which holds landlord not

liable for damages to tenant or member of his family through sickness due to breach of covenant to repair.

Cited in notes (11 L.R.A.(N.S.) 507) on landlord's liability to tenant for breach of contract to repair; (34 L.R.A.(N.S.) 805) on liability of landlord for injury to tenants from defects in premises under express agreement to repair.

Distinguished in Reams v. Taylor, 31 Utah, 293, 8 L.R.A.(N.S.) 438, 120 Am. St. Rep. 930, 87 Pac. 1089, 11 Ann. Cas. 51, holding insane landlord not liable to tenant for injury caused by failure of guardian to close an open cellarway according to guardian's covenant.

Contributory negligence of tenant.

Cited in note (34 L.R.A.(N.S.) 809) on contributory negligence of tenant.

Liability of landlord for injuries from defects.

Cited in footnote to Moore v. Parker, 53 L.R.A. 778, which holds landlord liable for failure to inform tenant of known defective or dangerous condition.

52 L. R. A. 326, DICKINSON v. WEST END ST. RY. CO. 177 Mass. 365, 83 Am. St. Rep. 284, 59 N. E. 60.

Fellow servant or passenger.

Cited in Harris v. City & E. G. R. Co. 69 W. Va. 66, — L.R.A.(N.S.) —, 70 S. E. 859, Ann. Cas. 1912D, 59, holding that day laborer in power house is passenger when riding to place of work; Dayton Coal & Iron Co. v. Dodd, 37 L.R.A. (N.S.) 463, 110 C. C. A. 395, 188 Fed. 606, holding that miners are not passengers while being gratuitously carried to work on private railroad of mine owner; Twiss v. Boston Elev. R. Co. 208 Mass. 111, 32 L.R.A.(N.S.) 728, 94 N. E. 253, holding that fireman riding free on running board of street car contrary to rules is mere licensee; Pigeon v. Lane, 80 Conn. 244, 67 Atl. 886, 11 Ann. Cas. 371, holding plaintiff and driver of sleigh not fellow servants at time of accident, where plaintiff as a favor to him was allowed to ride to work by driver working for same master; Indianapolis Traction & Terminal Co. v. Romans, 40 Ind. App. 196, 79 N. E. 1068, holding employee of company riding home after work on a pass given not as a part of contract of employment but by custom he not having any thing to do with the operation of the car to be a passenger; Enos v. Rhode Island Suburban R. Co. 28 R. I. 295, 12 L.R.A.(N.S.) 246, 67 Atl. 5; Hebert v. Portland R. Co. 103 Me. 322, 125 Am. St. Rep. 297, 69 Atl. 266, 13 Ann. Cas. 886,— holding an employee of carrier to be a passenger while riding on a regular street car of his own volition to his place of work on fare paid by coupon issued to him as part of his wages; Simmons v. Oregon R. Co. 41 Ore. 164, 69 Pac. 440, holding same where employee of carrier on his own volition and business was riding on train of employer not at the time having any connection with his employment; Missouri, K. & T. R. Co. v. Hendricks, 49 Tex. Civ. App. 324, 108 S. W. 745, holding brakeman after finding that his train was gone and not being subject to further call that day, and having decided to quit defendant's employ, was not in the service of defendant when killed by engine while crossing tracks to call on a friend and consequently not fellow servant of engineer.

Distinguished in Kilduff v. Boston Elev. R. Co. 195 Mass. 309, 9 L.R.A.(N.S.) 874, 81 N. E. 191, where employers were riding to and from work in a special car provided for that purpose only; Dishon v. Cincinnati, N. O. & T. P. R. Co. 126 Fed. 202, holding section hand required to board at section house a fellow servant of train man who negligently killed him while he was passing necessarily between two cars on his way to station to pass away his time after work was over.

Liability of master for injury to employee while in his service.

Cited in Gooch v. Citizens' Electric Street R. Co. 202 Mass. 256, 23 L.R.A. (N.S.) 962, 88 N. E. 591, holding that motorman off duty between trips, killed while in defendant's telephone booth arranging to have a substitute take his place is not in the service of defendant at the time making recovery under Employers' Liability Act impossible.

Cited in note (12 L.R.A.(N.S.) 858) on existence of relationship where servant goes on master's premises at other than hours of actual labor.

Distinguished in Boyle v. Columbian Fire Proofing Co. 182 Mass. 102, 64 N. E. 726, holding master liable for injury to workmen while necessarily passing from one part of building to another to get their dinner pails at the noon hour they not having left and being still on defendants' premises.

52 L. R. A. 328, STACK v. NEW YORK, N. H. & H. R. CO. 177 Mass. 155, 83 Am. St. Rep. 269, 58 N. E. 686.

Compulsory physical examination.

Cited in May v. Northern P. R. Co. 32 Mont. 528, 70 L.R.A. 114, 81 Pac. 328, 4 Ann. Cas. 605, denying authority of court to compel physical examination without statutory warrant; Austin & N. W. R. Co. v. Cluck, 97 Tex. 177, 64 L.R.A. 497, 104 Am. St. Rep. 863, 77 S. W. 403, 1 Ann. Cas. 261, denying power of court to compel plaintiff to exhibit his person to qualify witnesses to testify as to physical condition; Best v. Columbia Street R. Light & P. Co. 85 S. C. 428, 67 S. E. 1 (dissenting opinion), on power of circuit court to compel plaintiff to submit to physical examination by defendant's physicians, or those appointed by court; Cedartown v. Brooks, 2 Ga. App. 598, 59 S. E. 836, disputing power to compel plaintiff to submit to physical examination.

Cited in footnotes to State v. Height, 59 L.R.A. 438, which holds unlawful, disclosure by physician of knowledge as to venereal disease, obtained by examination, against his will, of one accused of rape; Atchison T. & S. F. R. Co. v. Palmore, 64 L.R.A. 90, which sustains right to compel physical examination of injured eyes, though involving use of drugs for dilating pupils; Austin & N. W. R. Co. v. Cluck, 64 L.R.A. 393, which denies power of court in absence of statute to require the plaintiff in an action for personal injuries to submit to an examination of his person; May v. Northern P. R. Co. 70 L.R.A. 111, which denies judicial power at common law to compel plaintiff to submit to physical examination.

Cited in notes (2 L.R.A.(N.S.) 387) on waiver of right to object to physical examination or exhibition of person; (15 L.R.A.(N.S.) 665) on refusal of order for physical examination as abuse of discretion; (23 L.R.A.(N.S.) 463) on power to compel physical examination.

Distinguished in Mutual L. Ins. Co. v. Griesa, 156 Fed. 403, granting order for exhumation of corpse to be examined for purpose of discovering cause of death.

Disapproved in Brown v. Chicago, M. & St. P. R. Co. 12 N. D. 69, 102 Am. St. Rep. 564, 95 N. W. 153, holding it error to refuse to compel plaintiff to exhibit her person to experts to qualify them to state extent of her injuries.

Evidence of refusal to permit physical examination.

Cited in Lee v. Prudential L. Ins. Co. 206 Mass. 448, 92 N. E. 709, holding admissible, evidence of plaintiff's refusal of post mortem examination of insured.

52 L. R. A. 330, SUN INS. OFFICE v. MERZ, 64 N. J. L. 301, 45 Atl. 785.

Liability of reinsurer.

Cited in note (8 L.R.A.(N.S.) 846) on liability of reinsurer as affected by validity of contract.

52 L. R. A. 344, HAMPTON v. HARTFORD F. INS. CO. 65 N. J. L. 265, 47 Atl. 433.

Construction of forfeiture clauses of insurance policy.

Cited in Johnson v. Grand Lodge, A. O. U. W. 81 N. J. L. 515, 79 Atl. 333, holding that forfeitures are not favored and construction against such result will be preferred; MacKinnon v. Fidelity & C. Co. 72 N. J. L. 32, 60 Atl. 180, holding question as to having been refused insurance applied only to same class of insurance as that sought against accident and did not refer to dissimilar insurance; Henn v. Metropolitan L. Ins. Co. 67 N. J. L. 311, 51 Atl. 689, holding forfeiture will not be allowed for wrongful answer to question not clearly false.

Cited in footnote to Brehm Lumber Co. v. Svea Ins. Co. 68 L.R.A. 110, which holds policy on shingle mill and dry kiln in close proximity divisible as to amounts of indemnity and avoided in entirety by shutting down of mill without permission, though shingles are still transferred into and out of the kiln.

52 L. R. A. 346, STATE v. MEYER, 65 N. J. L. 233, 47 Atl. 485.

52 L. R. A. 348, WOEHRLE v. MINNESOTA TRANSFER R. CO. 82 Minn. 165, 84 N. W. 791.

Omission of danger signals at railroad crossing.

Cited in Stegner v. Chicago, M. & St. P. R. Co. 94 Minn. 168, 102 N. W. 205, holding person about to cross has right to assume that gates are not negligently left open.

— Right of public to rely on gate and flagman.

Cited in Chicago & A. R. Co. v. Wright, 120 Ill. App. 221, holding when gates are open, or no signal of danger is given by flagman, traveler may assume it is safe to cross; Sights v. Louisville & N. R. Co. 117 Ky. 442, 78 S. W. 172, holding when gates are open, or flagman not in his accustomed place of duty, public have right to presume that gateman or flagman is properly discharging his duties.

Duty to "stop, look and listen."

Cited in Cleveland, C. C. & St. L. R. Co. v. Lynn, 171 Ind. 594, 85 N. E. 999, holding person who stopped and looked up track as far as possible not guilty of contributory negligence where without loitering he proceeded at once to cross tracks.

Cited in footnotes to Western & A. R. Co. v. Ferguson, 54 L.R.A. 803, which holds failure to look within 30 feet of track will not prevent recovery; Keenan v. Union Traction Co. 58 L.R.A. 217, which holds failure to look for train within 35 feet of track, negligence; Lorenz v. Burlington, C. R. & N. R. Co. 56 L.R.A. 753, which holds negligence of one pursuing cow without looking or listening before crossing railroad track, for jury; Colorado & Southern R. Co. v. Thomas, 70 L.R.A. 681, which holds failure to look and listen before crossing track not excused by existence of building adjoining highway which would obstruct view of tracks and by noise created therein which would prevent hearing approaching train.

52 L. R. A. 354, FOOT v. GREAT NORTHERN R. CO. 81 Minn. 493, 83 Am. St. Rep. 395, 84 N. W. 342.

Rights in statutory action for death by wrongful act.

Cited in Swift & Co. v. Johnson, 1 L.R.A.(N.S.) 1166, 71 C. C. A. 619, 138 Fed. 870, holding the right of action given by the Minnesota Statute is for the exclusive benefit of those who have demands for the support of deceased during time if any intervening between his injury and death, those who have demands for his funeral expenses and the widow and next of kin; Re Williams, 130 Iowa, 567, 107 N. W. 608, holding under statute the fund coming into hands of administrator as a result of a wrongful death passes to heirs and next of kin is exempt of debts of deceased, even though it was recovered under laws of another State; Lahti v. Oliver Iron Min. Co. 106 Minn. 243, 118 N. W. 1018, holding action is brought by administrator in a representative capacity and the recovery is for the benefit of the persons who under the statute are entitled to the money.

Settlement by personal representative of claim for death by wrongful act.

Cited in Shambach v. Middlecreek Electric Co. 45 Pa. Super. Ct. 303, holding that widow may settle action for wrongful death of husband, without consent of guardian of children; Pittsburgh, C. C. & St. L. R. Co. v. Gipe, 160 Ind. 370, 65 N. E. 1034; Ahoy v. Republic Iron & Steel Co. 104 Minn. 326, 116 N. W. 590,—holding he may settle claim without approval of probate court; Aho v. Jesmore, 101 Minn. 450, 10 L.R.A.(N.S.) 999, 112 N. W. 538, holding personal representative has right to settle without consent of beneficiaries.

Settlements by legal representatives of statutory causes of action.

Cited in Johnson v. Minneapolis & St. L. R. Co. 101 Minn. 398, 112 N. W. 534, holding father who has brought action under statute for injuries to minor child may settle same.

Distinguished in Picciano v. Duluth, M. & N. R. Co. 102 Minn. 24, 112 N. W. 885, holding settlement without advice of counsel and without direction of court is subject to review by court upon being informed of nature of settlement.

52 L. R. A. 355, CORNISH v. WEST, 82 Minn. 107, 84 N. W. 750.

Joint and several obligations.

Later appeal in 89 Minn. 360, 94 N. W. 1082.

Cited in McArthur v. Board, 119 Iowa, 563, 93 N. W. 580, holding courts will enforce intent of parties to be severally bound if such intent appears from reading of whole contract.

52 L. R. A. 357, WILSON v. ALABAMA G. S. R. CO. 77 Miss. 714, 78 Am. St. Rep. 543, 28 So. 567.

Reasonableness of inspection or health regulation.

Cited in Pierce v. Dillingham, 203 Ill. 159, 62 L.R.A. 892, 67 N. E. 846, holding order requiring tuberculin test for all imported cattle whether from infected territory or not is unreasonable.

Cited in footnote to Pierce v. Dillingham, 62 L.R.A. 888, which holds invalid rules of state board of livestock commissioners for applying tuberculin test to cattle brought into state for dairy or breeding purposes.

Liability for enforcement of void quarantine.

Cited in Alabama & V. R. Co. v. Tirelli, 93 Miss. 802, 21 L.R.A.(N.S.) 732,

136 Am. St. Rep. 559, 48 So. 962, 17 Ann. Cas. 879, holding railroad not liable for damage to perishable freight caused by delay where police then present under mistaken application of an ordinance prevented delivery.

Cited in note (13 L.R.A.(N.S.) 361) on carrier's liability for injury or loss from enforcement of quarantine.

52 L. R. A. 359. KRAMER v. SOUTHERN R. CO. 127 N. C. 328, 37 S. E. 468.

Subsequent appeal 128 N. C. 269, 38 S. E. 872, holding cited case res adjudicata.

Duty to protect children from dangerous structures.

Cited in Ferrell v. Dixie Cotton Mills, 157 N. C. 532, 37 L.R.A.(N.S.) 65, 73 S. E. 142, holding corporation, permitting guy wire to hang against electric wire at place where children play, liable for death of child.

Cited in footnotes to Kopplekom v. Colorado Cement Pipe Co. 54 L.R.A. 284, which holds owner of uninclosed city lot liable for injury to young child by toppling over of large cement pipe used by children as plaything; Kessler v. Berger, 61 L.R.A. 611, which holds boy injured by fall of lumber pile not lounger by stopping in street to cool after playing game in vacant lot; Busse v. Rogers, 64 L.R.A. 183, which holds one piling lumber insecurely in street liable for injuries to child by its fall upon him while attempting to climb on the pile.

Cited in notes (6 L.R.A.(N.S.) 906) on duty towards children with respect to obstructions or defects in street; (19 L.R.A.(N.S.) 112) on attractive nuisance.

Distinguished in Briscoe v. Henderson Lighting & Power Co. 148 N. C. 406, 19 L.R.A.(N.S.) 1127, 62 S. E. 600, denying liability to trespassing child lured into electric plant by attractiveness of machinery where due precautions were made for persons ordinarily about premises.

Liability of abutter for injuries from obstructions in highways.

Cited in footnotes to Garibaldi v. O'Connor, 66 L.R.A. 73, which holds merchants using portion of sidewalk adjoining place of business for receiving and shipping goods so that travelers are limited to narrow passageway during most of day liable for injury caused by permitting straw and loose bananas in such passageway; Friedman v. Snare & Triest Co. 70 L.R.A. 147, which holds abutting owner storing building materials in street not ordinarily charged with duty to render them safe for persons attempting to use them for their own pleasure, convenience, or profit.

52 L. R. A. 362, REIGER v. WORTH CO. 127 N. C. 230, 80 Am. St. Rep. 798, 37 S. E. 217.

Measure of damages for loss of crops.

Cited in Chicago v. Dickman, 105 Ill. App. 212, holding damages recoverable for negligent destruction of crop is value thereof at time of destruction.

Cited in footnote to Herring v. Armwood, 57 L.R.A. 958, which holds damage from diminution of yield from breach of contract to furnish fertilizers not too remote for recovery.

Cited in note (37 L.R.A.(N.S.) 81, 88) on liability of vender of seeds.

Distinguished in Vaughan's Seed Store v. Stringfellow, 56 Fla. 721, 48 So. 410, holding damages for supplying inferior seed is difference in value of crop grown and crop that would have resulted from kind of seed ordered.

52 L. R. A. 365, STATE v. MT. HOPE COLLEGE CO. 63 Ohio St. 341, 58 N. E. 799.

Forfeiture of franchise.

Cited in footnote to Illinois Trust & Sav. Bank v. Doud, 52 L.R.A. 481, which denies right to forfeit franchise for failure to exercise all of granted power.

52 L. R. A. 367, COM. EX REL. JONES v. BLACKLEY, 198 Pa. 372, 47 Atl. 1104.

Followed without discussion in Philadelphia & R. Coal & I. Co.'s Petition, 200 Pa. 358, 49 Atl. 797; Krzykwa v. Croninger, 200 Pa. 362, 49 Atl. 979.

Local and class legislation.

Followed in Anderson v. Lower Merion Twp. 217 Pa. 381, 66 Atl. 1115, sustaining similar law for making of local improvements in first class townships.

Cited in Re Alliance, 7 North. Co. Rep. 401, on validity of act providing for classification of townships; Re Foster Twp. Road Tax, 32 Pa. Super. Ct. 56, holding statute abolishing work tax on roads upon election of tax payers of township is not a regulation by legislature of township affairs; Com. v. Mintz, 19 Pa. Super. Ct. 286, holding act relating only to junk of peddlers in cities is constitutional as to classification.

Cited in footnote to Carolina Grocery Co. v. Burnett, 58 L.R.A. 687, which upholds as against objection of special legislation statute establishing new method of forming governing boards in counties with provision for nonapplication in specified counties.

Classification of townships by density of population.

Cited in Radnor Twp. v. Bell, 27 Pa. Super. Ct. 4, holding it constitutional to apportion townships by density of population; Travis v. Lehigh Coal & Nav. Co. 33 Pa. Super. Ct. 207, holding act classifying townships according to density of population is constitutional; Com. ex rel. Lynch v. Finn, 12 Luzerne Leg. Reg. Rep. 180, 14 Pa. Dist. R. 685, sustaining a statute authorizing counties containing cities of the third class to appoint a collector of taxes; Cornman v. Hagginbotham, 227 Pa. 551, 76 Atl. 721, 25 Montg. Co. L. Rep. 195, on the classification of townships.

Cited in footnote to Longview v. Crawfordsville, 68 L.R.A. 623, which holds void classification of cities for purpose of legislation so as to make particular law conferring power to annex territory applicable to those having population between six and seven thousand.

52 L. R. A. 369, WOOD v. SEATTLE, 23 Wash. 1, 62 Pac. 135.

Cessation of appealable question.

Cited in White Crest Canning Co. v. Sims, 29 Wash. 390, 69 Pac. 1094, holding appeal will not be dismissed on ground of cessation of controversy where it does not appear actually to have ceased; Hewitt v. Root, 31 Wash. 315, 71 Pac. 1021, holding refusal generally to confirm execution sale insufficient to warrant dismissal of appeal from order refusing to quash writ of execution resale not being certainly barred.

Extension of railway franchise.

Cited in Overholser v. Oklahoma Interurban Traction Co. 29 Okla. 579, 119 Pac. 127, holding that franchise ordinance may be amended by providing that street railway may extend its tracks generally throughout city.

Effect of motives in passage of ordinance.

Cited in Gardiner v. Bluffton, 173 Ind. 460, 89 N. E. 853, Ann. Cas. 1912A,

713, holding that court will not inquire into motives of councilmen in passing street improvement ordinance.

52 L. R. A. 395, BISHOP v. MINDERHOUT, 128 Ala. 163, 86 Am. St. Rep. 134, 29 So. 11.

Recovery of price on loss of property by conditional vendee.

Cited in Commercial Nat. Bank v. Latham, 25 Okla. 91, 116 Pac. 197, Ann. Cas. 1913A, 999, holding that loss of property without fault of conditional vendee does not relieve him from obligation to pay fine; Marion Mfg. Co. v. Buchanan, 118 Tenn. 246, 8 L.R.A.(N.S.) 593, 99 S. W. 984, 12 Ann. Cas. 707, holding accidental loss of chattel falls on vendee where they were delivered completely into his possession although vendor reserved title until notes, securing payment, were paid.

Cited in notes (2 L.R.A.(N.S.) 99) on right of conditional vendor to recover amount unpaid where property lost or destroyed without fault of purchaser; (138 Am. St. Rep. 905) on right of conditional vendor to recover price of property destroyed while in vendee's possession.

Distinguished in Swaney v. Alstott, 134 Iowa, 65, 8 L.R.A.(N.S.) 1033, 111 N. W. 406, holding loss of stallion wholly delivered to vendee but to be paid for from service fees is on vendor if not fully paid for before loss occurred.

Disapproved in National Cash Register Co. v. South Bay Club House Asso. 64 Misc. 128, 118 N. Y. Supp. 1044; La Valley v. Ravenna, 78 Vt. 156, 2 L.R.A. (N.S.) 100, 112 Am. St. Rep. 898, 62 Atl. 47, 6 Ann. Cas. 684,—holding that where seller retained a bare lien or security title the loss falls on the buyer in possession.

52 L. R. A. 396, BRUNSWICK & W. R. CO. v. HARDEY, 112 Ga. 604, 37 S. E. 888.

Obstruction in highway as private nuisance.

Cited in Savannah F. & W. R. Co. v. Gill, 118 Ga. 746, 45 S. E. 623, holding a merchant suffers special damages where the access to his store is destroyed by an obstruction in the highway.

Remedy for obstruction to highway.

Cited in Coker v. Atlanta, K. & N. R. Co. 123 Ga. 489, 51 S. E. 481, holding closing of street by city which would destroy principal approach to plaintiff's place of business may be enjoined; Galveston, H. & S. A. R. Co. v. De Groff, 102 Tex. 441, 21 L.R.A.(N.S.) 753, 118 S. W. 134, holding action of damages proper remedy for loss of hotel patrons by maintenance of railroad switching in highway.

Cited in footnote to Brauer v. Baltimore R. & H. Co. 66 L.R.A. 403, which sustains right of owner of building devoted to retail trade to enjoin adjoining owner from erecting platform along front of iceplant in process of erection on portion of sidewalk space, and from removing curbs so that wagons can load from platform where pedestrian travel will be rendered inconvenient and entirely interrupted part of the time.

Evidence of loss of profits.

Cited in Hayes v. Atlanta, 1 Ga. App. 32, 57 S. E. 1087, holding in action for injury to a leasehold evidence of earning capacity of business done there is admissible.

Cited in note (13 L.R.A.(N.S.) 253) on loss of customers as element of damages from obstruction of highway.

52 L. R. A. 398, HILL v. McBURNEY OIL & FERTILIZER CO. 112 Ga. 788, 38 S. E. 42.

Noise as nuisance.

Cited in Reilley v. Curley, 75 N. J. Eq. 60, 138 Am. St. Rep. 510, 71 Atl. 700, enjoining operation of machinery used in depositing stone on lot in residential district; McGill v. Pintsch Compressing Co. 140 Iowa, 434, 20 L.R.A. (N.S.) 472, 118 N. W. 786, holding gas manufacturing plant a nuisance only to the extent that it emits smoke or makes noise unreasonably.

Cited in footnotes to Louisville & Nashville Terminal Co. v. Jacobs, 61 L.R.A. 188, which holds that construction of round house for housing engines does not render owner liable for nuisance created by tenant's improper manner of using; Froelicher v. Oswald Iron Works, 64 L.R.A. 228, which sustains right to injunction against construction of boiler and tanks and hammering of sheet iron in open air, so as to cause physical discomforts to occupants of adjoining premises; Redd v. Edna Cotton Mills, 67 L.R.A. 983, which holds that blowing of factory whistle will not be enjoined until fact of nuisance has been established; Wade v. Miller, 69 L.R.A. 820, which holds characteristic noises and odors from chicken house and yard maintained in cleanly manner not a nuisance.

Equitable jurisdiction to restrain nuisance or trespass.

Cited in Gray Lumber Co. v. Gaskin, 122 Ga. 351, 50 S. E. 164, holding injunction proper to restrain constantly recurring trespassing for purpose of unlawfully cutting timber.

Cited in footnote to Sullivan v. Jones & L. Steel Co. 66 L.R.A. 712, which holds that manufacturer of pig iron will be enjoined from changing manner of operating furnaces if result is to cast ore dust on neighboring residential property in such quantity as to destroy homes or other property there situated.

— Where nuisance consists only in excess or abuse.

Cited in Georgia R. & Bkg. Co. v. Maddox, 116 Ga. 83, 42 S. E. 315, holding use of yards by railroad on Sunday may be enjoined to extent that it is unnecessary.

Entitling affidavits.

Cited in Franklin v. Kriegshaber, 114 Ga. 949, 41 S. E. 47, holding affidavit that does not show upon its face its connection with case in which it is sought to be used is insufficient; Johnson v. Tanner, 126 Ga. 720, 56 S. E. 80, holding affidavit that does not contain caption of case or other facts showing its connection is inadmissible; Hicks v. Portwood, 129 Ga. 309, 58 S. E. 837, holding unentitled affidavit insufficient although written by attorney and all parties intending it for use at that trial where not so attached to a correctly entitled paper as to amount to notice; Falls City Mfg. Co. v. Athens Coca-Cola Bottling Co. 130 Ga. 561, 61 S. E. 230, holding affidavits in ancillary proceedings are sufficient if entitled in name of main suit.

52 L. R. A. 401, RAILWAY OFFICIALS & E. ACCI. ASSO. v. JOHNSON, 109 Ky. 261, 95 Am. St. Rep. 370, 58 S. W. 694.

Accidental death within accident policy.

Cited in Herdic v. Maryland Casualty Co. 146 Fed. 398, on nature of death by sunstroke.

52 L. R. A. 403, BALL v. SAFE DEPOSIT & T. CO. 92 Md. 503, 48 Atl. 155.

Validity of sale of ground rents by trustee.

Cited in Levering v. Gosnell, 115 Md. 589, 80 Atl. 1078, holding that court

had no jurisdiction to decree sale of ground rent so as to bind contingent remaindermen not parties to cause; Preston v. Safe Deposit & Trust Co. 116 Md. 215, 81 Atl. 523, holding that equity has jurisdiction to decree sale of property so as to bind interest of after-born parties; Murphy v. Cole, 107 Md. 209, 68 Atl. 615, holding interest of unborn remaindermen in ground rents do not pass on sale by executrix where no such power is given by will.

52 L. R. A. 406, BALTIMORE v. LYMAN, 92 Md. 591, 84 Am. St. Rep. 524, 48 Atl. 145.

What constitutes a public officer.

Cited in Hartigan v. West Virginia University, 49 W. Va. 29, 38 S. E. 698, holding a state university professor is not a public officer.

Cited in footnote to State v. Lechner, 59 L.R.A. 916, which holds member of city board of education, a ministerial officer.

52 L. R. A. 409, TOWNSEND v. EPSTEIN, 93 Md. 537, 86 Am. St. Rep. 441, 49 Atl. 629.

Right to light and air from highway.

Cited in Williams v. Los Angeles R. Co. 150 Cal. 595, 89 Pac. 330, denying injunction for deprivation of light and air from highway by a street railway switch tower, where injury to adjoining owner is very slight; Bischof v. Merchants' Nat. Bank, 75 Neb. 843, 5 L.R.A.(N.S.) 491, 106 N. W. 996, holding obstruction that destroys use by mercantile house of its display windows fronting highway will be enjoined.

Cited in footnote to First Nat. Bank v. Tyson, 59 L.R.A. 399, which sustains right of injunction against erection of pillars in street in front of adjoining lot, obstructing light and air from street.

Cited in notes (106 Am. St. Rep. 248; 122 Am. St. Rep. 220) on easement of light and air from public streets; (109 Am. St. Rep. 913) on obstruction of light and air as "damage" to property within provision that property shall not be taken or damaged for public use without compensation.

Subjection of property to private interest.

Cited in Edison Electric Light & P. Co. v. Blomquist, 185 Fed. 618, holding void, ordinance requiring electric companies to remove wires at their own expense to accommodate person moving house through streets; Arnsperger v. Crawford, 101 Md. 255, 70 L.R.A. 501, 61 Atl. 413, holding legislature cannot grant private way over private property; Cereghino v. Oregon Short Line R. Co. 26 Utah, 479, 99 Am. St. Rep. 843, 73 Pac. 634, denying power of city to authorize construction of switch track on highway by railroad for private business; Northwestern Teleph. Exchg. Co. v. Anderson, 12 N. D. 593, 65 L.R.A. 775, 102 Am. St. Rep. 580, 98 N. W. 706, 1 Ann. Cas. 110, holding city cannot empower house mover to cut wires of telephone company over streets.

Cited in notes (22 L.R.A.(N.S.) 24) on limitation of power of eminent domain to public use; (125 Am. St. Rep. 345, 347) on grant by city of right to use streets and sidewalks for private purpose.

Distinguished in Dulaney v. United R. & Electric Co. 104 Md. 440, 65 Atl. 45, holding it proper for railroad doing an express business to lay a spur track connecting its line with line of express company that handled its business.

— Bridges across street.

Cited in notes (23 L.R.A.(N.S.) 159) on right of municipality, without ex-

press power, to permit private overhead bridge across street; (107 Am. St. Rep. 246) on bridges across street for private use as public nuisances.

Remedies of abutter for improper use of street.

Cited in note (101 Am. St. Rep. 117) on remedies available to abutter against improper use of street.

Right of abutter to compensation for vacation of highway.

Cited in note (36 L.R.A.(N.S.) 1116) on right of abutter to compensation for vacation of highway.

52 L. R. A. 414, SCHWAB v. SCHWAB, 93 Md. 382, 49 Atl. 331.

Supplemental pleading.

Cited in Cassidy v. Saline County Bank, 7 Ind. Terr. 565, 104 S. W. 829, holding supplemental pleading alleging judgment obtained in another state is improper in a suit originally on account where to admit it would enlarge liability of sureties.

— In divorce actions.

Cited in Schwab v. Schwab, 96 Md. 593, 94 Am. St. Rep. 584, 54 Atl. 653, holding supplemental bill in suit for divorce for adultery setting up adultery subsequent to institution of suit with persons not mentioned in original bill is improper.

Distinguished in Sodini v. Sodini, 96 Minn. 331, 104 N. W. 976, holding decree of divorce proper upon proof out of order of acts of adultery committed subsequently to filing of original bill as alleged in supplemental answer to which reply was filed.

Grounds for absolute and limited divorce.

Cited in Stewart v. Stewart, 105 Md. 302, 66 Atl. 16, holding adultery no ground for divorce a mensa et thoro where statute provides for such divorce only in case of cruelty or abandonment.

52 L. R. A. 417, LITTLE v. HOLYOKE, 177 Mass. 114, 58 N. E. 170.

Liability of city when engaged in private enterprise.

Cited in Davies v. Boston, 190 Mass. 197, 76 N. E. 663, holding city liable for injuries by negligence to passenger on ferry boat operated by city for profit; Libby v. Portland, 105 Me. 378, 26 L.R.A.(N.S.) 145, 74 Atl. 805, 18 Ann. Cas. 547, holding demurrer properly overruled to allegation that negligent injury was received in building of city used by it for profit, there being no allegation that it was the poor farm.

Cited in footnotes to Fox v. Philadelphia, 65 L.R.A. 214, which holds city liable for injuries due to negligence of operator of elevator in public building, although he was employed by a legislative commission; Kelly v. Boston, 66 L.R.A. 429, which holds portion of city building devoted to housing of executive departments which collect money for city within rule that city is not liable for negligence of those to whom are entrusted care and custody of buildings used exclusively for performance of municipal duties.

Cited in notes (25 L.R.A.(N.S.) 92) on liability of municipality for tort in connection with buildings used by it; (108 Am. St. Rep. 173) as to what municipal corporations are answerable for injuries due to defects in city halls.

Distinguished in Kelley v. Boston, 186 Mass. 166, 66 L.R.A. 431, 71 N. E. 299, holding city not liable for negligence of servant in throwing snow from city hall onto adjoining property although building is occupied by water works, sewer, and other departments; Haley v. Boston, 191 Mass. 292, 5 L.R.A.(N.S.) 1008,

77 N. E. 888, denying liability of city for negligent act of ash dumper whose services were free to all householders, although charge was made where steam engines were used.

What constitutes governmental public duty.

Cited in Wheelock v. Lowell, 196 Mass. 224, 124 Am. St. Rep. 543, 81 N. E. 977, 12 Ann. Cas. 1109, holding erection of town meeting house a proper act of the town, though the hall may occasionally be devoted to private uses.

52 L.R.A. 418, BOSTON & A. R. CO. v. BROWN, 177 Mass. 65, 58 N. E. 189.

Rights of hack and baggagemen in and about depot.

Cited in State ex rel. Sheets v. Union Depot Co. 71 Ohio St. 391, 68 L.R.A. 797, 73 N. E. 633, 2 Ann. Cas. 186, holding union depot company may grant exclusive right to use of its station grounds for soliciting use of hacks: Hedding v. Gallagher, 72 N. H. 392, 64 L.R.A. 821, 57 Atl. 225, holding that a depot company may grant an exclusive right to solicit business about the depot by a baggage company if it thereby furnishes adequate facilities to patrons in moving their baggage; Donovan v. Pennsylvania Co. 61 L.R.A. 143, 57 C. C. A. 362, 120 Fed. 217; Oregon Short Line R. Co. v. Davidson, 33 Utah, 376, 16 L.R.A.(N.S.) 783, 94 Pac. 10, 14 Ann. Cas. 489,—holding railroad may exclude all but one company of hack drivers from its premises: New York, N. H. & H. R. Co. v. Bork, 23 R. I. 223, 49 Atl. 965, holding same though street ran through the depot grounds, and upon which it was sought to solicit business.

Cited in footnotes to Pennsylvania Co. v. Chicago, 53 L.R.A. 223, which denies carrier's power to prevent others than lessee occupying hack stands in street; Donovan v. Pennsylvania Co. 61 L.R.A. 140, which sustains carrier's power to give exclusive right to solicit patrons within station to one hackman: State ex rel. Sheets v. Union Depot Co. 68 L.R.A. 793, which sustains right of union depot company to grant transfer company exclusive right to use specified part of depot grounds for hacks and vehicles and soliciting patronage of passengers; Hedding v. Gallagher, 64 L.R.A. 811, which sustains right of railroad company to give exclusive right to one teamster to enter on its grounds, if reasonable requirements of passengers are fully met.

Cited in note (16 L.R.A.(N.S.) 779, 780) on right to discriminate between solicitors of patronage at depots, wharves, etc.

— Trespass on station grounds.

Cited in Boston & M. R. Co. v. Sullivan, 177 Mass. 232, 83 Am. St. Rep. 275, 58 N. E. 689, holding use of station grounds by soliciting hackmen after being ordered off was a trespass.

52 L. R. A. 420, LOCKE v. McPHERSON, 163 Mo. 492, 85 Am. St. Rep. 546, 63 S. W. 726.

Married women's acts.

Cited in Bronson v. Brady, 28 App. D. C. 258, on married women's act as emancipating women from matrimonial disabilities as to property: Grimes v. Reynolds, 184 Mo. 690, 83 S. W. 1132, Affirming 94 Mo. App. 586, 68 S. W. 588, on effect of married women acts on matrimonial status.

— Contracts with husband or wife.

Cited in Rice, S. & Co. v. Sally, 176 Mo. 129, 75 S. W. 398, holding chattel mortgage from husband to wife may be enforced by wife interpleading in an attachment suit against the husband.

Conflict of laws as to matrimonial property.

Cited in note (29 L.R.A.(N.S.) 782) on conflict of laws as to matrimonial property.

52 L. R. A. 424, PORTER v. TRADERS' INS. CO. 164 N. Y. 504, 58 N. E. 641.

Sufficiency of proofs of loss.

Cited in St. Paul F. & M. Ins. Co. v. Mittendorf, 24 Okla. 654, 28 L.R.A.(N.S.) 654, 104 Pac. 354, holding that a substantial compliance with the requirements of the policy as to proof of loss as a condition precedent to a right of action, was sufficient.

52 L. R. A. 429, HANNON v. SIEGEL-COOPER CO. 167 N. Y. 244, 60 N. E. 597.

Estoppel to set up ultra vires as defense.

Cited in Vought v. Eastern Bldg. & L. Asso. 172 N. Y. 518, 92 Am. St. Rep. 761, 65 N. E. 496, holding corporation estopped to set up defense of ultra vires where contract has been fully performed by other party in good faith and is not illegal; Eastern Bldg. & L. Asso. v. Williamson, 189 U. S. 130, 47 L. ed. 741, 23 Sup. Ct. Rep. 527, on the same point; Burke v. State, 64 Misc. 574, 119 N. Y. Supp. 1089, holding state liable for tort committed in operating a park railroad for hire although operation thereof was ultra vires; Ring v. Long Island Real Estate Exch. & Invest. Co. 93 App. Div. 447, 87 N. Y. Supp. 682, holding real estate company estopped to deny receipt of money by its secretary for investment where he was in full charge of its affairs, though the investment was ultra vires.

Distinguished in Thomas v. Springer, 134 App. Div. 643, 119 N. Y. Supp. 460, holding owner of theatre not estopped to deny liability for negligence of theatrical company in using his theatre.

Liability of corporations for negligent acts of persons in their employ.

Distinguished in Kellogg v. Church Charity Foundation, 128 App. Div. 216, 112 N. Y. Supp. 566, holding that no contractual relation existing between a charitable corporation and a person treated by a physician employed by them, the corporation was not liable for the negligence of such physician.

Practice of a profession by corporations.

Cited in Re Benzel, 68 Miss. 82, 124 N. Y. Supp. 726; Re-Co-Operative Law Co. 198 N. Y. 484, 32 L.R.A.(N.S.) 58, 92 N. E. 15, 19 Ann. Cas. 879,—holding that a corporation can neither practice law, nor hire lawyers to carry on the business of practicing law; People v. Woodbury Dermatological Institute, 124 App. Div. 884, 109 N. Y. Supp. 578, on the practice of medicine by a corporation.

Cited in note (32 L.R.A.(N.S.) 56) on practice of law or medicine by corporation.

52 L. R. A. 430, TRADESMEN'S NAT. BANK v. CURTIS, 167 N. Y. 194, 60 N. E. 429.

Appeal from order allowing amendments to answer in 63 App. Div. 15, 71 N. Y. Supp. 414.

Effect of failure of consideration on bona fide holders.

Cited in Moyses v. Bell, 62 Wash. 541, 114 Pac. 193, holding that knowledge by endorsee that note was given for executory contract does not deprive him of character of bona fide holder, where he had no notice of breach of contract.

52 L. R. A. 433, RE DOWS, 167 N. Y. 227, 88 Am. St. Rep. 509, 60 N. E. 439.

Inheritance tax as a tax on property.

Cited in Re Moses, 138 App. Div. 526, 123 N. Y. Supp. 443; Dixon v. Ricketts, 26 Utah, 218, 72 Pac. 947,—holding that the tax imposed by the inheritance tax law was imposed on the right of devolution and succession and not on property; Re Wolfe, 89 App. Div. 353, 85 N. Y. Supp. 949, holding that the inheritance tax was not a tax upon the property transferred, nor upon the estate, but upon the devolution.

Cited in notes (9 L.R.A.(N.S.) 123) on nature of right to take by will or inheritance; (33 L.R.A.(N.S.) 609) on nature of inheritance tax.

Property within inheritance or transfer tax.

Cited in Re Dobson, 73 Misc. 174, 132 N. Y. Supp. 472, holding taxable, transfer of estate to cousin on latter's promise to lease it back to decedent for her life; Re Cornell, 66 App. Div. 169, 73 N. Y. Supp. 32, holding a gift, not a gift causa mortis, was not subject to the inheritance tax; Re Rogers, 71 App. Div. 465, 75 N. Y. Supp. 835, holding transfer tax applies to property transferred by will although in payment of testator's debts; Re Miller, 77 App. Div. 481, 78 N. Y. Supp. 930, holding transfer tax not applicable to transfer of property made eight years before death and for valuable consideration; Blair v. Herold, 150 Fed. 203, on the same point; Re Baker, 83 App. Div. 533, 82 N. Y. Supp. 390, holding fund accepted by widow from estate in settlement of an ante-nuptial contract is not taxable; Re Hess, 110 App. Div. 480, 96 N. Y. Supp. 990, holding a conveyance given in consideration of grantees supporting grantors for life is not within transfer tax where conveyance was absolute; Re Chapman, 133 App. Div. 344, 117 N. Y. Supp. 679 (dissenting opinion), on property that is within transfer tax; Brown v. Lawrence Park Realty Co. 133 App. Div. 754, 118 N. Y. Supp. 132, holding where the testator directed all of his real estate to be converted into money and applied on the payment of specific legacies, the lien of the inheritance tax did not attach to the real estate but to the funds received therefor; Re Stebbins, 52 Misc. 442, 103 N. Y. Supp. 563, holding where the husband and wife kept a joint savings account, which was payable to either or the survivor, on the death of the wife, the fund which then belonged to the husband, was not subject to the inheritance tax; Re Kidd, 188 N. Y. 278, 80 N. E. 824, holding property received by the devisee under an agreement to devise, was subject to the inheritance tax.

Cited in footnote to Re Brandreth, 58 L.R.A. 148, which holds transfer of stock on condition that transferrer shall enjoy dividends and vote stock during lifetime subject to transfer tax.

Cited in note (127 Am. St. Rep. 1088) on inheritance taxation on property passing under agreements to make will.

— Interests of remaindermen.

Cited in Re Babcock, 37 Misc. 448, 75 N. Y. Supp. 926, holding where the devise was of all the personal property of the decedent, for life, with the right to use as much of the principal as was necessary, the remainder was not subject to the transfer tax until the death of the devisee; People v. McCormick, 208 Ill. 445, 64 L.R.A. 779, 70 N. E. 350, holding beneficiary must be capable of identification before tax may be assessed; Re Vanderbilt, 172 N. Y. 74, 64 N. E. 782, on transfer tax as applicable to contingent remainders; Re Bushnell, 73 App. Div. 328, 77 N. Y. Supp. 4, holding an estate in remainder is subject to transfer tax prior to determination of life estate if vested and indefeasable.

Cited in note (127 Am. St. Rep. 1076, 1077) on inheritance taxation on remainders.

Constitutionality of transfer or inheritance tax.

Affirmed in Orr v. Gilman, 183 U. S. 282, 46 L. ed. 199, 22 Sup. Ct. Rep. 213, holding transfer tax constitutional, as applying to the exercise of the power of appointment.

Cited in Black v. State, 113 Wis. 213, 90 Am. St. Rep. 853, 89 N. W. 522, holding unconstitutional an inheritance tax limited in its application to beneficiaries of estate of the value of over ten thousand dollars, without regard to the size of the bequests; Chanler v. Kelsey, 205 U. S. 476, 51 L. ed. 888, 27 Sup. Ct. Rep. 550, holding constitutional transfer tax on the exercise of the power of appointment as not being a deprivation of property without due process of law.

Power of appointment as affecting tax.

Cited in Re Fearing, 200 N. Y. 344, 93 N. E. 956, holding nontaxable, mortgages on realty within state held by nonresident and transferred under power of appointment by will of resident; Minot v. Treasurer & Receiver General (Minot v. Stevens) 207 Mass. 591, 33 L.R.A.(N.S.) 242, 93 N. E. 973, upholding imposition of succession tax on interest of those who will take under will on failure of donee of power of appointment therein to exercise it; Re Seaver, 63 App. Div. 286, 71 N. Y. Supp. 544, holding that the transfer tax becomes due by reason of the exercise of the power of appointment, and when and where it is made; Re Buckingham, 106 App. Div. 19, 94 N. Y. Supp. 130, holding where property was left in trust for the benefit of a son for life, and the principal to go to whoever he should appoint, that fund passing to the appointees was taxable under the transfer tax law, though the fund left to the son had already been taxed under the collateral inheritance tax law; Re Hull, 111 App. Div. 325, 97 N. Y. Supp. 701, holding resident donee who received power from resident testator and exercises it binds the property to taxation although situated in another state; Re Lansing, 182 N. Y. 244, 74 N. E. 882, holding where by the exercise of the power of appointment, the property was devised to the person to whom it would have gone under the will creating the power, the property passing under such exercise was not subject to the transfer tax, where the statute imposing the same was passed after the power was created; Isham v. New York Assoc. 177 N. Y. 223, 69 N. E. 367, holding where the beneficiary of a trust was given the power of appointment over the principal, and exercised it in favor of certain charitable institutions, directing the payment of all transfer and inheritance taxes to be paid out of the residue of the estate, the above institutions were entitled to have their transfer taxes paid out of the residue; Re Delano, 176 N. Y. 492, 64 L.R.A. 282, 68 N. E. 871, holding transfer of property under the exercise of a power of appointment, taxable though power was created prior to the passing of the tax law; Re Kissel, 65 Misc. 444, 121 N. Y. Supp. 1088, holding that the transfer of property under the exercise of a power of appointment created under the will of a resident of New York, by a resident of New Jersey, was taxable in New York, only as to property situated within that state: Re Thomas, 39 Misc. 138, 78 N. Y. Supp. 981, holding that the exercise of the power of appointment by a resident under a will of a nonresident creating a trust, was not within the transfer tax law, where all the property was without the state though under the control of a resident trustee; Re Cooksey, 182 N. Y. 98, 74 N. E. 880; Re Warren, 62 Misc. 447, 116 N. Y. Supp. 1034,—holding where by the exercise of the power of appointment, the property goes to the person who would have received the same in the default of the exercise, but under a modification of the terms of the original will the exercise was subject to the transfer tax.

Cited in footnote to Re Delano, 64 L.R.A. 279, which holds power to tax exer-

cise of power of appointment by will not destroyed by fact that power of appointment was created by deed before passage of the statute providing for the tax.

Cited in notes (33 L.R.A.(N.S.) 243, 244, 248; 127 Am. St. Rep. 1055, 1071, 1072) on inheritance or succession tax on property covered by power of appointment.

52 L. R. A. 437, McGUIRE v. BELL TELEPH. CO. 167 N. Y. 208, 60 N. E. 433.

Exceptions surviving unanimous affirmance.

Cited in People v. Lambrix, 204 N. Y. 263, 97 N. E. 524, holding that exception to court's refusal to charge as requested by defendant survives unanimous affirmance by appellate division.

Injury to lineman through defect in pole.

Followed in Riker v. New York, O. & W. R. Co. 64 App. Div. 357, 72 N. Y. Supp. 168, holding the defendant company liable for injuries to lineman by the falling of pole because same was improperly placed, where there was no evidence that same could not have been discovered by inspection.

Cited in Terrell v. Washington, 158 N. C. 296, 73 S. E. 888; Corby v. Missouri & K. Teleph. Co. 231 Mo. 440, 132 S. W. 712,—holding electrical company liable for injury to lineman from fall of pole rotten below ground; Mullin v. Genesee County Electric Light, Power & Gas Co. 202 N. Y. 280, 95 N. E. 689, holding that lineman cannot recover for injury from fall of pole improperly set by polesetters; La Duke v. Hudson River Teleph. Co. 136 App. Div. 138, 120 N. Y. Supp. 171, holding telephone company bound to inspect poles below surface of ground for benefit of servants removing poles; Rowley v. American Illuminating Co. 83 App. Div. 613, 81 N. Y. Supp. 1099, holding it insufficient inspection for company to jab screw driver into telephone pole to ascertain degree of decay though such was the ordinary method of inspection.

Cited in notes (21 L.R.A.(N.S.) 776, 777; 26 L.R.A.(N.S.) 509) on injury to lineman through defect in pole or appurtenances.

Master's duty to inspect.

Cited in Wilson v. Valley Improv. Co. 69 W. Va. 786, 45 L.R.A.(N.S.) 279, 73 S. E. 64, Ann. Cas. 1913B, 791, holding that contractor is not under duty to inspect another's premises upon which his servants are to work; Franck v. American Tartar Co. 91 App. Div. 577, 87 N. Y. Supp. 219, holding master liable for negligent inspection of employe although inspector was shown to be competent; Young v. Mason Stable Co. 193 N. Y. 194, 21 L.R.A.(N.S.) 596, 127 Am. St. Rep. 939, 86 N. E. 15, Affirming 96 App. Div. 313, 89 N. Y. Supp. 349, holding that where the owner of a freight elevator for the use of employes, contracted with a company to regularly inspect and keep in repair his elevator, and the same accidentally injured a servant, the master was not liable; La Duke v. Hudson River Teleph. Co. 124 App. Div. 112, 108 N. Y. Supp. 189 (dissenting opinion), on the same point; Dittman v. Edison Electric Illuminating Co. 87 App. Div. 70, 83 N. Y. Supp. 1078, on inspection required of master; Walsh v. New York & W. C. R. Co. 80 App. Div. 319, 80 N. Y. Supp. 767, holding street railroad bound to inspect sufficiency of pole used to uphold heavy cables for the safety of servants removing cables; Oowell v. Cohoes R. Co. 136 App. Div. 211, 120 N. Y. Supp. 336 (dissenting opinion), majority holding that a street railway company was not liable for injuries to its motorman resulting from defects in tracks of another railroad company over which it operates some of its cars; Newton v. New York C. & H. R. R. Co. 96 App. Div. 83, 89 N. Y. Supp. 23, hold-

ing that negligence in respect to inspection is negligence of master, though inspection is committed to servant.

Distinguished in O'Dougherty v. Postal Teleg.-Cable Co. 134 App. Div. 299, 118 N. Y. Supp. 871, holding that the defendant company was liable for injuries to an employee by the explosion of a boiler upon a scow hired by them from a reputable company to use in laying a submarine cable.

— Delegability.

Approved in Koehler v. New York Steam Co. 183 N. Y. 4, 75 N. E. 538, holding that the duty of inspection is the master's duty and one that cannot be delegated so as to relieve the master from negligence therein.

Cited in McGlynn v. Pennsylvania Steel Co. 144 App. Div. 347, 129 N. Y. Supp. 45, holding that duty of inspection of hoisting cable was not delegable, was continuous, and servant on whom duty was cast was vice-principal; Griffin v. Flank, 132 App. Div. 337, 117 N. Y. Supp. 36, holding that master cannot delegate the duty to inspect so as to relieve himself from liability for the negligent performance of the same.

Cited in footnote to Rincicotti v. John J. O'Brien Contracting Co. 69 L.R.A. 936, which denies master's power to relieve himself of duty to make reasonable inspection of appliances used to aid servants in their work by delegating duty to competent employees.

Assumption of risk.

Cited in Barto v. Iowa Teleph. Co. 126 Iowa, 244, 106 Am. St. Rep. 347, 101 N. W. 876, holding telephone company that allows light company to use its poles is liable to its employes for injuries caused by latter's negligence in wiring poles; Citrone v. O'Rourke Engineering Constr. Co. 188 N. Y. 343, 19 L.R.A. (N.S.) 343, 80 N. E. 1092, holding that the master was not liable for the negligence of his servants in blasting operations, which resulted in injury to a servant employed to remove the blasted stone; Huebner v. Hammond, 80 App. Div. 126, 80 N. Y. Supp. 295, holding employe of steamship ordered to assist in hauling barge along side the steamer assumes risk in going on board barge of the ordinary condition of its deck.

Distinguished in Finnigan v. New York Contracting Co. 122 App. Div. 719, 107 N. Y. Supp. 855, on the assumption of risk of injury through negligent acts of fellow servants; Britton v. Central U. Teleg. Co. 65 C. C. A. 598, 131 Fed. 847, denying telephone company's liability for defective pole where lineman knew company's custom was not to inspect poles in such cases, and he assumed the risk.

Master's duty as to safe place to work.

Cited in Henry v. Hudson & M. R. Co. 201 ... Y. 142, 94 N. E. 623, holding that principle that master must provide safe place applies only where, in conduct of work, master furnishes place.

52 L. R. A. 444, McLENDON v. WOODMEN OF THE WORLD, 106 Tenn. 695, 64 S. E. 36.

Application as part of policy.

Cited in note (19 L.R.A.(N.S.) 89) on what reference to application will make it part of policy.

Completion of contract for fraternal benefit insurance.

Cited in Lathrop v. Modern Woodmen, 56 Or. 448, 106 Pac. 328, holding that delivery of benefit certificate by head officer to camp clerk is not delivery to applicant; Sterling v. Woodmen of the World, 28 Utah. 519, 80 Pac. 375, holding

delivery of benefit certificate to member essential to completion of contract of insurance where by laws so provide.

Cited in notes (17 L.R.A.(N.S.) 1155) on effect of stipulation in application or policy of life insurance that it shall not become binding unless delivered to assured while in good health; (138 Am. St. Rep. 48, 63) on delivery and acceptance of insurance policies.

52 L. R. A. 448, GROVES v. LOUISVILLE R. CO. 109 Ky. 76, 58 S. W. 508.

Liability for tracks or structures in city street.

Cited in Asmus v. United R. Co. 152 Mo. App. 534, 134 S. W. 92, holding that liability of railway for injury to driver from wagon striking switch guard extending two inches above level of street is question for jury; Citizens' R. & Light Co. v. Forepaugh & S. Bros. Shows, 149 Iowa, 360, 128 N. W. 357, holding it duty of street railway to construct track so that surface of street should be level with top of rails; Chicago Union Traction Co. v. Case, 129 Ill. App. 462, holding it to be duty of street railway company to lay and maintain its track in such manner as not to be dangerous to the public; Pugh v. Texarkana Light & Traction Co. 86 Ark. 45, 109 S. W. 1019, on same point; Decatur Waterworks Co. v. Foster, 161 Ala. 180, 49 So. 759, holding that negligence of water company in maintaining water plug in street cannot be excused by showing license from city, and also citing specially annotation on this point.

Cited in footnote to Gerard v. La Crosse City R. Co. 57 L.R.A. 465, which holds street railway company liable for injury due to removing snow from tracks to adjacent roadway in such manner as to render street unsafe for travel.

Cited in notes (15 L.R.A.(N.S.) 840; 24 L.R.A.(N.S.) 567) on liability of street railway for defects in track or street; (23 L.R.A.(N.S.) 751) on liability for injury to person other than passenger or employe by derailment of street car; (33 L.R.A.(N.S.) 127) on frightening horse on highway by locomotive or car running parallel.

Distinguished in Louisville v. Arrowsmith, 145 Ky. 504, 140 S. W. 1022, holding city liable for injury to person alighting from car from defective condition of street.

52 L. R. A. 468, CARTER v. GIBSON, 61 Neb. 207, 85 N. W. 45.

Estoppel to deny validity of acts of trustee.

Cited in Dickson v. New York Biscuit Co. 211 Ill. 491, 71 N. E. 1058, holding beneficiaries estopped to set up invalidity of trustee's sale where they have accepted and retain the proceeds, and sale has been confirmed.

Distinguished in Aho v. Republic Iron & Steel Co. 104 Minn. 325, 116 N. W. 590, holding widow as administratrix de bonis non, not barred from bringing action for negligence causing death of husband, though administrator had made fraudulent settlement, and she had sued him therefore, but action had been dismissed.

Effect of legal remedy to defeat following of trust funds.

Cited in note (6 L.R.A.(N.S.) 795) on effect of legal remedy to defeat equitable jurisdiction to follow trust funds.

Presumption as to judgments.

Cited in Stansbury v. Storer, 70 Neb. 605, 97 N. W. 805, holding that judgments of the district court are presumed to be right and will not be reversed unless error affirmatively appears on the record.

52 L. R. A. 469, UNION BANK & T. CO. v. WRIGHT, — Tenn. —, 58 S. W. 755.

52 L. R. A. 471, THIRD AVE. R. CO. v. BARTON, 46 C. C. A. 241, 107 Fed. 215.

Riding on running board as negligence.

Cited in note (2 L.R.A.(N.S.) 1192) on riding or standing on running board of street car as negligence.

52 L. R. A. 473, FORREST v. VANDERBILT, 46 C. C. A. 611, 107 Fed. 734.

Appurtenances on sale of chattels.

Cited in note (8 L.R.A.(N.S.) 795) on what articles pass as appurtenances upon sale of chattels.

52 L. R. A. 479, LATTA v. LONSDALE, 47 C. C. A. 1, 107 Fed. 585.

52 L. R. A. 481, ILLINOIS TRUST & SAV. BANK v. DOUD, 44 C. C. A. 389, 105 Fed. 123.

Forfeiture of franchise for non user.

Cited in State ex rel. Hadley v. Delmar Jockey Club, 200 Mo. 51, 92 S. W. 185, holding that charter may be declared forfeited where corporation was chartered to hold fair and promote agriculture but has wholly failed to comply with such purpose.

Priorities of subsequent charges under mortgage of corporate property.

Cited in Gay v. Hudson River Electric Power Co. 190 Fed. 807, holding that judgment creditor had no lien on money deposited by corporation to cover claim in accordance with unauthorized order making such deposit condition of discharge of receiver; Gay v. Hudson River Electric Power Co. 182 Fed. 907, holding surety on corporation's supersedeas bond pending appeal from judgment not entitled to preference over bond holders; State Trust Co. v. Kansas City P. & G. R. Co. 120 Fed. 402, on general claims against mortgagor as having no preference.

— Cost of improvements or additions to plant.

Cited in Atlantic Trust Co. v. Dana, 62 C. C. A. 657, 128 Fed. 229, holding that cost of permanent improvements to the property made by receiver under order of court, does not take precedence over prior mortgage: Fordyce v. Omaha, K. C. & E. R. Co. 145 Fed. 545; Roger Ballast Car Co. v. Omaha, K. C. & E. R. Co. 83 C. C. A. 403, 154 Fed. 631,—holding that purchase price of engines and cars has no priority over prior mortgage which covered after acquired property; Hickson Lumber Co. v. Gay Lumber Co. 150 N. C. 288, 21 L.R.A.(N.S.) 846, 63 S. E. 1045, holding that one who loans money to mortgagor to purchase property which will be covered by an existing registered mortgage obtains no priority over such mortgage.

— Labor claims and current expenses.

Cited in Guaranty Trust Co. v. Galveston City R. Co. 46 C. C. A. 305, 107 Fed. 320, holding that receiver may prefer claims, for current expenses of operation of road, over rights of mortgagee in earnings of road; Kansas Loan & T. Co. v. Electric R. Light & P. Co. 108 Fed. 702, holding that preferential claim in favor of one furnishing supplies to railroad arises only where there has been a diversion of earnings which has benefited the mortgagee; Louisville & N. R. Co. v. Memphis Gaslight Co. 60 C. C. A. 141, 125 Fed. 99, denying preference to judgment for fuel furnished gas company over prior mortgage, in the absence of a showing that earnings had been diverted to paying interest on the mort-

gage; Westinghouse Air Brake Co. v. Kansas City Southern R. Co. 71 C. C. A. 1, 137 Fed. 29, holding that mechanics' lien for labor and materials furnished within certain time takes preference over prior mortgage.

Power to create liens by receivers.

Cited in note (83 Am. St. Rep. 74, 77) on power to create liens by receivers.

52 L. R. A. 500, STATE ex rel. SCOTT v. HARVEY, 112 Iowa, 416, 84 Am. St. Rep. 350, 84 N. W. 535.

Exhibiting child to jury as evidence.

Cited in State v. Nathoo, 152 Iowa, 672, 133 N. W. 129, holding it error to exhibit child to jury to establish resemblance, though prosecutrix and defendant are of different races; State v. Stark, 149 Iowa, 750, 129 N. W. 331, Ann. Cas. 1912D, 362, holding it not error to permit child to be with prosecutrix while testifying in bastardy proceedings; State v. Hunt, 144 Iowa, 258, 122 N. W. 902, holding that presence of babe in court with her mother and reference thereto by county attorney is not error; Com. v. Pearl, 33 Pa. Super. Ct. 103 (dissenting opinion), on error in presenting child to jury as an exhibit; State ex rel. Mundt v. Meier, 140 Iowa, 544, 118 N. W. 792, holding it error for counsel to exhibit child to jury during argument and to comment upon its resemblance to alleged father; State v. Danforth, 73 N. H. 218, 111 Am. St. Rep. 600, 60 Atl. 839, 6 Ann. Cas. 557, holding that child may be exhibited to the jury for purpose of showing resemblance to accused in prosecution for rape and citing also full annotation on this point.

Annotation cited in Anderson v. Aupperle, 51 Or. 562, 95 Pac. 330, holding that child three months of age may be exhibited to the jury in action for seduction for purpose of showing resemblance; Cook v. State, 96 Ark. 554, 132 S. W. 455, holding that prosecutrix may produce her child before jury in prosecution for carnal abuse.

52 L. R. A. 505, UNITED STATES use of FIDELITY NAT. BANK v. RUNDLE, 46 C. C. A. 251, 107 Fed. 227.

Effect on surety of judgment against principal.

Cited in notes (132 Am. St. Rep. 768; 40 L.R.A.(N.S.) 747) on effect upon surety of judgment against principal.

52 L. R. A. 509, BOYD v. PORTLAND GENERAL ELECTRIC CO. 37 Or. 567, 62 Pac. 378.

Improper remarks of counsel as ground for reversal.

Cited in Watson v. Southern Oregon Co. 39 Or. 485, 65 Pac. 985, holding improper remarks of counsel no ground for reversal where not objected to nor any exception taken.

Duty as to electric wires.

Cited in Hebert v. Lake Charles Ice, Light & Waterworks Co. 111 La. 529, 64 L.R.A. 105, 100 Am. St. Rep. 505, 35 So. 731, holding it to be absolute duty of electric light company to keep its wires insulated.

Cited in footnotes to Thomas v. Maysville Gas Co. 53 L.R.A. 147, which requires corporation sending electricity into street railway company's wires to see to their insulation; Boyd v. Portland General Electric Co. 57 L.R.A. 619, which holds electric light company liable for injury by wire broken during storm; Hebert v. Lake Charles Ice, Light & Waterworks Co. 64 L.R.A. 101, which holds electric light company conveying electricity by overhead wires bound to keep

them insulated so as to guard against effect of objects coming in contact with them.

Cited in notes (22 L.R.A.(N.S.) 1174) on injuries from electric wires in highway; (100 Am. St. Rep. 517) on duties and liabilities of electric corporations; (1 Brit. Rul. Cas. 808) on duty to protect traveler from electricity from wires on highway.

Proof of death by electric shock.

Cited in Ohrstrom v. Tacoma, 57 Wash. 128, 106 Pac. 629, holding evidence that deceased fell in immediate vicinity of light which he went to turn on and that body was burnt and showed other evidence of electric shock, sufficient to show that death was caused by electric shock.

52 L. R. A. 512, KOEBER v. SOMERS, 108 Wis. 497, 84 N. W. 991.

Implied covenants.

Followed in Hunter v. Hathaway, 108 Wis. 625, 84 N. W. 996, holding no covenants implied in lease for more than three years.

Cited in Koch v. Hustis, 113 Wis. 603, 87 N. W. 834, holding covenant to repair not implied in deed of land bounded by mill race and with right to draw water therefrom.

Lease as conveyance.

Cited in note (11 L.R.A.(N.S.) 99) on lease as conveyance.

Privileged communications between attorney and client.

Cited in Herman v. Schlesinger, 114 Wis. 393, 91 Am. St. Rep. 922, 90 N. W. 460, holding that privilege does not extend to communications between attorney and third person in presence of client and while transacting business for him; Re Downing, 118 Wis. 590, 95 N. W. 876, holding admissible testimony of attorney, who draws and witnesses a will, as to matters relating to its execution.

Distinguished in Re Hunt, 122 Wis. 468, 100 N. W. 874, holding inadmissible testimony of physician as to mental competency of testatrix, based wholly upon information obtained while treating her professionally and for purpose of such treatment.

52 L. R. A. 518, SYLVESTER v. WEBB, 179 Mass. 236, 60 N. E. 495.

Validity of public contracts involving action of interested person.

Cited in Smith v. Dandridge, 98 Ark. 42, 34 L.R.A.(N.S.) 135, 135 S. W. 800, Ann. Cas. 1912D, 1130, denying injunction against payment of compensation for necessary personal services of school director, outside duties of office as director; Seward v. Revere Water Co. 201 Mass. 456, 87 N. E. 749, holding contract with water company for purchase of its plant not void because an officer of the company acted as moderator and appointed committees at meeting where the purchase was decided upon.

Cited in note (34 L.R.A.(N.S.) 131) on obligation of public corporation to pay for services under contract in which officer personally interested.

52 L. R. A. 520, STORTI v. COM. 178 Mass. 549, 60 N. E. 210.

Punishment for crime of murder.

Followed in Storti's Case, 180 Mass. 59, 61 N. E. 759, holding that mode of confinement is not a part of the punishment.

Right of executive officer to fix date of criminal's execution.

Cited in note (14 L.R.A.(N.S.) 269) on right of executive officer to fix date of criminal's execution.

52 L. R. A. 523, IN RE PRESTON, 63 Ohio St. 428, 81 Am. St. Rep. 642, 59 N. E. 101.

Liberty of contract.

Cited in State v. Kreutzberg, 114 Wis. 543, 58 L.R.A. 748, 91 Am. St. Rep. 934, 90 N. W. 1098, holding invalid act making it an offense to discharge employee because member of labor union.

Cited in footnote to Toney v. State, 67 L.R.A. 286, which holds void, statute making it a misdemeanor for one under contract to labor to enter into new contract with third person without former employer's consent and a sufficient excuse.

52 L. R. A. 525, BRAYTON v. CLEVELAND SPECIAL POLICE CO. 63 Ohio St. 83, 57 N. E. 1085.

Action for slander of corporation.

Cited in Hapgoods v. Crawford, 125 App. Div. 857, 110 N. Y. Supp. 122, holding that corporation cannot maintain action for slander where by innuendo it alleges that the slanderous words were spoken of and concerning its officers and stockholders.

Cited in note (2 L.R.A.(N.S.) 742) on right of corporation to sue for libel.

52 L. R. A. 530, STATE v. INTERSTATE SAV. INVEST. CO. 64 Ohio St. 283, 83 Am. St. Rep. 754, 60 N. E. 220.

What constitutes a lottery.

Followed in Heintz v. Sawyer, 5 Ohio C. C. N. S. 250, 27 Ohio C. C. 12, Affirming 1 Ohio N. P. N. S. 150, 13 Ohio S. & C. P. Dec. 720, on the validity of the contracts of investment known as the "numeral apart" plan; Harrington v. Halliday, 4 Ohio N. P. N. S. 284, 17 Ohio S. & C. P. Dec. 42, on what constituted a lottery scheme.

Cited in footnotes to State ex rel. Prout v. Nebraska Home Co. 60 L.R.A. 448, which holds scheme by which common fund is distributed among contributors, a valuable preference in distribution depending on chance, a lottery; Equitable Loan & Secur. Co. v. Waring, 62 L.R.A. 93, which holds consideration, prize and chance essential elements of lottery; People ex rel. Ellison v. Lavin, 66 L.R.A. 601, which holds distribution of prizes to those who shall make closest estimate of number of cigars on which tax is paid during specified month, a lottery; People v. McPhee, 69 L.R.A. 506, which holds a scheme by which a certain number of persons pay a small sum weekly and choose by lot each week one of the number to receive a suit of clothes worth much more than the weekly payment after which he ceases to be a member, a lottery, although each member is entitled to trade out the amount paid in whenever he chooses to withdraw.

Cited in note (13 L.R.A.(N.S.) 1096) on accumulating money by payments of member, and distributing it in order of number of certificate, as a lottery.

— Pseudo investment scheme.

Cited in State v. United States Exp. Co. 95 Minn. 449, 104 N. W. 556, holding that company issuing certificates depending upon lapses and new business for payment, and upon chance as to time of redemption is conducting a lottery scheme; Fidelity Funding Co. v. Vaughn, 18 Okla. 26, 10 L.R.A.(N.S.) 1123, 90 Pac. 34, holding void investment contract depending upon lapses and new contracts for funds for its payment and also having a prize feature; People v. McPhee, 139 Mich. 691, 69 L.R.A. 505, 103 N. W. 174, 5 Ann. Cas. 835, holding void as lottery tailor's club where each member paid a dollar weekly and one

member whose name was drawn received a suit, though all would eventually receive suits; Everhart v. United Invest. & Redemption Co. 8 Ohio N. P. 526, 11 Ohio S. & C. P. Dec. 688, on the validity of sales of certificates and debentures on the partial payment plan.

Distinguished in Atty. Gen. v. Preferred Mercantile Co. 187 Mass. 519, 73 N. E. 669, holding issuing of obligations redeemable in numerical order not to constitute a lottery though payment depends upon lapses and new business; Equitable Loan & Secur. Co. v. Waring, 117 Ga. 615, 62 L.R.A. 93, 97 Am. St. Rep. 177, 44 S. E. 320, holding investment scheme not to be a lottery though depending to some extent upon lapses, and though time of redemption of certificates depended upon a number scheme.

— Right to relief in equity.

Cited in Christian v. Michigan Debenture Co. 134 Mich. 178, 96 N. W. 22, holding that person, induced to invest in lottery scheme which does not appear fraudulent upon its face, is not barred from relief in equity.

52 L. R. A. 545, SMITH v. SMITH, 163 N. Y. 168, 57 N. E. 300.

Admissibility of account books as evidence.

Cited in Hurley v. Macy, 94 App. Div. 12, 87 N. Y. Supp. 924, holding accounts kept by bookkeeper from items furnished by party in charge of work, admissible where the latter testified to giving in the items correctly, but neither could testify as to amounts from memory; State Bank v. Brown, 165 N. Y. 222, 53 L.R.A. 522, 59 N. E. 1, holding account books inadmissible in absence of proper foundation laid; Wright v. Hicks, 61 App. Div. 490, 70 N. Y. Supp. 675; Stone v. Cronin, 72 App. Div. 566, 76 N. Y. Supp. 605,—holding account books inadmissible in absence of evidence that accounts were settled from them; Rathborne v. Hatch, 80 App. Div. 119, 80 N. Y. Supp. 347, holding book of accounts inadmissible in absence of evidence that the books were fairly and honestly kept; Collins v. Carlin, 106 App. Div. 207, 94 N. Y. Supp. 317, holding time book not admissible though person who kept it is dead where entries were made from time given in by timekeepers or the men themselves, and their absence was unexplained; Gregory v. Jones, 101 Mo. App. 284, 73 S. W. 899, holding entries in memorandum book of payments on note not admissible, because not proper subjects of book accounts; Tredwell v. Smith, 136 App. Div. 900, 120 N. Y. Supp. 1148, on inadmissibility of entries in book purporting to have been kept by deceased.

Cited in footnote to Callihan v. Washington Water Power Co. 56 L.R.A. 772, which holds street car conductor's trip report as to fares taken admissible in corroboration of his testimony as to nonreceipt of transfer on trip.

Cited in notes (33 L.R.A.(N.S.) 552) on effect of calling for and inspecting document to make it competent; (36 L.R.A.(N.S.) 899) on admissibility upon bookkeeper's testimony of entries in party's books of account, based upon other's statements; (37 L.R.A.(N.S.) 1171) on admissibility of insurance agent's memorandum or letters; (138 Am. St. Rep. 444, 445, 448) on admissibility in evidence of books of account.

— "Clerk" or keeper or books.

Cited in Radcliffe v. Chaves, 15 N. M. 266, 110 Pac. 699, holding that physician's wife who made from time to time entries in his books of account from his dictation is not clerk; Van Name v. Barber, 115 App. Div. 595, 100 N. Y. Supp. 987, holding that clerk employed to take orders and deliver groceries is not such clerk as will render books of account inadmissible.

52 L. R. A. 552, POST v. KENERSON, 72 Vt. 341, 82 Am. St. Rep. 948, 47 Atl. 1072.

Admissibility of book entries.

Cited in Murray v. Dickens, 149 Ala. 245, 42 So. 1031, holding admissible entries made within reasonable time pursuant to report by another who testified that he reported the items correctly; Freehart v. Stanford, 77 Vt. 39, 58 Atl. 790, on character of book and course of business between the parties as governing admissibility of book entries.

Annotation cited in San Francisco Teaming Co. v. Gray, 11 Cal. App. 318, 104 Pac. 999, holding inadmissible entries in book made by bookkeeper pursuant to oral statements to him by teamsters who were not called to testify.

Cited in note (138 Am. St. Rep. 450) on admissibility in evidence of books of account.

52 L. R. A. 611, BASSETT v. FAIRCHILD, 132 Cal. 637, 61 Pac. 791, 64 Pac. 1082.

Right of officer of corporation to recover for services.

Cited in Taussig v. St. Louis & K. R. Co. 166 Mo. 34, 89 Am. St. Rep. 674, 65 S. W. 969, holding director entitled to compensation for services rendered to corporation, upon its request as attorney in legal matters; Bell v. Peper Tobacco Warehouse Co. 205 Mo. 492, 103 S. W. 1014, holding director entitled to recover for services outside of his duties as director, rendered to the corporation with understanding that they were to be paid for; Wagner v. Edison Electric Illuminating Co. 141 Mo. App. 73, 121 S. W. 329; Wagner v. Edison Electric Illuminating Co. 177 Mo. 62, 75 S. W. 966,—holding that where a number of electric companies act jointly through a committee, and the committee appoint one of its own members as engineer, the latter may recover from companies other than his own, for services rendered where he acts with understanding that he is to be paid therefor.

Cited in note (136 Am. St. Rep. 921, 923) on right of corporate officers to compensation for services rendered.

Distinguished in Miller v. Crown Perfumery Co. 57 Misc. 394, 109 N. Y. Supp. 760, holding that president and secretary of a corporation being a majority of the directors can not vote themselves salaries as against right of stock holders.

Validity of contract where director is interested adversely to his corporation.

Cited in Parsons v. Tacoma Smelting & Ref. Co. 25 Wash. 498, 65 Pac. 765, holding lease voted by majority of trustees invalid at suit of stock holder where vote of trustee who was also interested as lessee was necessary to constitute such majority.

52 L. R. A. 621, WRIGHT v. HOLLYWOOD CEMETERY CORP. 112 Ga. 884, 38 S. E. 94.

Right of lot owner in cemetery.

Cited in McDonald v. Butler, 10 Ga. App. 848, 74 S. E. 573, holding that lot owner can recover damages against person wrongfully disinterring remains of persons buried therein; Hertle v. Riddell, 127 Ky. 630, 15 L.R.A.(N.S.) 798, 128 Am. St. Rep. 364, 106 S. W. 282, holding cemetery lotowner entitled to mandatory injunction to compel removal of carcass of dog buried in the cemetery where by laws provided that it was "set apart for burial of the white race, and to be used for cemetery purposes only."

Cited in note (67 L.R.A. 124) on character of estate or property of owner in burial lot.

Rights in dead bodies.

Cited in Wilson v. St. Louis & S. F. R. Co. 160 Mo. App. 657, 142 S. W. 775, holding that action will lie to recover damages from railroad for inhuman and malicious manner in which casket containing plaintiff's wife was handled; Louisville & N. R. Co. v. Wilson, 123 Ga. 67, 51 S. E. 24, 3 Ann. Cas. 128; Kyles v. Southern R. Co. 147 N. C. 400, 16 L.R.A.(N.S.) 407, 61 S. E. 278,—holding that widow may maintain action for the mutilation of the dead body of her husband; Koerber v. Patek, 123 Wis. 459, 68 L.R.A. 959, 102 N. W. 40, holding that son, having right of burial, may maintain action for mutilation of the dead body of his mother.

Cited in footnotes to Enos v. Snyder, 53 L.R.A. 221, which holds next of kin entitled to decedent's body for burial, as against disposition by will; McEntee v. Bonacum, 60 L.R.A. 440, which holds next of kin of unmarried person entitled to custody of body and to decide on place of burial; Pettigrew v. Pettigrew, 64 L.R.A. 179, which sustains widow's right to control interment of intestate husband's corpse; Koerber v. Patek, 68 L.R.A. 956, which holds that legal right to bury corpse vests in nearest relative of decedent so situated as to be able and willing to perform the duty.

When exemplary damages recoverable.

Cited in Southern R. Co. v. O'Bryan, 119 Ga. 149, 45 S. E. 1000, holding exemplary damages recoverable only in case of wilful misconduct, malice, fraud, or gross want of care.

Cited in note (16 L.R.A.(N.S.) 442) on necessity of actual malice to justify exemplary damages for tort.

Review by direct bill of exceptions.

Cited in Webb v. Hicks, 117 Ga. 342, 43 S. E. 738, holding ruling of court directing verdict reviewable by direct bill of exceptions; Lyndon v. Georgia R. & Electric Co. 129 Ga. 361, 58 S. E. 1047, holding that refusal to allow amendment, thereby cutting off material part of case, is a controlling ruling which may be brought up by direct bill; Henderson v. State, 123 Ga. 747, 51 S. E. 764, on what constitutes a controlling ruling; Cawthon v. State, 119 Ga. 396, 46 S. E. 897 (dissenting opinion) on rulings and orders not being reviewable by direct bill of exceptions where not controlling; Benton v. Singleton, 114 Ga. 558, 58 L.R.A. 187, 40 S. E. 811, on conclusiveness of rulings where not excepted to nor assigned as error.

Effect of error in overruling demurrer.

Cited in Morgan v. Gibian, 115 Ga. 146, 41 S. E. 495, on subsequent proceedings being nugatory where court erred in overruling a demurrer.

Right to appeal from unfavorable part of decree.

Cited in note (29 L.R.A.(N.S.) 28) on right to appeal from unfavorable while accepting favorable part of decree, judgment or order.

52 L. R. A. 626, KILEY v. CHICAGO CITY R. CO. 189 Ill. 384, 82 Am. St. Rep. 460, 59 N. E. 794.

Right of recovery for expulsion from car.

Cited in Randell v. Chicago, R. I. & P. R. Co. 102 Mo. App. 354, 76 S. W. 493, on force permissible in expelling a person from a car; Peoria & P. Terminal R. Co. v. Hoerr, 120 Ill. App. 66, on right of conductor to eject person refusing to pay fare.

Distinguished in Devine v. Chicago C. R. Co. 141 Ill. App. 586, holding company liable where conductor used unnecessary force and violence in expelling from car person refusing to pay fare.

— For presentation of bad transfer or ticket.

Cited in Burn v. Chicago, B. & Q. R. Co. 153 Ill. App. 325, holding that passenger presenting ticket on day other than its date may be ejected: Norton v. Consolidated R. Co. 79 Conn. 114, 118 Am. St. Rep. 132, 63 Atl. 1087, 6 Ann. Cas. 943, holding that person may be expelled for failure to pay fare though he hold transfer which, but for error of conductor issuing it, would be good: Montgomery Traction Co. v. Fitzpatrick, 149 Ala. 514, 9 L.R.A.(N.S.) 853, 43 So. 136, on same point: Shelton v. Erie R. Co. 73 N. J. L. 562, 9 L.R.A.(N.S.) 729, 118 Am. St. Rep. 704, 66 Atl. 403, 9 Ann. Cas. 883, holding person not entitled to recover for expulsion from train where he presented ticket which showed that it had expired, though he paid full fare for the ticket and it should have been unlimited; Hornesby v. Georgia R. & Electric Co. 120 Ga. 915, 48 S. E. 339, 1 Ann. Cas. 391, holding person ejected from car when presenting transfer on which time limit has expired, not entitled to recover though delay was caused by initial car, but he failed to try to get new transfer.

Cited in footnotes to Southern R. Co. v. Wood, 55 L.R.A. 536, which holds carrier liable for ejection of passenger whose round-trip ticket was unstamped through inability to find agent: United R. & Electric Co. v. Hardsty, 57 L.R.A. 275, which denies carrier's duty to accept coupon detached from commutation book.

Cited in notes (7 L.R.A.(N.S.) 98) on rights and duties of passenger receiving defective transfer: (118 Am. St. Rep. 463, 464) on duties and liabilities of street railway companies toward passengers; (122 Am. St. Rep. 645) on liability of railroad companies for negligence, mistakes, and misrepresentations of ticket agents.

Distinguished in Arnold v. Rhode Island Co. 28 R. I. 120, 125 Am. St. Rep. 721, 66 Atl. 60, holding that passenger, holding transfer good on the car where presented, may resist expulsion and may recover damages where violently expelled.

Disapproved in Morrill v. Minneapolis Street R. Co. 103 Minn. 370, 123 Am. St. Rep. 341, 115 N. W. 395, holding that action for expulsion from car will lie where passenger presented transfer which was, through fault of conductor who issued it, not good for passage.

— Mistake of conductor taking fare.

Cited in Breen v. St. Louis Transit Co. 108 Mo. App. 449, 83 S. W. 998, holding that passenger tendering fare in good coin which conductor refuses in belief that it is counterfeit, may recover for expulsion from car though done without unnecessary force.

Cited in footnote to Lawshe v. Tacoma R. & P. Co. 59 L.R.A. 350, which sustains right to substantial damages for ejection from street car due to unnoticed mistake in transfer slip given by other conductor.

Ejection of patron from public place.

Cited in People v. Hart, 156 Ill. App. 527, holding that ticket-holder may be ejected from automobile show on refusal to leave after re-entering after closing hours.

52 L. R. A. 628, MADDOX v. MADDOX, 189 Ill. 152, 82 Am. St. Rep. 431, 59 N. E. 599.

Cruelty as ground for divorce.

Cited in Trenchard v. Trenchard, 245 Ill. 315, 92 N. E. 243, holding that bad

temper, want of civil attentions and use of rude, angry and abusive language do not constitute extreme and repeated cruelty.

Cited in footnote to Ring v. Ring, 62 L.R.A. 878, which holds habitual and intemperate use of morphine not cruel treatment entitling other spouse to divorce.

52 L. R. A. 630, BETSER v. BETSER, 186 Ill. 537, 78 Am. St. Rep. 303, 58 N. E. 249.

Right of wife to sue for alienation of husband's affections.

Followed in Smith v. Gillapp, 123 Ill. App. 123, holding that wife may maintain suit against person for alienating her husband's affections.

Cited in Golden v. Gartleman, 159 Ill. App. 339; Dodge v. Rush, 28 App. D. C. 152, 8 Ann. Cas. 671; Nolin v. Pearson, 191 Mass. 290, 4 L.R.A.(N.S.) 649, 114 Am. St. Rep. 605, 77 N. E. 890, 6 Ann. Cas. 658; King v. Hanson, 13 N. D. 97, 99 N. W. 1085,—holding that wife may maintain suit for alienation of her husband's affections and consequent loss of his society and support; Lonstorf v. Lonstorf, 118 Wis. 167, 95 N. W. 961 (dissenting opinion), on wife's right of action for the alienation of her husband's affections and for loss of his consortium.

52 L. R. A. 632, WILSON v. CARLINVILLE NAT. BANK, 187 Ill. 222, 58 N. E. 250.

Liability of bank in making collections.

Cited in Pinkney v. Kanawha Valley Bank, 68 W. Va. 269, 32 L.R.A.(N.S.) 995, 69 S. E. 1012, Ann. Cas. 1912 B, 115, holding that fact that drawee bank is only bank at place constitutes no exception to general rule of negligence in sending checks direct to drawee bank.

Cited in footnote to Second Nat. Bank v. Merchants' Nat. Bank, 55 L.R.A. 273, which holds bank negligent in sending note for collection to bank whose cashier is treasurer of corporation maker, without hearing from similar note previously sent.

Cited in notes (2 L.R.A.(N.S.) 196) on validity of custom to send paper to drawee for collection; (18 L.R.A.(N.S.) 443) on sending check directly to drawee bank.

Distinguished in First Nat. Bank v. Bank of Whittier, 221 Ill. 329, 77 N. E. 563, 5 Ann. Cas. 653; Winchester Mill. Co. v. Bank of Winchester, 120 Tenn. 239, 18 L.R.A.(N.S.) 447, 111 S. W. 248,—holding collecting bank liable for loss where check was sent directly to drawee bank for collection, though there was no other bank in the place.

52 L. R. A. 634, SCHROEDER v. JOLIET, 189 Ill. 48, 59 N. E. 550.

Damages under eminent domain.

Cited in note (109 Am. St. Rep. 911) on what constitutes "damage" to property within provision that property shall not be taken or damaged for public use without compensation.

— Deduction for benefits.

Cited in Re New York, 190 N. Y. 355, 16 L.R.A.(N.S.) 337, 83 N. E. 299, 13 Ann. Cas. 598, holding that where land is taken by eminent domain, the owner is entitled to full value of land taken without deduction for benefits resulting to his remaining land.

Cited in footnote to Beveridge v. Lewis, 59 L.R.A. 581, which denies right to deduct benefits from damages in exercise of eminent domain by individual.

Cited in note (9 L.R.A.(N.S.) 815, 839) on right to set off benefits against damages on condemnation.

— Damage to lateral support.

Cited in Barry v. Chicago, I. & St. L. Short Line R. Co. 149 Ill. App. 627, holding that where land is injured by cave in, caused by railroad excavation the measure of damages is the diminution of value of the land resulting therefrom.

Cited in notes (68 L.R.A. 684, 699, 700, 704, 705) on liability for removal of lateral or subjacent support of land in its natural condition; (5 L.R.A.(N.S.) 1087) on removal of lateral support as damage for injury within constitutional provision against taking, etc., without compensation; (12 L.R.A.(N.S.) 698) on liability of municipality for injury to lateral support in making street improvements.

— Nonabutting owner.

Cited in Damkoehler v. Milwaukee, 124 Wis. 152, 101 N. W. 706, holding that non-abutting owner may recover for loss of lateral support to his lot caused by negligence of city in excavating and grading street.

52 L. R. A. 637, BORROWERS' & I. B. ASSO. v. EKLUND, 190 Ill. 257, 60 N. E. 521.

Usury in building association loans.

Cited in Laidley v. Cram, 96 Mo. App. 586, 70 S. W. 912, on method of calculating interest on Building and Loan Association contracts as to usury; Collins v. Cobe, 202 Ill. 471, 66 N. E. 1079, holding borrower estopped to set up invalidity of by-law and consequent usury, where he applied for the loan specifically under that by-law.

Cited in footnotes to Gray v. Baltimore Bldg. & L. Asso. 54 L.R.A. 217, which holds percentage payable to loan association indefinitely, usurious though called "premium;" Floyd v. National L. & Invest. Co. 54 L.R.A. 536, which holds contract with foreign loan association not within exemption of domestic associations as to usury unless in conformity to local law; Pacific Sav. Loan & Bldg. Co. v. Hill, 56 L.R.A. 164, which holds requirement that borrower bid for stock and pay dues on same, device to cover usury; National Mut. Bldg. & L. Asso. v. Brahan, 57 L.R.A. 793, which holds usury in loan by foreign loan association to resident, secured by mortgage on land in state, determined by local law; Washington Nat. Bldg. Loan & Invest. Asso. v. Stanley, 58 L.R.A. 816, which holds exaction of monthly premium which, with interest, exceeding legal rate, unauthorized; Cramer v. Southern Ohio L. & T. Co. 69 L.R.A. 415, which upholds statute empowering loan associations to collect from members such dues, fines, interest, and premium or other assessments although in excess of legal interest as may be provided for in the constitution and by-laws.

— Irregularly effected loans.

Followed in Jamieson v. Jurgens, 195 Ill. 89, 62 N. E. 917, Affirming 97 Ill. App. 557, holding loan usurious where premium and interest amount to more than legal rate and loan was not made by competitive bids as required by statute.

Cited in Home Bldg. & L. Asso. v. McKay, 217 Ill. 557, 108 Am. St. Rep. 263, 75 N. E. 569, Reversing 118 Ill. App. 586, holding that building and loan associations may charge more than legal rate of interest on contracts made in compliance with statutes governing such associations; Free Home Bldg. L. & Homestead Asso. v. Edwards, 223 Ill. 135, 79 N. E. 64, Affirming 124 Ill. App. 191; Cobe v. Guyer, 237 Ill. 570, 86 N. E. 1088, Reversing 139 Ill. App. 580,—holding that exemption of loans by Building and Loan Association from usury law applies only to such

loans as are made pursuant to provision of act governing such societies; Garlick v. Mutual Loan & Bldg. Asso. 236 Ill. 234, 86 N. E. 236, Affirming 129 Ill. App. 402, on same point; Assets Realization Co. v. Heiden, 117 Ill. App. 466, holding contract providing for fixed premium which with interest exceeded legal rate, usurious where statute did not authorize contracts with fixed premium; Sargent v. Home Bldg. & L. Asso. 114 Ill. App. 400, holding same in case of fixed premium where money was not offered in open meeting as required by law; Garlick v. Mutual Loan & Bldg. Asso. 116 Ill. App. 315; Cobe v. Airey, 125 Ill. App. 55, —holding loan usurious where made at more than legal rate by building and loan association without complying with regulations prescribed by statute for making loans.

Distinguished in Savage v. Evanston Sav. & L. Asso. 228 Ill. 435, 81 N. E. 1062, Affirming 128 Ill. App. 654, holding that bidder need not be present but may submit bid in writing, and competitive bidding is sufficient though all bidders were accommodated.

— Application of payments on usurious contract.

Cited in Estey v. Capitol Invest. Bldg. & L. Asso. 131 Mich. 506, 91 N. W. 753, holding that money paid as interest on usurious contract should be applied as payments on the principal.

52 L. R. A. 641, RE QUA v. GRAHAM, 187 Ill. 67, 58 N. E. 357.

Rights of creditors to trust funds.

Cited in Binns v. La Forge, 191 Ill. 608, 61 N. E. 382, holding that creditors can not reach trust fund placed by third person in hands of trustee for benefit of debtor for life.

Cited in note (11 L.R.A.(N.S.) 381) on right of creditors or personal representatives to make or control election for or against will or between different provisions of will or statute.

Distinguished in Linn v. Downing, 216 Ill. 75, 74 N. E. 729, holding that equity will not aid creditor to reach trust fund bequeathed to husband where it would injure the rights of his children in the fund.

Rights under will.

Cited in Koelling v. Foster, 150 Ill. App. 136, holding that rights of one taking under will are governed by its provisions.

Effect of renunciation.

Cited in Dunshee v. Dunshee, 251 Ill. 411, 96 N. E. 298; Lewis v. Sedgwick, 223 Ill. 221, 79 N. E. 14, holding that renunciation of provision of will by widow entitles her to her statutory interest, but it does not affect the will as to the rest of the estate.

Construction of statute adopted from another state.

Cited in People v. Griffith, 245 Ill. 539, 92 N. E. 313, holding that where statute is adopted from another state it is presumed that construction thereof by courts of such state is also adopted; Rhoads v. Chicago & A. R. Co. 227 Ill. 334, 11 L.R.A.(N.S.) 629, 81 N. E. 371, 10 Ann. Cas. 111, holding same but that this only applies to construction in such other state before its adoption in state where in question.

52 L. R. A. 643, BAUERLE v. LONG, 187 Ill. 475, 58 N. E. 458.

Powers of administrators.

Cited in McAuley v. O'Connor, 92 Ill. App. 593, holding that administrator can not bind estate by contract to employ an attorney to assist in settling the estate.

Distinguished in Lawson v. Cobban, 38 Mont. 141, 99 Pac. 128, holding valid agreement signed by one as administrator of an estate and by two others to convey at a future date, land which was part of the estate of which one was administrator.

52 L. R. A. 645, LYMAN v. SUBURBAN R. CO. 190 Ill. 320, 60 N. E. 515.

Validity of contracts for location of railroads or depots.

Cited in Southard v. Arkansas Valley & W. R. Co. 24 Okla. 423, 103 Pac. 750, holding valid note to railroad in aid of construction of line between two given points through certain point; Latham v. Illinois C. R. Co. 253 Ill. 97, 97 N. E. 254, holding that condition in deed to railroad requiring it to maintain depot on certain lot is condition subsequent on breach of which railroad will be ejected; Griswold v. Minneapolis, St. P. & S. Ste. M. R. Co. 12 N. D. 440, 102 Am. St. Rep. 572, 97 N. W. 538, holding condition in grant of land for right of way that depot should always be maintained thereon was lawful; Enid Right of Way & Townsite Co. v. Lile, 15 Okla. 345, 82 Pac. 813 (dissenting opinion), on same point; McCowen v. Pew, 153 Cal. 747, 21 L.R.A.(N.S.) 807, 96 Pac. 893, 15 Ann. Cas. 630, holding valid contract to build railroad over a certain route where there was no provision preventing building on any other route also if desired.

Cited in note (15 L.R.A.(N.S.) 594) on validity of contract of railroad to establish and maintain station.

Distinguished in Chicago & E. I. R. Co. v. People, 222 Ill. 407, 78 N. E. 784, holding that railroad has right to abandon a depot used for a number of years and establish a new one in another location; Farrington v. Stuckey, 7 Ind. Terr. 385, 104 S. W. 647, holding valid agreement by railroad company to construct its line through a city on consideration of a bonus from such city.

52 L. R. A. 649, GLOBE MUT. L. INS. ASSO. v. WAGNER, 188 Ill. 133, 80 Am. St. Rep. 169, 58 N. E. 970.

Effect of untrue statements in application for insurance.

Cited in Fraternal Tribunes v. Hanes, 100 Ill. App. 4, holding policy not avoided by untrue statement as to prior rejection, such statement being a mere representation and not material to the risk; Provident Sav. Life Assur. Soc. v. Cannon, 103 Ill. App. 551, holding that policy will not be forfeited for matter within knowledge of agent taking the application regardless of warranties therein.

Distinguished in Supreme Lodge, O. C. K. v. McLaughlin, 108 Ill. App. 93, holding policy avoided by untrue statements in regard to prior rejection for insurance and medical examinations in which he was informed that he had consumption.

— As to family history.

Cited in Globe Mut. L. Ins. Asso. v. March, 118 Ill. App. 264, holding that statement as to cause of death of parent is a representation only, and if untrue does not avoid policy unless applicant knew it to be untrue; Bagby v. Court of Honor, 151 Ill. App. 377, holding that untrue statements as to cause of death of applicant's parents do not avoid the policy as a matter of law, if made in good faith in belief that they are true.

Representation or warranty in insurance.

Cited in Iowa L. Ins. Co. v. Haughton, 46 Ind. App. 477, 87 N. E. 702, holding that warranty is created only by most unequivocal language and where words will admit of two interpretations that most favorable to insured will be adopted; Kidder v. Supreme Assembly, A. S. E. 154 Ill. App. 492; Rayner v. Modern Bro-

therhood, 157 Ill. App. 519,—holding that statements by applicant to best of his knowledge and belief concerning health, medical history, etc., were representations; Pelican v. Mutual L. Ins. Co. 44 Mont. 287, 119 Pac. 778, holding that statement by insured as to his condition of health is not warranty; Provident Sav. Life Assur. Soc. v. Cannon, 103 Ill. App. 545, holding that in case of doubt, statements will be construed to be representations only; Metropolitan L. Ins. Co. v. Moravec, 116 Ill. App. 276, holding that unanswered statements will not be held to be warranties; North American Acci. Ins. Co. v. Rehacek, 123 Ill. App. 220, holding statement that applicant carried no other accident insurance to be a representation only though designated as a warranty; Court of Honor v. Clark, 125 Ill. App. 492, holding answers not warranties though designated as such where followed by clause as to effect of fraudulent or untrue statements in such application; Minnesota Mut. L. Ins. Co. v. Link, 131 Ill. App. 95, holding answers not warranties where policy itself repeatedly refers too such "answers and representations."

Cited in note (11 L.R.A.(N.S.) 985) on statements as representations, although expressly denominated in policy as warranties.

— Burden of proof of falsity.

Cited in Provident Sav. Life Assur. Soc. v. Cannon, 103 Ill. App. 540, holding that falsity of statements is a matter of defense to be shown by insurer.

52 L. R. A. 652, HEINMAN v. KINNARE, 190 Ill. 156, 83 Am. St. Rep. 123, 60 N. E. 215.

Contributory negligence as a matter of law.

Cited in Straus v. National Live Stock Bank, 163 Ill. App. 352, holding purchaser of drafts guilty of contributory negligence as matter of law; Illinois Steel Co. v. Olste, 214 Ill. 185, 73 N. E. 422, holding that if from the facts admitted in a given case or conclusively proved, there is not substantial ground for reasonable minds to reach different conclusions upon a question, then such question may become one of law; O'Hern v. Chicago City R. Co. 151 Ill. App. 211, holding that a person who seeks to cross ahead of an approaching street car by running to pass in front of it, is guilty of contributory negligence as a matter of law; Blumenthal v. Boston & M. R. Co. 97 Me. 260, 54 Atl. 747, holding that where the conclusions from the evidence showed only one of two things, that plaintiff failed to look before crossing the tracks, or else did look and took his chances, it was proper to direct a nonsuit because of negligence.

Distinguished in Commonwealth Electric Co. v. Melville, 210 Ill. 78, 70 N. E. 1052, holding that the plaintiff's contributory negligence was for the jury where the defendant company placed an electric light wire along under a sidewalk, and the plaintiff seeing a fire under it crawled under and was injured by coming in contact with the wire, which he did not know was there.

— As to children.

Cited in Fortier v. Fair, 153 Ill. App. 204, holding contributory negligence of child under sixteen no defense, where he was injured because of employment in violation of statute; Hanna v. Iowa C. R. Co. 129 Ill. App. 138, holding a boy twelve years of age, who fully comprehended the danger, was guilty of contributory negligence as a matter of law, in going upon a floating log; Lake Erie & W. R. Co. v. Klinkrath, 227 Ill. 442, 81 N. E. 377, holding an instruction erroneous which was that if a child exercised such care and caution as children of her age, capacity, and intelligence are capable of, under the same circumstances, she was not guilty of contributory negligence, since it left out the question of the plain-

tiff's experience which had been shown; Chicago City R. Co. v. Tuohy, 95 Ill. App. 318, holding that it is a question of fact to determine whether a child is guilty of contributory negligence.

Cited in footnote to Gleason v. Smith, 55 L.R.A. 622, which denies liability for injury by collision with team, to twelve-year-old boy using street as playground.

Duty owed to trespassers.

Cited in McAllister v. Jung, 112 Ill. App. 146, holding that the owner of premises owes no duty to keep the same in repair as to trespassers, and the only duty he owes is to refrain from wilful injury; Linnberg v. Rock Island, 136 Ill. App. 499, holding same except in case of infant trespassers and attractive nuisances.

Cited in footnote to Kopplekom v. Colorado Cement Pipe Co. 54 L.R.A. 284, which holds owner of unineloscd city lot liable for injury to young child by toppling over of large cement pipe used by children as plaything.

52 L. R. A. 655, WEST CHICAGO STREET R. CO. v. LIDERMAN, 187 Ill. 463, 79 Am. St. Rep. 226, 58 N. E. 367.

Contributory negligence as a defense.

Cited in Straus v. National Live Stock Bank, 163 Ill. App. 352, holding purchaser of drafts guilty of contributory negligence as matter of law; Chicago North Shore R. Co. v. Green, 93 Ill. App. 111, holding that the contributory negligence of the plaintiff is not a bar to recovery where the defendant was guilty of some wilful, wanton act after he had discovered the peril of the plaintiff; Chicago City R. Co. v. McDonough, 125 Ill. App. 240, holding that where the rights of the two parties are equal, and a collision occurs through the contributory negligence of the party injured he cannot recover therefor even though the other were also negligent; Wabash R. Co. v. Jensen, 99 Ill. App. 316, holding that the burden is upon the person seeking to recover to show that the injury resulted from the defendant's negligence and that he himself was free from negligence; Macon v. Holcomb, 205 Ill. 646, 69 N. E. 79, holding that the doctrine of comparative negligence does not exist in Illinois.

Cited in notes (33 L.R.A.(N.S.) 1132) on burden of proof as to contributory negligence; (110 Am. St. Rep. 285) on degree of care required of parents.

Distinguished in Belvidere Gas & Electric Co. v. Boyer, 122 Ill. App. 121, holding that where deceased was killed by a live wire of which he had knowledge, it was a question of fact whether he was guilty of contributory negligence.

Contributory negligence in attempting rescue.

Cited in Mulliken v. Cleveland, C. C. & St. L. R. Co. 164 Ill. App. 39, holding that negligence of mother in attempting to rescue infant son from train was question for jury; Dixon v. New York, N. H. & H. R. Co. 207 Mass. 130, 92 N. E. 1030, holding that negligence in going to rescue of driver struggling to restrain plunging horse on track is question for jury; Whitworth v. Shreveport Belt R. Co. 112 La. 364, 65 L.R.A. 129, 36 So. 414, holding where the plaintiff's intestate was killed in going to the rescue of a companion who was electrocuted while working upon a telephone pole, that the defendant company was liable for the death of the plaintiff's husband since the accident occurred through the defendant company's negligence; Chicago Terminal Transfer R. Co. v. Kotoski, 101 Ill. App. 306, holding that one delaying his escape in order to aid another is not per se contributorily negligent, but it is a question for the jury.

Cited in footnotes to Becker v. Louisville & N. R. Co. 53 L.R.A. 267, which holds boy not negligent in attempting to rescue from approaching train, girl under his

escort falling on railroad bridge; Ryan v. Tower, 55 L.R.A. 310, which denies land owner's duty to make premises safe for one attempting to rescue trespassing child caught in water wheel in unused building; Chattanooga L. & P. Co. v. Hodges, 60 L.R.A. 459, which holds employee re-entering burning building to telephone fire alarm, proximate cause of his death; Pittsburgh, C. C. & St. L. R. Co. v. Lynch, 63 L.R.A. 504, which holds recovery for injuries sustained in effort to save life of imperiled person not defeated by latter's contributory negligence; Saylor v. Parsons, 64 L.R.A. 542, which denies liability of corporation for injury to employee in attempting to rescue one of its members from sudden danger; Whitworth v. Shreveport Belt R. Co. 65 L.R.A. 129, which holds telephone lineman not negligent in going to rescue of fellow servant who has received shock while on telephone pole, due to defective insulation of hanger connecting span wire of electric railway with trolley wire.

Cited in note (27 L.R.A.(N.S.) 1069) on voluntarily incurring danger to save life as contributory negligence.

Peremptory instructions.

Cited in Ewen v. Wilbor, 208 Ill. 499, 70 N. E. 575, holding that a request for a peremptory instruction to find for the defendant was properly refused where offered after argument upon a motion for a verdict for the defendant; Chicago Union Traction Co. v. O'Donnell, 211 Ill. 351, 71 N. E. 1015, holding that the defendant did not waive his right to have reviewed the action of the trial court in refusing a peremptory instruction because it was offered for the first time at the close of all the evidence, or because after its refusal, the court was requested to charge generally as to the law of the case.

52 L. R. A. 660, BROWN v. ODILL, 104 Tenn. 250, 78 Am. St. Rep. 914, 56 S. W. 840.

Agreement to marry by party already married.

Cited in note (1 Brit. Rul. Cas. 922) on agreement to marry where one party already married.

Breach of continuous executory contract.

Cited in Kelly v. Security Mut. L. Ins. Co. 186 N. Y. 19, 78 N. E. 584, 9 Ann. Cas. 661, holding that the rule that a renunciation of a continuous executory contract by one party before the day of performance gives the other party the right to sue at once for damages, does not give a right of action for the wrongful declaration that a contract of insurance was void and forfeited.

Excessive verdicts.

Cited in Arkansas River Packet Co. v. Hobbs, 105 Tenn. 47, 58 S. W. 278, holding that a verdict of four thousand dollars is not an excessive one for an injury to a young man, whereby he is permanently disfigured and his earning capacity reduced about one half.

52 L. R. A. 665, HOME INS. CO. v. HANCOCK, 106 Tenn. 513, 62 S. W. 145.

Waiver by agent of insurer.

Cited in Snyder v. Supreme Ruler, F. M. C. 122 Tenn. 265, — L.R.A.(N.S.) —, 122 S. W. 981, holding that refusal to pay benefit certificate on ground that member's death was due to excessive drinking waives forfeiture on ground that wife obtained divorce; Shotliff v. Modern Woodmen, 100 Mo. App. 149, 73 S. W. 326, holding that there was a waiver of objection to the answer of an applicant where upon the advice of the examining physician he incorrectly answered "No," to a question after a statement of all the facts.

Cited in footnote to Sternaman v. Metropolitan L. Ins. Co. 57 L.R.A. 319, which denies insurer's right to rely on warranty by applicant that answers properly recorded, where medical examiner knew otherwise.

Cited in notes (4 L.R.A.(N.S.) 608) on effect of agent's insertion in application of false answers to questions correctly answered by insured; (16 L.R.A.(N.S.) 1236) on parol-evidence rule as to varying or contracting written contracts, as affected by doctrine of waiver or estoppel as applied to insurance policies; (107 Am. St. Rep. 110) on waiver of provisions of non-waiver or written waiver of conditions and forfeitures in policies.

Avoidance of policy for vacancy.

Cited in footnotes to German Ins. Co. v. Russell, 58 L.R.A. 234, which holds policy absolutely forfeited by premises remaining vacant time specified in policy; Brehm Lumber Co. v. Svea Ins. Co. 68 L.R.A. 110, which holds policy on shingle mill and dry kiln in close proximity divisible as to amounts of indemnity and avoided in entirety by shutting down of mill without permission, though shingles are still transferred into and out of the kiln.

Cited in note (40 L.R.A.(N.S.) 62) on sleeping on premises as preventing their becoming vacant or unoccupied within insurance policy.

52 L. R. A. 668, STATE USE OF NEWMAN v. KIMBROUGH, — Tenn. — , 59 S. W. 1061.

Conflict of laws on divorce.

Cited in note (59 L.R.A. 136) on conflict of laws on divorce.

Presumptions flowing from marriage ceremony.

Cited in note (16 L.R.A.(N.S.) 102) on presumptions flowing from marriage ceremony.

52 L. R. A. 671, COBURN v. NEW TELEPH. CO. 156 Ind. 90, 59 N. E. 324.

Additional servitudes upon highways.

Cited in Frazier v. East Tennessee Teleph. Co. 115 Tenn. 420, 3 L.R.A.(N.S.) 325, 112 Am. St. Rep. 856, 90 S. W. 620, 5 Ann. Cas. 838; Mordhurst v. Ft. Wayne & S. W. Traction Co. 163 Ind. 281, 66 L.R.A. 116, 106 Am. St. Rep. 222, 71 N. E. 642, 2 Ann. Cas. 967,—holding that the operation of an interurban electric railroad upon the streets of a city is not an additional servitude for which the abbutting owners are entitled to compensation; Kinsey v. Union Traction Co. 169 Ind. 604, 81 N. E. 922, (dissenting opinion), on the same point.

Cited in note (106 Am. St. Rep. 267) on what are additional servitudes in highways.

— Telephone lines.

Cited in McCann v. Johnson County Teleph. Co. 69 Kan. 217, 66 L.R.A. 176, 76 Pac. 870, 2 Ann. Cas. 156, holding that the erection and maintenance of a telephone line upon a rural highway is not an additional servitude.

Cited in footnote to Donovan v. Allert, 58 L.R.A. 775, which holds use of street for telephone poles an additional burden.

Title of abutting owner.

Cited in Western U. Teleg. Co. v. Krueger, 30 Ind. App. 30, 64 N. E. 635, holding that the abutting owner has the rights and remedies of a freeholder, as to shade trees growing in front of his property, subject only to the public easement in the street; Hall v. Breyfogle, 162 Ind. 503, 70 N. E. 883, holding that the abutting owner is the owner of the fee to the center of the street subject to the rights of the public to travel same.

Right to maintain action to abate public nuisance.

Cited in Merchants' Mut. Teleph. Co. v. Hirschman, 43 Ind. App. 290, 87 N. E. 238, holding that injury to the abutting owner from loss of business, depreciating the rental value of his premises, is a special injury sufficient to enable him to sue for the removal of a public nuisance.

Sufficiency of complaint.

Cited in Daily v. State, 171 Ind. 651, 87 N. E. 4, holding that under the state code, an action can be commenced only by filing in the clerks office a complaint constituting a cause of action in plain and concise language, which states facts and not conclusions or legal propositions.

52 L. R. A. 675, SHAPARD v. HYNES, 45 C. C. A. 271, 104 Fed. 449.

Effect of removal of chattels upon lien of mortgage.

Cited in F. E. Creelman Lumber Co. v. Lesh, 73 Ark. 18, 83 S. W. 320, 3 Ann. Cas. 108, holding that a lien of a chattel mortgage is not lost because the chattels are removed to another state; Hammels v. Sentous, 151 Cal. 524, 91 Pac. 327, 12 Ann. Cas. 945, holding same where the mortgage was duly recorded under the laws of the state where mortgage was given.

Removal of goods from state as affecting rights of the parties thereto.

Cited in Cooper v. Philadelphia Worsted Co. 68 N. J. Eq. 631, 60 Atl. 352; Studebaker Bros. Co. v. Mau, 13 Wyo. 370, 110 Am. St. Rep. 1001, 80 Pac. 151,—holding that the removal of goods sold under a conditional sale contract does not affect the rights of the parties under the contract where there was nothing in the contract relative to the removal.

Cited in notes (64 L.R.A. 357) on necessity of refiling or rerecording chattel mortgage in state to which property removed; (6 L.R.A.(N.S.) 940) on mortgagee's consent to removal of property from state as affecting lien.

Recovery for wrongful conversion of mortgaged property.

Cited in Bank of Havelock v. Western U. Teleg. Co. 4 L.R.A.(N.S.) 185, 72 C. C. A. 580, 141 Fed. 526, 5 Ann. Cas. 515, holding that a mortgagee may recover for a wrongful conversion of the mortgaged property, though the lien still holds sufficient to secure the debt.

52 L. R. A. 679, STATE v. WILSON, 62 Kan. 621, 64 Pac. 23.

Burden of proof of fact within the knowledge of other party.

Cited in Northrup v. A. G. Wills Lumber Co. 65 Kan. 772, 70 Pac. 879, holding that when the issuance of a license to transact business is a matter of record in a known public office the burden of proof of its nonissuance is upon the party asserting such negative fact; State v. Huff, 75 Kan. 599, 12 L.R.A.(N.S.) 1100, 90 Pac. 279, holding defendant accused of practising medicine without certificate must show he comes within exception of statute as that he is not medical officer of army or navy; Com. v. Standard Oil Co. 129 Ky. 555, 112 S. W. 632, holding that the burden was upon the defendant to prove that oil was up to the standard in a prosecution for selling oil which had been condemned as below standard, and which had been raised it was claimed, above standard.

Direction of verdict or peremptory instruction to find guilt.

Cited in State v. Koch, 33 Mont. 500, 85 Pac. 272, 8 Ann. Cas. 804, holding that even though the evidence conclusively shows the defendant's guilt, the court can not direct a verdict of guilty under a plea of not guilty, since the constitution guarantees a trial by jury.

Cited in note (22 L.R.A.(N.S.) 305) on right to direct verdict of guilty.

52 L. R. A. 684, McDERMOTT v. AMERICAN BREWING CO. 105 La. 124, 83 Am. St. Rep. 225, 29 So. 498.

Liability of master for acts of servant outside of scope of his employment.

Cited in Schmidt v. New Orleans R. Co. 116 La. 322, 7 L.R.A.(N.S.) 175, 40 So. 714, on the liability of the master for the wilful and malicious acts of the servant outside of the scope of his employment; Brenner v. Ford, 116 La. 554, 40 So. 894, holding that the master was not liable for injuries to another by the reckless acts of his servant, where the latter was acting in a manner forbidden by his master, and without the scope of his employment; Steinman v. Baltimore Antiseptic Steam Laundry Co. 109 Ind. 67, 21 L.R.A.(N.S.) 887, 71 Atl. 517, holding that it being against rules of laundry company to deliver goods without collecting the charges therefor, it was not liable for the acts of its deliveryman in committing an assault and battery in attempting to retake goods delivered upon credit.

Cited in footnote to McNamara v. St. Louis Transit Co. 66 L.R.A. 486, which holds exemplary damages against street car company justified by conductor's intentional and unjustified kicking of boy attempting to board car.

Cited in note (21 L.R.A.(N.S.) 884) on responsibility of master for acts of employee in attempting to recover goods delivered at his own risk, without receiving payment.

52 L. R. A. 687, BOYNTON v. EQUITABLE LIFE ASSUR. CO. 105 La. 202, 29 So. 490.

Presumption against suicide.

Cited in Bircher v. Modern Brotherhood, 25 S. D. 329, 126 N. W. 583, holding correct, instruction that plaintiff is entitled to recover unless evidence excludes every reasonable theory except that of suicide; Prudential Ins. Co. v. Dolan, 46 Ind. App. 43, 91 N. E. 970, holding that suicide need not be proved beyond reasonable doubt, but only by preponderance of evidence; Brignac v. Pacific Mut. L. Ins. Co. 112 La. 577, 66 L.R.A. 326, 36 So. 595, holding that the presumption is against suicide where the facts will possibly admit of a different construction; Metropolitan L. Ins. Co. v. De Vault, 109 Va. 403, 63 S. E. 982, 17 Ann. Cas. 27; Shotliff v. Modern Woodmen, 100 Mo. App. 143, 73 S. W. 326; Lindahl v. Supreme Court, I. O. F. 100 Minn. 96, 8 L.R.A.(N.S.) 922, 117 Am. St. Rep. 666, 116 N. W. 358,—holding that the presumption being against suicide, the burden of proving suicide is upon the defendant, and it must be proved by a fair preponderance of evidence, or if proved by circumstantial evidence, in such a manner that all other reasonable hypotheses are excluded; Kane v. Supreme Tent, K. M. W. 113 Mo. App. 118, 87 S. W. 547, holding that the presumption is against suicide and in favor of accidental death; Cosmopolitan L. Ins. Co. v. Koegel, 104 Va. 633, 52 S. E. 166, holding that where all the facts proved were consistent with the theory that the death was accidental, a finding that the deceased came to his death accidentally and not by suicide, the finding will not be disturbed on appeal.

Cited in footnote to Brignac v. Pacific Mut. L. Ins. Co. 66 L.R.A. 323, which holds that suicidal intent will not be found where facts admit of different construction.

52 L. R. A. 689, HALL v. CHAMBERSBURG WOOLEN CO. (HALL v. WOOD) 187 Pa. 18, 67 Am. St. Rep. 563, 40 Atl. 986.

Admission of account books in evidence.

Annotation cited in Union Cent. L. Ins. Co. v. Prigge, 90 Minn. 373, 96 N. W.

917, holding that account books were not admissible in evidence where they contained statements based on papers which might have been admissible in evidence as admissions; Deatherage v. Petruschke, 106 Minn. 22, 118 N. W. 153, holding that books of account were inadmissible to prove an oral contract of a later date.

Cited in footnotes to Blum v. State, 56 L.R.A. 322, which holds books of account of one charged with obtaining money by false pretenses inadmissible against him; Callihan v. Washington Water Power Co. 56 L.R.A. 772, which holds street car conductor's trip report as to fares taken admissible in corroboration of his testimony as to nonreceipt of transfer on trip.

Cited in notes (37 L.R.A.(N.S.) 1171) on admissibility of insurance agent's memoranda or letters; (138 Am. St. Rep. 470) on admissibility in evidence of books of account.

Distinguished in Vallee Bros. Electrical Co. v. North Penn. Iron Co. 32 Pa. Super. Ct. 114, holding that a book of original entries was admissible in evidence to prove a sale of goods, founded on an order in writing.

52 L.R.A. 724, YEISER v. UNITED STATES BOARD & PAPER CO. 46 C. C. A. 567, 107 Fed. 340.

Liability of promoters for wrongs done to an incipient corporation.

Cited in Las Ovas Co. v. Davis, 35 App. D. C. 381; Old Dominion Copper Min. & Smelting Co. v. Bigelow, 203 Mass. 178, 40 L.R.A.(N.S.) 327, 89 N. E. 193,—holding that promoters organizing corporation to purchase property from them at excessive price are liable to corporation for their extraordinary profits; Central Trust Co. v. East Tennessee Land Co. 116 Fed. 749, holding that the promoters of a corporation will be liable to the corporation for the difference between what they paid for land and what they received from the corporation for it, regardless of the value of the land; Old Dominion Copper Min. & Smelting Co. v. Bigelow, 203 Mass. 185, 40 L.R.A.(N.S.) 331, 89 N. E. 193, (dissenting opinion), on the same point.

Cited in footnote to Pietsch v. Milbrath, 68 L.R.A. 945, which holds that promoters of corporation cannot escape liability to take for fraudulent profits in transferring to it property at an excessive value by limiting stock subscription to themselves until the transaction is consummated.

Cited in note (18 L.R.A.(N.S.) 1107, 1108, 1111, 1114, 1123) on duty and liability of promoters to corporation and its members.

Distinguished in Old Dominion Copper Min. & Smelting Co. v. Lewishon, 210 U. S. 206, 52 L. ed. 1031, 28 Sup. Ct. Rep. 634, holding that a corporation could not set aside a sale of property to it by its promoters at a large profit to them, while they owned all the stock, though done in contemplation of a large issue to the public.

Imputing agent's knowledge to principal.

Cited in American Nat. Bank v. Miller, 107 C. C. A. 456, 185 Fed. 343, holding that agent's knowledge is not that of principal when former is engaged in attempt to defraud latter.

52 L. R. A. 730, TOLEDO v. WESTERN U. TELEG. CO. 46 C. C. A. 111, 107 Fed. 10.

Subsequent appeal 58 C. C. A. 16, 121 Fed. 735, referring to cited case for facts.

Construction of grants for the use of public highways.

Cited in Omaha Electric Light & P. Co. v. Omaha, 172 Fed. 496, holding that a grant to an electric company to maintain poles and wires in the streets for lighting purposes, does not give it the right to maintain poles for any other

purposes such as furnishing electricity for power, heating, etc.; Perkins v. Coffin, 84 Conn. 312, 79 Atl. 1070, Ann. Cas. 1912C, 1188 (dissenting opinion), on whether amendment of charter of river company authorizing conversion of water power into electricity created fundamental change in corporate powers; Home Telegraph Co. v. Nashville, 118 Tenn. 22, 101 S. W. 770, 11 Ann. Cas. 824, holding that the grant of the right to erect and maintain a telegraph line upon the public highways and streets of the state, does not give the same company the right to maintain a telephone line; State ex rel. Rocky Mountain Bell Teleph. Co. v. Red Lodge, 30 Mont. 342, 76 Pac. 758, holding that a grant of the right to build telegraph lines upon public highways, gives the right to construct lines along city streets.

Grant of right to construct telegraph lines on post roads.

Cited in Sunset Teleph. & Teleg. Co. v. Pomona, 164 Fed. 568, holding that a corporation doing both a telegraph and a telephone business cannot claim the benefits of the telegraph grant, for their telephone lines.

—Giving right to construct lines on city streets.

Cited in Cumberland Teleph. & Teleg. Co. v. Evansville, 127 Fed. 195, holding that the grant of the right to telegraph companies to place telegraph lines over military and post roads, does not give the company the right to place its poles upon city streets without a grant of the right by the city; Ganz v. Ohio Postal Teleg.-Cable Co. 72 C. C. A. 186, 140 Fed. 695, holding that the grant of the right to the telegraph companies does not interfere with the control of municipalities over their roads and streets.

52 L. R. A. 734, JOSEPH BANCROFT & SONS CO. v. BLOEDE, 45 C. C. A. 354, 106 Fed. 396.

52 L. R. A. 738, KIRTLEY v. HOLMES, 46 C. C. A. 102, 107 Fed. 1.

Contractual nature of stockholder's statutory liability.

Cited in Miller v. Katz, 10 Cal. App. 579, 102 Pac. 946, holding that the liability for corporate debts by virtue of ownership of stock is in its nature contractual, so that a suit may be maintained against an executrix without joining the heirs or devisees; Pfaff v. Gruen, 92 Mo. App. 577; Kulp v. Fleming, 65 Ohio St. 337, 87 Am. St. Rep. 611, 62 N. E. 334,—holding that the statutory liability of a stockholder is contractual and not penal so that it may be enforced in another state.

— Enforcement thereof in another state.

Approved in Converse v. Mears, 162 Fed. 773, holding that a receiver appointed under the state statutes to enforce the statutory liabilities of stockholders, may maintain an action in a federal court of competent jurisdiction to enforce the liability against a stockholder resident in another state.

Cited in Burr v. Smith, 113 Fed. 864; Hale v. Hilliker, 109 Fed. 274,—holding that a special receiver appointed under the state statutes of the state to enforce the statutory liability of stockholders may maintain an action in the federal courts in another state against a stockholder therein residing; Swing v. Karges Furniture Co. 123 Mo. App. 380, 100 S. W. 662, holding that the decrees dissolving a foreign insolvent corporation should be pleaded in an action on the decree in another state, and it should be alleged that the court making the decree had jurisdiction of the subject matter.

Cited in footnotes to Bank of China v. Morse, 56 L.R.A. 139, which holds assessment under English statute in proceeding to wind up corporation will not be enforced here against resident; Blair v. Newbegin, 58 L.R.A. 644, which

sustains right to enforce stockholder's liability in other state without making corporation a party; Miller v. Smith, 66 L.R.A. 473, which holds that courts of state of stockholder's residence will not take jurisdiction of suit by corporate creditor on behalf of all to enforce his statutory liability to contribute toward payment of corporate debts in advance of judicial determination of his proportionate liability where laws of state of incorporation contemplate pro rata contribution to be enforced in equitable proceeding against all stockholders.

Cited in notes (33 L.R.A.(N.S.) 898, 899, 905) on right to enforce stockholders' liability outside of state of incorporation; (47 L. ed. U. S. 383) on right of receiver to enforce liability of corporate stockholder outside state of appointment.

Distinguished in Miller v. Smith, 26 R. I. 152, 66 L.R.A. 477, 106 Am. St. Rep. 699, 58 Atl. 634, holding that a suit by the creditors of a corporation in behalf of themselves and such as may wish to come in, against one stockholder will not be maintained, to enforce the liability of the stockholder in a foreign corporation.

— Right of receiver to recover statutory added liability.

Cited in note (31 L.R.A.(N.S.) 372) on right of receiver, assignee, or trustee to recover statutory added liability of corporate shareholder.

Power of receiver to sue out of jurisdiction of appointment.

Cited in Bluefields S. S. Co. v. Steele, 106 C. C. A. 564, 184 Fed. 586, holding that Federal court may appoint ancillary receiver, where receiver is not permitted to sue in another jurisdiction than one where appointed.

Cited in note (4 L.R.A.(N.S.) 825) on power of receiver to sue out of jurisdiction of appointment.

52 L. R. A. 745, SIMON v. GOODYEAR METALLIC RUBBER SHOE CO. 44 C. C. A. 612, 105 Fed. 573.

What constitutes fraudulent misrepresentation.

Cited in King v. Lamborn, 108 C. C. A. 123, 186 Fed. 28, holding that affirmation of what one did not know or believe to be true constitutes fraudulent misrepresentation; Joslyn v. Cadillac Automobile Co. 101 C. C. A. 77, 177 Fed. 868; holding that to prevent a false statement being fraudulent there must have been not only an honest belief in its truth, but an honest effort to ascertain the truth.

Measure of damages.

Cited in Chesbrough v. Woodworth, 116 C. C. A. 465, 195 Fed. 885, holding that measure of damages in action of deceit in inducing purchase of property, is difference between sum paid and actual intrinsic value of property.

Remedies of purchaser under fraudulent inducements.

Cited in Cheney v. Dickenson, 28 L.R.A.(N.S.) 361, 96 C. C. A. 314, 172 Fed. 111, holding that a party induced by fraud to purchase property may repudiate the purchase, and return the property and recover the consideration, or he may affirm the purchase and retain the property, and recover the difference betwen what he paid, and the value of what he received; Re Sweeney, 94 C. C. A. 90, 168 Fed. 617, holding that the sellers of goods could not rescind the sale and recover the goods after bankruptcy proceedings had been begun, where they delivered the goods to the bankrupt with full knowledge of his failing circumstances.

Waiver of fraud by performance of contract.

Cited in Richardson v. Lowe, 79 C. C. A. 317, 149 Fed. 632, holding that a

party to a contract may not recover for loss resulting from a performance of a contract after knowledge of fraud in obtaining the contract; Hein v. Westinghouse Air Brake Co. 172 Fed. 526, holding that by retaining the benefits for fifteen months, and continuing to pay the price, the contract was irrevocably ratified, precluding subsequent attack for fraud; Tuttle v. Stovall, 134 Ga. 331, 67 S. E. 806, 20 Ann. Cas. 168, holding that a payment of one of the notes, and the taking of an agreement to wait for the payment of the second, till a certain time, was a waiver of the fraud in securing the contract where the party knew of the fraud at the time of the payments.

Cited in note (8 L.R.A.(N.S.) 453) on waiver by completing contract for sale of personalty after discovering fraud.

52 L. R. A. 751, ROBERTSON v. STATE, 43 Fla. 156, 29 So. 535.

Third appeal, 45 Fla. 105, 34 So. 294, citing history of the litigation.

Validity of arrest without warrant.

Cited in footnote to McCullough v. Greenfield, 62 L.R.A. 906, which holds that possession of warrant by officer will not justify arrest of accused by police department of another town under direction by telephone by such officer.

Forceable resistance to unlawful arrest.

Cited in State v. Gum, 68 W. Va. 110, 33 L.R.A.(N.S.) 155, 69 S. E. 463, holding that person cannot use deadly weapon in resisting unlawful arrest.

Cited in footnote to Montgomery v. State, 55 L.R.A. 866, which sustains right to resist, with whatever force necessary, officer attempting to make arrest without warrant for carrying arms without disclosing authority.

Cited in notes (66 L.R.A. 353, 354, 374, 375, 377, 378) on homicide in resisting arrest, or of officers of justice; (5 L.R.A.(N.S.) 1017) on self defense in resisting officer.

Heat of passion which will reduce degree of homicide.

Cited in note (5 L.R.A.(N.S.) 826) on heat of passion which will mitigate or reduce degree of homicide.

Murder or manslaughter.

Cited in Cook v. State, 46 Fla. 76, 35 So. 665 (dissenting opinion), on the test for malice in determining degree of murder or manslaughter.

52 L. R. A. 755, CAMP v. DIXON, MITCHELL & CO. 112 Ga. 872, 38 S. E. 71.

Followed without discussion in Enterprise Lumber Co. v. Clegg, 117 Ga. 901, 45 S. E. 281.

Injunction to prevent irreparable injury to land.

Cited in Murphey v. Harker, 115 Ga. 89, 41 S. E. 585, holding that one who is the owner of a building situated upon an alley, is entitled to an injunction to restrain the erection of a structure in the alley which will cause irreparable damage to the abutting property; Hart v. Lewis, 126 Ga. 441, 55 S. E. 189; McConnell Bros. v. Jones Naval Stores Co. 125 Ga. 377, 54 S. E. 117,— holding that if the damage to land be irreparable, the allegations that the defendant was insolvent, or like allegations need not be made.

Cited in note (99 Am. St. Rep. 734, 735, 742, 749) on injunction against trespass on realty.

— Cutting timber.

Approved in Kilgore v. Norman, 119 Fed. 1009, holding that a court will restrain the cutting of timber pending the determination of title to land,

where it appears that the defendants have made large preparations to remove the timber.

Cited in Graves v. Ashburn, 215 U. S. 334, 54 L. ed. 220, 30 Sup. Ct. Rep. 108, holding that equity may enjoin wrongful boxing and cutting of timber valuable for turpentine purposes: Wethington v. Baxter, 124 Ga. 1026, 53 S. E. 505, on irreparable damages which will support an injunction.

Distinguished in Wiggins v. Middleton, 117 Ga. 164, 43 S. E. 432, holding that a general allegation that the cutting of timber would cause irreparable damage to the land was not sufficient unless bill shows special equitable reasons; Gray Lumber Co. v. Gaskin, 122 Ga. 349, 50 S. E. 164, holding that an injunction may issue to restrain the cutting of timber though the defendant be solvent, and the damages reparable, if the circumstances indicate that the trespasses are constantly recurring, and the defendant threatens to continue them from day to day.

What constitutes irreparable injury.

Cited in Lewis, R. & Co. v. Hutchinson, 127 Ga. 789, 56 S. E. 998, holding that the working of trees for turpentine would constitute an irreparable damage which would be enjoined where the trees had been kept as a grove for shade trees and not for commercial purposes; Heine v. Roth, 2 Alaska, 421, holding an irreparable injury is such that a remedy at law would not be adequate because of the greatness or smallness of the injury or its constant or frequent occurrence.

Jurisdiction of equity in settlement of adverse claims to land.

Cited in Foley v. County Ct. 54 W. Va. 20, 46 S. E. 246, holding that a court of equity would enjoin the taking of private property for public use without compensation, though there be a controversy as to the title or the boundary.

52 L. R. A. 760, ALLEN v. NATIONAL STATE BANK, 92 Md. 509, 84 Am. St. Rep. 517, 48 Atl. 78.

Property subject to taxation.

Cited in Baltimore v. Johnson, 96 Md. 747, 61 L.R.A. 573, 54 Atl. 646, holding that a seat in the stock exchange was not property within the meaning of the statutes relative to taxation; William Wilkens Co. v. Baltimore, 103 Md. 313, 63 Atl. 562, 7 Ann. Cas. 1192, holding that the tangible property of a corporation is taxable even though the largest share of its stock was held by residents; Blackstone v. Miller, 188 U. S. 204, 47 L. ed. 444, 23 Sup. Ct. Rep. 277, holding that debts due a non-resident decedent were subject to the succession tax.

Taxation of mortgages.

Cited in Kinney v. Treasurer & Receiver General (Kinney v. Stevens) 207 Mass. 370, 35 L.R.A.(N.S.) 786, 93 N. E. 586, Ann. Cas. 1912A, 902, holding that notes held by nonresident and secured by mortgage are subject to inheritance tax in state where land is located; Miller v. Wicomico County, 107 Md. 441, 69 Atl. 118, sustaining a statute which provided for a tax of eight per cent upon the yearly interest upon mortgages on record in certain counties, though the act applied only to certain counties; Musgrove v. Baltimore & O. R. Co. 111 Md. 633, 75 Atl. 245, holding that mortgages of land situated in the state, owned and held by citizens of other states, may be taxed in the counties of the state where the land is situated.

Distinguished in Adams v. Colonial & U. S. Mortg. Co. 82 Miss. 397, 17 L.R.A.(N.S.) 151, 100 Am. St. Rep. 633, 34 So. 482, holding that where the

mortgagee has nothing but a mere lien upon the land, if the mortgage is held by a nonresident having no place of business in the state, nor engaged in business there, it is not taxable within the state.

Taxation of banks.

Cited in Baltimore v. State, 105 Md. 8, 65 Atl. 369, 11 Ann. Cas. 716, as approving an earlier case, which sanctioned the taxation of banks upon the yearly statements of the state.

Application of statutes to non-residents.

Cited in Himmel v. Eichengreen, 107 Md. 615, 69 Atl. 511, holding that a statute exempting from attachment the payment of money or other benefit by a fraternal beneficiary association, was for the benefit of nonresident as well as resident certificate holder.

52 L. R. A. 764, CUMBERLAND & P. R. CO. v. STATE, 92 Md. 668, 48 Atl. 503.

52 L. R. A. 772, UNITED R. & ELECTRIC CO. v. BALTIMORE, 93 Md. 630, 49 Atl. 655.

Taxation of corporation's use of streets.

Followed in Baltimore Belt R. Co. v. Baltimore, 93 Md. 638, 49 Atl. 1134, where the facts were similar in all respects except as to the amount of mileage involved.

Cited in Consolidated Gas Co. v. Baltimore, 101 Md. 549, 1 L.R.A.(N.S.) 268, 109 Am. St. Rep. 584, 61 Atl. 532, holding that the easement created by the actual occupancy of a city street by a gas company was taxable as real estate.

52 L. R. A. 775, POLICE COMRS. v. WAGNER, 93 Md. 182, 86 Am. St. Rep. 423, 48 Atl. 455.

Property rights in machines designed to violate the law.

Cited in State v. Derry, 171 Ind. 22, 131 Am. St. Rep. 237, 85 N. E. 765, holding that no property right can exist in tools or apparatus, inherently evil and which are regarded in law as mala per se.

— Seizure and destruction of illegal machines.

Followed in Wagner v. Upshur, 95 Md. 519, 93 Am. St. Rep. 412, 52 Atl. 509, holding that a slot machine which could be used for either a legal or an illegal purpose, could not be seized and destroyed until the illegality of its purpose had been determined.

Distinguished in Berry v. De Maris, 76 N. J. L. 309, 70 Atl. 337, holding that a statute providing for the confiscation of any tent, booth, etc., and the articles of traffic for selling or disposing of such articles within three miles of any place of religious worship during the conducting of religious exercises, was void as taking property without a proper hearing.

Replevin to recover gambling devices seized by police authority.

Cited in Robertson v. Porter, 1 Ga. App. 228, 57 S. E. 993; J. B. Mullen & Co. v. Moseley, 13 Idaho, 464, 12 L.R.A.(N.S.) 398, 121 Am. St. Rep. 277, 90 Pac. 986, 13 Ann. Cas. 450; Vasey v. Campbell, 4 Cal. App. 454, 88 Pac. 509,— holding that replevin would not lie to recover property to be used in the violation of gambling laws, and which could not be put to any legitimate use.

Police power.

Cited in State v. Hyman, 98 Md. 621, 64 L.R.A. 645, 57 Atl. 6, 1 Ann. Cas.

742, sustaining statute regulating the manufacture of garments for sale "in sweat-shops."

52 L. R. A. 778, ALL SAINTS PARISH v. BROOKLINE, 178 Mass. 404, 59 N. E. 1003.

Exemption of property temporarily used by charitable institution.

Cited in State, Children's Seashore House, Prosecutor, v. Atlantic City, 59 L.R.A. 947, which denies exemption from taxation of land purchased by charitable corporation for use after selling property then occupied, but which pending such sale is occupied by a camp for the accommodation of overflow from main institution during summer months.

Right to sue for taxes paid on erroneous assessments.

Cited in note (16 L.R.A.(N.S.) 688) on right to sue for taxes paid on erroneous assessments without previous resort to statutory remedies.

52 L. R. A. 782, WELCH v. WALSH, 177 Mass. 555, 83 Am. St. Rep. 302, 59 N. E. 440.

Defenses to guaranty of prompt payment.

Cited in Fegley v. Jennings, 44 Fla. 207, 103 Am. St. Rep. 142, 32 So. 873, holding that under a guaranty of prompt payment at maturity of a note, the failure of the holder to present same for payment and notify the guarantor of non-payment nor the fact that the holder did not resort to the mortgage or sue the maker, is no defense in an action on the guaranty; Lomax v. Witkowsky, 124 Ill. App. 263, holding that the guarantor is not released by the laches of the other party in not investigating for five years as to whether the debt had been paid.

Notice to guarantor before suit.

Cited in Cumberland Glass Mfg. Co. v. Wheaton, 208 Mass. 433, 94 N. E. 803, holding that in action by glass company against guarantors of contract, where delivery and acceptance of contract of purchase containing guaranty were absolute and unconditional, plaintiff need not give notice to guarantors of purchaser's failure to pay for bottles delivered and refused to accept remainder; Wakefield v. American Surety Co. 209 Mass. 177, 95 N. E. 350, holding that obligee need not keep surety constantly advised as to state of work under contract; Roth v. Adams, 185 Mass. 344, 70 N. E. 445, holding that the lessor was not bound to give notice to the guarantor of the payment of rent, of the lessee's default, before bringing action thereon against the guarantor; Graham v. Middleby, 185 Mass. 356, 70 N. E. 416, holding that no notice was necessary before bringing suit upon a guaranty of the performance of a contract; Hudson v. Miles, 185 Mass. 587, 102 Am. St. Rep. 370, 71 N. E. 63, holding that the failure of the town officers to give notice of the default of the principal was no defense in an action agains the sureties upon his official bond; Sands v. Melchionda, 186 Mass. 273, 71 N. E. 546, holding that the plaintiffs were not bound to give notice to the guarantors, who had guaranteed payment by the purchaser from the plaintiff's Lascelles v. Clark, 204 Mass. 372, 90 N. E. 875, on the necessity of notice to a guarantor.

Cited in footnote to Lemert v. Guthrie, 62 L.R.A. 954, which holds reasonable notice of maker's default essential to liability of grantor of negotiable note.

Cited in note (105 Am. St. Rep. 518) on necessity of notice of default.

Recovery for negligence in absence of privity.

Cited in note (100 Am. St. Rep. 192) on right to recover for negligence in absence of privity.

Liability of sureties.

Cited in Rogers v. Abbot, 206 Mass. 275, 138 Am. St. Rep. 394, 92 N. E. 472, on liability of sureties.

Distinction between guaranty and suretyship.

Cited in note (105 Am. St. Rep. 503) on distinction between guaranty and suretyship.

52 L. R. A. 785, CASTON v. QUIMBY, 178 Mass. 153, 59 N. E. 653.

When commissions are earned.

Cited in Gage v. Billing, 12 Cal. App. 693, 108 Pac. 664, holding that in the absence of an express contract for compensation in case of a failure to procure a purchaser, a broker is not entitled to compensation in case of such failure.

Cited in note (139 Am. St. Rep. 233) as to when broker has earned his commissions.

52 L. R. A. 786, NIVEN v. BOLAND, 177 Mass. 11, 58 N. E. 282.

52 L. R. A. 788, WHITING v. BURKHARDT, 178 Mass. 535, 86 Am. St. Rep. 503, 60 N. E. 1.

Effect of acts of mortgagor on rights of mortgagee in insurance.

Cited in footnotes to Shadgett v. Phillips & C. Co. 56 L.R.A. 461, which holds mortgagee not entitled to insurance procured by donee for own benefit by latter's knowledge of mortgagor's failure to keep agreement to insure; Delaware Ins. Co. v. Greer, 61 L.R.A. 137, which holds mortgagee's indemnity placed at risk of every act and omission of mortgagor which would avoid latter's interest.

Cited in notes (18 L.R.A.(N.S.) 205) on effect of breach of insurance policy by mortgagor on rights of mortgagee; (135 Am. St. Rep. 757, 759) on fire insurance as security for a mortgagee or other lien holder.

Assignments of rights sufficient to avoid policy in favor of mortgagee.

Cited in Union Inst. for Sav. v. Phœnix Ins. Co. 196 Mass. 233, 14 L.R.A. (N.S.) 463, 81 N. E. 994, 13 Ann. Cas. 433, holding that the subsequent conveyance of the equity of redemption by the mortgagor, does not affect the right of the mortgagee to recover under the policy, it being payable to him as his interest may appear; Breeyear v. Rockingham Farmers' Mut. F. Ins. Co. 71 N. H. 446, 52 Atl. 860, holding that a sale of the mortgage by the mortgagee and an assignment by the purchaser to secure a loan, was not such an assignment of the policy, as would avoid the same, where the policy was payable to the mortgagee as his interest may appear.

Objection to suit in equity first urged upon appeal.

Cited in Haskell v. Merrill, 179 Mass. 123, 60 N. E. 485, holding that an objection to a suit in equity on the grounds that there is an adequate remedy at law, comes too late when first urged on appeal.

52 L. R. A. 790, ROCHESTER & C. TURNP. ROAD CO. v. PAVIOUR, 164 N. Y. 281, 58 N. E. 114.

Corporate paper in payment of individual debt as notice.

Cited in St. Louis Charcoal Co. v. Lewis, 154 Mo. App. 551, holding that face of check of corporation drawn by president to pay his debt carries notice of its irregular and illegal character; Niagara Woolen Co. v. Pacific Bank, 141 App. Div. 270, 126 N. Y. Supp. 890, holding bank charged with constructive

notice, where president deposited to his own account checks drawn to order of his corporation; Coleman v. Stocke, 159 Mo. App. 47, 139 S. W. 216, holding that creditor of treasurer of corporation receiving its check payable to cash in payment of treasurer's individual debt is chargeable with notice that such use of corporate funds is unauthorized; Capital City Brick Co. v. Jackson, 2 Ga. App. 775, 59 S. E. 92, holding that a note of a corporation by its president payable to himself is prima facie void, and a holder of the same cannot claim to be a bona fide holder; Manhattan Web Co. v. Aquianeck Nat. Bank, 133 Fed. 77; De Jonge & Co. v. Woodport Hotel & Land Co. 77 N. J. L. 235, 72 Atl. 439,—holding same as to a check drawn by the treasurer to himself; Ward v. City Trust Co. 192 N. Y. 69, 84 N. E. 585, holding that where a president of a corporation indorsed a cashier's check payable to the corporation, and delivered it in payment of his individual debt, the form of the check was sufficient to warn subsequent holders and they would be charged with the knowledge of what they would earn upon inquiry; Squire v. Ordemann, 194 N. Y. 397, 87 N. E. 435, holding same where executor delivered a check payable to the estate, in payment of his individual indebtedness; Citizens' Bank v. Rung Furniture Co. 76 App. Div. 474, 78 N. Y. Supp. 604, holdsame as to check of corporation by its treasurer payable to his wife; Warshawsky v. Grand Theatre Co. 47 Misc. 617, 94 N. Y. Supp. 522 (dissenting opinion), on the same point; United States v. Bolognesi, 164 Fed. 159, holding same as to a governmental order issued in payment of an individual debt; Empire State Surety Co. v. Nelson, 141 App. Div. 851, 126 N. Y. Supp. 453, holding that signing of check as special guardian, given in payment of guardian's individual debt, constitutes constructive notice to creditor that check was drawn on trust funds; Hathaway v. Delaware County, 185 N. Y. 373, 13 L.R.A.(N.S.) 277, 113 Am. St. Rep. 909, 78 N. E. 153, on the one intrusted with a check for delivery to another as having apparent authority to dispose of it in payment of his own debt.

Cited in note (29 L.R.A.(N.S.) 355) on circumstances sufficient to put purchaser of negotiable paper on inquiry.

Distinguished in Orr v. South Amboy Terra Cotta Co. 113 App. Div. 104, 98 N. Y. Supp. 1026, holding that a check payable to a director of a corporation is not notice; Cluett v. Couture, 140 App. Div. 834, 125 N. Y. Supp. 813, holding that hotelkeeper was not put on inquiry as to manager's authority, where former cashed check drawn to latter's company.

— Liability for money received for same.

Cited in Buckley v. Lincoln Trust Co. 72 Misc. 221, 131 N. Y. Supp. 105, holding bank not liable, where inquiry as to corporate check deposited by manager to his own account would have revealed power of attorney to manager to do so; Lanning v. Trust Co. of N. A. 137 App. Div. 725, 122 N. Y. Supp. 485, holding that trust company receiving in payment of loan to president of another company check of such company, is liable to receiver of drawer; Newburyport v. Spear, 204 Mass. 151, 134 Am. St. Rep. 652, 70 N. E. 522, holding that the person cashing a check payable to the city treasurer and drawn by him to pay his personal debt, are liable for the amount of the checks though they have paid the money to others; Kelsey v. Bank of Mansfield, 85 App. Div. 336, 83 N. Y. Supp. 281; James Reynolds Elevator Co. v. Merchants' Nat. Bank, 55 App. Div. 7, 67 N. Y. Supp. 397,—holding bank liable for money of the corporation applies to the individual indebtedness of its president upon checks drawn by the latter; Ward v. City Trust Co. 117 App. Div. 147, 102 N. Y. Supp. 50 (dissenting opinion), on the same point; Phelan v. Downs, 59 App. Div.

285, 69 N. Y. Supp. 375, holding that a fund of a corporation misappropriated by one of its officers may be recovered by the owner if it has been kept intact and can be identified, except as against bona fide holders for value; Campbell v. Manufacturers' Nat. Bank, 67 N. J. L. 304, 91 Am. St. Rep. 438, 51 Atl. 497, holding that upon proof that it was known to the claimant to be an individual transaction, the burden is cast upon the claimant to prove that the act of the cashier thus done for his own benefit, was authorized or ratified.

Cited in note (31 L.R.A.(N.S.) 171, 175) on right of taker of commercial paper of corporation for officer's individual debt.

Liability of depositary for misappropriation of trust funds.

Annotation approved in Globe Sav. Bank v. National Bank, 64 Neb. 417, 89 N. W. 1030, holding that a bank which appropriated money of a trust fund deposited with it, to pay an individual debt of the depositor, is liable to the depositor for a conversion of the money.

Cited in footnote to Merchants' & M. Nat. Bank v. Ohio Valley Furniture Co. 70 L.R.A. 312, which holds that bank acts at its peril in discounting for agent's own benefit paper held by him to its knowledge as agent in reliance on his statement that he has secured authority for such discount.

Cited in notes (1 L.R.A.(N.S.) 1110) on bank's right to apply deposit by factor on his debt; (15 L.R.A.(N.S.) 311) on right of one knowingly receiving principal's money in payment of agent's debt, which he believes to be principal's; (37 L.R.A.(N.S.) 409) on applicability of deposits to depositor's indebtedness where word suggestive of fiduciary character appended to name.

Authority of agent to bind principal where interests are adverse.

Cited in Langlois v. Gragnon, 123 La. 459, 22 L.R.A.(N.S.) 417, 49 So. 18, holding that the agent can not bind his principal where he has an adverse interest in the subject matter.

52 L. R. A. 803, PEOPLE v. BUFFALO FISH CO. 164 N. Y. 100, 79 Am. St. Rep. 622, 58 N. E. 36.

Application of game laws to foreign caught game.

Cited in People v. Fargo, 137 App. Div. 730, 122 N. Y. Supp. 553, holding fish and game law inapplicable to deer while in transit from another state; People v. Cone, 33 Misc. 395, 67 N. Y. Supp. 624, 15 N. Y. Crim. Rep. 289; People v. Bootman, 180 N. Y. 6, 72 N. E. 505, 2 Ann. Cas. 226, 19 N. Y. Crim. Rep. 32, Affirming 95 App. Div. 475, 88 N. Y. Supp. 887,—holding that the statute prohibiting the having of game in possession during the closed season, applied only to game and fish caught or killed within the state, and not those brought in from other states; People v. A. Booth & Co. 105 App. Div. 185, 93 N. Y. Supp. 425, Reversing 42 Misc. 322, 86 N. Y. Supp. 272; People ex rel. Hill v. Hesterberg, 184 N. Y. 131, 3 L.R.A.(N.S.) 166, 128 Am. St. Rep. 528, 76 N. E. 1032, 6 Ann. Cas. 353, Reversing 109 App. Div. 297, 96 N. Y. Supp. 286,—holding that the statute prohibiting the possession of game during the closed season was valid, though it applied to game coming from without the state.

Cited in note in (78 Am. St. Rep. 247, 248) on acts as to fish and game which legislature may declare criminal.

Distinguished in People v. Waldorf-Astoria Hotel Co. 118 App. Div. 725, 103 N. Y. Supp. 434, holding that the statute as changed applied to game brought from without the state, as well as to that killed within the state.

Possession of game in closed season as prima facie evidence of violation of law.

Cited in People v. Bootman, 40 Misc. 31, 81 N. Y. Supp. 195, holding that the possession of game birds at the forbidden season within the state is prima facie evidence that the possessor has violated the law, and the burden is upon him to prove the possession legal.

Statutes interfering with ownership of private property.

Cited in People v. Adams, 176 N. Y. 360, 63 L.R.A. 410, 98 Am. St. Rep. 675, 68 N. E. 636, 17 N. Y. Crim. Rep. 566, holding that the statute making it unlawful to have in possession apparatus used in policy gambling, is valid as not interfering with the ownership of private property; People v. Lochner, 177 N. Y. 183, 101 Am. St. Rep. 773, 69 N. E. 373 (dissenting opinion), majority holding that the statute limiting the hours of work in bakeries, was not unconstitutional as an invasion of private rights.

Regulation of interstate commerce.

Followed in People ex rel. Treat v. Coler, 166 N. Y. 150, 59 N. E. 776, holding that a statute prohibiting the use of any stone in any municipal work unless dressed and prepared within the state is void as a regulation of interstate commerce.

Cited in Re Gemmill, 20 Idaho, 745, 41 L.R.A.(N.S.) 718, 119 Pac. 298, Ann. Cas. 1913A, 76 (dissenting opinion), on validity of act requiring state printing to be done within state; Boston Mfr.'s Mut. F. Ins. Co. v. Hendricks, 41 Misc. 484, 85 N. Y. Supp. 44, holding that a statute imposing a tax upon insurance companies doing business within the state did not apply to companies who issued their policies and collected their premiums in the state of its domicil.

— By fish and game laws.

Cited in Acklen v. Thompson, 122 Tenn. 54, 135 Am. St. Rep. 851, 126 S. W. 730, holding void, act prohibiting sale of foreign caught game; McDonald v. Southern Exp. Co. 134 Fed. 285, holding that a statute prohibiting the shipping of shad fish beyond the limits of the state, was void as prohibiting the transportation of shad fish caught without the state.

Tests for decision of constitutional questions.

Cited in Viemeister v. White, 88 App. Div. 45, 84 N. Y. Supp. 712, holding that the validity of statutes must be determined solely with reference to constitutional restriction and not by natural equity or justice; Holloway v. McWilliams, 97 App. Div. 371, 89 N. Y. Supp. 1074 (dissenting opinion), on the construction of statutes.

52 L. R. A. 811, EPPENS, S. & W. & CO. v. LITTLEJOHN, 164 N. Y. 187, 58 N. E. 19.

Reasonable time.

Cited in Robinson Clay Product Co. v. American Locomotive Co. 56 Misc. 591, 107 N. Y. Supp. 69, holding that what constitutes a reasonable time depends upon the circumstances of each case, such as the parties may be supposed to have contemplated in a general way when making the contract.

Sale of goods "to arrive."

Cited in Penn-American Plate Glass Co. v. Harshaw, E. & G. Co. 46 Ind. App. 658, 90 N. E. 1047, holding that sale of goods "subject to arrival" does not import warranty that they will arrive.

Distinguished in Abe Stein Co. v. Robertson, 167 N. Y. 106, 60 N. E. 329, holding that where the goods expected to arrive were contracted for, and the

clause "no arrival, no sale" was added, and the goods were offered to the purchaser but not accepted, the clause above did not apply where they were refused because of inferior quality, and the purchaser can recover damages for not delivering the right quality.

52 L. R. A. 814, PEOPLE EX REL. RODGERS v. COLER, 166 N. Y. 1, 82 Am. St. Rep. 605, 59 N. E. 716.

Mandamus to compel public officer to perform duty.

Cited in Schmitt v. Dooling, 145 Ky. 243, 36 L.R.A.(N.S.) 886, 140 S. W. 197, Ann. Cas. 1913 B, 1078, holding that mandamus lies to compel city auditor to draw warrant for salary due fireman; H. P. Cornell Co. v. Barber, 31 R. I. 381, 76 Atl. 801, holding that mandamus will lie to compel treasurer to pay claim against town.

Cited in note (20 L.R.A.(N.S.) 802) on mandamus to compel public officer or board to perform contractual duty.

Statutes invading rights of contract.

Cited in American Surety Co. v. Shallenberger, 183 Fed. 641, holding void, act making it duty of state officers to fix maximum charges of surety companies; Republic Iron & Steel Co. v. State, 160 Ind. 386, 62 L.R.A. 142, 66 N. E. 1005, holding invalid a statute providing for the weekly payment of wages of laborers, and making it unlawful to assess any fine against the wages, as an invasion of the rights of contract; Re Stebbins, 52 Misc. 446, 103 N. Y. Supp. 563, holding that a statute impairing the validity of contracts is invalid; Jordon v. State, 51 Tex. Crim. Rep. 539, 11 L.R.A.(N.S.) 608, 103 S. W. 633, 14 Ann. Cas. 616, holding that a statute which prohibited the payment of laborer's wages in goods or merchandise, was unconstitutional: State ex rel. Zillmer v. Kreutzberg, 114 Wis. 534, 58 L.R.A. 751, 91 Am. St. Rep. 934, 90 N. W. 1098, holding that a statute which prohibited an employer from discharging an employe because he was a member of a labor union, was invalid.

Cited in note (139 Am. St. Rep. 874) on constitutionality of statutes relating to wages.

Distinguished in People v. Lochner, 177 N. Y. 156, 101 Am. St. Rep. 773, 69 N. E. 373, holding valid statute limiting the hours of work in bakeries or confectionery establishments.

Validity of restrictions as to labor or materials for public works.

Followed in People ex rel. Treat v. Coler, 166 N. Y. 149, 59 N. E. 776, holding that a statute requiring stone used in performing public contracts should be prepared for use within the state, was unconstitutional; People ex rel. Lentilhon v. Coler, 168 N. Y. 8, 60 N. E. 1046, dismissing appeal from 61 App. Div. 225, 70 N. Y. Supp. 482, holding that a statute which provided that laborers on public work should not receive more than a certain amount per hour, was invalid.

Cited in Com. v. Casey, 231 Pa. 176, 34 L.R.A.(N.S.) 769, 80 Atl. 78, holding void, act limiting hours of labor on improvement contracts undertaken by municipality in private capacity; People v. I. M. Ludington's Sons, 74 Misc. 369, 131 N. Y. Supp. 550, upholding statute limiting employes on public works to citizens; Inge v. Board of Public Works, 135 Ala. 202, 93 Am. St. Rep. 20, 33 So. 678, holding that a stipulation of a contract for paving that the contractor should not employ alien or convict labor, rendered the contract void; Keefe v. People, 37 Colo. 321, 8 L.R.A.(N.S.) 135, 87 Pac. 791, holding that a statute limiting the hours of work upon public buildings being erected by any contractor, was void; Street v. Varney Electrical Supply Co. 160 Ind. 343,

61 L.R.A. 159, 98 Am. St. Rep. 325, 66 N. E. 895, holding invalid a statute fixing the price for unskilled labor upon any public work; Cleveland v. Clements Bros. Constr. Co. 67 Ohio St. 212, 59 L.R.A. 779, 93 Am. St. Rep. 670, 65 N. E. 885; Meyers v. New York, 58 App. Div. 537, 69 N. Y. Supp. 529; People ex rel. Cossey v. Grout, 179 N. Y. 421, 72 N. E. 464, 1 Ann. Cas. 39,— holding that a statute limiting the hours of labor of employees of contractors engaged in public work, was invalid; Ryan v. New York, 177 N. Y. 273, 69 N. E. 599, Affirming 78 App. Div. 134, 79 N. Y. Supp. 599, holding that a statute providing that the wages for a legal day's wages for all laborers on public works and on materials used therein should be not less than the prevailing rate in the locality where labor is performed was valid so far as it relates to direct employees of the state or city; Byars v. State, 2 Okla. Crim. Rep. 498, 102 Pac. 804, on the same point; People ex rel. Hausauer-Jones Printing Co. v. Zimmerman, 58 Misc. 272, 109 N. Y. Supp. 396, sustaining a statute limiting the hours of work upon municipal contracts only, but not as to other work being performed by the laborers.

Cited in footnotes to Cleveland v. Clements Bros. Constr. Co. 59 L.R.A. 775, which holds void, act limiting to eight hours a day work of laborers on public contract; People ex rel. North v. Featherstonhaugh, 60 L.R.A. 768, which upholds provision in street improvement contract for payment of laborers in cash not store orders; Street v. Varney Electrical Supply Co. 61 L.R.A. 154, which denies power of legislature to compel city to pay more for common labor on public improvements than its worth in market.

Distinguished in Edwards & W. Constr. Co. v. Jasper County, 117 Iowa, 369, 94 Am. St. Rep. 301, 90 N. W. 1006, holding that where the owners of city property did not object to a paving contract which had been performed, they can not raise the objection to the validity of the contract because providing for the hiring of certain labor, in an action by the contractor on one of the paving certificates against the owner; Gardiner v. Street Comrs. 188 Mass. 224, 74 N. E. 341, as to the effect of a clause in a contract for paving providing "for the payment of full union wages;" People ex rel. Williams Engineering & Contracting Co. v. Metz, 193 N. Y. 154, 24 L.R.A.(N.S.) 206, 85 N. E. 1070, holding that under the constitution as amended, a statute limiting the hours of work by laborers under a contract for municipal work, was valid; People v. Orange County Road Constr. Co. 73 App. Div. 581, 77 N. Y. Supp. 16, 17 N. Y. Crim. Rep. 15, Reversing 37 Misc. 345, 75 N. Y. Supp. 510, 16 N. Y. Crim. Rep. 321, sustaining a statute which provided that any person contracting with the state or a municipality, who should require more than eight hours work for a day's labor, is guilty of a misdemeanor; Allen v. Labsap, 188 Mo. 699, 87 S. W. 926, 3 Ann. Cas. 306, holding that a municipal ordinance requiring all stone used in public work to be dressed within the state, was not unconstitutional; State v. Livingston Concrete Bldg. & Mfg. Co. 34 Mont. 582, 87 Pac. 980, 9 Ann. Cas. 204, sustaining a statute limiting the hours of employment on municipal work, and in ore, mills, smelters, and mines.

— Effect of inclusion of void restrictions in contract.

Cited in City Street Improv. Co. v. Kroh, 158 Cal. 327, 110 Pac. 933, holding that violation by contractor of invalid provision against employment of unnaturalized aliens will not defeat his right to recover price; Meyers v. Pennsylvania Steel Co. 77 App. Div. 308, 79 N. Y. Supp. 199; Knowles v. New York, 71 App. Div. 411, 75 N. Y. Supp. 725; Knowles v. New York, 176 N. Y. 438, 68 N. E. 860,— holding that the incorporation of the provisions of the labor law into a contract to build a bridge for the city, did not render the contract void, where such

provisions had since been declared unconstitutional; Knowles v. New York, 37 Misc. 202, 75 N. Y. Supp. 189; People ex rel. North v. Featherstonbaugh, 172 N. Y. 125, 60 L.R.A. 772, 64 N. E. 802,—on the same point.

Estoppel by agreement to illegal requirement.

Cited in People ex rel. John Single Paper Co. v. Edgcomb, 112 App. Div. 607, 98 N. Y. Supp. 965, holding that the fact that printing company agreed to the unlawful specification in the bids for county printing, that the work should bear the union label, did not estop them from asserting the invalidity of the requirement.

Distinguished in Grant v. Rochester, 79 App. Div. 465, 80 N. Y. Supp. 522, holding that where a person agreed to act in a certain municipal office at the salary unlawfully fixed, it did not prevent his recovering the difference between what he agreed to accept and what he should have received under the law.

Construction of constitution.

Cited in Williams v. Port Chester, 97 App. Div. 92, 89 N. Y. Supp. 671, on construction of constitution according to spirit and intent.

Agencies of the state.

Cited in Re Public Officers, 31 Pa. Co. Ct. 591, 15 Pa. Dist. R. 716, 36 Pittsb. L. J. N. S. 189, holding that a manufacturer of a commercial fertilizer cannot recover from the secretary of agriculture in the event of injury resulting to his business because of the publication of the results of the secretary's analysis of his product.

Incurring indebtedness for county or city purposes.

Cited in Chapman v. New York, 168 N. Y. 88, 56 L.R.A. 849, 85 Am. St. Rep. 665, 61 N. E. 108, holding that a statute providing for the payment of attorney's fees and expenses of a city or municipal officer in successfully defending any trial to remove him from office, was unconstitutional as not incurring an indebtedness for a county or city purpose.

Power of state to control private actions.

Cited in Dodge v. Cornelius, 168 N. Y. 251, 61 N. E. 244 (dissenting opinion), on the power of the state to denounce as penal or criminal, acts or omissions of a citizen, in themselves perfectly innocent and harmless.

Review of order granting or denying writ of mandamus.

Cited in People ex rel. Lentilhon v. Coler, 168 N. Y. 8, 60 N. E. 1046, holding that no appeal lies to the court of appeals from an order of the appellate division affirming an order denying a writ of mandamus to compel the payment of a city warrant.

Interference by legislature with local self-government.

Cited in footnote to Americus v. Perry, 57 L.R.A. 230, which sustains act creating board of police commissioners, naming members of board and setting forth their powers and mode of choosing successors.

Police power.

Cited in Re Boston & A. R. Co. 64 App. Div. 261, 72 N. Y. Supp. 32, affirming action of Railroad Commission in establishing an under grade crossing.

52 L. R. A. 831, RE BARRY, 164 N. Y. 18, 58 N. E. 12.

Acquiring voting residence while attending public institution.

Cited in footnote to Powell v. Spackman, 54 L.R.A. 378, which denies power to gain residence for voting purposes by presence in a soldiers' home as an inmate.

Distinguished in State ex rel. Lyle v. Willett, 117 Tenn. 350, 97 S. W. 299, holding that inmate of a national soldiers' home under the exclusive jurisdiction of the United States, are not residents of the state for voting purposes.

— Students.

Cited in Re McCormack, 86 App. Div. 364, 83 N. Y. Supp. 847, holding that a student did not lose his former residence by registering and living at a seminary of learning, so as to entitle him to be registered for election purposes in the election district where the seminary was located.

Cited in note (40 L.R.A.(N.S.) 171) on acquiring voting residence while attending school or public institution.

School residence.

Cited in footnote to Montgomery v. Lebanon, 54 L.R.A. 914, which holds farmer retaining country house as home taxable in town where he goes to give children school privileges.

52 L. R. A. 833, CHICK v. ROBINSON, 37 C. C. A. 205, 95 Fed. 619.

Admissibility of partnership books of account.

Annotation approved in Willson v. Morse, 117 Iowa, 586, 91 N. W. 823, holding that where the book was not in evidence, statements therefrom to show purchases under the partnership agreement, were inadmissible in an action for partnership accounting.

Cited in note (36 L.R.A.(N.S.) 899) on admissibility upon bookkeeper's testimony of entries in party's books of account, based upon other's statements.

52 L. R. A. 849, MURPHY v. BORDWELL, 83 Minn. 54, 85 Am. St. Rep. 454, 85 N. W. 915.

Validity of gifts.

Cited in Varley v. Sims, 100 Minn. 340, 8 L.R.A.(N.S.) 832, 117 Am. St. Rep. 694, 111 N. W. 269, 10 Ann. Cas. 473, holding law supplies consideration, and a gift is on an equality with a contract founded on a valuable consideration.

Delivery as an element of gift.

Cited in Scott v. Union & P. Bank & T. Co. 123 Tenn. 278, 130 N. W. 757, holding that indorsement by donor of certificate of deposit and giving of it to donee constitutes sufficient delivery of gift causa mortis.

Distinguished in Winslow v. McHenry, 93 Minn. 510, 106 Am. St. Rep. 448, 101 N. W. 799, holding, where there was no delivery of deposit in question, that there could be neither a gift inter vivos or causa mortis.

Sufficiency of evidence of completed gift.

Cited in Nelson v. Olson, 108 Minn. 114, 121 N. W. 609, holding that where the testatrix made a will, and afterward sold the land and gave the certificates representing the proceeds, to her father asking him to give them to her sisters, and he kept them and deposited them for safe keeping, and the testatrix died within thirty days, it was a gift inter vivos.

52 L. R. A. 852, FINLEY v. STEELE, 159 Mo. 299, 60 S. W. 108.

Privileged communications.

Cited in Vanloon v. Vanloon, 159 Mo. App. 271, 140 S. W. 631, holding that qualifiedly privileged communication is one made bona fide by party having interest to one having corresponding interest; Holmes v. Royal Fraternal Union, 222 Mo. 568, 26 L.R.A.(N.S.) 1088, 121 S. W. 100, holding where an agent of a fraternal organization failed to remit money collected by him, and when

threatened with suit threatened to leave the association and take a large number of the members with him, whereupon the association wrote to the members and stated that he had been discharged and not to pay dues to him, that was a qualified privileged communication; Kersting v. White, 107 Mo. App. 277, 80 S. W. 730, holding that a statement by a member of a religious society in repeating a statement made at a meeting of an investigating committee of the society, was privileged where made in good faith, to another member; Overton v. White, 117 Mo. App. 604, 93 S. W. 363, on the same point; Yager v. Bruce, 116 Mo. App. 483, 93 S. W. 307, holding that statements regarding a candidate for public office, are at the most qualifiedly privileged, and must be made in good faith to protect the speaker.

Cited in footnotes to Buisson v. Huard, 56 L.R.A. 296, which holds privileged, answers to inquiries by interested persons as to defamatory remarks by others; Mauk v. Brundage, 62 L.R.A. 477, which holds statute as to carelessness of physician in preamble to order of board of health not privileged.

Cited in notes (30 L.R.A.(N.S.) 200, 201) on privilege of school officer in reporting to authorities upon character of teacher; (104 Am. St. Rep. 116, 121) on what libelous statements are privileged.

— Effect of malice.

Cited in Cornelius v. Cornelius, 233 Mo. 31, 135 S. W. 65, holding that malice destroys qualified privilege; Rose v. Tholborn, 153 Mo. App. 412, 134 S. W. 1093, holding that communications to person to whom speaker owes duty are not privileged if spoken in malice; Minter v. Bradstreet Co. 174 Mo. 487, 73 S. W. 668, holding that if the plaintiff can prove actual malice in making a privileged communication, the privilege is gone, and he may recover as for libel.

— Proof of malice.

Cited in Tanner v. Stevenson, 138 Ky. 589, 30 L.R.A.(N.S.) 205, 128 S. W. 878, holding that plaintiff must show actual malice where defendant is entitled to qualified privilege; Wagner v. Scott, 164 Mo. 301, 63 S. W. 1107, holding where the plaintiff had been engaged by several electric light companies to construct a system of underground conduits, and the president of one of them wrote another falsely charging that the plaintiff was attempting to prevent an examination of the work and had forged some papers, it was prima facie evidence of malice.

Damages for libel.

Cited in Cook v. Globe Printing Co. 227 Mo. 604, 127 S. W. 332 (dissenting opinion), making comparison to show excessiveness of verdict in libel suit.

52 L. R. A. 854, PADGITT v. MOLL, 159 Mo. 143, 81 Am. St. Rep. 347, 60 S. W. 121.

Who are passengers.

Cited in Drogmund v. Metropolitan Street R. Co. 122 Mo. App. 159, 98 S. W. 1091, holding that a boy who was permitted by the grip-man on a street car to ride with him and ring the bell, was not a passenger.

Cited in notes (8 L.R.A.(N.S.) 1241) on duty of carrier to one permitted to enter cars upon his own business; (104 Am. St. Rep. 589) on who are passengers on street railways.

Reading stenographer's notes to the jury.

Cited in Otto v. Young, 43 Misc. 631, 88 N. Y. Supp. 188, holding that it was reversible error for the court stenographer to read to the jury, in the

absence of counsel for either party, the testimony of both the plaintiff and the defendant.

Cited in note (21 L.R.A.(N.S.) 933) on right of jury to have reporter's notes read.

Distinguished in Bradley v. Spickardsville, 90 Mo. App. 424, holding that it was not reversible error to permit the attorney in closing his argument to read from a transcript from the stenographer's notes.

Stenographer's notes as a part of the record.

Cited in Becher v. Deuser, 169 Mo. 164, 69 S. W. 363, holding that the stenographer's notes or proceedings are not a part of the record, so that it is not admissible to make a nunc pro tunc entry based thereon; Jackson v. Fulton, 87 Mo. App. 236, holding that the stenographer's notes were insufficient by which to amend a bill of exceptions where the dispute arose as to something omitted from the notes.

Best evidence of witness's testimony.

Distinguished in Estes v. Missouri P. R. Co. 111 Mo. App. 3. 85 S. W. 909, holding that a transcript of a witness's testimony is the best evidence of what the witness testified to on a former trial.

Explained in Turner v. Southwest Missouri R. Co. 138 Mo. App. 149, 120 S. W. 128, holding that the court stenographer's notes are the best evidence of the testimony of a witness upon a former trial.

Stating memory of testimony to jury.

Cited in Rose v. Kansas City, 125 Mo. App. 237, 102 S. W. 578, holding that it was error for the judge to make remarks as to what he remembered the testimony of a certain witness to be.

Admissibility of evidence on former trial.

Cited in notes (25 L.R.A.(N.S.) 170) on admissibility on subsequent trial of admission made to defeat continuance; (91 Am. St. Rep. 193) on admissibility of evidence given on former trial in civil case.

52 L. R. A. 858, STATE v. EDWARDS, 61 Neb. 181, 85 N. W. 43.

Trusts in proceeds of collection by insolvent bank.

Cited in footnote to Garrison v. Union Trust Co. 70 L.R.A. 615, which holds rule that bank making collection is entitled to lien on proceeds to balance account with correspondent as against title of original transmitting bank not changed by fact that bank to which draft was sent by correspondent for collection was insolvent when receiving notice of collection from third bank to which draft was forwarded for collection and credit.

Cited in note (38 L.R.A.(N.S.) 148) on trusts in proceeds of collection made by a bank when insolvent.

Preference of beneficiary of trust funds.

Cited in Patek v. Patek, 166 Mich. 449, 35 L.R.A.(N.S.) 464, 131 N. W. 1101, holding that receiver must return amount of money deposited without authority, to true owner as trust fund, in preference to claims of general creditors of bank.

52 L. R. A. 861, KOCHER v. SUPREME COUNCIL, C. B. L. 65 N. J. L. 649, 86 Am. St. Rep. 687, 48 Atl. 544.

Waiver of provisions of by-laws.

Cited in Coughlin v. Knights of Columbus, 79 Conn. 227, 64 Atl. 223, holding

that an acceptance of the assessments after the time allowed by the by-laws, did not change the by-laws though allowed by the custom of the local lodge.

— By officers.

Cited in J. P. Lamb & Co. v. Merchants' Nat. Mut. F. Ins. Co. 18 N. D. 267, 119 N. W. 1048, holding that secretary of mutual fire insurance company cannot waive by-law as to credit for premiums or assessments; Larkin v. Modern Woodmen, 163 Mich. 674, 127 N. W. 786, holding that clerk of local camp cannot waive by-laws of great camp as to exhaustion of remedies within order; Timberlake v. Supreme Commandery, 208 Mass. 423, 36 L.R.A.(N.S.) 602, 94 N. E. 685, on power of officers of fraternal insurance company to waive compliance by intended member with requirements for admission; Bruley v. Royal League, 3 Ill. C. C. 334, holding that an acceptance of assessments by an officer of a subordinate did not waive the by-law prohibiting a member from engaging in the liquor business.

Cited in note (121 Am. St. Rep. 548) on corporations being bound by acts of officers.

52 L. R. A. 863, STATE v. HOGAN, 63 Ohio St. 202, 81 Am. St. Rep. 626, 58 N. E. 572.

Special or class legislation.

Cited in Davies v. State, 6 Ohio C. C. N. S. 424, 27 Ohio C. C. 599, upholding the constitutionality of a law providing for the payment of a specific pension to certain blind persons; Burks v. Walker, 25 Okla. 367, 109 Pac. 544, holding an act creating county superior courts for counties having a certain population and a city of a certain population was not unconstitutional; Burks v. Walter, 25 Okla. 367, 109 Pac. 544, holding valid, act creating county superior court for each county having population of 30,000.

— Necessity of uniformity of operation within class.

Cited in Horstman v. Cincinnati Street R. Co. 12 Ohio S. & C. P. Dec. 777, holding unconstitutional a statute which fails to grant the same powers to all corporations which act under law at the same time; State v. American Strawboard Co. 13 Ohio S. & C. P. Dec. 376, holding an act providing for the punishment of the pollution of streams in any county the inhabitants of which are aggrieved by the act is constitutional; Klopfer v. Board of Health, 9 Ohio N. P. N. S. 40, 20 Ohio S. & C. P. Dec. 390, on the necessity that a statute operate uniformly on the class to which applicable.

Cruel and unusual punishments.

Cited in Weems v. Miller, 217 U. S. 405, 54 L. ed. 814, 30 Sup. Ct. Rep. 544 (dissenting opinion), considering when statutes are unconstitutional as imposing severe and unusual punishments.

Constitutional right to bear arms.

Cited in notes (115 Am. St. Rep. 201) on constitutional right to keep and bear arms; (3 L.R.A.(N.S.) 170) on same point.

Validity of vagrancy acts.

Cited in note (137 Am. St. Rep. 946, 967) on constitutionality of statutes dealing with vagrancy.

52 L. R. A. 868, BOARD OF EDUCATION v. TOWNSEND, 63 Ohio St. 514, 59 N. E. 223.

Excusing performance of contract.

Cited in Dixon v. Breon, 22 Pa. Super. Ct. 348, holding that where a contract

of a continuing nature is entered into or to be performed at some future time, depending upon the existence of some particular thing or person, subsequent death or destruction of the thing excuses compliance with the contract.

Cited in footnotes to Ontario Deciduous Fruit Growers' Asso. v. Cutting Fruit Packing Co. 53 L.R.A. 681, which denies liability for failure to deliver specified quantity of fruit contracted for, from failure of crop due to unusual climatic conditions; Krause v. Crothersville School Trustees, 65 L.R.A. 111, which holds covenant to repair building and construct annex thereto discharged by destruction by lightning of main building when work is practically completed.

52 L. R. A. 872, PEOPLE'S & D. BANK v. CRAIG, 63 Ohio St. 374, 81 Am. St. Rep. 639, 59 N. E. 102.

Right of subrogation.

Cited in Bennett v. Chandler, 199 Ill. 107, 64 N. E. 1052, holding an agent of a mortgagee who receives unindorsed interest coupons for collection and remits the amount out of his own funds is not entitled to be subrogated to mortgagees' rights therein.

Direction of verdict.

Cited in Quay v. Quay, 4 Ohio N. P. N. S. 537, 16 Ohio S. & C. P. Dec. 442, holding it was duty of court on motion for directed verdict by defendant after plaintiff had rested to weigh evidence presented by plaintiff and where nothing was proved such motion should be granted.

52 L. R. A. 874, NEISLER v. PEARSALL, 22 R. I. 367, 48 Atl. 8.

Absence of power of revocation from trust deed as prima facie evidence of mistake.

Distinguished in Wallace v. Industrial Trust Co. 29 R. I. 559, 73 Atl. 25, holding that the absence of a power of revocation in a voluntary deed creating a trust, is not prima facie evidence of a mistake, where the primary underlying purpose of the trust is entirely inconsistent with such power of revocation.

Power to revoke voluntary settlements.

Cited in footnote to Slack v. Rees, 69 L.R.A. 393, which holds that deed without power of revocation from parent physically incapacitated and mentally weak to daughter without benefit of competent advice will be set aside.

52 L. R. A. 877, TOLMAN v. AMERICAN NAT. BANK, 22 R. I. 462, 84 Am. St. Rep. 850, 48 Atl. 480.

Liability of bank to depositor for money wrongfully paid out.

Cited in O'Neil v. New England Trust Co. 28 R. I. 311, 11 L.R.A.(N.S.) 248, 125 Am. St. Rep. 740, 67 Atl. 63, holding that if a bank pays out money deposited with it, other than on the order of the depositor, or to or for his use, it is liable to the amount of such payment; Chicago Sav. Bank v. Block, 126 Ill. App. 131, holding that the drawer is not liable and cannot be charged with money paid on raised checks.

Cited in footnotes to Burrows v. Western Union Teleg. Co. 58 L.R.A. 433, which holds telegraph company delivering check, upon order by telegraph, to wrong party liable to bona fide purchaser; Canadian Bank of Commerce v. Bingham, 60 L.R.A. 955, which sustains drawee's right to recover amount of forged check payable to fictitious person, from one cashing same on indorsement pur-

porting to be payee's without requiring identification; La Fayette v. Merchants' Bank, 68 L.R.A. 231, which sustains right of drawee paying draft on forged indorsement in ignorance of forgery on presentation bearing indorsement of collecting bank to recover back amount so paid.

Burden of loss upon payment of check to fraudulent payee.

Cited in Central Nat. Bank v. National Metropolitan Bank, 31 App. D. C. 397, 17 L.R.A.(N.S.) 523, holding drawee having paid check which by fraud ran to one under an assumed name, could not recover from an intermediate collecting bank, merely because it had guaranteed prior indorsements and the check was avoided.

Cited in note (17 L.R.A.(N.S.) 515) as to who must bear loss when check or bill is issued or indorsed to impostor.

Disapproved in Hoffman v. American Exch. Nat. Bank, 2 Neb. (Unof.) 220, 96 N. W. 112, holding that where a check or draft is drawn or indorsed and delivered to a party to be cashed by him under the name in which it is made out or indorsed, his signature by the way of indorsement in that name is valid as between an innocent holder and the party delivering it to him.

Indorsement of check by fictitious payee.

Cited in National Council, K. & L. S. v. Hibernian Bkg. Asso. 137 Ill. App. 185, holding the distinction between a real and a fictitious person as payee was such that an indorsement by name of the latter was no forgery.

52 L. R. A. 879, RE RHODE ISLAND SUBURBAN R. CO. 22 R. I. 457, 48 Atl. 591.

Object of eminent domain.

Cited in Great Western Natural Oil & Gas Co. v. Hawkins, 30 Ind. App. 567, 66 N. E. 765, holding that in a proceeding to condemn a right of way for a pipe line, it must be alleged that the company is engaged in furnishing gas to the public, since the power of eminent domain cannot be exercised except for a public use; Fallsburg Power & Mfg. Co. v. Alexander, 101 Va. 108, 61 L.R.A. 133, 99 Am. St. Rep. 855, 43 S. E. 194, holding that a grant of the power of eminent domain was unconstitutional where given to a power company, who was to generate electricity for its own use and for sale.

What is a public use.

Cited in Brown v. Gerald, 100 Me. 367, 70 L.R.A. 480, 109 Am. St. Rep. 526, 61 Atl. 785, holding that the generation and sale of electricity to the public for manufacturing purposes is not a public use warranting the exercise of eminent domain; Northern P. R. Co. v. Boynton, 17 N. D. 207, 115 N. W. 679, holding that the construction of a reservoir to gather water for the use of the railroad's locomotives, was a public use where necessary to the operation of the railroad; Terrell v. Chesapeake & O. R. Co. 110 Va. 345, 32 L.R.A.(N.S.) 378, 66 S. E. 55, holding that maintenance by railroad of yard for storing, cleaning and firing of engines is done in its private, and not its public, capacity.

Cited in note (2 L.R.A.(N.S.) 845) on generation of electricity for sale for power as public purpose.

Distinguished in Rockingham County Light & P. Co. v. Hobbs, 72 N. H. 535, 66 L.R.A. 585, 58 Atl. 46; Minnesota Canal & Power Co. v. Koochiching Co. 97 Minn. 447, 5 L.R.A.(N.S.) 647, 107 N. W. 405, 7 Ann. Cas. 1182,—holding that the generation of electricity by waterpower for distribution and sale to the general public on equal terms, subject to governmental control, is a public use of land, and warrants the exercise of eminent domain.

Judicial power over eminent domain.

Cited in notes (22 L.R.A.(N.S.) 35, 37, 42, 51, 59, 76, 80, 122, 134, 138) on judicial power over eminent domain; (88 Am. St. Rep. 930, 933, 935) on existence or public use as question for courts.

Private functions of a public service corporation.

Cited in Townsend v. Norfolk R. & Light Co. 105 Va. 33, 4 L.R.A.(N.S.) 92, 115 Am. St. Rep. 842, 52 S. E. 970, 8 Ann. Cas. 558, holding that a railroad and light company in the operation of its power house is engaged as an individual and is liable for the maintenance of a nuisance such as injury to adjoining property by vibration, or by smoke.

Construction of "necessary."

Cited in Rexroth v. Holloway, 45 Ind. App. 38, 90 N. E. 87, holding that word "necessary" means that which is reasonable for purpose required.

52 L. R. A. 883, HILL v. MYNATT, — Tenn. — , 59 S. W. 163.

52 L. R. A. 894, SALE v. EICHBERG, 105 Tenn. 333, 59 S. W. 1020.

Instructions on damages.

Cited in Harrison v. McMillan, 109 Tenn. 80, 69 S. W. 973, holding that it was error for the court to charge that the action was not only for board, but for nursing the defendant's wife during her sickness, and that the plaintiff could recover for the latter, and it was the duty of the jury to ascertain the reasonable charge for the same, where the action was for board only, and the jury followed the instruction.

Res judicata.

Distinguished in Taylor v. Sledge, 110 Tenn. 268, 75 S. W. 1074, holding that a judgment by default is conclusive on the parties as to material matters properly pleaded and averred in the declaration.

Statement of cause of action in justice's warrant.

Cited in Memphis Street R. Co. v. Flood, 122 Tenn. 72, 113 S. W. 384, on necessity of statement of cause of action in justice's warrant.

52 L. R. A. 899, ROYSTON v. McCULLEY, — Tenn. — , 59 S. W. 725.

Sufficiency of delivery of gift causa mortis.

Cited in Scott v. Union & Planters' Bank & T. Co. 123 Tenn. 282, 130 S. W. 757, holding that delivery must completely terminate donor's custody and control.

Cited in footnotes to Lord v. New York L. Ins. Co. 56 L.R.A. 597, which sustains gift of policy found among papers of insured at his death, on proof of his declarations that it was donee's; Hawn v. Stoler, 65 L.R.A. 813, which holds parol instructions by one giving money to another for safe keeping which the latter's husband has deposited in bank in his own name as to the persons to whom such money is to be paid after donor's death, insufficient to affect valid gift causa mortis; Re Collins, 68 L.R.A. 119, which sustains as gift *causa mortis* drawing of check for part of deposit under fear of impending death and delivered to drawee with directions to forward it to the bank with statement that it is to become the drawee's property in case of drawer's death.

Retention or resumption of possession by donor as affecting gift.

Cited in Talbot v. Talbot, 32 R. I. 95, 78 Atl. 535, Ann. Cas. 1912 C, 1221, holding that gift of stock certificates is not defeated by their return to donor.

Cited in note (32 L.R.A.(N.S.) 221) on retention or resumption of possession by donor as affecting gift.

Attorney's implied right to fees.

Cited in Sullivan v. Detroit, Y. & A. A. R. Co. 135 Mich. 667, 64 L.R.A. 676, 106 Am. St. Rep. 403, 98 N. W. 756, holding that an attorney could not have a contract with the promoters that they in consideration of his services in accomplishing their scheme, would make him attorney for the corporation, and at the same time have an implied contract with the corporation to pay him for the same services.

52 L. R. A. 915, SOUTHERN INS. CO. v. ESTES, 106 Tenn. 472, 82 Am. St. Rep. 892, 62 S. W. 149.

Application of Federal revenue stamp law to evidence in state courts.

Cited in Wade v. Foss, 96 Me. 232, 52 Atl. 640, holding that the provision of the Federal revenue law requiring stamps upon notes before they are admissible in evidence, applies only to notes in evidence in the Federal courts.

Cited in footnote to Small v. Slocomb, 53 L.R.A. 130, which denies power of Congress to prohibit receiving unstamped instruments in evidence in state court.

Cited in note (84 Am. St. Rep. 187) on power of Congress to exclude instruments in state courts for failure to comply with statute requiring stamping of writings.

Sole ownership within the meaning of insurance policy.

Cited in Continental F. Ins. Co. v. Whitaker, 112 Tenn. 165, 64 L.R.A. 455, 105 Am. St. Rep. 916, 79 S. W. 119, holding existence of mere incumbrance of lien on property was not enough to falsify a representation as to title; Matthews v. Capital F. Ins. Co. 115 Wis. 274, 91 N. W. 67, holding that equitable ownership is entire and sole ownership as regards the real purpose of the provisions of an insurance policy requiring such ownership as a condition precedent to the validity of the contract of insurance.

Cited in footnotes to Steinmeyer v. Steinmeyer, 59 L.R.A. 319, which holds entry of judgment setting aside voluntary deed does not change grantee's ownership; Phenix Ins. Co. v. Kerr, 66 L.R.A. 569, which holds interest of owner of property held by another under option to purchase which is irrevocable by owner but which owner of option is not bound to accept, sole and unconditional ownership.

Cited in note (7 L.R.A.(N.S.) 628) on vendor's lien as affecting sole and unconditional ownership.

52 L. R. A. 919, GRIFFITH v. NEW ENGLAND TELEPH. & TELEG. CO. 72 Vt. 441, 48 Atl. 643.

Liability of electric companies for injuries coming from outside currents.

Cited in Byron Teleph. Co. v. Sheets, 122 Ill. App. 10, holding that a person dealing with the dangerous agency of electricity is bound to exercise the highest degree of care and skill to protect persons from injury whether the danger arises from currents getting on from other sources or not; Central U. Teleph. Co. v. Sokola, 34 Ind. App. 436, 73 N. E. 143, holding telephone company liable for injuries from broken wires having become heavily charged by contact with other wires, though a storm is a concurrent cause the company being negligent in the first place; Harrington v. Wadesboro, 153 N. C. 442, 69 S. E. 399, holding that municipality furnishing electrical power to run moving picture show is liable for shock received by patron of show from uninsulated wire.

Cited in footnotes to Cumberland Teleg. & Teleph. Co. v. Martin, 63 L.R.A. 469, which denies liabilty of telephone company stretching inadequately insulated wire over roof of store porch for death by lightning of passer by taking refuge under

roof during storm; Alexander v. Nanticoke L. Co. 67 L.R.A. 475, which holds that corporation contracting to light building by electricity undertakes to protect occupants from injury by electric current so far as it can do so by highest degree of care, skill, and diligence in maintaining plant.

Cited in notes (36 L.R.A.(N.S.) 279, 281) on liability for personal injury to one using telephone; (100 Am. St. Rep. 522) on duties and liabilities of electric corporations.

Distinguished in Mercantile F. & M. Ins. Co. v. Cumberland Teleph. & Teleg. Co. 126 La. 625, 52 So. 851, holding that amended petition alleging that destruction of house was due to contract of defendant's wires, not properly insulated, with outside wires does not state same cause of action as original petition alleging that destruction was due to improper installation of defendant's wires inside house.

— From lightning.

Cited in Southern Teleg. & Teleph. Co. v. Evans, 54 Tex. Civ. App. 66, 116 S. W. 418, holding telephone company liable for injury from its negligence in failing to install in connection with telephone lightning-arrester with ground wire; Southwestern Teleg. & Teleph. Co. v. Abeles, 94 Ark. 259, 140 Am. St. Rep. 115, 126 S. W. 724, 21 Ann. Cas. 1006, holding telephone company liable for shock received by person using telephone during ordinary electrical storm; Norfolk & P. Traction Co. v. Daily, 111 Va. 676, 69 S. E. 963, holding that traction company in extending wire from trolley to building for lighting purposes is bound to use that ordinary care which present state of scientific knowledge would suggest as reasonably necessary.

Cited in footnote to Phoenix Light & Fuel Co. v. Bennett, 63 L.R.A. 219, which holds provision for sufficient insulation to withstand lightning striking the wires, not within obligation of electric lighting company.

52 L. R. A. 922, GRIFFEN v. MANICE, 166 N. Y. 188, 82 Am. St. Rep. 630, 59 N. E. 925.

Cited in Griffen v. Manice, 74 App. Div. 371, 77 N. Y. Supp. 626, subsequent appeal from judgment dismissing complaint, 36 Misc. 365, 73 N. Y. Supp. 559, after order setting aside complaint, on the history of the litigation and for facts.

Presumption of negligence from happening of accident.

Approved in Keenan v. McAdams & C. Elevator Co. 58 Misc. 372, 108 N. Y. Supp. 952, holding that the starting of a machine, while it was being repaired by the plaintiff, after it had been stopped for that purpose, gave rise to a presumption of negligence.

Cited in Wilson v. Metropolitan Street R. Co. 112 App. Div. 909, 98 N. Y. Supp. 1117, (dissenting opinion); Fallon v. Howard, 95 App. Div. 629, 88 N. Y. Supp. 1098, (dissenting opinion); Sinkovitz v. Peters Land Co. 5 Ga. App. 797, 64 S. E. 93,—on the application of the doctrine of res ipsa loquitur; Turner v. Southern Power Co. 154 N. C. 138, 32 L.R.A.(N.S.) 852, 69 S. E. 767, holding doctrine of res ipsa loquitur applicable to injury by electricity to consumer by taking hold of lamp to turn on light; The Thomas Cranage, 189 Fed. 1005, on presumption of negligence from fall of hatch cover in vessel; Dalton v. Selah Water Users' Asso. 67 Wash. 593, 122 Pac. 4, holding doctrine of res ipsa loquitur applicable to break in bank of irrigation canal; Hicks v. Western U. Teleg. Co. 157 N. C. 525, 73 S. E. 139, on application of doctrine of res ipsa loquitur to electrocution of linemen; Stelter v. Cordes, 146 App. Div. 300, 130 N. Y. Supp. 688, holding rule of res ipsa loquitur not applicable, where bowler ran splinter into foot; Fouquet v. New York C. & H. R. R. Co. 53 Misc. 125, 103 N. Y. Supp. 1105, holding that the doctrine does not apply where it does not appear that by the exercise of reason-

able care the accident could have been prevented; Nebraska Bridge Supply & Lumber Co. v. Jeffery, 95 C. C. A. 137, 169 Fed. 611, holding that the doctrine did not apply where the evidence rebutted the presumption of negligence; Huggard v. Glucose Sugar Ref. Co. 132 Iowa, 737, 109 N. W. 475, holding that where the circumstances point to the injury to the plaintiff being caused in a certain manner which could not have happened but for the defendant's negligence, the doctrine of res ipsa loquitur applies; Boisen v. Cobbs & Mitchell, 147 Mich. 436, 111 N. W. 82, holding that there could be no inference of negligence from the absence of a key and ring from the draught arm on a locomotive, where such may have occurred consistently with the performance of duty; Corbally v. Erie R. Co. 97 App. Div. 23, 89 N. Y. Supp. 577, holding that an injury to a pedestrian in crossing a railway track at a street crossing was sufficient to raise a presumption of negligence, where the injury resulted from a "flying switch" across the crossing; Moglia v. Nassau Electric R. Co. 127 App. Div. 245, 111 N. Y. Supp. 70, holding same as to a shock received by a pedestrian upon the street by coming in contact with a pole; Fisher v. New York Dock Co. 91 App. Div. 527, 87 N. Y. Supp. 117, holding that a presumption of negligence arose from an injury to the plaintiff by a collision between the car which he was unloading and others being moved by the defendant company; Grant v. Metropolitan Street R. Co. 99 App. Div. 424, 91 N. Y. Supp. 202, holding that an injury to a passenger by a horse and wagon running into a car while the same was coming to a stop, did not give rise to an inference of negligence; Eaton v. New York C. & H. R. R. Co. 195 N. Y. 271, — L.R.A.(N.S.) —, 88 N. E. 378, Reversing 125 App. Div. 56, 109 N. Y. Supp. 419, holding that the doctrine of res ipsa loquitur did not apply where a shipper standing upon the station platform was struck by some object from a passing train; O'Donohoe v. Duparquet, H. & M. Co. 67 Misc. 436, 123 N. Y. Supp. 193, holding that the doctrine did not apply where the plaintiff's automobile was run into by the defendant's truck after the latter was struck by a street car and shoved into the automobile; Duerr v. Consolidated Gas Co. 86 App. Div. 26, 83 N. Y. Supp. 714, holding that the doctrine of res ipsa loquitur applied to the breaking of a gas tank while the same was being tested; Robinson v. Empire City Subway Co. 53 Misc. 594, 103 N. Y. Supp. 717, holding that the doctrine did not apply to the injury of the plaintiff by an explosion of gas in a subway caused by a lighted lamp, where it was not shown who the person was who held the lamp which caused the explosion, nor how the gas came to be in the subway; Crowley v. Rochester Fireworks Co. 95 App. Div. 16, 88 N. Y. Supp. 483, holding that the doctrine does not apply where a spectator watching a display of fireworks, was injured by being struck by the falling stick from a sky-rocket; Kahn v. Burette, 42 Misc. 542, 85 N. Y. Supp. 1047, holding that the doctrine applied where the defendant's place of business was flooded by water and the ceiling below was wet, though no water was coming down into the plaintiff's rooms at the time; Silverberg v. New York City, 59 Misc. 494, 110 N. Y. Supp. 992; Ettlinger v. New York, 58 Misc. 230, 109 N. Y. Supp. 44,—holding that a presumption of negligence arose from the flooding of the plaintiff's cellar by a breaking of defective water mains; Hill v. Bloomingdale, 136 App. Div. 652, 121 N. Y. Supp. 370, on the burden of explaining the cause of the accident.

Cited in note (113 Am. St. Rep. 995, 1001, 1002, 1030) on presumption of negligence from happening of accident causing personal injuries.

Distinguished in Moran v. Merritt & C. Derrick & Wrecking Co. 135 Fed. 864, holding that the doctrine of res ipsa loquitur did not apply where a tug was damaged by a rope in the water where it was not shown that the rope belonged to the respondent, and no negligence shown on the part of the latter; Denver v.

Spencer, 34 Colo. 277, 2 L.R.A.(N.S.) 151, 114 Am. St. Rep. 158, 82 Pac. 590, 7 Ann. Cas. 1042, holding that an instruction to the effect that the mere happening of the event was presumptive of negligence charged, was erroneous; Fink v. Slade, 66 App. Div. 109, 72 N. Y. Supp. 821, holding that the rule of res ipsa loquitur does not dispense with the necessity of any evidence of negligence, but relates simply to the probative force of evidence.

— Effect of relation between the parties.

Approved in Nolan v. Brooklyn Heights R. Co. 68 App. Div. 221, 74 N. Y. Supp. 120, holding that the doctrine of res ipsa loquitur is not confined in its application to accidents where the parties bear no contractual relation, but applies in actions between master and servant.

Cited in Robinson v. Consolidated Gas Co. 57 Misc. 155, 106 N. Y. Supp. 1088; Jenkins v. St. Paul City R. Co. 105 Minn. 510, 20 L.R.A.(N.S.) 405, 117 N. W. 928,—holding that the relation of the parties does not ordinarily affect the application of the doctrine of res ipsa loquitur, and it applies as between master and servant; Marceau v. Rutland R. Co. 74 Misc. 639, 134 N. Y. Supp. 594, holding doctrine of res ipsa loquitur applicable to explosion in fire box of locomotive; Lynch v. Ninemire Packing Co. 63 Wash. 427, — L.R.A.(N.S.) —, 115 Pac. 838, holding that presumption of negligence did not arise from explosion of vat; Eagle Brewing Co. v. Luckowitz, 138 Ill. App. 141, holding that the doctrine does not apply as between master and servant; Duhme v. Hamburg-American Packet Co. 184 N. Y. 408, 112 Am. St. Rep. 615, 77 N. E. 386, Reversing 107 App. Div. 239, 94 N. Y. Supp. 1102, holding that where no contractual relation exists, the rule of res ipsa loquitur does not apply unless the facts or circumstances permit an inference of negligence by the jury; Illinois C. R. Co. v. McCollum, 122 Ill. App. 535; Stackpole v. Wray, 74 App. Div. 313, 77 N. Y. Supp. 633,—holding that the doctrine is not confined to cases where the contractual relation exists; VanInwegen v. Erie R. Co. 126 App. Div. 300, 110 N. Y. Supp. 959, holding same and applies between carrier and servant; Keenan v. McAdams & C. Elevator Co. 129 App. Div. 120, 113 N. Y. Supp. 343, on the same point.

Cited in note (6 L.R.A.(N.S.) 338) on res ipsa loquitur, as between master and servant.

— Fall or collapse of fixed objects.

Approved in Robinson v. Consolidated Gas Co. 194 N. Y. 41, 28 L.R.A.(N.S.) 591, 86 N. E. 805, holding that the injury of an employee by the falling of the scaffolding upon which he was working, the doctrine of res ipsa loquitur does not apply where it is shown that the nature of the work imposed a considerable strain on the scaffold.

Cited in Morris v. Zimmerman, 138 App. Div. 116, 122 N. Y. Supp. 900, holding rule of res ipsa loquitur applicable to fall of plaster from ceiling; Scheider v. American Bridge Co. 78 App. Div. 168, 79 N. Y. Supp. 634, holding that presumption of negligence arises from fall of iron column by breaking of rope; Hardie v. Charles P. Boland Co. 205 N. Y. 340, 98 N. E. 661, holding doctrine of res ipsa loquitur inapplicable to collapse of chimney of building being erected; Brady v. New York, 149 App. Div. 822, 134 N. Y. Supp. 305, holding that presumption of negligence arises from caving in of street subsequent to explosion; Potter v. Rorabaugh-Wiley Dry Goods Co. 83 Kan. 714, 32 L.R.A.(N.S.) 46, 112 Pac. 613, holding that where awning fell, burden is on owner to prove that it was properly constructed and maintained; Clancy v. New York & Q. C. R. Co. 82 App. Div. 565, 81 N. Y. Supp. 875; Smith v. Brooklyn Heights R. Co. 82 App. Div. 535, 81 N. Y. Supp. 8038, holding that the falling of a trolley wire raised a presumption of negligence; Wolpers v. New York & Q. Electric Light

& P. Co. 91 App. Div. 426, 86 N. Y. Supp. 845, holding same as to electric light wire; Walters v. Syracuse Rapid Transit R. Co. 64 App. Div. 155, 71 N. Y. Supp. 853, on the same point; Waller v. Ross, 100 Minn. 10, 12 L.R.A. (N.S.) 726, 117 Am. St. Rep. 661, 110 N. W. 252, 10 Ann. Cas. 715, holding that a presumption of negligence arises from the falling of an awning upon a pedestrian upon the sidewalk; Cunningham v. Dady, 191 N. Y. 157, 83 N. E. 689, holding that the caving in of a street, over two months after the digging of a trench and placing of a watermain did not raise a presumption of negligence; Ferrick v. Eidlitz, 195 N. Y. 252, 24 L.R.A.(N.S.) 839, 88 N. E. 33, Reversing 123 App. Div. 468, 108 N. Y. Supp. 28, holding that the doctrine of res ipsa loquitur did not apply where the servant was injured by stepping upon a portion of a temporary structure which was being removed, where the part onto which he stepped had not been touched in the removal operations; Lentino v. Port Henry Iron Ore Co. 71 App. 468, 75 N. Y. Supp. 755, holding that a presumption of negligence arose by proof of the caving in of a portion of the mine over which the plaintiff had to pass in going to his work; Moran v. Munson S. S. Line, 82 App. Div. 490, 81 N. Y. Supp. 612, holding that the doctrine does not apply to an injury by the falling, in the unloading of apparatus, where there was no evidence of negligence, but on the contrary there was evidence to show that there was no defect; Travers v. Murray, 87 App. Div. 553, 84 N. Y. Supp. 558, holding that a presumption of negligence arose from the falling of a chimney; Uggla v. Brokaw, 117 App. Div. 589, 102 N. Y. Supp. 857, holding that a presumption of negligence arose from an injury to a person upon the street by being struck by a skylight blown from a neighboring building; Stubley v. Allison Realty Co. 124 App. Div. 170, 108 N. Y. Supp. 759, holding that the doctrine did not apply where a building collapsed, and it was shown that the plans were not faulty and that the contractors erecting it were competent, and it was not known that it was in a dangerous condition; Weber v. Lieberman, 47 Misc. 585, 94 N. Y. Supp. 460, holding that injury to a person standing upon a grating in the sidewalk, by a collapse of the grating, gave rise to a presumption of negligence; Griffin v. Flank, 48 Misc. 618, 95 N. Y. Supp. 546, holding that the falling of a pulley from a shaft does not raise a presumption of negligence where it does not appear that the employer had failed in any duty; Anderson v. McCarthy Dry Goods Co. 49 Wash. 403, 16 L.R.A.(N.S.) 934, 126 Am. St. Rep. 870, 95 Pac. 325, holding that a prima facie case of negligence arose where a parcel carrier in a store fell upon a customer; Iesief v. New York C. & H. R. R. Co. 102 App. Div. 170, 92 N. Y. Supp. 342, holding that an inference of negligence arose from the falling of a board from a scaffold onto one of the servants engaged below.

— Fall of elevators or the like.

Cited in Cohen v. Farmers' Loan & Trust Co. 70 Misc. 551, 127 N. Y. Supp. 561, on presumption of negligence from fall of elevator; Scott v. Nauss Bros. Co. 141 App. Div. 262, 126 N. Y. Supp. 17, holding rule of res ipsa loquitur inapplicable, where fall of elevator may have been result of improper operation; Glassman v. Surpless, 53 Misc. 588, 103 N. Y. Supp. 789, holding that negligence may arise from the nature of the act, such as the falling of an elevator; Ingrafia v. Samuels, 71 App. Div. 18, 75 N. Y. Supp. 718, holding that an inference of negligence arose from the injury to a person in a passenger elevator, by the same starting up, while the operator was away from it; Bogendoerfer v. Jacobs, 97 App. Div. 357, 89 N. Y. Supp. 1051, holding that the fall of an elevator while not overloaded and while not in operation, raises a presumption of negligence; Stackpole v. Wray, 99 App. Div. 265, 90 N. Y. Supp. 1045, holding that the injury of a servant by the fall of a freight

elevator while not overloaded nor in operation, did not give rise to a presumption of negligence where the owner had had the same repaired when necessary according to competent experts; Frahm v. Siegel-Cooper Co. 131 App. Div. 750, 116 N. Y. Supp. 90, holding that an inference of negligence did not arise from the mere falling of mortar down the shaft of an elevator striking the plaintiff while on the elevator; Konigsberg v. Davis, 57 Misc. 631, 108 N. Y. Supp. 595, holding that a presumption of negligence arose from the falling of a piece of chain from the defendant's elevator, where it was shown that the chain had been broken for some time and had been repaired by a servant; Burke v. State, 64 Misc. 581, 119 N. Y. Supp. 1089, holding that the doctrine applies where the rope used in the operation of an inclined railroad, broke, and the safety apparatus failed to work.

Cited in footnote to Gibson v. International Trust Co. 52 L.R.A. 928, which denies liability for injury to passenger from involuntary starting of elevator by conductor grasping mechanism to prevent falling.

Distinguished in Young v. Mason Stable Co. 193 N. Y. 192, 21 L.R.A.(N.S.) 595, 127 Am. St. Rep. 959, 86 N. E. 15, holding that where the owner regularly employed a competent firm to inspect the elevator, and they had not informed the owner of any defect in the elevator, a presumption of negligence did not arise from the mere falling of the elevator; Lomas v. New York City Realty Co. 111 App. Div. 335, 97 N. Y. Supp. 658, holding that a presumption of negligence arose from the sudden stopping of a car while the plaintiff was about to alight, so as to throw her off the car; Schaetele v. Bristor, 148 App. Div. 847, 133 N. Y. Supp. 506, holding rule of res ipsa loquitur inapplicable to fall of elevator from breaking of cable.

— Breaking hoists.

Cited in Feingold v. Ocean S. S. Co. 61 Misc. 640, 113 N. Y. Supp. 1018, holding that the breaking of a rope holding the lumber together while it was being unloaded did not raise a presumption of negligence.

— Injury to passengers generally.

Approved in Huneke v. West Brighton Amusement Co. 80 App. Div. 270, 80 N. Y. Supp. 261, holding that it was error to instruct that an inference of negligence could be drawn from the happening of the accident which was the falling of the plaintiff from a wooden horse upon the defendant's gravity railway; Goss v. Northern P. R. Co. 48 Or. 442, 87 Pac. 149, holding that the doctrine did not apply in an action for injuries to a passenger by the closing of a door upon his hand, where it was shown that the catch of the door was in proper condition and good repair; Christensen v. Oregon Short Line R. Co. 35 Utah, 143, 20 L.R.A.(N.S.) 257, 99 Pac. 676, 18 Ann. Cas. 1159, holding same where it was not shown that the catch was defective or that the door had been placed so that the catch would engage it.

Cited in Houston, E. & W. T. R. Co. v. Roach, 52 Tex. Civ. App. 102, 114 S. W. 418, holding it proper to submit issue of defendant's negligence to jury, though there was no evidence except unexplained bursting of steam heating apparatus of car; Losie v. Delaware & H. Co. 142 App. Div. 216, 126 N. Y. Supp. 871, holding rule of res ipsa loquitur inapplicable, where sleeping-car passenger was found dead on tracks; Wyatt v. Pacific Electric R. Co. 156 Cal. 174, 103 Pac. 892, holding that no presumption of negligence arises from the mere fact that the plaintiff was injured while aboard one of the defendant's cars, or while alighting therefrom; Kohner v. Capital Traction Co. 22 App. D. C. 187, 62 L.R.A. 876, holding that the doctrine of res ipsa loquitur applies where a passenger was assaulted upon one of the defendant's cars by its conductor; Paducah Traction Co. v. Baker, 130 Ky. 369, 18 L.R.A.(N.S.) 1188, 113 S. W. 449, holding that a

presumption of negligence arises from the starting of a street car with a sudden jerk sufficient to throw off a person about to alight from the car; Allen v. United Traction Co. 67 App. Div. 364, 73 N. Y. Supp. 737, holding that the falling of a fire extinguisher attached to the side of car, raised a presumption of negligence; D'Arcy v. Westchester Electric R. Co. 82 App. Div. 266, 81 N. Y. Supp. 952, holding that an inference of negligence arose where a passenger was injured by an electric shock while riding upon the defendant's car; Strembel v. Brooklyn Heights R. Co. 110 App. Div. 24, 96 N. Y. Supp. 903, holding that no presumption of negligence arises from the falling of an open car window, raised by the passenger; Baum v. New York & Q. C. R. Co. 124 App. Div. 14, 108 N. Y. Supp. 265, holding that a presumption of negligence arose where a trap door in the floor of a street car flew up and injured a passenger; Elliott v. Brooklyn Heights R. Co. 127 App. Div. 302, 111 N. Y. Supp. 358, holding that under the doctrine of res ipsa loquitur, inference of negligence did not arise from a collision between a street car while standing still discharging passengers, and a following car, unless it was shown that the latter was owned by the same company; Langley v. Metropolitan Street R. Co. 36 Misc. 805, 74 N. Y. Supp. 857, holding that where the plaintiff was injured by a sudden stopping of the defendant's car, the doctrine of res ipsa loquitur applied; Barnes v. New York C. & H. R. R. Co. 42 Misc. 627, 87 N. Y. Supp. 608, holding that an accident causing injuries by slipping at night while alighting from the defendant's train in its shed, gave rise to a presumption of negligence; Munzer v. Interurban Street R. Co. 45 Misc. 571, 91 N. Y. Supp. 21, holding that an instruction that the doctrine applied in an action against the street railroad company to recover for injuries received by a passenger because of a run away horse striking the car, was erroneous.

Cited in notes (68 L.R.A. 804) on presumption and burden of proof as to carrier's negligence when passenger is injured by collision with vehicle under control of third person; (2 L.R.A.(N.S.) 726) on presumption of negligence from injury to passenger by collision of car with vehicle not under carrier's control; (2 L.R.A.(N.S.) 748, 749) on presumption of negligence from injury to elevator passenger; (13 L.R.A.(N.S.) 619) on presumption of negligence from injury to passenger.

Prima facie evidence.

Cited in Cox v. Mason, 89 App. Div. 221, 85 N. Y. Supp. 973, holding that the collapse of a folding bed while the purchaser's wife was taking off the sheets was prima facie evidence of a breach of the seller's agreement to place the same in a safe condition; Johnson v. Roach, 83 App. Div. 353, 82 N. Y. Supp. 203, holding that the falling of a scaffold is prima facie evidence of a violation of the labor law regulating the erection of scaffolds; Beall v. Dadirrian, 62 Misc. 128, 115 N. Y. Supp. 196, holding that the magistrate's holding was prima facie evidence of probable cause in an action for malicious prosecution; People v. Friedman, 149 App. Div. 876, 134 N. Y. Supp. 153, holding that possession of stolen property warrants inference that possessor was guilty of larceny.

Degree of care required of owner of elevator.

Approved in Burgess v. Stowe, 134 Mich. 210, 96 N. W. 29, holding that the owner of a passenger elevator is bound to exercise the care required of an ordinarily prudent person under the same circumstances; Edwards v. Manufacturers Bldg. Co. 27 R. I. 250, 2 L.R.A.(N.S.) 748, 114 Am. St. Rep. 37, 61 Atl. 646, 8 Ann. Cas. 974, holding that an owner of a passenger elevator is not held to the same degree of care as a carrier of passengers, but only to exercise a reasonable degree.

Cited in Young v. Mason Stable Co. 96 App. Div. 310, 89 N. Y. Supp. 349; Grifhahn v. Kreizer, 62 App. Div. 414, 70 N. Y. Supp. 973; Hubener v. Heide, 62 App. Div. 370, 70 N. Y. Supp. 1115, Hubener v. Heide, 73 App. Div. 203, 76 N. Y. Supp. 758,—holding that the measure of the duty of the owner of an elevator, was to use reasonable care in the maintenance and operation of the elevator; Sciolaro v. Asch, 198 N. Y. 82, 32 L.R.A.(N.S.) 948, 91 N. E. 263, Affirming 129 App. Div. 89, 113 N. Y. Supp. 446; McCracken v. Meyers, 75 N. J. L. 937, 16 L.R.A.(N.S.) 291, 68 Atl. 805,—holding that the owner of a passenger elevator must exercise at least ordinary care for the protection of persons using the same; Fish v. Waverly Electric Light & P. Co. 189 N. Y. 343, 13 L.R.A.(N.S.) 232, 82 N. E. 150, holding that by analogy an electric light company furnishing and maintaining a lamp in a store for a consideration, must use reasonable care in placing it.

Distinguished in Edwards v. Burke, 36 Wash. 111, 78 Pac. 610, holding that the owner of an elevator owes passengers invited to ride therein, a duty analogous to that of a common carrier in the operation of the elevator.

Disapproved in Belvedere Bldg. Co. v. Bryan, 103 Md. 538, 64 Atl. 44, holding that the operator of a passenger elevator must use the highest degree of care to see that the same is safe.

— To whom owed.

Cited in Green v. Urban Contracting & Heating Co. 106 App. Div. 464, 94 N. Y. Supp. 743, on the liability of the owner of an elevator for injuries to a tenant of the building.

Cited in note (92 Am. St. Rep. 523) on liability of lessors to third persons for injuries from elevators.

Duty to care for those upon premises by invitation.

Cited in Huebner v. Hammond, 80 App. Div. 127, 80 N. Y. Supp. 295, holding that the owner of a lighter owed a duty to his employees, and to those coming on board on business by his invitation or consent, express or implied, to use reasonable care to see that the lighter was in a safe condition or warn them of the danger.

What is ordinary care.

Cited in Walsh v. Central New York Teleph. & Teleg. Co. 176 N. Y. 167, 68 N. E. 146, holding that ordinary care must be commensurate with the danger, and will require a greater degree of vigilance under one set of circumstances, than under another.

52 L. R. A. 928, GIBSON v. INTERNATIONAL TRUST CO. 177 Mass. 100, 58 N. E. 278.

Liability for injury to elevator passenger.

Cited in footnotes to Griffen v. Manice, 52 L.R.A. 922, which holds only reasonable care required as to safety of machinery and appliances for moving elevator; Springer v. Ford, 52 L.R.A. 930, which holds operators of passenger elevator bound to exercise highest degree of care and diligence to prevent injury to passengers.

Cited in note (2 L.R.A.(N.S.) 748, 755) on liability for injury to elevator passenger.

Shifting of burden of proof.

Cited in Jaquith v. Rogers, 179 Mass. 197, 60 N. E. 486, holding the fact that the demandant in an action to recover land alleged to have been conveyed through a third person to a tenant in default of creditors, has made out a

case sufficient to go to jury does not throw the burden of proof upon the tenant; Wylie v. Marinofsky, 201 Mass. 584, 88 N. E. 448, holding plaintiff in action of replevin is not relieved of the burden of proving the right to possession by reason that defendant relies on a sale to him of the property by plaintiff's husband and plaintiff's ratification of the act.

Application of doctrine of res ipsa loquitur.

Cited in Parsons v. Hecla Iron Works, 186 Mass. 224, 71 N. E. 572, holding in an action by plaintiff for injuries received through the falling of a staging constructed by defendant's employees for their use the doctrine of res ipsa loquitur had no application where the cause of the fall of the staging was shown.

Scope of employment.

Followed as law of the case in second appeal, 186 Mass. 455, 72 N. E. 70, on the act of the janitor in moving the stool in the elevator as not being in the course of his employment.

Proximate cause.

Cited in Teis v. Smuggler Min. Co. 15 L.R.A.(N.S.) 898, 85 C. C. A. 478, 158 Fed. 266, holding a mining company was not liable where an employee overcome by gas in the mine was injured through the negligence of the searching party in removing him.

52 L. R. A. 930, SPRINGER v. FORD, 189 Ill. 430, 82 Am. St. Rep. 464, 59 N. E. 953.

Operator of elevator as common carrier.

Cited in Walsh v. Cullen, 235 Ill. 95, 18 L.R.A.(N.S.) 914, 85 N. E. 223, holding proprietor of elevator is not liable to employees as a common carrier of passengers; Steiskal v. Marshall Field & Co. 238 Ill. 98, 87 N. E. 117, Affirming 142 Ill. App. 158, holding proprietor of elevator liable as a carrier of passengers to one in the building seeking employment; Cooper v. Century Realty Co. 224 Mo. 723, 123 S. W. 848, holding the operators of an elevator were carriers as respecting an employee of a tenant of the building; Diamond Glue Co. v. Wietzychowski, 227 Ill. 342, 81 N. E. 392, Reversing 125 Ill. App. 288, on liability of operators of passenger elevators as common carriers.

Degree of care required of carriers of passengers.

Cited in O'Callaghan v. Dellwood Park Co. 242 Ill. 344, 26 L.R.A.(N.S.) 1056, 134 Am. St. Rep. 331, 89 N. E. 1005, 17 Ann. Cas. 407, Affirming 149 Ill. App. 39, requiring the highest degree of care for the safety of passengers, of the operators of scenic railroad as being carriers of passengers; Chicago City R. Co. v. Morse, 98 Ill. App. 666, holding carrier required to exercise the highest degree of care for the safety of passengers; Chicago Union Traction Co. v. Kallberg, 107 Ill. App. 91, holding instruction to same effect correct.

— Elevators.

Cited in Sweeden v. Atkinson Improv. Co. 93 Ark. 402, 27 L.R.A.(N.S.) 126, 125 S. W. 439, holding that the owner of an elevator is bound to use the same degree of care as a carrier of passengers, which is the highest degree of skill and care and foresight that is consistent in the practical operation of the elevator; Springer v. Schultz, 105 Ill. App. 548; Winheim v. Field, 107 Ill. App. 149; Anderson Art Co. v. Greenburg, 118 Ill. App. 224; Ohio Valley Trust Co. v. Wernke, 42 Ind. App. 334, 84 N. E. 999; Belvedere Bldg. Co. v. Bryan, 103 Md. 537, 64 Atl. 44; Chicago Exch. Bldg. Co. v. Nelson, 98 Ill. App. 197,— requiring of proprietor of passenger elevators the highest degree of care in

its operation; Orcutt v. Century Bldg. Co. 201 Mo. 438, 8 L.R.A.(N.S.) 932, 99 S. W. 1062; Beidler v. Branshaw, 200 Ill. 429, 65 N. E. 1086, Reversing 102 Ill. App. 187, holding the degree of care required in the operation of passenger elevators applies to freight elevators carrying person rightfully as a passenger.

Cited in footnotes to Griffen v. Manice, 52 L.R.A. 922, which holds only reasonable care required as to safety of machinery and appliances for moving elevator; Gibson v. International Trust Co. 52 L.R.A. 928, which denies liability for injury to passenger from involuntary starting of elevator by conductor grasping mechanism to prevent falling.

Cited in note (2 L.R.A.(N.S.) 745, 749, 760) on liability for injury to elevator passenger.

Res ipsa loquitur as applied to fall of elevator.

Cited in McCormick Harvesting Mach. Co. v. Zakzewski, 121 Ill. App. 31; Spring Valley Coal Co. v. Buzis, 115 Ill. App. 199,—on mere fact of accident as creating presumption of negligence where relation of passengers and carrier exists; Womble v. Merchants' Grocery Co. 135 N. C. 485, 47 S. E. 493; Field v. Winheim, 123 Ill. App. 232,—holding the unexplained falling of a passenger elevator created a presumption of negligence in its operators; Klebe v. Parker Distilling Co. 207 Mo. 491, 13 L.R.A.(N.S.) 144, 105 S. W. 1057, holding the rule of res ipsa loquitur did not apply where an employee was injured by the falling of an elevator by reason of the breaking of the cable, where he and fellow employees were acquainted with elevators and their operation and the cause of the break is not explained.

Cited in footnote to Spees v. Boggs, 52 L.R.A. 933, which holds employer not bound to explain cause of accident to servant through fall of elevator furnished for his use.

Cited in notes (13 L.R.A.(N.S.) 619) on presumption of negligence from injury to elevator passenger; (113 Am. St. Rep. 1030) on presumption of negligence from happening of elevator accident.

Release of carrier from duty to passengers.

Cited in Elgin, A. & S. Traction Co. v. Hench, 132 Ill. App. 542, holding a carrier could not be released from its duty to safely carry passengers by a city ordinance.

Persons bound by tenant's release of landlord as to condition of elevator.

Cited in B. Shoninger Co. v. Mann, 219 Ill. 247, 3 L.R.A.(N.S.) 1103, 76 N. E. 354, Affirming 121 Ill. App. 279, holding landlord not relieved from liability for injury to servant of tenant due to the defective condition of an elevator, because lease relieved him from liability for defects in the elevator.

Liability of landlord for defects in premises.

Cited in footnote to McGinley v. Alliance Trust Co. 56 L.R.A. 334, which holds lessor of apartment house retaining control of stairways liable for injury to tenants from lack of repair of stair railing.

Cited in notes (17 L.R.A.(N.S.) 1164) on liability of owner for injury to tenant's guests or employees by defect in premises; (92 Am. St. Rep. 523) on liability to third persons of lessors of real or personal property.

52 L. R. A. 933, SPEES v. BOGGS, 198 Pa. 112, 82 Am. St. Rep. 792, 47 Atl. 875.

Evidence of additional precautions after injury.

Cited in footnote to Georgia Southern & F. R. Co. v. Cartledge, 59 L.R.A. 118, which holds incompetent, evidence of additional precautions after injury.

Burden of proving negligence.

Cited in Chandler v. Philadelphia Rapid Transit Co. 10 Del. Co. Rep. 587, holding that burden is on railway to show freedom from negligence, where trolley pole fell on pedestrian; Witmer v. Pennsylvania R. Co. 21 Lanc. L. Rev. 210, holding that burden was on plaintiff to establish negligence, where plaintiff's decedent was killed by being thrown by runaway horse near railroad crossing in bad repair.

Cited in note (113 Am. St. Rep. 988) on presumption of negligence from happening of accident causing personal injuries.

— Of employer.

Cited in Diver v. Singer Mfg. Co. 205 Pa. 171, 54 Atl. 718, holding it necessary to the right of an employee to recover for injuries received by slipping on the floor that it be shown that employer was negligent of the existence of conditions from which negligence might be inferred; Marsh v. Lehigh Valley R. Co. 206 Pa. 560, 56 Atl. 52, holding in an action for the death of a locomotive fireman by reason of the explosion of the boiler, the negligence of defendant company must be sustained by proof; Dalton v. Towanda, 215 Pa. 406, 64 Atl. 547, holding in an action by an employee for injuries received by reason of an explosion, negligence on the part of the master must be shown; Doutrich v. Buch, 22 Lanc. L. Rev. 354, holding that no presumption of negligence as between employer and employee arises from happening of accident; Brown v. Towanda, 24 Pa. Super. Ct. 382, holding negligence of employer would not be presumed from the mere fact of happening of accident.

Cited in note (6 L.R.A.(N.S.) 352) on res ipsa loquitur, as between master and servant.

Who are fellow servants.

Cited in Golien v. Susquehanna Coal Co. 15 Luzerne Leg. Reg. 492, holding that hoisting engineer and miner are fellow servants; Duffy v. Platt, 205 Pa. 298, 54 Atl. 1000, holding a foreman of a carding room who in cleaning machinery leaves it uncovered and a boy employed there who is injured thereby are fellow servants; Remmert v. Pennsylvania R. Co. 18 Pa. Dist. R. 376, holding locomotive engineers in the employment of the same company though running different engines are fellow servants.

Cited in footnote to Louisville & N. R. Co. v. Stuber, 54 L.R.A. 696, which holds foreman of railroad water supply riding on engine, fellow servant of engineer.

— Elevatorman and other servants.

Cited in Fouquet v. New York C. & H. R. R. Co. 123 App. Div. 805, 108 N. Y. Supp. 525, holding a draftsman and elevatorman employed by defendant company were fellow servants.

52 L. R. A. 934, MILLS v. GEER, 111 Ga. 275, 36 S. E. 673.

Constitutionality of retroactive statutes.

Cited in Lears v. Seaboard Air-Line R. Co. 3 Ga. App. 624, 60 S. E. 343, holding a retroactive statute which merely affected a remedy for an already existing right was not unconstitutional; United States v. Heinszen, 206 U. S. 388, 51 L. ed. 1105, 27 Sup. Ct. Rep. 742, 11 Ann. Cas. 732, holding an act ratifying collection of duties was not invalid as depriving the parties paying the duties of property without due process of law.

Cited in note (38 L.R.A.(N.S.) 1016) on applicability to existing contracts, of statute avoiding contractual stipulations limiting time for action.

Validity of act giving reimbursement for past betterments of land.

Cited in Lay v. Sheppard, 112 Ga. 113, 37 S. E. 132 (dissenting opinion), questioning the constitutionality of an act creating the right to set off the value of improvements made before the passage of the act to an action for the recovery of land.

Recovery of mesne profits.

Cited in Acme Brewing Co. v. Central R. & Bkg. Co. 115 Ga. 508, 42 S. E. 8, holding in an action for the recovery of land where the defendant set up the value of improvements placed on the land during the occupancy of a prior holder, the plaintiff might recover mesne profits for the time such former occupant was in possession, though part of time in hands of receiver; Bowman v. Owens. 133 Ga. 56, 65 S. E. 156, holding in an action for the recovery of land the plaintiff may recover mesne profits only for the period of defendant's occupancy where such defendant only sets off improvements made during his occupancy.

Right to set-off value of improvements in proceedings for the recovery of the land.

Cited in Hicks v. Webb, 127 Ga. 174, 56 S. E. 307, holding a bona fide occupier of land might in proceedings for its recovery set off the value of bona fide permanent improvements.

Cited in note (81 Am. St. Rep. 176) on set-off of improvements in ejectment.

Authority of courts in vacation.

Cited in Morehead v. Allen, 131 Ga. 816, 63 S. E. 507; Webb v. Hicks, 117 Ga. 338, 43 S. E. 738,—holding a judge of the superior court had no power in vacation to order a sale of a minor's legal estate.

52 L. R. A. 950, NESTOR v. DIAMOND MATCH CO. 44 C. C. A. 606, 105 Fed. 567.

Cited in Riedinger v. Diamond Match Co. 60 C. C. A. 1, 123 Fed. 246, as res judicata to the suit at bar.

52 L. R. A. 954, ILLINOIS C. R. CO. v. McLEOD, 78 Miss. 334, 84 Am. St. Rep. 630, 29 So. 76.

Imputable negligence.

Cited in Flynn v. Chicago City R. Co. 250 Ill. 473, 95 N. E. 449, holding that negligence of driver of wagon colliding with street car is not imputable to person riding with him; Davis v. Chicago, R. I. & P. R. Co. 16 L.R.A.(N.S.) 431, 88 C. C. A. 488, 159 Fed. 19, holding plaintiff could not recover for injuries received by being struck by a train while riding with a friend where he made no objection to his friend's negligent act in driving upon track in front of an approaching train: Shultz v. Old Colony Street R. Co. 193 Mass. 319, 8 L.R.A. (N.S.) 610, 118 Am. St. Rep. 502, 79 N. E. 873, 9 Ann. Cas. 402, holding a person injured in a collision while riding as the guest of another might recover from the negligent third party although the driver of the vehicle in which he rode was also negligent, where unable to protect himself; Cotton v. Willmar & S. F. R. Co. 99 Minn. 372, 8 L.R.A.(N.S.) 654, 116 Am. St. Rep. 422, 109 N. W. 835, 9 Ann. Cas. 935, holding the negligence of the driver of a hired vehicle in driving upon tracks was not imputable to the passengers who were unaware of the danger.

Cited in footnotes to Koplitz v. St. Paul, 58 L.R.A. 74, which holds negligence of omnibus driver not imputable to member of picnic party carried; Duval

v. Atlantic Coast Line R. Co. 65 L.R.A. 722, which holds father's negligence in driving not imputable to daughter riding with him; McKernan v. Detroit Citizens' Street R. Co. 68 L.R.A. 347, which holds negligence of driver of fire engine in colliding with street car not imputable to fireman riding on engine; St. Louis & S. F. R. Co. v. McFall, 69 L.R.A. 217, which holds engineer's negligence resulting in collision not imputable to conductor; Markowitz v. Metropolitan Street R. Co. 69 L.R.A. 389, which holds negligence of driver imputable to employer seated beside him; Colorado & Southern R. Co. v. Thomas, 70 L.R.A. 681, which denies right of recovery for death by collision with train of one joining with driver of conveyance in testing danger of attempting to cross tracks in front of train.

Cited in notes (8 L.R.A.(N.S.) 673) on imputed negligence of driver to passenger; (110 Am. St. Rep. 294) on imputed negligence.

Failure to look and listen in crossing tracks as contributory negligence.

Cited in Jackson v. Mobile & O. R. Co. 89 Miss. 39, 42 So. 236, holding a person killed while attempting to cross tracks of which he had an unobstructed view and who might have seen the train if he had looked was guilty of such contributory negligence as to bar a recovery for his wrongful death.

Cited in footnotes to Western & A. R. Co. v. Ferguson, 54 L.R.A. 803, which holds failure to look within 30 feet of track does not prevent recovery: Keenan v. Union Traction Co. 58 L.R.A. 217, which holds failure to look for train within 35 feet of track, negligence.

52 L. R. A. 956. PEABODY v. SATTERLEE, 166 N. Y. 174, 59 N. E. 818.

Followed without discussion in Steinhardt v. Bingham, 80 App. Div. 626, 80 N. Y. Supp. 1149, Memorandum decision dissenting opinion.

Construction of fire policy as to risk insured.

Cited in Hustace v. Phenix Ins. Co. 175 N. Y. 303, 62 L.R.A. 657, 67 N. E. 592, holding under standard policy the insured was not liable for loss occasioned by an explosion in an adjoining building caused by fire; Nelson v. Traders' Ins. Co. 181 N. Y. 475, 74 N. E. 421, Affirming 86 App. Div. 69, 83 N. Y. Supp. 220, holding under a policy providing that the insurance should cease if the building fall, except as a result of fire: there was no liability where a wall fell and damage resulted to stock in extinguishing the resulting fire: Globe & R. Fire Ins. Co. v. David Moffat Co. 83 C. C. A. 91, 154 Fed. 21, on the construction of words in a standard form of fire insurance policy.

Sufficiency of giving of notice within specified time.

Cited in Knights of Maccabees v. Sackett, 34 Mont. 366, 115 Am. St. Rep. 532, 86 Pac. 423, holding the depositing in the mail of a notice or request for a change of beneficiary under a policy, did not constitute a delivery to the insurer: Fink v. Fink, 171 N. Y. 623, 64 N. E. 506, holding a request for a change of beneficiary placed in the mails before the death of the insured but not received by insurer until after did not constitute a timely delivery of such request: Slocum v. Saratoga & W. F. Ins. Co. 149 App. Div. 868, 134 N. Y. Supp. 72; Perry v. Caledonian Ins. Co. 103 App. Div. 116, 93 N. Y. Supp. 50,—holding in the absence of a waiver the furnishing of proofs of loss as stipulated by the policy is a condition precedent to a maintenance of an action on the policy; Lake Geneva Co. v. Selvage, 36 Misc. 213, 73 N. Y. Supp. 193, holding a requirement of proof of loss within sixty days after the fire is not complied with where such statement does not reach the insurer until after sixty days have elapsed; Kavanaugh v. Security Trust & L. Ins. Co. 117 Tenn. 44, 7 L.R.A.(N.S.) 260, 96 S. W. 499, 10 Ann. Cas. 680, holding the mere mailing of a notice of maturity of premium will not effect a forfeiture for nonpayment

unless it appears that such notice was received; Loomis v. Lewis, 62 App. Div. 435, 71 N. Y. Supp. 62, on proof of loss required within specific time not satisfied where notice is mailed but not received until after expiration of such time.

Cited in footnote to Hartford Fire Ins. Co. v. Redding, 67 L.R.A. 518, which holds policy not forfeited by failure to give notice or make proofs of loss within stipulated time in absence of stipulation to that effect.

Disapproved in Craig v. United States Health & Acci. Ins. Co. 80 S. C. 155, 18 L.R.A.(N.S.) 109, 128 Am. St. Rep. 877, 61 S. E. 423, 15 Ann. Cas. 216, holding a mailing of notice within the time limited a sufficient compliance with requirement that notice of illness be given within certain time.

52 L. R. A. 959, PERLSTEIN v. AMERICAN EXP. CO. 177 Mass. 530, 59 N. E. 194.

Negligent failure to observe laws of the road.

Cited in McGourty v. DeMarco, 200 Mass. 60, 85 N. E. 891, holding the fact that in passing from behind an electric car that had stopped to let off passengers the driver of a team goes to the right of the car is evidence of negligence; Bourne v. Whitman, 209 Mass. 163, 35 L.R.A.(N.S.) 702, 95 N. E. 404, holding that court is not bound to give instruction on effect of single fact that one party may have been on proper side of road when collision occurred.

Cited in footnotes to Winter v. Harris, 54 L.R.A. 643, which holds person on left of center of full width of road in fault, though on right of center of macadamized part; Neal v. Rendall, 63 L.R.A. 668, which holds failure of driver to turn to right of highway, evidence of negligence sufficient to go to jury.

Liability of master when servant acts outside scope of employment.

Cited in Fairbanks v. Boston Storage Warehouse Co. 189 Mass. 420, 13 L.R.A. (N.S.) 423, 109 Am. St. Rep. 646, 75 N. E. 737, holding an employer not liable for an unprovoked assault upon a customer without provocation by an employee called by the customer to take him down in the elevator; Grant v. Singer Mfg. Co. 190 Mass. 493, 6 L.R.A.(N.S.) 570, 77 N. E. 480, holding where an employee engaged to remove a sewing machine from one who has not complied with condition of payment commits an assault in securing the machine; the master is liable although the employee was forbidden to use force.

— Driving master's vehicle.

Cited in McCarthy v. Timmins, 178 Mass. 381, 86 Am. St. Rep. 490, 59 N. E. 1038, holding where his driver in going from his day's work goes out of his way to visit a saloon, master is not liable for injuries received by a traveler on the team's running away during the absence of the driver; Jones v. Weigand, 134 App. Div. 646, 119 N. Y. Supp. 441, holding a master was not liable where the driver of his carriage negligently ran over a child where the servant had gone out of his way with the carriage for his own pleasure; Maher v. Benedict, 123 App. Div. 580, 108 N. Y. Supp. 228, holding defendant was not liable for the negligence of his son who was twenty years of age while driving defendant's motor car for his own pleasure; Danforth v. Fisher, 75 N. H. 112, 21 L.R.A. (N.S.) 95, 71 Atl. 535, holding that where the chauffeur was told to take the automobile to a certain hotel at a certain time, but instead took it and went to visit a friend, and while returning ran into and injured a third person, the master was not liable therefor; Fleishman v. Polar Wave Ice & Fuel Co. 148 Mo. App. 130, 127 S. W. 660, on evidence that defendant's name was on wagon as proof that defendant's servants were acting in course of their employment.

Cited in note (9 L.R.A.(N.S.) 1034) on liability for injury by horse or automobile used by servant for own purposes.

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